

any person or group of persons associated with a customer, the court may specify that the delay be indefinite.

(2) Extensions of the delay of notice provided in paragraph (1) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection.

(3) Upon expiration of the period of delay of notification under paragraph (1) or (2), the customer shall be served with or mailed a copy of the process or request together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] that such notice might (state reason). The purpose of the investigation or official proceeding was .".

(c) Notice requirement respecting emergency access to financial records

When access to financial records is obtained pursuant to section 3414(b) of this title (emergency access), the Government authority shall, unless a court has authorized delay of notice pursuant to subsections (a) and (b), as soon as practicable after such records are obtained serve upon the customer, or mail by registered or certified mail to his last known address, a copy of the request to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by (agency or department) under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] on (date) for the following purpose: Emergency access to such records was obtained on the grounds that (state grounds).".

(d) Preservation of memorandums, affidavits, or other papers

Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the customer to whom such records pertain, the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection (a).

(Pub. L. 95-630, title XI, §1109, Nov. 10, 1978, 92 Stat. 3702; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

EDITORIAL NOTES

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (b)(1), is title II of Pub. L. 95-223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The Right to Financial Privacy Act of 1978, referred to in subsecs. (b)(3) and (c), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

In subsec. (a), "magistrate judge" substituted for "magistrate" pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

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

§3410. Customer challenges

(a) Filing of motion to quash or application to enjoin; proper court; contents

Within ten days of service or within fourteen days of mailing of a subpoena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpoena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request, with copies served upon the Government authority. A motion to quash a judicial subpoena shall be filed in the court which issued the subpoena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States district court. Such motion or application shall contain an affidavit or sworn statement—

- (1) stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and
- (2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this chapter.

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, "delivery" has the meaning stated in rule 5(b) of the Federal Rules of Civil Procedure.

(b) Filing of response; additional proceedings

If the court finds that the customer has complied with subsection (a), it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within seven calendar days of the filing of the Government's response.

(c) Decision of court

If the court finds that the applicant is not the customer to whom the financial records sought by the Government authority pertain, or that there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion or application, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced. If the court finds that the applicant is the customer to whom the records sought by the Government authority pertain, and that there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed or shall enjoin the Government authority's formal written request.

(d) Appeals

A court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer. An appeal of a ruling denying a motion or application under this section may be taken by the customer (1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the financial records, or (2) within thirty days after a notification that no legal proceeding is contemplated against him. The Government authority obtaining the

financial records shall promptly notify a customer when a determination has been made that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion or application, if the Government authority obtaining the records has not initiated such a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until either notification to the customer has occurred or a legal proceeding is initiated as described in clause (A). ¹

(e) Sole judicial remedy available to customer

The challenge procedures of this chapter constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this chapter.

(f) Affect on challenges by financial institutions

Nothing in this chapter shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a Government authority under existing law. Nothing in this chapter shall entitle a customer to assert the rights of a financial institution.

(Pub. L. 95–630, title XI, §1110, Nov. 10, 1978, 92 Stat. 3703.)

EDITORIAL NOTES

REFERENCES IN TEXT

Rule 5(b) of the Federal Rules of Civil Procedure, referred to in subsec. (a), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

¹ *So in original. Section does not contain a clause (A).*

§3411. Duty of financial institutions

Upon receipt of a request for financial records made by a Government authority under section 3405 or 3407 of this title, the financial institution shall, unless otherwise provided by law, proceed to assemble the records requested and must be prepared to deliver the records to the Government authority upon receipt of the certificate required under section 3403(b) of this title.

(Pub. L. 95–630, title XI, §1111, Nov. 10, 1978, 92 Stat. 3705.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3412. Use of information

(a) Transfer of financial records to other agencies or departments; certification

Financial records originally obtained pursuant to this chapter shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is

reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity, investigation or analysis related to international terrorism within the jurisdiction of the receiving agency or department.

(b) Mailing of copy of certification and notice to customer

When financial records subject to this chapter are transferred pursuant to subsection (a), the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: "Copies of, or information contained in, your financial records lawfully in possession of _____ have been furnished to _____ pursuant to the Right of Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose:

. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974 [5 U.S.C. 552a]."

(c) Court-ordered delays in mailing

Notwithstanding subsection (b), notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 3409(a) and (b) of this title and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 3409(a) and (b) of this title. Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 3409(a) and (b) of this title shall serve to the customer the notice specified in section 3409(b) of this title.

(d) Exchanges of examination reports by supervisory agencies; transfer of financial records to defend customer action; withholding of information

Nothing in this chapter prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this chapter prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this chapter shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) Exchange of records, reports, or other information

Notwithstanding section 3401(6) ¹ of this title or any other provision of law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or any subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council, the Securities and Exchange Commission, the Federal Trade Commission, the Commodity Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted.

(f) Transfer to Attorney General or Secretary of the Treasury

(1) In general

Nothing in this chapter shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General or the Secretary of the Treasury upon the certification by a supervisory level official of the transferring agency or department that—

(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and

(B) the records were obtained in the exercise of the agency's or department's supervisory or regulatory functions.

(2) Limitation on use

Records so transferred shall be used only for criminal investigative or prosecutive purposes, for

civil actions under section 1833a of this title, or for forfeiture under sections ² 981 or 982 of title 18 by the Department of Justice and only for criminal investigative purposes relating to money laundering and other financial crimes by the Department of the Treasury and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department. No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those records under law.

(Pub. L. 95–630, title XI, §1112, Nov. 10, 1978, 92 Stat. 3705; Pub. L. 97–320, title IV, §432(a), Oct. 15, 1982, 96 Stat. 1527; Pub. L. 100–690, title VI, §6186(b), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 101–73, title IX, §944, Aug. 9, 1989, 103 Stat. 498; Pub. L. 102–242, title IV, §411(1), Dec. 19, 1991, 105 Stat. 2375; Pub. L. 102–550, title XV, §1516, title XVI, §1606(b), Oct. 28, 1992, 106 Stat. 4059, 4087; Pub. L. 106–102, title II, §231(b)(2), title VII, §727(b)(2), Nov. 12, 1999, 113 Stat. 1407, 1475; Pub. L. 107–56, title III, §358(f)(1), Oct. 26, 2001, 115 Stat. 327; Pub. L. 109–455, §§10, 13, Dec. 22, 2006, 120 Stat. 3381, 3382; Pub. L. 111–203, title X, §1099(2), July 21, 2010, 124 Stat. 2105; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

EDITORIAL NOTES

REFERENCES IN TEXT

The Right of Financial Privacy Act of 1978, and the Financial Privacy Act of 1978, referred to in subsec. (b), both probably mean title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, known as the Right to Financial Privacy Act of 1978, which is classified generally to this chapter (§3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

The Privacy Act of 1974, referred to in subsec. (b), is Pub. L. 93–579, Dec. 31, 1974, 88 Stat. 1896, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5.

Section 3401(6) of this title, referred to in subsec. (e), was redesignated section 3401(7) of this title by Pub. L. 101–73, title IX, §941(1), Aug. 9, 1989, 103 Stat. 496.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment note below.

2010—Subsec. (e). Pub. L. 111–203 substituted "the Commodity Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted" for "and the Commodity Futures Trading Commission is permitted".

2006—Subsec. (e). Pub. L. 109–455, §10, which inserted "the Federal Trade Commission," after "the Securities and Exchange Commission," was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56 inserted ", or intelligence or counterintelligence activity, investigation or analysis related to international terrorism" after "legitimate law enforcement inquiry".

1999—Subsec. (e). Pub. L. 106–102 inserted ", examination reports" after "financial records" and substituted "provision of law," for "provision of this chapter," and ", the Securities and Exchange Commission, and the Commodity Futures Trading Commission" for "and the Securities and Exchange Commission".

1992—Subsec. (f)(1). Pub. L. 102–550, §1516(1), inserted "or the Secretary of the Treasury" after "the Attorney General".

Subsec. (f)(2). Pub. L. 102–550, §1606(b), inserted a comma before "for civil actions" and made technical amendment to reference to sections 981 or 982 of title 18.

Pub. L. 102–550, §1516(2), inserted "and only for criminal investigative purposes relating to money laundering and other financial crimes by the Department of the Treasury" after "the Department of Justice".

1991—Subsec. (f)(2). Pub. L. 102–242 inserted "for civil actions under section 1833a of this title, or for forfeiture under sections 981 or 982 of title 18" after "or prosecutive purposes" and inserted at end "No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those

records under law."

1989—Subsec. (e). Pub. L. 101–73, §944(1), which directed the insertion of ", holding company, or any subsidiary of a depository institution or holding company," after "with respect to a depository institution", was executed by making the insertion after "with respect to a financial institution", as the probable intent of Congress.

Pub. L. 101–73, §944(2), substituted "Council and the Securities and Exchange Commission" for "Council".

1988—Subsec. (f). Pub. L. 100–690 added subsec. (f).

1982—Subsec. (e). Pub. L. 97–320 added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 10 of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1606(b) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

¹ [*See References in Text note below.*](#)

² [*So in original. Probably should be "section".*](#)

§3413. Exceptions

(a) Disclosure of financial records not identified with particular customers

Nothing in this chapter prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) Disclosure to, or examination by, supervisory agency pursuant to exercise of supervisory, regulatory, or monetary functions with respect to financial institutions, holding companies, subsidiaries, institution-affiliated parties, or other persons

This chapter shall not apply to the examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions, including conservatorship or receivership functions, with respect to any financial institution, holding company, subsidiary of a financial institution or holding company, institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a financial institution, holding company, or subsidiary, or other person participating in the conduct of the affairs thereof.

(c) Disclosure pursuant to title 26

Nothing in this chapter prohibits the disclosure of financial records in accordance with procedures authorized by title 26.

(d) Disclosure pursuant to Federal statute or rule promulgated thereunder

Nothing in this chapter shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Disclosure pursuant to Federal Rules of Criminal Procedure or comparable rules of other courts

Nothing in this chapter shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

(f) Disclosure pursuant to administrative subpoena issued by administrative law judge

Nothing in this chapter shall apply when financial records are sought by a Government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5 and to which the Government authority and the customer are parties.

(g) Disclosure pursuant to legitimate law enforcement inquiry respecting name, address, account number, and type of account of particular customers

The notice requirements of this chapter and sections 3410 and 3412 of this title shall not apply when a Government authority by a means described in section 3402 of this title and for a legitimate law enforcement inquiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 4305(b) of title 50; the International Emergency Economic Powers Act (title II, Public Law 95-223) [50 U.S.C. 1701 et seq.]; or section 287c of title 22.

(h) Disclosure pursuant to lawful proceeding, investigation, etc., directed at financial institution or legal entity or consideration or administration respecting Government loans, loan guarantees, etc.

(1) Nothing in this chapter (except sections 3403, 3417 and 3418 of this title) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer) or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 3403(b) of this title. For access pursuant to paragraph (1)(B), no further certification shall be required for subsequent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this chapter, whenever a customer applies for participation in a Government loan, loan guaranty, or loan insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only

when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer), or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that violation, and such agency or department may then seek access to the records pursuant to the provisions of this chapter.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1)(B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Disclosure pursuant to issuance of subpoena or court order respecting grand jury proceeding

Nothing in this chapter (except sections 3415 and 3420 of this title) shall apply to any subpoena or court order issued in connection with proceedings before a grand jury, except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 3409 of this title.

(j) Disclosure pursuant to proceeding, investigation, etc., instituted by Government Accountability Office and directed at a government authority

This chapter shall not apply when financial records are sought by the Government Accountability Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(k) Disclosure necessary for proper administration of programs of certain Government authorities

(1) Nothing in this chapter shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board, where the disclosure of such information is necessary to, and such information is used solely for the purpose of, the proper administration of section 1441 of title 26, title II of the Social Security Act [42 U.S.C. 401 et seq.], or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(2) Nothing in this chapter shall apply to the disclosure by the financial institution of information contained in the financial records of any customer to any Government authority that certifies, disburses, or collects payments, where the disclosure of such information is necessary to, and such information is used solely for the purpose of—

(A) verification of the identity of any person or proper routing and delivery of funds in connection with the issuance of a Federal payment or collection of funds by a Government authority; or

(B) the investigation or recovery of an improper Federal payment or collection of funds or an improperly negotiated Treasury check.

(3) Notwithstanding any other provision of law, a request authorized by paragraph (1) or (2) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing information contained in the financial records of the customer to the

Government authority requesting the information, and the financial institution and its agents shall be barred from redisclosure of such information. Any Government authority receiving information pursuant to paragraph (1) or (2) may not disclose or use the information, except for the purposes set forth in such paragraph.

(l) Crimes against financial institutions by insiders

Nothing in this chapter shall apply when any financial institution or supervisory agency provides any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 1841(a)(2) of this title or subparagraph (A) or (B) of section 1730a(a)(2) of this title) of such institution, or of any major borrower from such institution who there is reason to believe may be acting in concert with any such officer, director, employee, or controlling shareholder, to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such person of—

- (1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of, or by borrowers from, financial institutions; or
- (2) any provision of subchapter II of chapter 53 of title 31 or of section 1956 or 1957 of title 18.

No supervisory agency which transfers any such record under this subsection shall be deemed to have waived any privilege applicable to that record under law.

(m) Disclosure to, or examination by, employees or agents of Board of Governors of Federal Reserve System or Federal Reserve Bank

This chapter shall not apply to the examination by or disclosure to employees or agents of the Board of Governors of the Federal Reserve System or any Federal Reserve Bank of financial records or information in the exercise of the Federal Reserve System's authority to extend credit to the financial institutions or others.

(n) Disclosure to, or examination by, Resolution Trust Corporation or its employees or agents

This chapter shall not apply to the examination by or disclosure to the Resolution Trust Corporation or its employees or agents of financial records or information in the exercise of its conservatorship, receivership, or liquidation functions with respect to a financial institution.

(o) Disclosure to, or examination by, Federal Housing Finance Agency or Federal home loan banks

This chapter shall not apply to the examination by or disclosure to the Federal Housing Finance Agency or any of the Federal home loan banks of financial records or information in the exercise of the Federal Housing Finance Agency's authority to extend credit (either directly or through a Federal home loan bank) to financial institutions or others.

(p) Access to information necessary for administration of certain veteran benefits laws

(1) Nothing in this chapter shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of Veterans Affairs where the disclosure of such information is necessary to, and such information is used solely for the purposes of, the proper administration of benefits programs under laws administered by the Secretary.

(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of Veterans Affairs and shall be barred from redisclosure by the financial institution or its agents.

(q) Disclosure pursuant to Federal contractor-issued travel charge card

Nothing in this chapter shall apply to the disclosure of any financial record or information to a Government authority in conjunction with a Federal contractor-issued travel charge card issued for official Government travel.

(r) Disclosure to the Bureau of Consumer Financial Protection

Nothing in this chapter shall apply to the examination by or disclosure to the Bureau of Consumer Financial Protection of financial records or information in the exercise of its authority with respect to a financial institution.

(Pub. L. 95–630, title XI, §1113, Nov. 10, 1978, 92 Stat. 3706; Pub. L. 98–21, title I, §121(c)(3)(C), Apr. 20, 1983, 97 Stat. 83; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–570, title I, §1353(b), Oct. 27, 1986, 100 Stat. 3207–22; Pub. L. 100–690, title VI, §6186(c), Nov. 18, 1988, 102 Stat. 4358; Pub. L. 101–73, title IX, §942, Aug. 9, 1989, 103 Stat. 497; Pub. L. 101–647, title I, §104, Nov. 29, 1990, 104 Stat. 4791; Pub. L. 102–242, title IV, §411(2)–(4), Dec. 19, 1991, 105 Stat. 2375; Pub. L. 102–568, title VI, §603(a), Oct. 29, 1992, 106 Stat. 4342; Pub. L. 105–264, §2(c)(1), Oct. 19, 1998, 112 Stat. 2351; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–234, title XIV, §14205, May 22, 2008, 122 Stat. 1459; Pub. L. 110–246, §4(a), title XIV, §14205, June 18, 2008, 122 Stat. 1664, 2221; Pub. L. 110–289, div. A, title II, §1216(a), July 30, 2008, 122 Stat. 2792; Pub. L. 111–203, title X, §1099(3), July 21, 2010, 124 Stat. 2105.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

The Federal Rules of Criminal Procedure, referred to in subsec. (e), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The International Emergency Economic Powers Act, referred to in subsec. (g), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

The effective date of this chapter, referred to in subsec. (h)(3), is the date upon the expiration of 120 days after Nov. 10, 1978. See section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

The Social Security Act, referred to in subsec. (k)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of such Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (k)(1), is act Aug. 29, 1935, ch. 812, as amended, generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (r). Pub. L. 111–203 added subsec. (r).

2008—Subsec. (k). Pub. L. 110–246, §14205, inserted heading, added pars. (2) and (3), and struck out former par. (2) which read as follows: "Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board and shall be barred from redisclosure by the financial institution or its agents."

Subsec. (o). Pub. L. 110–289 substituted "Federal Housing Finance Agency" for "Federal Housing Finance Board" and "Federal Housing Finance Agency's" for "Federal Housing Finance Board's".

2004—Subsec. (j). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1998—Subsec. (q). Pub. L. 105–264 added subsec. (q).

1992—Subsec. (p). Pub. L. 102–568 added subsec. (p).

1991—Subsec. (h)(1)(A), (4). Pub. L. 102–242, §411(2), (3), substituted "a financial institution (whether or not such proceeding, investigation, examination, or inspection is also directed at a customer)" for "the financial institution in possession of such records".

Subsec. (l). Pub. L. 102–242, §411(4), inserted at end "No supervisory agency which transfers any such record under this subsection shall be deemed to have waived any privilege applicable to that record under law."

1990—Subsec. (l)(2). Pub. L. 101–647 inserted before period at end "or of section 1956 or 1957 of title 18".

1989—Subsec. (b). Pub. L. 101–73, §942(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Nothing in this chapter prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution."

Subsecs. (m) to (o). Pub. L. 101–73, §942(2), added subsecs. (m) to (o).

1988—Subsec. (l). Pub. L. 100–690 added subsec. (l).

1986—Subsec. (c). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (i). Pub. L. 99–570 inserted ", except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 3409 of this title".

Subsec. (k)(1). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1983—Subsec. (k). Pub. L. 98–21 added subsec. (k).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–264 effective Oct. 1, 1983, and applicable to any records created pursuant to United States Travel and Transportation Payment and Expense Control System or any Federal contractor-issued travel charge card issued for official Government travel, see section 2(c)(2) of Pub. L. 105–264, set out as a Requiring Use of Travel Charge Card note under section 5701 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3414. Special procedures

(a) Access to financial records for certain intelligence and protective purposes

(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 ¹ of this title) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities;

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 18 U.S.C. 3056A, Public Law 90-331, ¹ as amended); or

(C) a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority and a term that specifically identifies a customer, entity, or account to be used as the basis for the production and disclosure of financial records.

(3)(A) If the Government authority described in paragraph (1) or the Secret Service, as the case may be, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Government authority or the Secret Service has sought or obtained access to a customer's financial records.

(B) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under subparagraph (A).

(C) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under subparagraph (A).

(D) At the request of the authorized Government authority or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government authority or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the authorized Government authority or the Secret Service of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for financial records under this subsection.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director) certifies in writing to the financial institution that such records are sought for foreign counter intelligence ² purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(C) On the dates provided in section 3106 of title 50, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 3003 of title 50) concerning all requests made pursuant to this paragraph.

(b) Emergency access to financial records

(1) Nothing in this chapter shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

- (A) physical injury to any person;
- (B) serious property damage; or
- (C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 3409(c) of this title.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(c) Prohibition of certain disclosure

(1) Prohibition

(A) In general

If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (d) is provided, no financial institution that receives a request under subsection (a), or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under subsection (a).

(B) Certification

The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that the absence of a prohibition of disclosure under this subsection may result in—

- (i) a danger to the national security of the United States;
- (ii) interference with a criminal, counterterrorism, or counterintelligence investigation;
- (iii) interference with diplomatic relations; or
- (iv) danger to the life or physical safety of any person.

(2) Exception

(A) In general

A financial institution that receives a request under subsection (a), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

- (i) those persons to whom disclosure is necessary in order to comply with the request;
- (ii) an attorney in order to obtain legal advice or assistance regarding the request; or
- (iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(B) Application

A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection

(a) in the same manner as the person to whom the request is issued.

(C) Notice

Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

(D) Identification of disclosure recipients

At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under clause (i) or (iii) of subparagraph (A) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

(d) Judicial review

(1) In general

A request under subsection (a) or a nondisclosure requirement imposed in connection with such request under subsection (c) shall be subject to judicial review under section 3511 of title 18.

(2) Notice

A request under subsection (a) shall include notice of the availability of judicial review described in paragraph (1).

(e) Definition of "financial institution"

For purposes of this section, and sections 3415 and 3417 of this title insofar as they relate to the operation of this section, the term "financial institution" has the same meaning as in subsections (a)(2) and (c)(1) of section 5312 of title 31, except that, for purposes of this section, such term shall include only such a financial institution any part of which is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

(Pub. L. 95–630, title XI, §1114, Nov. 10, 1978, 92 Stat. 3707; Pub. L. 97–320, title IV, §432(b), Oct. 15, 1982, 96 Stat. 1527; Pub. L. 99–569, title IV, §404, Oct. 27, 1986, 100 Stat. 3197; Pub. L. 107–56, title III, §358(f)(2), title V, §505(b), Oct. 26, 2001, 115 Stat. 327, 365; Pub. L. 107–306, title VIII, §811(b)(9), Nov. 27, 2002, 116 Stat. 2426; Pub. L. 108–177, title III, §374(a), Dec. 13, 2003, 117 Stat. 2628; Pub. L. 109–177, title I, §116(d), (e), title VI, §605(e)(1), Mar. 9, 2006, 120 Stat. 215, 216, 255; Pub. L. 109–178, §4(d), Mar. 9, 2006, 120 Stat. 280; Pub. L. 114–23, title V, §§501(b), 502(b), 503(b), June 2, 2015, 129 Stat. 282, 284, 290.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3421 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 104–66, title III, §3001(d), Dec. 21, 1995, 109 Stat. 734.

Public Law 90–331, as amended, referred to in subsec. (a)(1)(B), is Pub. L. 90–331, June 6, 1968, 82 Stat. 170, which was set out as a note under section 3056 of Title 18, Crimes and Criminal Procedure, prior to repeal by Pub. L. 98–587, §2, Oct. 30, 1984, 98 Stat. 3111. See 18 U.S.C. 3056(a)(7).

AMENDMENTS

2015—Subsec. (a)(2). Pub. L. 114–23, §501(b), inserted before period at end "and a term that specifically identifies a customer, entity, or account to be used as the basis for the production and disclosure of financial records".

Subsec. (a)(5)(D). Pub. L. 114–23, §502(b)(1), struck out subpar. (D) which related to prohibition of certain disclosure.

Subsec. (c). Pub. L. 114–23, §502(b)(2), added subsec. (c).

Subsecs. (d), (e). Pub. L. 114–23, §503(b), added subsec. (d) and redesignated former subsec. (d) as (e).

2006—Subsec. (a)(1)(B). Pub. L. 109–177, §605(e)(1), which directed the amendment of section 3414 of title 12, United States Code, by substituting "18 U.S.C. 3056A" for "3 U.S.C. 202" in subsec. (a)(1)(B), was

executed to this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 109–177, §116(d), which directed the general amendment of section 1114(a)(3) of the Right to Financial Privacy Act, was executed to subsec. (a)(3) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, par. (3) read as follows: "No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records."

Subsec. (a)(3)(D). Pub. L. 109–178, §4(d)(1), which directed the general amendment of subsec. (a)(3)(D) of section 1114(a)(3) of the Right to Financial Privacy Act, was executed to subsec. (a)(3)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, subpar. (D) read as follows: "At the request of the authorized Government agency or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government agency or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such requesting official that the person intends to consult an attorney to obtain legal advice or legal assistance."

Subsec. (a)(5)(D). Pub. L. 109–177, §116(e), which directed the general amendment of section 1114(a)(5)(D) of the Right to Financial Privacy Act, was executed to subsec. (a)(5)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, subpar. (D) read as follows: "No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph."

Subsec. (a)(5)(D)(iv). Pub. L. 109–178, §4(d)(2), which directed the general amendment of clause (iv) of section 1114(a)(5)(D) of the Right to Financial Privacy Act, was executed to clause (iv) of subsec. (a)(5)(D) of this section, which is section 1114 of the Right to Financial Privacy Act of 1978, to reflect the probable intent of Congress. Prior to amendment, cl. (iv) read as follows: "At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance."

2003—Subsec. (d). Pub. L. 108–177 added subsec. (d).

2002—Subsec. (a)(5)(C). Pub. L. 107–306 substituted "On the dates provided in section 415b of title 50, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 401a of title 50)" for "On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate".

2001—Subsec. (a)(1)(C). Pub. L. 107–56, §358(f)(2), added subpar. (C).

Subsec. (a)(5)(A). Pub. L. 107–56, §505(b), inserted "in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director" after "Director's designee" and substituted "sought for foreign counter intelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States" for "sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 1801 of title 50".

1986—Subsec. (a)(5). Pub. L. 99–569 added par. (5).

1982—Subsec. (b)(2). Pub. L. 97–320 struck out "of" after "financial institution".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–178, Mar. 9, 2006, 120 Stat. 282, provided in part that: "This Act [amending this section, sections 1681u and 1681v of Title 15, Commerce and Trade, section 2709 of Title 18, Crimes and Criminal Procedure, and sections 436 and 1861 of Title 50, War and National Defense, and enacting provisions set out as a note under section 1 of Title 18] shall become effective immediately upon enactment [Mar. 9, 2006]."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 358(f)(2) of Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this title.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION PROCEDURES

Pub. L. 114–23, title V, §502(f), June 2, 2015, 129 Stat. 288, provided that:

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [June 2, 2015], the Attorney General shall adopt procedures with respect to nondisclosure requirements issued pursuant to section 2709 of title 18, United States Code, section 626 or 627 of the Fair Credit Reporting Act (15 U.S.C. 1681u and 1681v), section 1114 of the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3414), or section 802 of the National Security Act of 1947 (50 U.S.C. 3162), as amended by this Act, to require—

"(A) the review at appropriate intervals of such a nondisclosure requirement to assess whether the facts supporting nondisclosure continue to exist;

"(B) the termination of such a nondisclosure requirement if the facts no longer support nondisclosure; and

"(C) appropriate notice to the recipient of the national security letter, or officer, employee, or agent thereof, subject to the nondisclosure requirement, and the applicable court as appropriate, that the nondisclosure requirement has been terminated.

"(2) REPORTING.—Upon adopting the procedures required under paragraph (1), the Attorney General shall submit the procedures to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives."

¹ [*See References in Text note below.*](#)

² [*So in original. Probably should be "counterintelligence".*](#)

§3415. Cost reimbursement

Except for records obtained pursuant to section 3403(d) or 3413(a) through (h) of this title, or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this chapter a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(Pub. L. 95–630, title XI, §1115(a), Nov. 10, 1978, 92 Stat. 3708.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 95–630, title XI, §1115(b), Nov. 10, 1978, 92 Stat. 3708, provided that: "This section shall take effect on October 1, 1979."

§3416. Jurisdiction

An action to enforce any provision of this chapter may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

(Pub. L. 95-630, title XI, §1116, Nov. 10, 1978, 92 Stat. 3708.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

§3417. Civil penalties

(a) Liability of agencies or departments of United States or financial institutions

Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this chapter is liable to the customer to whom such records relate in an amount equal to the sum of—

- (1) \$100 without regard to the volume of records involved;
- (2) any actual damages sustained by the customer as a result of the disclosure;
- (3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and
- (4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Disciplinary action for willful or intentional violation of chapter by agents or employees of department or agency

Whenever the court determines that any agency or department of the United States has violated any provision of this chapter and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Director of the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Director after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Director recommends.

(c) Good faith defense

Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this chapter in good-faith reliance upon a certificate by any Government authority or pursuant to the provisions of section 3413(l) of this title shall not be liable to the customer for such disclosure under this chapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(d) Exclusive judicial remedies and sanctions

The remedies and sanctions described in this chapter shall be the only authorized judicial remedies and sanctions for violations of this chapter.

(Pub. L. 95-630, title XI, §1117, Nov. 10, 1978, 92 Stat. 3708; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 100-690, title VI, §6186(d), Nov. 18, 1988, 102 Stat. 4358.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–690 inserted "or pursuant to the provisions of section 3413(l) of this title" after "Government authority" and "under this chapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State" after "such disclosure".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" and "Director" substituted in subsec. (b) for "Civil Service Commission" and "Commission" pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§3418. Injunctive relief

In addition to any other remedy contained in this chapter, injunctive relief shall be available to require that the procedures of this chapter are complied with. In the event of any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

(Pub. L. 95–630, title XI, §1118, Nov. 10, 1978, 92 Stat. 3709.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3419. Suspension of limitations

If any individual files a motion or application under this chapter which has the effect of delaying the access of a Government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

(Pub. L. 95–630, title XI, §1119, Nov. 10, 1978, 92 Stat. 3709.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3420. Grand jury information; notification of certain persons prohibited

(a) Financial records about a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a Federal grand jury—

(1) shall be returned and actually presented to the grand jury unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records.; ¹

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure, or for a purpose authorized by section 3412(a) of this title;

(3) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraph (2); and

(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

(b)(1) No officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution shall, directly or indirectly, notify any person named in a grand jury subpoena served on such institution in connection with an investigation relating to a possible—

(A) crime against any financial institution or supervisory agency or crime involving a violation of the Controlled Substance Act [21 U.S.C. 801 et seq.], the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.], section 1956, 1957, or 1960 of title 18, sections 5313, 5316, 5322, 5324, 5331, and 5332 of title 31, or section 6050I of title 26; or

(B) conspiracy to commit such a crime,

about the existence or contents of such subpoena, or information that has been furnished to the grand jury in response to such subpoena.

(2) Section 1818 of this title and section 1786(k)(2) of this title shall apply to any violation of this subsection.

(Pub. L. 95–630, title XI, §1120, Nov. 10, 1978, 92 Stat. 3709; Pub. L. 100–690, title VI, §6186(e), Nov. 18, 1988, 102 Stat. 4358; Pub. L. 101–73, title IX, §943, Aug. 9, 1989, 103 Stat. 497; Pub. L. 102–550, title XV, §1532, Oct. 28, 1992, 106 Stat. 4066; Pub. L. 107–56, title III, §358(f)(3), Oct. 26, 2001, 115 Stat. 327; Pub. L. 116–283, div. F, title LXIII, §6308(d), Jan. 1, 2021, 134 Stat. 4594.)

EDITORIAL NOTES

REFERENCES IN TEXT

Rule 6(e) of the Federal Rules of Criminal Procedure, referred to in subsec. (a)(2), (4), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Controlled Substance Act, referred to in subsec. (b)(1)(A), probably means the Controlled Substances Act, which is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (b)(1)(A), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

AMENDMENTS

2021—Subsec. (b)(1)(A). Pub. L. 116–283 substituted ", 1957, or 1960 of title 18" for "or 1957 of title 18" and ", 5322, 5324, 5331, and 5332 of title 31" for "and 5324 of title 31".

2001—Subsec. (a)(2). Pub. L. 107–56 inserted ", or for a purpose authorized by section 3412(a) of this

title" before semicolon at end.

1992—Subsec. (b)(1)(A). Pub. L. 102–550 inserted before semicolon "or crime involving a violation of the Controlled Substance Act, the Controlled Substances Import and Export Act, section 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26".

1989—Pub. L. 101–73 designated existing provisions as subsec. (a) and added subsec. (b).

1988—Par. (1). Pub. L. 100–690 inserted "unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records." before semicolon at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this title.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

¹ *So in original.*

§3421. Repealed. Pub. L. 104–66, title III, §3001(d), Dec. 21, 1995, 109 Stat. 734

Section, Pub. L. 95–630, title XI, §1121, Nov. 10, 1978, 92 Stat. 3710, related to reporting requirements.

§3422. Applicability to Securities and Exchange Commission

Except as provided in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], this chapter shall apply with respect to the Securities and Exchange Commission.

(Pub. L. 95–630, title XI, §1122, Nov. 10, 1978, 92 Stat. 3710; Pub. L. 96–433, §2, Oct. 10, 1980, 94 Stat. 1855.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

1980—Pub. L. 96–433 substituted provision making this chapter applicable with respect to the Commission, except as provided in the Securities Exchange Act of 1934, for provision exempting the Commission from this chapter for a period of two years from November 10, 1978.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–433 effective Nov. 10, 1980, see section 5(b) of Pub. L. 96–433, set out as a note under section 78u of Title 15, Commerce and Trade.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3423. Immunity from suit for disclosure of financial exploitation of senior citizens

(a) Immunity

(1) Definitions

In this section—

(A) the term "Bank Secrecy Act officer" means an individual responsible for ensuring compliance with the requirements mandated by subchapter II of chapter 53 of title 31 (commonly known as the "Bank Secrecy Act");

(B) the term "broker-dealer" means a broker and a dealer, as those terms are defined in section 78c(a) of title 15;

(C) the term "covered agency" means—

(i) a State financial regulatory agency, including a State securities or law enforcement authority and a State insurance regulator;

(ii) each of the Federal agencies represented in the membership of the Financial Institutions Examination Council established under section 3303 of this title;

(iii) a securities association registered under section 78o-3 of title 15;

(iv) the Securities and Exchange Commission;

(v) a law enforcement agency; or

(vi) a State or local agency responsible for administering adult protective service laws;

(D) the term "covered financial institution" means—

(i) a credit union;

(ii) a depository institution;

(iii) an investment adviser;

(iv) a broker-dealer;

(v) an insurance company;

(vi) an insurance agency; or

(vii) a transfer agent;

(E) the term "credit union" has the meaning given the term in section 5301 of this title;

(F) the term "depository institution" has the meaning given the term in section 1813(c) of this title;

(G) the term "exploitation" means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or a fiduciary, that—

(i) uses the resources of a senior citizen for monetary or personal benefit, profit, or gain; or

(ii) results in depriving a senior citizen of rightful access to or use of benefits, resources, belongings, or assets;

(H) the term "insurance agency" means any business entity that sells, solicits, or negotiates insurance coverage;

(I) the term "insurance company" has the meaning given the term in section 80a-2(a) of title 15;

(J) the term "insurance producer" means an individual who is required under State law to be licensed in order to sell, solicit, or negotiate insurance coverage;

(K) the term "investment adviser" has the meaning given the term in section 80b-2(a) of this title;

(L) the term "investment adviser representative" means an individual who—

(i) is employed by, or associated with, an investment adviser; and

(ii) does not perform solely clerical or ministerial acts;

(M) the term "registered representative" means an individual who represents a broker-dealer

in effecting or attempting to effect a purchase or sale of securities;

(N) the term "senior citizen" means an individual who is not younger than 65 years of age;

(O) the term "State" means each of the several States, the District of Columbia, and any territory or possession of the United States;

(P) the term "State insurance regulator" has the meaning given the term in section 6735 of title 15;

(Q) the term "State securities or law enforcement authority" has the meaning given the term in section 78x(f)(4) of title 15; and

(R) the term "transfer agent" has the meaning given the term in section 78c(a) of title 15.

(2) Immunity from suit

(A) Immunity for individuals

An individual who has received the training described in subsection (b) shall not be liable, including in any civil or administrative proceeding, for disclosing the suspected exploitation of a senior citizen to a covered agency if the individual, at the time of the disclosure—

(i) served as a supervisor or in a compliance or legal function (including as a Bank Secrecy Act officer) for, or, in the case of a registered representative, investment adviser representative, or insurance producer, was affiliated or associated with, a covered financial institution; and

(ii) made the disclosure—

(I) in good faith; and

(II) with reasonable care.

(B) Immunity for covered financial institutions

A covered financial institution shall not be liable, including in any civil or administrative proceeding, for a disclosure made by an individual described in subparagraph (A) if—

(i) the individual was employed by, or, in the case of a registered representative, insurance producer, or investment adviser representative, affiliated or associated with, the covered financial institution at the time of the disclosure; and

(ii) before the time of the disclosure, each individual described in subsection (b)(1) received the training described in subsection (b).

(C) Rule of construction

Nothing in subparagraph (A) or (B) shall be construed to limit the liability of an individual or a covered financial institution in a civil action for any act, omission, or fraud that is not a disclosure described in subparagraph (A).

(b) Training

(1) In general

A covered financial institution or a third party selected by a covered financial institution may provide the training described in paragraph (2)(A) to each officer or employee of, or registered representative, insurance producer, or investment adviser representative affiliated or associated with, the covered financial institution who—

(A) is described in subsection (a)(2)(A)(i);

(B) may come into contact with a senior citizen as a regular part of the professional duties of the individual; or

(C) may review or approve the financial documents, records, or transactions of a senior citizen in connection with providing financial services to a senior citizen.

(2) Content

(A) In general

The content of the training that a covered financial institution or a third party selected by the covered financial institution may provide under paragraph (1) shall—

(i) be maintained by the covered financial institution and made available to a covered

agency with examination authority over the covered financial institution, upon request, except that a covered financial institution shall not be required to maintain or make available such content with respect to any individual who is no longer employed by, or affiliated or associated with, the covered financial institution;

(ii) instruct any individual attending the training on how to identify and report the suspected exploitation of a senior citizen internally and, as appropriate, to government officials or law enforcement authorities, including common signs that indicate the financial exploitation of a senior citizen;

(iii) discuss the need to protect the privacy and respect the integrity of each individual customer of the covered financial institution; and

(iv) be appropriate to the job responsibilities of the individual attending the training.

(B) Timing

The training under paragraph (1) shall be provided—

(i) as soon as reasonably practicable; and

(ii) with respect to an individual who begins employment, or becomes affiliated or associated, with a covered financial institution after May 24, 2018, not later than 1 year after the date on which the individual becomes employed by, or affiliated or associated with, the covered financial institution in a position described in subparagraph (A), (B), or (C) of paragraph (1).

(C) Records

A covered financial institution shall—

(i) maintain a record of each individual who—

(I) is employed by, or affiliated or associated with, the covered financial institution in a position described in subparagraph (A), (B), or (C) of paragraph (1); and

(II) has completed the training under paragraph (1), regardless of whether the training was—

(aa) provided by the covered financial institution or a third party selected by the covered financial institution;

(bb) completed before the individual was employed by, or affiliated or associated with, the covered financial institution; and

(cc) completed before, on, or after May 24, 2018; and

(ii) upon request, provide a record described in clause (i) to a covered agency with examination authority over the covered financial institution.

(c) Relationship to State law

Nothing in this section shall be construed to preempt or limit any provision of State law, except only to the extent that subsection (a) provides a greater level of protection against liability to an individual described in subsection (a)(2)(A) or to a covered financial institution described in subsection (a)(2)(B) than is provided under State law.

(Pub. L. 115–174, title III, §303, May 24, 2018, 132 Stat. 1335.)

EDITORIAL NOTES

REFERENCES IN TEXT

For the Bank Secrecy Act, referred to in subsec. (a)(1)(A), (2)(A)(i), see Short Title note set out under section 1951 of this title and Tables.

CODIFICATION

Section was enacted as part of the Economic Growth, Regulatory Relief, and Consumer Protection Act, and not as part of the Right to Financial Privacy Act of 1978 which comprises this chapter.

CHAPTER 36—DEPOSITORY INSTITUTIONS DEREGULATION AND FINANCIAL REGULATION SIMPLIFICATION

SUBCHAPTER I—DEPOSITORY INSTITUTIONS DEREGULATION

§§3501 to 3509. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 3501 to 3509, which provided for creation and operation of Depository Institutions Deregulation Committee, were omitted pursuant to section 3509 which provided that the Committee and all authorities transferred to the Committee ceased to exist on expiration of six years after Mar. 31, 1980.

Section 3501, Pub. L. 96–221, title II, §202, Mar. 31, 1980, 94 Stat. 142, set out congressional findings and stated that the purpose in enacting this subchapter was to provide for orderly phase-out and ultimate elimination of limitations on maximum rates of interest and dividends which could be paid on deposits and accounts by depository institutions.

Pub. L. 96–221, title II, §201, Mar. 31, 1980, 94 Stat. 142, provided that title II of Pub. L. 96–221 (subchapter I of this chapter) could be cited as the "Depository Institutions Deregulation Act of 1980".

Pub. L. 96–221, title VIII, §801, Mar. 31, 1980, 94 Stat. 191, provided that title VIII of Pub. L. 96–221 (subchapter II of this chapter) could be cited as the "Financial Regulation Simplification Act of 1980", prior to repeal (effective 5 years after the date of enactment) by Pub. L. 96–221, title VIII, §806, Mar. 31, 1980, 94 Stat. 192.

Section 3502, Pub. L. 96–221, title II, §203, Mar. 31, 1980, 94 Stat. 142, provided for membership and authority of Depository Institutions Deregulation Committee.

Section 3503, Pub. L. 96–221, title II, §204, Mar. 31, 1980, 94 Stat. 143; Pub. L. 97–320, title III, §327, Oct. 15, 1982, 96 Stat. 1501; Pub. L. 97–457, §13, Jan. 12, 1983, 96 Stat. 2508, provided for phase-out and elimination of limitations, and gradual increases in maximum rates of interest and dividends paid on deposits and accounts.

Section 3504, Pub. L. 96–221, title II, §205, Mar. 31, 1980, 94 Stat. 143, set voting requirements respecting targets for limitations on maximum rates of interest and dividends paid on deposits and accounts and phase-out of interest rate controls.

Section 3505, Pub. L. 96–221, title II, §206, Mar. 31, 1980, 94 Stat. 143, set out the reporting requirements for individual members of Deregulation Committee.

Section 3506, Pub. L. 96–221, title II, §207, Mar. 31, 1980, 94 Stat. 144, provided for repeal of related statutory authorities.

Section 3507, Pub. L. 96–221, title II, §208, Mar. 31, 1980, 94 Stat. 144; Pub. L. 101–73, title VII, §744(s), Aug. 9, 1989, 103 Stat. 440, set the procedures applicable for enforcement of regulations.

Section 3508, Pub. L. 96–221, title II, §209, Mar. 31, 1980, 94 Stat. 145, provided for transitional application of rules and regulations issued pursuant to transferred statutory authorities.

Section 3509, Pub. L. 96–221, title II, §210, Mar. 31, 1980, 94 Stat. 145, directed that, on the expiration of six years after Mar. 31, 1980, all authorities transferred to Deregulation Committee by this subchapter would cease to be effective and Deregulation Committee would cease to exist.

SUBCHAPTER II—REGULATORY SIMPLIFICATION

§§3521 to 3524. Repealed. Pub. L. 96–221, title VIII, §806, Mar. 31, 1980, 94 Stat.

Section 3521, Pub. L. 96-221, title VIII, §802, Mar. 31, 1980, 94 Stat. 191, set forth Congressional findings with respect to regulatory simplification.

Section 3522, Pub. L. 96-221, title VIII, §803, Mar. 31, 1980, 94 Stat. 191, set forth statement of policy respecting regulations issued by Federal financial regulatory agencies.

Section 3523, Pub. L. 96-221, title VIII, §804, Mar. 31, 1980, 94 Stat. 192, authorized program for periodic review by financial regulatory agencies of existing regulations, and revision of regulations not in accord with policy statement.

Section 3524, Pub. L. 96-221, title VIII, §805, Mar. 31, 1980, 94 Stat. 192, related to reporting requirements for each financial regulatory agency.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 96-221, title VIII, §806, Mar. 31, 1980, 94 Stat. 192, provided that: "This title [enacting this subchapter] is hereby repealed five years after the date of enactment of this title [Mar. 31, 1980]."

CHAPTER 37—SOLAR ENERGY AND ENERGY CONSERVATION BANK

§§3601 to 3620. Repealed. Pub. L. 102-550, title IX, §912(i)(1), Oct. 28, 1992, 106 Stat. 3876

Section 3601, Pub. L. 96-294, title V, §503, June 30, 1980, 94 Stat. 719, provided Congressional statement of purpose for this chapter.

Section 3602, Pub. L. 96-294, title V, §504, June 30, 1980, 94 Stat. 719; Pub. L. 98-181, title I [title IV, §463(a)], Nov. 30, 1983, 97 Stat. 1233, provided definitions for this chapter.

Section 3603, Pub. L. 96-294, title V, §505, June 30, 1980, 94 Stat. 722; Pub. L. 100-122, §2(a), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327, established Solar Energy and Energy Conservation Bank.

Section 3604, Pub. L. 96-294, title V, §506, June 30, 1980, 94 Stat. 723; Pub. L. 100-242, title V, §570(e), Feb. 5, 1988, 101 Stat. 1950, provided for a Board of Directors for Bank.

Section 3605, Pub. L. 96-294, title V, §507, June 30, 1980, 94 Stat. 723, provided for officers and personnel of Bank.

Section 3606, Pub. L. 96-294, title V, §508, June 30, 1980, 94 Stat. 723; Pub. L. 98-181, title I [title IV, §463(b)], Nov. 30, 1983, 97 Stat. 1233, provided for establishment of advisory committees of Bank.

Section 3607, Pub. L. 96-294, title V, §509, June 30, 1980, 94 Stat. 725; Pub. L. 100-242, title V, §570(e), Feb. 5, 1988, 101 Stat. 1950, authorized financial assistance in various forms and limitations and conditions on such assistance.

Section 3608, Pub. L. 96-294, title V, §510, June 30, 1980, 94 Stat. 726, provided for establishment of levels of financial assistance.

Section 3609, Pub. L. 96-294, title V, §511, June 30, 1980, 94 Stat. 726; Pub. L. 98-181, title I [title IV, §463(c)], Nov. 30, 1983, 97 Stat. 1233, set maximum amounts of financial assistance for residential and commercial energy conserving improvements.

Section 3610, Pub. L. 96-294, title V, §512, June 30, 1980, 94 Stat. 728, set maximum amounts of financial assistance for solar energy systems.

Section 3611, Pub. L. 96-294, title V, §513, June 30, 1980, 94 Stat. 729, established general conditions on financial assistance for loans.

Section 3612, Pub. L. 96-294, title V, §514, June 30, 1980, 94 Stat. 730; Pub. L. 98-181, title I [title IV, §463(d)], formerly §463(c), Nov. 30, 1983, 97 Stat. 1234; Pub. L. 98-479, title I, §104(d)(1), (e)(1), Oct. 17, 1984, 98 Stat. 2226, established conditions on financial assistance for residential and commercial energy conserving improvements.

Section 3613, Pub. L. 96-294, title V, §515, June 30, 1980, 94 Stat. 732; Pub. L. 100-242, title V, §570(e), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, established conditions on financial assistance for solar energy systems.

Section 3614, Pub. L. 96–294, title V, §516, June 30, 1980, 94 Stat. 734, provided limitations on provision of financial assistance for residential and commercial energy conserving improvements.

Section 3615, Pub. L. 96–294, title V, §517, June 30, 1980, 94 Stat. 734, provided limitations on provision of financial assistance for solar energy systems.

Section 3616, Pub. L. 96–294, title V, §518, June 30, 1980, 94 Stat. 735, authorized Bank to promote program established by this chapter.

Section 3617, Pub. L. 96–294, title V, §519, June 30, 1980, 94 Stat. 736, provided for submission of reports to Congress.

Section 3618, Pub. L. 96–294, title V, §520, June 30, 1980, 94 Stat. 736; Pub. L. 98–181, title I [title IV, §463(e)], Nov. 30, 1983, 97 Stat. 1234; Pub. L. 98–479, title I, §104(d)(2)(A), Oct. 17, 1984, 98 Stat. 2226, provided for promulgation of rules and regulations to implement this chapter.

Section 3619, Pub. L. 96–294, title V, §521, June 30, 1980, 94 Stat. 737, established penalties relating to disclosure of facts or statements required by this chapter.

Section 3620, Pub. L. 96–294, title V, §522, June 30, 1980, 94 Stat. 737; Pub. L. 98–181, title I [title IV, §463(f)(2)], Nov. 30, 1983, 97 Stat. 1235, authorized appropriations for residential and commercial energy conserving improvements and solar energy systems.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–294, title V, §501, June 30, 1980, 94 Stat. 719, provided that: "This title [enacting this chapter and sections 6347, 8235 to 8235i, and 8281 to 8286b of Title 42, The Public Health and Welfare, amending sections 1451, 1454, 1717, 1723g, and 1723h of this title and sections 6862 to 6872, 8211, 8213, 8214, 8216, 8217, and 8221 of Title 42, repealing section 1723f of this title, and enacting provisions set out as notes under this section and sections 8211 and 8235 of Title 42] may be cited as the 'Solar Energy and Energy Conservation Act of 1980'."

Pub. L. 96–294, title V, §502, June 30, 1980, 94 Stat. 719, provided that subtitle A (§§502–534) of title V of Pub. L. 96–294 was to be cited as the "Solar Energy and Energy Conservation Bank Act", prior to repeal by Pub. L. 102–550, title IX, §912(i)(1), Oct. 28, 1992, 106 Stat. 3876.

CHAPTER 38—MULTIFAMILY MORTGAGE FORECLOSURE

Sec.	
3701.	Findings and purpose.
3702.	Definitions.
3703.	Applicability.
3704.	Foreclosure commissioner; designation, duties, etc.
3705.	Prerequisites to foreclosure.
3706.	Notice of default and foreclosure sale; condition and term of sale.
3707.	Commencement of foreclosure; powers and duties of foreclosure commissioner or substitute.
3708.	Service of notice of default and foreclosure sale.
3709.	Presale reinstatement.
3710.	Foreclosure sale.
3711.	Foreclosure costs.
3712.	Disposition of sale proceeds.
3713.	Transfer of title and possession.
3714.	Record of foreclosure and sale.
3715.	Computation of time.
3716.	Separability.
3717.	Regulations.

§3701. Findings and purpose

(a) The Congress finds that—

(1) disparate State laws under which the Secretary of Housing and Urban Development forecloses multifamily mortgages burden the programs administered by the Secretary pursuant to these authorities, and cause detriment to the residents of the affected projects and the community generally;

(2) long periods to complete the foreclosure of these mortgages under certain State laws lead to deterioration in the condition of the properties involved; necessitate substantial Federal management and holding expenditures; increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties; and adversely affect the residents of the projects and the neighborhoods in which the properties are located;

(3) these conditions seriously impair the Secretary's ability to protect the Federal financial interest in the affected properties and frustrate attainment of the objectives of the underlying Federal program authorities, as well as the national housing goal of "a decent home and a suitable living environment for every American family";

(4) application of State redemption periods to these mortgages following their foreclosure would impair the salability of the properties involved and discourage their rehabilitation and improvement, thereby compounding the problems referred to in clause (3);

(5) the availability of a uniform and more expeditious procedure for the foreclosure of these mortgages by the Secretary and continuation of the practice of not applying postsale redemption periods to such mortgages will tend to ameliorate these conditions; and

(6) providing the Secretary with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing many foreclosures from the courts where they contribute to overcrowded calendars.

(b) The purpose of this chapter is to create a uniform Federal foreclosure remedy for multifamily mortgages.

(Pub. L. 97-35, title III, §362, Aug. 13, 1981, 95 Stat. 422; Pub. L. 102-550, title V, §517(a), Oct. 28, 1992, 106 Stat. 3791.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-550, §517(a)(1), substituted "multifamily mortgages" for "real estate mortgages which the Secretary holds pursuant to title II of the National Housing Act or section 312 of the Housing Act of 1964 covering multiunit residential and nonresidential properties".

Subsec. (b). Pub. L. 102-550, §517(a)(2), substituted "multifamily mortgages" for "multiunit residential and nonresidential mortgages held by the Secretary of Housing and Urban Development pursuant to title II of the National Housing Act or section 312 of the Housing Act of 1964".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 97-35, title III, §371, Aug. 13, 1981, 95 Stat. 431, provided that:

"(a) Except as otherwise provided in this subtitle, the provisions of this subtitle [for classification of subtitle A (§300-371) of title III of Pub. L. 97-35, see Tables] shall take effect on October 1, 1981.

"(b) The amendments made by sections 324, 325, and 326(a) [amending section 1437f of Title 42, The Public Health and Welfare] shall apply only with respect to contracts entered into on and after October 1, 1981."

SHORT TITLE

Pub. L. 97-35, title III, §361, Aug. 13, 1981, 95 Stat. 422, provided that: "This part [enacting this chapter] may be cited as the 'Multifamily Mortgage Foreclosure Act of 1981'."

§3702. Definitions

As used in this chapter—

(1) "mortgage" means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in property, real, personal or mixed, or any interest in property including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien, for the purpose of securing the payment of money or the performance of an obligation;

(2) "multifamily mortgage" means a mortgage held by the Secretary pursuant to—

(A) section 608 or 801, or title II or X, of the National Housing Act [12 U.S.C. 1743, 1748, 1707 et seq., 1749aa et seq.];

(B) section 312 of the Housing Act of 1964 [42 U.S.C. 1452b], as it existed immediately before its repeal by section 289 of the Cranston-Gonzalez National Affordable Housing Act;

(C) section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], as it existed immediately before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act;

(D) section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act; and

(E) section 811 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013].

(3) "mortgage agreement" means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or instrument or instruments creating the mortgage, including any instrument incorporated by reference therein (including any applicable regulatory agreement), and any instrument or agreement amending or modifying any of the foregoing;

(4) "mortgagor" means the obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not personally liable on the mortgage debt;

(5) "person" includes any individual, group of individuals, association, partnership, corporation, or organization;

(6) "record" and "recorded" include "register" and "registered" in the instance of registered land;

(7) "security property" means the property, real, personal or mixed, or an interest in property, including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, together with fixtures and other interests subject to the lien of the mortgage under applicable State law;

(8) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, and Indian tribes as defined by the Secretary;

(9) "county" means county as defined in section 2 of title 1; and

(10) "Secretary" means the Secretary of Housing and Urban Development and the Secretary of Agriculture.

(Pub. L. 97–35, title III, §363, Aug. 13, 1981, 95 Stat. 422; Pub. L. 102–550, title V, §517(b), Oct. 28, 1992, 106 Stat. 3792; Pub. L. 118–42, div. B, title VII, §762, Mar. 9, 2024, 138 Stat. 115.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in par. (2)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of this title. Title X of the Act, which was classified principally to subchapter IX–A (§1749aa et seq.) of chapter 13 of this title, was repealed by Pub. L. 101–235, title I, §133(a), Dec. 15, 1989, 103 Stat. 2027. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 312 of the Housing Act of 1964, referred to in par. (2)(B), is section 312 of Pub. L. 88–560, which

was classified to section 1452b of Title 42, The Public Health and Welfare, and was repealed by Pub. L. 101-625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

Section 801 of the Cranston-Gonzalez National Affordable Housing Act, referred to in par. (2)(C), (D), is section 801 of Pub. L. 101-625.

AMENDMENTS

2024—Par. (10). Pub. L. 118-42, which directed the insertion of "and the Secretary of Agriculture" after "Secretary of Housing Urban Development", was executed by making the insertion after "Secretary of Housing and Urban Development", to reflect the probable intent of Congress.

1992—Par. (2). Pub. L. 102-550 amended par. (2) generally. Prior to amendment, par. (2) read as follows: " 'multifamily mortgage' means a mortgage held by the Secretary pursuant to title II of the National Housing Act or section 312 of the House Act of 1964 covering any property, except a property on which there is located a one- to four-family residence;".

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.

§3703. Applicability

Multifamily mortgages held by the Secretary encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this chapter, or pursuant to other foreclosure procedures available, at the option of the Secretary. If the Secretary forecloses on any such mortgage pursuant to such other foreclosure procedures available, the provisions of section 3706(b) of this title may be applied at the discretion of the Secretary.

(Pub. L. 97-35, title III, §364, Aug. 13, 1981, 95 Stat. 423; Pub. L. 98-181, title I [title IV, §471], Nov. 30, 1983, 97 Stat. 1237.)

EDITORIAL NOTES

AMENDMENTS

1983—Pub. L. 98-181 inserted provision relating to application of section 3706(b) of this title in event of foreclosure under other foreclosure procedures.

§3704. Foreclosure commissioner; designation, duties, etc.

A foreclosure commissioner or commissioners designated pursuant to this chapter shall have a nonjudicial power of sale as provided in this chapter. Where the Secretary is the holder of a multifamily mortgage, the Secretary may designate a foreclosure commissioner and, with or without cause, may designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by executing a duly acknowledged, written designation stating the name and business or residential address of the commissioner or substitute commissioner. The designation shall be effective upon execution. Except as provided in section 3707(b) of this title, a copy of the designation shall be mailed with each copy of the notice of default and foreclosure sale served by mail in accordance with section 3708(1) of this title. The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under the laws of the State in which the security property is located. The foreclosure commissioner shall be a person who is responsible, financially sound and competent to conduct the foreclosure. More than one foreclosure commissioner may be designated. If a natural person is designated as foreclosure commissioner or substitute foreclosure commissioner, such person shall be designated by name,

except that where such person is designated in his or her capacity as an official or employee of the government of the State or subdivision thereof in which the security property is located, such person may be designated by his or her unique title or position instead of by name. The Secretary shall be a guarantor of payment of any judgment against the foreclosure commissioner for damages based upon the commissioner's failure properly to perform the commissioner's duties. As between the Secretary and the mortgagor, the Secretary shall bear the risk of any financial default by the foreclosure commissioner. In the event that the Secretary makes any payment pursuant to the preceding two sentences, the Secretary shall be fully subrogated to the rights satisfied by such payment.

(Pub. L. 97-35, title III, §365, Aug. 13, 1981, 95 Stat. 423.)

§3705. Prerequisites to foreclosure

Foreclosure by the Secretary under this chapter of a multifamily mortgage may be commenced, as provided in section 3707 of this title, upon the breach of a covenant or condition in the mortgage agreement for which foreclosure is authorized under the mortgage, except that no such foreclosure may be commenced unless any previously pending proceeding, judicial or nonjudicial, separately instituted by the Secretary to foreclose the mortgage other than under this chapter has been withdrawn, dismissed, or otherwise terminated. No such separately instituted foreclosure proceeding on the mortgage shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter. Nothing in this chapter shall preclude the Secretary from enforcing any right, other than foreclosure, under applicable State law, including any right to obtain a monetary judgment. Nothing in this chapter shall preclude the Secretary from foreclosing under this chapter where the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law or under the mortgage agreement, including, but not limited to, the appointment of a receiver, mortgagee-in-possession status, relief under an assignment of rents, or transfer to a nonprofit entity pursuant to section 1701q of this title or section 8013 of title 42.

(Pub. L. 97-35, title III, §366, Aug. 13, 1981, 95 Stat. 424; Pub. L. 102-550, title V, §517(c), Oct. 28, 1992, 106 Stat. 3792.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102-550 substituted "status, relief under an assignment of rents, or transfer to a nonprofit entity pursuant to section 1701q of this title or section 8013 of title 42" for "status or relief under an assignment of rents" in last sentence.

§3706. Notice of default and foreclosure sale; condition and term of sale

(a) The notice of default and foreclosure sale to be served in accordance with this chapter shall be subscribed with the name and address of the foreclosure commissioner and the date on which subscribed, and shall set forth the following information:

- (1) the names of the Secretary, the original mortgagee and the original mortgagor;
- (2) the street address or a description of the location of the security property, and a description of the security property, or so much thereof as is to be offered for sale, sufficient to identify the property to be sold;
- (3) the date of the mortgage, the office in which the mortgage is recorded, and the liber and folio or other description of the location of recordation of the mortgage;
- (4) the failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date the notice is subscribed, or the description of other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness;
- (5) the date, time, and place of the foreclosure sale;
- (6) a statement that the foreclosure is being conducted pursuant to this chapter;

- (7) the types of costs, if any, to be paid by the purchaser upon transfer of title; and
- (8) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary), the time and method of payment of the balance of the foreclosure purchase price and other appropriate terms of sale.

(b)(1) Except as provided in paragraph (2)(A), the Secretary may require, as a condition and term of sale, that the purchaser at a foreclosure sale under this chapter agree to continue to operate the security property in accordance with the terms of the program under which the mortgage insurance or assistance was provided, or any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale.

(2)(A) In any case where the majority of the residential units in a property subject to such a sale are occupied by residential tenants at the time of the sale, the Secretary shall require, as a condition and term of sale, any purchaser (other than the Secretary) to operate the property in accordance with such terms, as appropriate, of the programs referred to in paragraph (1).

(B) In any case where the Secretary is the purchaser of a multifamily project, the Secretary shall manage and dispose of such project in accordance with the provisions of section 203 of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z-11].

(Pub. L. 97-35, title III, §367, Aug. 13, 1981, 95 Stat. 424; Pub. L. 102-550, title V, §517(d), Oct. 28, 1992, 106 Stat. 3792.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-550 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Except as provided in paragraph (2)(A), the Secretary may require, as a condition and term of sale, that the purchaser at a foreclosure sale under this chapter agree to continue to operate the security property in accordance with the terms, as appropriate, of the loan program under section 312 of the Housing Act of 1964, the program under which insurance under title II of the National Housing Act was originally provided with respect to such property, or any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale."

§3707. Commencement of foreclosure; powers and duties of foreclosure commissioner or substitute

(a) If the Secretary as holder of a multifamily mortgage determines that the prerequisites to foreclosure set forth in section 3705 of this title are satisfied, the Secretary may request the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage, by commencing service of a notice of default and foreclosure sale in accordance with section 3708 of this title.

(b) Subsequent to commencement of a foreclosure under this chapter, the Secretary may designate a substitute foreclosure commissioner at any time up to forty-eight hours prior to the time of foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in his or her sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. In the event that the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in the manner provided in section 3710(c) of this title. Upon designation of a substitute foreclosure commissioner, a copy of the written notice of such designation referred to in section 3704 of this title shall be served upon the persons set forth in section 3708(1) of this title (1) by mail as provided in such section 3708 of this title (except that the minimum time periods between mailing and the date of foreclosure sale prescribed in such section shall not apply to notice by mail pursuant to this subsection), or (2) in any other manner, which in the substitute commissioner's sole discretion, is conducive to achieving timely notice of such substitution. In the event a substitute foreclosure commissioner is designated less than forty-eight hours prior to the time of the foreclosure sale, the

pending foreclosure shall be terminated and a new foreclosure shall be commenced by commencing service of a new notice of default and foreclosure sale.

(Pub. L. 97-35, title III, §368, Aug. 13, 1981, 95 Stat. 425.)

§3708. Service of notice of default and foreclosure sale

The foreclosure commissioner shall serve the notice of default and foreclosure sale provided for in section 3706 of this title upon the following persons and in the following manner, and no additional notice shall be required to be served notwithstanding any notice requirements of any State or local law—

(1) The notice of default and foreclosure sale, together with the designation required by section 3704 of this title, shall be sent by certified or registered mail, postage prepaid and return receipt requested, to the following persons:

(A) the current security property owner of record, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter;

(B) the original mortgagor and all subsequent mortgagors of record or other persons who appear of record or in the mortgage agreement to be liable for part or all of the mortgage debt, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter, except any such mortgagors or persons who have been released; and

(C) all persons holding liens of record upon the security property, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter.

Notice under clauses (A) and (B) of this paragraph shall be mailed at least twenty-one days prior to the date of foreclosure sale, and shall be mailed to the owner or mortgagor at the address stated in the mortgage agreement, or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such owner or mortgagor. Notice under clause (C) of this paragraph shall be mailed at least ten days prior to the date of foreclosure sale, and shall be mailed to each such lienholder's address as stated of record or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder. Notice by mail pursuant to this subsection or section 3707(b) of this title shall be deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the letter is returned.

(2) A copy of the notice of default and foreclosure sale shall be published, as provided herein, once a week during three successive calendar weeks, and the date of last publication shall be not less than four nor more than twelve days prior to the sale date. The information included in the notice of default and foreclosure sale pursuant to section 3706(a)(4) of this title may be omitted, in the foreclosure commissioner's discretion, from the published notice. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. To the extent practicable, the newspaper or newspapers chosen shall be a newspaper or newspapers, if any is available, having circulation conducive to achieving notice of foreclosure by publication. Should there be no newspaper published at least weekly which has a general circulation in one of the counties in which the security property being sold is located, copies of the notice of default and foreclosure sale shall be posted in at least three public places in each such county at least twenty-one days prior to the date of sale.

(3) A copy of the notice of default and foreclosure sale shall be posted in a prominent place at or on the real property to be sold at least seven days prior to the foreclosure sale, and entry upon the premises for this purpose shall be privileged as against all persons. If the property consists of two or more noncontiguous parcels of land, a copy of the notice of default and foreclosure sale shall be posted in a prominent place on each such parcel. If the security property consists of two or

more separate buildings, a copy of the notice of default and foreclosure sale shall be posted in a prominent place on each such building. Posting at or on the premises shall not be required where the foreclosure commissioner, in the commissioner's sole discretion, finds that the act of posting will likely cause a breach of the peace or that posting may result in an increased risk of vandalism or damage to the property.

(Pub. L. 97-35, title III, §369, Aug. 13, 1981, 95 Stat. 426.)

§3709. Presale reinstatement

(a) Grounds

Except as provided in sections 3707(b) and 3710(c) of this title, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if—

(1) the Secretary so directs the commissioner prior to or at the time of sale;

(2) the commissioner finds, upon application of the mortgagor at least three days prior to the date of sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the notice of default and foreclosure sale; or

(3)(A) in the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated; (B) in the case of a foreclosure involving a nonmonetary default, the foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that such default is cured; and (C) there is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding additional amounts which would have been due if mortgage payments had been accelerated), all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 3711 of this title, except that the Secretary shall have discretion to refuse to cancel a foreclosure pursuant to this paragraph (3) if the current mortgagor or owner of record has on one or more previous occasions caused a foreclosure of the mortgage, commenced pursuant to this chapter or otherwise, to be canceled by curing a default.

(b) Views of Secretary

Prior to withdrawing the security property from foreclosure in the circumstances described in subsection (a)(2) or (a)(3), the foreclosure commissioner shall afford the Secretary a reasonable opportunity to demonstrate why the security property should not be so withdrawn.

(c) Mortgage subsequent to reinstatement

In any case in which a foreclosure commenced under this chapter is canceled, the mortgage shall continue in effect as though acceleration had not occurred.

(d) Subsequent foreclosures

If the foreclosure commissioner cancels a foreclosure sale under this chapter a new foreclosure may be subsequently commenced as provided in this chapter.

(Pub. L. 97-35, title III, §369A, Aug. 13, 1981, 95 Stat. 427.)

§3710. Foreclosure sale

(a) Time of sale; public auction; location

The date of foreclosure sale set forth in the notice of default and foreclosure sale shall not be prior to thirty days after the due date of the earliest installment wholly unpaid or the earliest occurrence of any uncured nonmonetary default upon which foreclosure is based. Foreclosure sale pursuant to this chapter shall be at public auction, and shall be scheduled to begin between the hours of 9 o'clock ante meridian and 4 o'clock post meridian local time on a day other than Sunday or a public holiday as

defined by section 6103(a) of title 5 or State law. The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale, which shall be a location where foreclosure real estate auctions are customarily held in the county or one of the counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. Sale of security property situated in two or more counties may be held in any one of the counties in which any part of the security property is situated.

(b) Conduct of sale

The foreclosure commissioner shall conduct the foreclosure sale in accordance with the provisions of this chapter and in a manner fair to both the mortgagor and the Secretary. The foreclosure commissioner shall attend the foreclosure sale in person, or, if there are two or more commissioners, at least one shall attend the foreclosure sale. In the event that no foreclosure commissioner is a natural person, the foreclosure commissioner shall cause its duly authorized employee to attend the foreclosure sale to act on its behalf. Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the commissioner at the sale. The Secretary and any other person may bid at the foreclosure sale, including the Secretary or any other person who has submitted a written one-price bid, except that the foreclosure commissioner or any relative, related business entity or employee of such commissioner or entity shall not be permitted to bid in any manner on the security property subject to foreclosure sale. The foreclosure commissioner may serve as auctioneer, or, in accordance with regulations of the Secretary, may employ an auctioneer to be paid from the commission provided for in section 3711(5) of this title.

(c) Adjournment or cancellation

The foreclosure commissioner shall have discretion, prior to or at the time of sale, to adjourn or cancel the foreclosure sale if the commissioner determines, in the commissioner's sole discretion, that circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary or that additional time is necessary to determine whether the security property should be withdrawn from foreclosure as provided in section 3709 of this title. The foreclosure commissioner may adjourn a sale to a later hour the same day without the giving of further notice, or may adjourn the foreclosure sale for not less than nine nor more than twenty-four days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite that the foreclosure sale has been adjourned to a specified date and to include any corrections the foreclosure commissioner deems appropriate. Such notice shall be served by publication, mailing and posting in accordance with section 3708 of this title, except that publication may be made on any of three separate days prior to the revised date of foreclosure sale, and mailing may be made at any time at least seven days prior to the date to which the foreclosure sale has been adjourned.

(Pub. L. 97-35, title III, §369B, Aug. 13, 1981, 95 Stat. 428.)

§3711. Foreclosure costs

The following foreclosure costs shall be paid from the sale proceeds prior to satisfaction of any other claim to such sale proceeds:

- (1) necessary advertising costs and postage incurred in giving notice pursuant to sections 3708 and 3710 of this title;
- (2) mileage for posting notices and for the foreclosure commissioner's attendance at the sale at the rate provided in section 1921 of title 28 for mileage by the most reasonable road distance;
- (3) reasonable and necessary costs actually incurred in connection with any necessary search of title and lien records;
- (4) necessary out-of-pocket costs incurred by the foreclosure commissioner to record documents; and
- (5) a commission for the foreclosure commissioner for the conduct of the foreclosure to the extent authorized by regulations issued by the Secretary.

(Pub. L. 97-35, title III, §369C, Aug. 13, 1981, 95 Stat. 429.)

§3712. Disposition of sale proceeds

Money realized from a foreclosure sale shall be made available for obligation and expenditure—

- (1) first to cover the costs of foreclosure provided for in section 3711 of this title;
- (2) then to pay valid tax liens or assessments prior to the mortgage;
- (3) then to pay any liens recorded prior to the recording of the mortgage which are required to be paid in conformity with the terms of sale in the notice of default and foreclosure sale;
- (4) then to service charges and advancements for taxes, assessments, and property insurance premiums;
- (5) then to the interest;
- (6) then to the principal balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided for in the mortgage agreement); and
- (7) then to late charges.

Any surplus after payment of the foregoing shall be paid to holders of liens recorded after the mortgage and then to the appropriate mortgagor. If the person to whom such surplus is to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds does not agree that some or all of the sale proceeds should be paid to a claimant as provided in this section, that part of the sale proceeds in question may be deposited by the foreclosure commissioner with an appropriate official or court authorized under law to receive disputed funds in such circumstances. If such a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action shall be deductible from the disputed funds.

(Pub. L. 97-35, title III, §369D, Aug. 13, 1981, 95 Stat. 429.)

§3713. Transfer of title and possession

(a) Payment and delivery of deeds

The foreclosure commissioner shall deliver a deed or deeds to the purchaser or purchasers and obtain the balance of the purchase price in accordance with the terms of sale provided in the notice of default and foreclosure sale.

(b) Quit claim deed

Subject to subsection (c), the foreclosure deed or deeds shall convey all of the right, title, and interest in the security property covered by the deed which the Secretary as holder, the foreclosure commissioner, the mortgagor, and any other persons claiming by, through, or under them, had on the date of execution of the mortgage, together with all of the right, title, and interest thereafter acquired by any of them in such property up to the hour of sale, and no judicial proceeding shall be required ancillary or supplementary to the procedures provided in this chapter to assure the validity of the conveyance or confirmation of such conveyance.

(c) Possession by purchaser; continuing interests

A purchaser at a foreclosure sale held pursuant to this chapter shall be entitled to possession upon passage of title to the mortgaged property, subject to an interest or interests senior to that of the mortgage and subject to the terms of any lease of a residential tenant for the remaining term of the

lease or for one year, whichever period is shorter. Any other person remaining in possession after the sale and any residential tenant remaining in possession after the applicable period shall be deemed a tenant at sufferance.

(d) Right of redemption; right of possession

There shall be no right of redemption, or right of possession based upon right of redemption, in the mortgagor or others subsequent to a foreclosure pursuant to this chapter.

(e) Imposition of tax on conveyance to the Secretary

When conveyance is made to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed, whether as a tax upon the instrument or upon the privilege of conveying or transferring title to the property. Failure to collect or pay a tax of the type and under the circumstances stated in the preceding sentence shall not be grounds for refusing to record such a deed, for failing to recognize such recordation as imparting notice or for denying the enforcement of such a deed and its provisions in any State or Federal court.

(Pub. L. 97-35, title III, §369E, Aug. 13, 1981, 95 Stat. 430.)

§3714. Record of foreclosure and sale

(a) To establish a sufficient record of foreclosure and sale, the foreclosure commissioner shall include in the recitals of the deed to the purchaser or prepare an affidavit or addendum to the deed stating—

- (1) that the mortgage was held by the Secretary;
- (2) the particulars of the foreclosure commissioner's service of notice of default and foreclosure sale in accordance with sections 3708 and 3710 of this title;
- (3) that the foreclosure was conducted in accordance with the provisions of this chapter and with the terms of the notice of default and foreclosure sale;
- (4) a correct statement of the costs of foreclosure, calculated in accordance with section 3711 of this title; and
- (5) the name of the successful bidder and the amount of the successful bid.

(b) The deed executed by the foreclosure commissioner, the foreclosure commissioner's affidavit and any other instruments submitted for recordation in relation to the foreclosure of the security property under this chapter shall be accepted for recordation by the registrar of deeds or other appropriate official of the county or counties in which the security property is located upon tendering of payment of the usual recording fees for such instruments.

(Pub. L. 97-35, title III, §369F, Aug. 13, 1981, 95 Stat. 430.)

§3715. Computation of time

Periods of time provided for in this chapter shall be calculated in consecutive calendar days including the day or days on which the actions or events occur or are to occur for which the period of time is provided and including the day on which an event occurs or is to occur from which the period is to be calculated.

(Pub. L. 97-35, title III, §369G, Aug. 13, 1981, 95 Stat. 431.)

§3716. Separability

If any clause, sentence, paragraph or part of this chapter shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or invalid as applied to a class of cases, such judgment

shall not affect, impair, or invalidate the remainder thereof and of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 97-35, title III, §369H, Aug. 13, 1981, 95 Stat. 431.)

§3717. Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 97-35, title III, §369I, Aug. 13, 1981, 95 Stat. 431.)

CHAPTER 38A—SINGLE FAMILY MORTGAGE FORECLOSURE

Sec.

- 3751. Findings and purpose.
- 3752. Definitions.
- 3753. Applicability.
- 3754. Designation of foreclosure commissioner.
- 3755. Prerequisites to foreclosure.
- 3756. Commencement of foreclosure.
- 3757. Notice of default and foreclosure sale.
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- 3759. Presale reinstatement.
- 3760. Conduct of sale; adjournment.
- 3761. Foreclosure costs.
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- 3766. Computation of time.
- 3767. Severability.
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§3751. Findings and purpose

(a) Findings

The Congress finds that—

(1) the disparate State laws under which mortgages are foreclosed on behalf of the Secretary covering 1- to 4-family residential properties—

- (A) burden certain programs administered by the Secretary;
- (B) increase the costs of collecting obligations; and
- (C) generally are a detriment to the community in which the properties are located;

(2) the long periods required to complete the foreclosure of such mortgages under certain State laws—

- (A) lead to deterioration in the condition of the properties involved;
- (B) necessitate substantial Federal holding expenditures;
- (C) increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties; and
- (D) adversely affect the neighborhoods in which the properties are located;

(3) these conditions seriously impair the ability of the Secretary to protect the Federal financial interest in the affected properties and frustrate attainment of the objectives of the underlying Federal program authority;

(4) the availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Secretary will tend to ameliorate these conditions; and

(5) providing the Secretary with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing many foreclosures from the courts if they contribute to overcrowded calendars.

(b) Purpose

The purpose of this chapter is to create a uniform Federal foreclosure remedy for single family mortgages that—

(1) are held by the Secretary pursuant to title I or title II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]; or

(2) secure loans obligated by the Secretary under section 1452b ¹ of title 42.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246. Titles I and II of the Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 1452b of title 42, referred to in subsec. (b)(2), was repealed by Pub. L. 101–625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

Section is based on section 802 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316, provided in part that title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which is classified to this chapter, is incorporated into Pub. L. 103–327 and deemed enacted into law upon enactment of Pub. L. 103–327, which was approved Sept. 28, 1994.

SHORT TITLE

Section 801 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327, title II [title VIII, §801], Sept. 28, 1994, 108 Stat. 2316, provided in part, that: "This title [enacting this chapter] may be cited as the 'Single Family Mortgage Foreclosure Act of 1994'."

¹ [*See References in Text note below.*](#)

§3752. Definitions

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

(1) Bona fide purchaser

The term "bona fide purchaser" means a purchaser for value in good faith and without notice of

any adverse claim, and who acquires the security property free of any adverse claim.

(2) County

The term "county" has the same meaning as in section 2 of title 1.

(3) Mortgage

The term "mortgage" means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real, personal or mixed), or any interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

(4) Mortgage agreement

The term "mortgage agreement" means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or instrument or instruments creating the mortgage, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

(5) Mortgagor

The term "mortgagor" means the obligor, grantor, or trustee named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

(6) Owner

The term "owner" means any person who has an ownership interest in property and includes heirs, devisees, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

(7) Person

The term "person" includes any individual, group of individuals, association, partnership, corporation, or organization.

(8) Record; recorded

The terms "record" and "recorded" include "register" and "registered" in the instance of registered land.

(9) Security property

The term "security property" means the property (real, personal or mixed) or an interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), together with fixtures and other interests subject to the lien of the mortgage under applicable State law.

(10) Single family mortgage

The term "single family mortgage" means a mortgage that covers property on which there is located a 1- to 4-family residence, and that—

(A) is held by the Secretary pursuant to title I or title II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]; or

(B) secures a loan obligated by the Secretary under section 1452b of title 42, as it existed before the repeal of that section by section 12839 of title 42 (except that a mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling shall not be subject to this chapter).

(11) State

The term "State" means—

(A) the several States;

(B) the District of Columbia;

- (C) the Commonwealth of Puerto Rico;
- (D) the United States Virgin Islands;
- (E) Guam;
- (F) American Samoa;
- (G) the Northern Mariana Islands;
- (H) the Trust Territory of the Pacific Islands; and
- (I) Indian tribes, as defined by the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in par. (10)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246. Titles I and II of the Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section is based on section 803 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

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.

§3753. Applicability

Single family mortgages encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this chapter, or pursuant to other foreclosure procedures available, at the option of the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 804 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3754. Designation of foreclosure commissioner

(a) In general

The Secretary may designate a person or persons to serve as a foreclosure commissioner or commissioners for the purpose of foreclosing upon a single family mortgage.

(b) Power of sale

A foreclosure commissioner designated under this section shall have a nonjudicial power of sale.

(c) Qualifications

The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No

person shall be designated as a foreclosure commissioner unless that person is responsible, financially sound, and competent to conduct a foreclosure.

(d) Designation procedure

(1) Written designation

The Secretary may designate a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such person may be designated by his or her unique title or position instead of by name.

(2) Substitute commissioners

The Secretary may, with or without cause, designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner.

(3) Number

More than 1 foreclosure commissioner may be designated at any time.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 805 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3755. Prerequisites to foreclosure

(a) In general

(1) Upon breach of covenant or condition

The Secretary is authorized to foreclose a mortgage under this chapter upon the breach of a covenant or condition in the mortgage agreement.

(2) No other pending proceedings

(A) Prior to commencement

No foreclosure may be commenced under this chapter unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage (other than under this chapter), has been withdrawn, dismissed, or otherwise terminated.

(B) After commencement

No separately instituted foreclosure proceeding on a mortgage which is the subject of a foreclosure proceeding under this chapter shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter.

(b) Other rights unaffected

Nothing in this chapter shall preclude the Secretary from—

(1) enforcing any right, other than foreclosure, under applicable Federal or State law, including any right to obtain a monetary judgment; or

(2) foreclosing under this chapter if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement, including the appointment of a receiver, mortgagee-in-possession status, or relief under an assignment of rents.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 806 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§3756. Commencement of foreclosure

(a) Request to foreclosure commissioner

If the Secretary, as holder of a single family mortgage, determines that the prerequisites to foreclosure set forth in section 3755 of this title are satisfied, the Secretary may request the foreclosure commissioner to commence foreclosure of a single family mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage, by commencing service of a notice of default and foreclosure sale in accordance with sections 3757 and 3758 of this title.

(b) Designation of substitute foreclosure commissioner

After commencement of a foreclosure under this chapter, the Secretary may designate a substitute foreclosure commissioner at any time before the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in accordance with section 3760(c) of this title.

(c) Written notice

Upon designation of a substitute foreclosure commissioner, a copy of the written notice of such designation described in section 3754 of this title shall be served—

- (1) by mail, as provided in section 3758 of this title (except that the minimum time periods between mailing and the date of foreclosure sale prescribed in such section shall not apply); or
- (2) in any other manner which, in the substitute commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 807 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§3757. Notice of default and foreclosure sale

The notice of default and foreclosure sale to be served in accordance with this chapter shall set forth—

- (1) the name and address of the foreclosure commissioner;
- (2) the date on which the notice is issued;
- (3) the names of—
 - (A) the Secretary;
 - (B) the original mortgagee (if other than the Secretary); and
 - (C) the original mortgagor;
- (4) the street address or a description of the location of the security property, and a description of the security property, sufficient to identify the property to be sold;
- (5) the date of the mortgage, the office in which the mortgage is recorded, and the liber number and folio or other appropriate description of the location of recordation of the mortgage;

(6) identification of the failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness;

(7) the date, time, and location of the foreclosure sale;

(8) a statement that the foreclosure is being conducted pursuant to this chapter;

(9) a description of the types of costs, if any, to be paid by the purchaser upon transfer of title;

(10) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary) and the time and method of payment of the balance of the foreclosure purchase price; and

(11) any other appropriate terms of sale or information, as the Secretary may determine.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 808 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§3758. Service of notice of foreclosure sale

The foreclosure commissioner shall serve the notice of default and foreclosure sale described in section 3757 of this title upon the following persons and in the following manner, and no additional notice shall be required to be served, notwithstanding any notice requirements of any State or local law:

(1) Timing

Not less than 21 days before the date of the foreclosure sale, the notice of default and foreclosure sale shall be filed in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located or, if none, in the manner authorized by section 3201 of title 28.

(2) Notice by mail

(A) In general

The notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid and return receipt requested, to the following:

(i) Current owner

The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(ii) Mortgagors

All mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(iii) Dwelling units

All dwelling units in the security property (whether or not the notice describes a sale adjourned).

(iv) Other lienholders

All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(B) Timing

(i) Notice under clauses (i) and (ii)

Notice under clauses (i) and (ii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to the current owner and mortgagor at the last known address of the current owner and mortgagor, or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such current owner and mortgagor.

(ii) Notice under clause (iii)

Notice under clause (iii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or the security property has more than 1 dwelling, the notice shall be posted at the security property not less than 21 days before the foreclosure sale.

(iii) Notice under clause (iv)

Notice under clause (iv) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to each such lienholder's address of record or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(C) Effectiveness of notice

Notice by mail pursuant to this section or section 3756(c) of this title shall be deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned.

(3) Publication

(A) In general

A copy of the notice of default and foreclosure sale shall be published once a week during 3 successive calendar weeks before the date of the foreclosure sale. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. To the extent practicable, the newspaper or newspapers chosen shall be a newspaper or newspapers having circulation conducive to achieving notice of foreclosure by publication. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located shall be considered a newspaper having general circulation for the purposes of this paragraph.

(B) Exception

If there is no newspaper published at least weekly which has a general circulation in one of the counties in which the security property being sold is located, copies of the notice of default and foreclosure sale shall be posted not less than 21 days before the date of the foreclosure sale—

(i) at the courthouse of any county or counties in which the security property is located;
and

(ii) at the place where the sale is to be held.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 809 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3759. Presale reinstatement

(a) Withdrawal and cancellation

(1) In general

Except as provided in sections 3756(b) and 3760(c) of this title, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if—

(A) the Secretary directs the foreclosure commissioner to do so before or at the time of the sale;

(B) the foreclosure commissioner finds, upon application of the mortgagor not less than 3 days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the notice of default and foreclosure sale; or

(C)(i) in the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated;

(ii) in the case of a foreclosure involving a nonmonetary default, the foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that such default is cured; and

(iii) there is tendered to the foreclosure commissioner before public auction is completed—

(I) all amounts due under the mortgage agreement (excluding additional amounts which would have been due if mortgage payments had been accelerated);

(II) all amounts of expenditures secured by the mortgage; and

(III) all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 3761 of this title.

(2) Discretionary noncancellation

The Secretary may refuse to cancel a foreclosure sale pursuant to paragraph (1)(C) if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to this chapter or otherwise, to be canceled by curing a default.

(b) Opportunity of Secretary to dispute withdrawal

Before withdrawing the security property from foreclosure under subparagraph (B) or (C) of subsection (a)(1), the foreclosure commissioner shall afford the Secretary a reasonable opportunity to demonstrate why the security property should not be so withdrawn.

(c) Effect of cancellation

(1) Mortgage unaffected

In any case in which a foreclosure commenced under this chapter is canceled, the mortgage shall continue in effect as though acceleration had not occurred.

(2) Commencement of new foreclosure sale

Cancellation of a foreclosure sale under this chapter shall have no effect on the commencement of a subsequent foreclosure proceeding under this chapter.

(d) Notice of cancellation

The foreclosure commissioner shall file a notice of cancellation in the same place and manner provided for filing the notice of default and foreclosure sale in section 3758 of this title.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 810 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3760. Conduct of sale; adjournment

(a) In general

(1) Manner and time

A foreclosure sale pursuant to this chapter shall be held at public auction and shall be scheduled to begin between the hours of 9 o'clock ante meridian and 4 o'clock post meridian local time.

(2) Location

The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale and such location shall be at a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. Sale of security property situated in two or more counties may be held in any 1 of the counties in which any part of the security property is situated.

(3) Sale of multiple properties

The foreclosure commissioner may designate the order in which multiple security properties are sold.

(b) Duties of foreclosure commissioner

(1) Conduct of sale

(A) In general

The foreclosure commissioner shall conduct the foreclosure sale in accordance with the provisions of this chapter and in a manner fair to both the mortgagor and the Secretary.

(B) Written bids

Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the foreclosure commissioner at the sale.

(C) Auctioneer

The foreclosure commissioner may serve as auctioneer, or, in accordance with regulations of the Secretary, may employ an auctioneer to be paid from the commission provided for in section 3761(5) of this title.

(2) Eligible participants

(A) In general

The Secretary, and any other person who has submitted a written one-price bid, may bid at the foreclosure sale.

(B) Prohibited participants

The foreclosure commissioner or any relative, related business entity, or employee of the foreclosure commissioner or a related business entity shall not be permitted to bid in any manner on the security property subject to foreclosure sale, except that the foreclosure commissioner or an auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf.

(c) Adjournment or cancellation of sale

(1) General authority

The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the commissioner determines, in the commissioner's discretion, that—

(A) circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary; or

(B) additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in section 3759 of this title.

(2) Adjournment to same or later day

The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting the new time and place of the foreclosure sale, or may adjourn the foreclosure sale for not less than 9 and not more than 31 days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite the fact that the foreclosure sale has been adjourned to a specified date, as well as any other information the foreclosure commissioner deems appropriate. Such notice shall be served by publication and mailing in accordance with section 3758 of this title, except that publication may be made on any of 3 separate days before the revised date of foreclosure sale, and mailing may be made at any time not less than 7 days before the date to which the foreclosure sale has been adjourned.

(d) Cash deposits

The foreclosure commissioner may require a bidder to make a cash deposit in an amount or percentage set by the foreclosure commissioner and stated in the notice of foreclosure sale before the bid is accepted. A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, shall be liable to the Secretary for any costs incurred as a result of such failure.

(e) Presumption of validity of sale

Any foreclosure sale held in accordance with this chapter shall be conclusively presumed to have been conducted in a legal, fair, and reasonable manner. The sale price shall be conclusively presumed to be reasonable and equal to the fair market value of the property.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 811 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§3761. Foreclosure costs

The following foreclosure costs shall be paid from the sale proceeds before satisfaction of any other claim to such sale proceeds:

(1) Advertising and postage

Necessary advertising costs and postage incurred in giving notice pursuant to sections 3758 and 3760 of this title.

(2) Mileage

Mileage (determined by the most reasonable road distance) for posting notices and for the foreclosure commissioner's or auctioneer's attendance at the sale, as provided in section 1821 of title 28.

(3) Title and lien search

Reasonable and necessary costs incurred in connection with any search of title and lien records.

(4) Recordation fees

Costs incurred to record documents.

(5) Commission

A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure, to the extent such a commission is authorized by the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 812 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3762. Disposition of sale proceeds

(a) Priority payments

Money realized from a foreclosure sale shall be made available for obligation and expenditure in the following order:

(1) Costs of foreclosure

To cover the costs of the foreclosure proceeding described in section 3761 of this title.

(2) Tax liens

To pay valid tax liens or assessments if required by the notice of default and foreclosure sale.

(3) Prior liens

To pay any liens recorded before the recording of the mortgage which are required to be paid in conformity with the terms of sale in the notice of default and foreclosure sale.

(4) Service charges and advances

To pay service charges and advances for taxes, assessments, and property insurance premiums.

(5) Interest

To pay any outstanding interest.

(6) Principal

To pay the principal outstanding balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided for in the mortgage agreement).

(7) Late charges or fees

To pay any late charges or fees.

(b) Other payments

(1) Other lienholders and the mortgagor

Any surplus of proceeds from a foreclosure sale, after payment of the items described in subsection (a) shall be paid in the following order:

(A) First, to holders of liens recorded after the mortgage in the order of priority under Federal law or the law of the State in which the security property is located.

(B) Second, to the appropriate mortgagor.

(2) Disputed claims

If the person to whom such surplus is to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds does not agree that some or all of the sale proceeds should be paid to a claimant as provided in this section, that part of the sale proceeds in question may be deposited by the foreclosure commissioner with an appropriate official or court authorized under law to receive disputed funds in such circumstances. If a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of

interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs incurred in taking or defending such action shall be deductible from the disputed funds.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 813 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3763. Transfer of title and possession

(a) Delivery of deeds

The foreclosure commissioner shall, upon delivery of a deed or deeds to the purchaser or purchasers (which shall be without warranty or covenants to the purchaser or purchasers) obtain the balance of the purchase price in accordance with the terms of sale provided in the notice of default and foreclosure sale. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner shall be a conveyance of the property, and constitute passage of title to the mortgaged property, and no judicial proceedings shall be required ancillary or supplementary to the procedures provided in this chapter to assure the validity of the conveyance or confirmation of such conveyance.

(b) Right of possession

A purchaser at a foreclosure sale held pursuant to this chapter shall be entitled to possession upon passage of title under subsection (a) to the mortgaged property, subject to any interest or interests not barred under section 3765 of this title. Any person remaining in possession of the mortgaged property after the passage of title shall be deemed a tenant at sufferance subject to eviction under local law.

(c) Death of purchaser

If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner shall execute and deliver the deed to a representative of the decedent purchaser's estate upon payment of the purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(d) Bona fide purchaser

The purchaser of property under this chapter shall be presumed to be a bona fide purchaser.

(e) No right of redemption

(1) In general

There shall be no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to this chapter.

(2) Certain provisions

Section 1710(l) of this title and section 1452c of title 42 shall not apply to mortgages foreclosed under this chapter.

(f) Taxes

When a mortgage foreclosed pursuant to this chapter is conveyed to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed (including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property). Failure to collect or pay a tax of the type and under the circumstances stated in the

preceding sentence shall not be grounds for refusing to record such a deed, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such a deed and its provisions in any State or Federal court.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 814 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3764. Record of foreclosure and sale

(a) Statements included

To establish a sufficient record of foreclosure and sale, the foreclosure commissioner shall include in the recitals of the deed to the purchaser, or prepare as an affidavit or addendum to the deed, a statement setting forth—

- (1) the date, time, and place of the foreclosure sale;
- (2) that the mortgage was held by the Secretary, the date of the mortgage, the office in which the mortgage was recorded, and the liber number and folio or other appropriate description of the recordation of the mortgage;
- (3) the particulars of the foreclosure commissioner's service of the notice of default and foreclosure sale in accordance with sections 3758 and 3760 of this title;
- (4) the date and place of filing the notice of default and foreclosure sale;
- (5) that the foreclosure was conducted in accordance with the provisions of this chapter and with the terms of the notice of default and foreclosure sale; and
- (6) the sale amount.

(b) Effect of statements

The items set forth in subsection (a) shall—

- (1) be prima facie evidence of the truth of such facts in any Federal or State court; and
- (2) evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice.

Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

(c) Recordation of instruments

The deed executed by the foreclosure commissioner, the foreclosure commissioner's affidavit (if prepared) and any other instruments submitted for recordation in relation to the foreclosure of the security property under this chapter shall be accepted for recordation by the registrar of deeds or other appropriate official of the county or counties in which the security property is located upon tendering of payment of the usual recording fees for such instruments, and without regard to the compliance of those instruments with any other local filing requirements.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 815 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3765. Effect of sale

A sale, made and conducted as prescribed in this chapter to a bona fide purchaser, shall bar all claims upon, or with respect to, the property sold, for each of the following persons:

(1) Notice recipients

Any person to whom the notice of default and foreclosure sale was mailed as provided in this chapter, and the heir, devisee, executor, administrator, successor, or assignee claiming under any such person.

(2) Subordinate claimants with knowledge

Any person claiming any interest in the property subordinate to that of the mortgage, if such person had actual knowledge of the foreclosure sale.

(3) Nonrecorded claimants

Any person claiming any interest in the property, whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as required by section 3758(3) of this title, and the executor, administrator, or assignee of such a person.

(4) Other persons

Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of the foregoing paragraphs.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 816 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3766. Computation of time

Periods of time provided for in this chapter shall be calculated in consecutive calendar days, including the day or days on which the actions or events occur or are to occur for which the period of time is provided and including the day on which an event occurs or is to occur from which the period is to be calculated.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 817 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3767. Severability

If any part of this chapter shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof, and shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 818 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§3768. Deficiency judgment

(a) In general

(1) Referral to Attorney General

If after deducting the payments provided for in section 3762 of this title, the price at which the security property is sold at a foreclosure sale is less than the unpaid balance of the debt secured by the security property, resulting in a deficiency, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any or all debtors to recover the deficiency, unless such an action is specifically prohibited by the mortgage.

(2) Other recoveries

In any action instituted pursuant to this section the United States may recover—

- (A) any amount authorized by section 3011 of title 28; and
- (B) the costs of the action.

(b) Limitation

Any action commenced to recover a deficiency under this section must be brought not later than 6 years after the date of the last sale of the security property.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

CODIFICATION

Section is based on section 819 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

CHAPTER 39—ALTERNATIVE MORTGAGE TRANSACTIONS

Sec.

- 3801. Findings and purpose.
- 3802. Definitions.
- 3803. Alternative mortgage authority.
- 3804. Applicability of preemption provisions.
- 3805. Applicability of consumer protection provisions.
- 3806. Adjustable rate mortgage caps.

§3801. Findings and purpose

(a) The Congress hereby finds that—

(1) increasingly volatile and dynamic changes in interest rates have seriously impaired ¹ the ability of housing creditors to provide consumers with fixed-term, fixed-rate credit secured by interests in real property, cooperative housing, manufactured homes, and other dwellings;

(2) alternative mortgage transactions are essential to the provision of an adequate supply of

credit secured by residential property necessary to meet the demand expected during the 1980's; and

(3) the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision have recognized the importance of alternative mortgage transactions and have adopted regulations authorizing federally chartered depository institutions to engage in alternative mortgage financing.

(b) It is the purpose of this chapter to eliminate the discriminatory impact that those regulations have upon nonfederally chartered housing creditors and provide them with parity with federally chartered institutions by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with the regulations issued by the Federal agencies.

(Pub. L. 97-320, title VIII, §802, Oct. 15, 1982, 96 Stat. 1545; Pub. L. 101-73, title VII, §744(c), Aug. 9, 1989, 103 Stat. 438.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (a)(3). Pub. L. 101-73 substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 97-320, title VIII, §807(a), Oct. 15, 1982, 96 Stat. 1548, provided that: "This title [enacting this chapter] shall be effective upon enactment [Oct. 15, 1982]."

SHORT TITLE

Pub. L. 97-320, title VIII, §801, Oct. 15, 1982, 96 Stat. 1545, provided that: "This title [enacting this chapter] may be cited as the 'Alternative Mortgage Transaction Parity Act of 1982'."

IDENTIFICATION, DESCRIPTION AND PUBLICATION OF REGULATIONS INAPPLICABLE TO, OR CONFORMATION OF REGULATIONS FOR USE OF NONFEDERALLY CHARTERED HOUSING CREDITORS

Pub. L. 97-320, title VIII, §807(b), Oct. 15, 1982, 96 Stat. 1548, provided that: "Within sixty days of the enactment of this title [Oct. 15, 1982], the Comptroller of the Currency, the National Credit Union Administration, and the Federal Home Loan Bank Board shall identify, describe, and publish those portions or provisions of their respective regulations that are inappropriate for (and thus inapplicable to), or that need to be conformed for the use of, the nonfederally chartered housing creditors to which their respective regulations apply, including without limitation, making necessary changes in terminology to conform the regulatory and disclosure provisions to those more typically associated with various types of transactions including credit sales."

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

§3802. Definitions

As used in this chapter—

(1) the term "alternative mortgage transaction" means a loan or credit sale secured by an interest in residential real property, a dwelling, all stock allocated to a dwelling unit in a residential cooperative housing corporation, or a residential manufactured home (as that term is defined in section 5402(6) of title 42), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined by applicable regulation; and

(2) the term "housing creditor" means—

(A) a depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980;

(B) a lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.];

(C) any person who regularly makes loans, credit sales, or advances secured by interests in properties referred to in paragraph (1); or

(D) any transferee of any of them.

A person is not a "housing creditor" with respect to a specific alternative mortgage transaction if, except for this chapter, in order to enter into that transaction, the person would be required to comply with licensing requirements imposed under State law, unless such person is licensed under applicable State law and such person remains, or becomes, subject to the applicable regulatory requirements and enforcement mechanisms provided by State law.

(Pub. L. 97-320, title VIII, §803, Oct. 15, 1982, 96 Stat. 1545; Pub. L. 111-203, title X, §1083(a)(1), July 21, 2010, 124 Stat. 2080.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980, referred to in par. (2)(A), is section 501(a)(2) of Pub. L. 96-221, title V, Mar. 31, 1980, 94 Stat. 161, which is set out as a note under section 1735f-7 of this title.

The National Housing Act, referred to in par. (2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

2010—Par. (1). Pub. L. 111-203 substituted "section 5402(6) of title 42), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined by applicable regulation; and" for "section 5402(6) of title 42)—

"(A) in which the interest rate or finance charge may be adjusted or renegotiated;

"(B) involving a fixed-rate, but which implicitly permits rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule; or

"(C) involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed-rate, fixed-term transactions, including without limitation, transactions that involve the sharing of equity or appreciation; described and defined by applicable regulation; and".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title X, §1083(b), July 21, 2010, 124 Stat. 2081, provided that: "This section [amending this section and section 3803 of this title and enacting provisions set out as a note under this section] and the amendments made by this section shall become effective on the designated transfer date."

[For definition of "designated transfer date", see section 5481 of this title.]

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97-320, set out as a note under section 3801 of this title.

CONSTRUCTION OF 2010 AMENDMENT

Pub. L. 111-203, title X, §1083(c), July 21, 2010, 124 Stat. 2081, provided that: "The amendments made by subsection (a) [amending this section and section 3803 of this title] shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date."

[For definition of "designated transfer date", see section 5481 of this title.]

§3803. Alternative mortgage authority

(a) General authority; compliance by banks, credit unions and all other housing creditors with applicable regulations

In order to prevent discrimination against State-chartered depository institutions, and other nonfederally chartered housing creditors, with respect to making, purchasing, and enforcing alternative mortgage transactions, housing creditors may make, purchase, and enforce alternative mortgage transactions, except that this section shall apply—

(1) with respect to banks, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5582], in accordance with regulations governing alternative mortgage transactions as issued by the Comptroller of the Currency for national banks, to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency with regard to national banks under laws other than this section;

(2) with respect to credit unions, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010, in accordance with regulations governing alternative mortgage transactions as issued by the National Credit Union Administration Board for Federal credit unions, to the extent that such regulations are authorized by rulemaking authority granted to the National Credit Union Administration with regard to Federal credit unions under laws other than this section;

(3) with respect to all other housing creditors, including without limitation, savings and loan associations, mutual savings banks, and savings banks, only to transactions made on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010, in accordance with regulations governing alternative mortgage transactions as issued by the Director of the Office of Thrift Supervision for federally chartered savings and loan associations, to the extent that such regulations are authorized by rulemaking authority granted to the Director of the Office of Thrift Supervision with regard to federally chartered savings and loan associations under laws other than this section; and

(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.

(b) Transactions deemed in compliance with applicable regulations

For the purpose of determining the applicability of this section, an alternative mortgage transaction shall be deemed to be made in accordance with the applicable regulation notwithstanding the housing creditor's failure to comply with the regulation, if—

(1) the transaction is in substantial compliance with the regulation; and

(2) within sixty days of discovering any error, the housing creditor corrects such error, including making appropriate adjustments, if any, to the account.

(c) Preemption of State law

An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.

(d) Bureau actions

The Bureau of Consumer Financial Protection shall—

(1) review the regulations identified by the Comptroller of the Currency and the National Credit

Union Administration,¹ (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

(e) Designated transfer date

As used in this section, the term "designated transfer date" means the date determined under section 1062 of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5582].

(Pub. L. 97–320, title VIII, §804, Oct. 15, 1982, 96 Stat. 1546; Pub. L. 101–73, title VII, §744(c), Aug. 9, 1989, 103 Stat. 438; Pub. L. 111–203, title X, §1083(a)(2), July 21, 2010, 124 Stat. 2080.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (d)(2), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of this title and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

AMENDMENTS

2010—Subsec. (a)(1), (2), (3). Pub. L. 111–203, §1083(a)(2)(A)(i), inserted "on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010," after "transactions made".

Subsec. (a)(4). Pub. L. 111–203, §1083(a)(2)(A)(ii)–(iv), added par. (4).

Subsec. (c). Pub. L. 111–203, §1083(a)(2)(B), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation."

Subsecs. (d), (e). Pub. L. 111–203, §1083(a)(2)(C), added subsecs. (d) and (e).

1989—Subsec. (a)(3). Pub. L. 101–73 substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1083(b) of Pub. L. 111–203, set out as a note under section 3802 of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97–320, set out as a note under section 3801 of this title.

¹ *So in original. The comma probably should not appear.*

§3804. Applicability of preemption provisions

(a) The provisions of section 3803 of this title shall not apply to any alternative mortgage transaction in any State made on or after the effective date (if such effective date occurs on or after October 15, 1982, and prior to a date three years after October 15, 1982) of a State law or a certification that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the preemption provided in section 3803 of this title to apply with respect to alternative mortgage transactions (or to any class or type of alternative mortgage transaction) subject to the laws of such State, except that section 3803 of this title shall continue to apply to—

(1) any alternative mortgage transaction undertaken on or after such date pursuant to an agreement to undertake such alternative mortgage transaction which was entered into on or after October 15, 1982, and prior to such later date (the "preemption period"); and

(2) any renewal, extension, refinancing, or other modification of an alternative mortgage transaction that was entered into during the preemption period.

(b) An alternative mortgage transaction shall be deemed to have been undertaken during the preemption period to which this section applies if it—

(1) is funded or extended in whole or in part during the preemption period, regardless of whether pursuant to a commitment or other agreement therefor made prior to that period; or

(2) is a renewal, extension, refinancing, or other modification of an alternative mortgage transaction entered into before the preemption period and such renewal, extension, or other modification is made during such period with the written consent of any person obligated to repay such credit.

(Pub. L. 97–320, title VIII, §805, Oct. 15, 1982, 96 Stat. 1547; Pub. L. 98–181, title I [title IV, §472], Nov. 30, 1983, 97 Stat. 1237.)

EDITORIAL NOTES

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–181 inserted "(or to any class or type of alternative mortgage transaction)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97–320, set out as a note under section 3801 of this title.

§3805. Applicability of consumer protection provisions

Section 501(c)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall not apply to transactions which are subject to this chapter.

(Pub. L. 97–320, title VIII, §806, Oct. 15, 1982, 96 Stat. 1548.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 501(c)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980, referred to in text, is section 501(c)(1) of Pub. L. 96–221, title V, Mar. 31, 1980, 94 Stat. 161, which is set out as a note under section 1735f–7 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 15, 1982, see section 807(a) of Pub. L. 97–320, set out as a note under section 3801 of this title.

§3806. Adjustable rate mortgage caps

(a) In general

Any adjustable rate mortgage loan originated by a creditor shall include a limitation on the

maximum interest rate that may apply during the term of the mortgage loan.

(b) Regulations

The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section.

(c) Enforcement

Any violation of this section shall be treated as a violation of the Truth in Lending Act [15 U.S.C. 1601 et seq.] and shall be subject to administrative enforcement under section 108 [15 U.S.C. 1607] or civil damages under section 130 [15 U.S.C. 1640] of such Act, or both.

(d) Definitions

For the purpose of this section—

(1) the term "creditor" means a person who regularly extends credit for personal, family, or household purposes; and

(2) the term "adjustable rate mortgage loan" means any consumer loan secured by a lien on a one- to four-family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest.

(e) Effective date

This section shall take effect upon the expiration of 120 days after August 10, 1987.

(Pub. L. 100–86, title XII, §1204, Aug. 10, 1987, 101 Stat. 662; Pub. L. 102–550, title IX, §952, Oct. 28, 1992, 106 Stat. 3893.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (c), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 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.

CODIFICATION

Section was enacted as part of the Competitive Equality Banking Act of 1987, and not as part of the Alternative Mortgage Transaction Parity Act of 1982 which comprises this chapter.

AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102–550 substituted "any consumer loan" for "any loan".

CHAPTER 40—INTERNATIONAL LENDING SUPERVISION

Sec.

- 3901. Congressional declaration of policy.
- 3902. Definitions.
- 3903. Strengthened supervision of international lending.
- 3904. Reserves.
- 3904a. Additional reserve requirements.
- 3905. Accounting for fees on international loans.
- 3906. Collection and disclosure of international lending data.
- 3907. Capital adequacy.
- 3908. Foreign loan evaluations.
- 3909. General authorities.
- 3910. Audit authority of Government Accountability Office.
- 3911. Equal representation for Federal Deposit Insurance Corporation and the Office of Thrift

Supervision.
3912. Repealed.

§3901. Congressional declaration of policy

(a)(1) It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision.

(2) This shall be achieved by strengthening the bank regulatory framework to encourage prudent private decisionmaking and by enhancing international coordination among bank regulatory authorities.

(b) The Federal banking agencies shall consult with the banking supervisory authorities of other countries to reach understandings aimed at achieving the adoption of effective and consistent supervisory policies and practices with respect to international lending.

(Pub. L. 98–181, title I [title IX, §902], Nov. 30, 1983, 97 Stat. 1278.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–240, title IV, §401, Dec. 19, 1989, 103 Stat. 2501, provided that: "This title [enacting section 3904a of this title and enacting provisions set out as notes under section 3904a of this title and section 2291 of Title 22, Foreign Relations and Intercourse] may be cited as the 'Foreign Debt Reserving Act of 1989'."

SHORT TITLE

Pub. L. 98–181, title I [title IX, §901], Nov. 30, 1983, 97 Stat. 1278, provided that: "This title [enacting this chapter] may be cited as the 'International Lending Supervision Act of 1983'."

ENCOURAGEMENT OF DEBT-FOR-DEVELOPMENT SWAPS THROUGH LOCAL CURRENCY REPAYMENT

Pub. L. 101–240, title V, §531, Dec. 19, 1989, 103 Stat. 2513, provided that:

"(a) STATEMENT OF POLICY.—It is the sense of the Congress that—

"(1) debt-for-development swaps, where payment is made in local currency at the free market rate, serve a useful purpose by providing banking institutions with constructive opportunities for the reduction of the external debt of highly indebted developing countries in a process that involves the participation of private, nonprofit groups in providing a stimulus to the economic and social development of such developing countries;

"(2) debt-for-development swaps provide highly indebted developing countries with a creative method of reducing external debt burdens, while promoting their economic growth and restructuring objectives;

"(3) banking institutions should give careful consideration to engaging in such swaps as one means of strengthening overall loan portfolios through the reduction of high external debt burdens while expanding economic opportunities through private sector initiatives; and

"(4) in order to avoid any bias against such swaps in the regulatory framework applicable to the financial reporting of banking institutions, where payment is made in local currency at the free market rate, appropriate recognition of the fair market exchange value of the currency so received should be made.

"(b) NOTIFICATION RELATING TO LOCAL CURRENCY REPAYMENT THROUGH DEBT-FOR-DEVELOPMENT SWAPS.—Before the end of the 6-month period beginning on the date of the enactment of this section [Dec. 19, 1989], each appropriate Federal banking agency shall adopt uniform guidelines that will effectuate the policy set forth in subsection (a) concerning the regulatory framework and accounting treatment of debt-for-development swaps involving repayment in local currency at the free market rate. For the purpose of such guidelines, the impact of such swaps on reported loan loss reserves shall be determined by valuing currency received in such swaps at fair market exchange value.

"(c) DEFINITIONS.—As used in this section:

"(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the meaning given such term in section 903(1) of the International Lending Supervision Act of 1983 [12 U.S.C. 3902(1)].

"(2) BANKING INSTITUTION.—The term 'banking institution' has the meaning given such term in

section 903(2) of the International Lending Supervision Act of 1983.

"(3) DEBT-FOR-DEVELOPMENT SWAP.—The term 'debt-for-development swap' has the meaning given such term in section 1608(b)(2) of the International Financial Institutions Act [22 U.S.C. 262p–4c(b)(2)].

"(4) HIGHLY INDEBTED COUNTRY.—The term 'highly indebted country' means any country designated as a 'Highly Indebted Country' in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section [Dec. 19, 1989]."

§3902. Definitions

For purposes of this chapter—

(1) the term "appropriate Federal banking agency" has the same meaning given such term in section 1813(q) of this title, except that for purposes of this chapter such term means the Board of Governors of the Federal Reserve System for—

(A) bank holding companies and any nonbank subsidiary thereof;

(B) Edge Act corporations organized under section 25(a) ¹ of the Federal Reserve Act [12 U.S.C. 611 et seq.]; and

(C) Agreement Corporations operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.]; and

(2) the term "banking institution" means—

(A)(i) an insured bank as defined in section 1813(h) of this title or any subsidiary of an insured bank;

(ii) an Edge Act corporation organized under section 25(a) ¹ of the Federal Reserve Act [12 U.S.C. 611 et seq.]; and

(iii) an Agreement Corporation operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.]; and

(B) to the extent determined by the appropriate Federal banking agency, any agency or branch of a foreign bank, and any commercial lending company owned or controlled by one or more foreign banks or companies that control a foreign bank as those terms are defined in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.]. The term "banking institution" shall not include a foreign bank.

(Pub. L. 98–181, title I [title IX, §903], Nov. 30, 1983, 97 Stat. 1278.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in pars. (1) and (2)(A), which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

The International Banking Act of 1978, referred to in par. (2)(B), is Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, which enacted chapter 32 (§3101 et seq.) and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 247, 611a, and 3101 of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For definitions, see section 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

¹ See *References in Text* note below.

§3903. Strengthened supervision of international lending

(a) Each appropriate Federal banking agency shall evaluate banking institution foreign country exposure and transfer risk for use in banking institution examination and supervision.

(b) Each such agency shall establish examination and supervisory procedures to assure that factors such as foreign country exposure and transfer risk are taken into account in evaluating the adequacy of the capital of banking institutions.

(Pub. L. 98–181, title I [title IX, §904], Nov. 30, 1983, 97 Stat. 1279.)

§3904. Reserves

(a) Establishment and maintenance of special reserves

(1) Each appropriate Federal banking agency shall require a banking institution to establish and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

(A) the quality of such banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as—

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness;

(ii) a failure to comply with the terms of any restructured indebtedness; or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(B) no definite prospects exist for the orderly restoration of debt service.

(2) Such reserves shall be charged against current income and shall not be considered as part of capital and surplus or allowances for possible loan losses for regulatory, supervisory, or disclosure purposes.

(b) Accommodation of potential losses on foreign loans by United States banks

The appropriate Federal banking agencies shall analyze the results of foreign loan rescheduling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 3907 of this title (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans.

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98–181, title I [title IX, §905], Nov. 30, 1983, 97 Stat. 1279.)

§3904a. Additional reserve requirements

(a) In general

Each appropriate Federal banking agency shall review the exposure to risk of United States banking institutions arising from the medium- and long-term loans made by such institutions that are outstanding to any highly indebted country. Each agency shall provide direction to such institutions regarding additions to general reserves maintained by each banking institution for potential loan losses and special reserves required by such agency arising from such review.

(b) Determination of institutional exposure to risk

In determining the exposure of an institution to risk for purposes of subsection (a), the appropriate Federal banking agency—

(1) shall determine whether any country exposure that is, and has been for at least 2 years, rated

in the category "Other Transfer Risk Problems" or the category "Substandard" by the Interagency Country Exposure Review Committee should be reevaluated;

(2) may exempt, in full or in part, from reserve requirements established pursuant to subsection (a), any loan—

(A) to a country that enters into a debt reduction, debt service reduction, or financing program with its bank creditors that is supported by the International Bank for Reconstruction and Development or the International Monetary Fund; or

(B) secured, in whole or in part, by appropriate collateral for payment of interest or principal;

(3) take into account any other factors which bear on such exposure and the particular circumstances of the institution; and

(4) shall consider as indicators of risk, where appropriate, the average reserve levels maintained by or required of banking institutions in foreign countries and secondary market prices for such loans.

(c) Timing and report

(1) Determined by agency

Except as provided in paragraph (3), each appropriate Federal banking agency shall determine the timing of any addition to reserves required by subsection (a).

(2) Report

Each appropriate Federal banking agency shall include in each report required to be made under section 3912(d) ¹ of this title after 1989 a report on the actions taken pursuant to this section.

(3) Deadline

Each Federal agency required to undertake a review described in subsection (a) shall complete the review not later than December 31, 1990.

(d) "Highly indebted country" defined

As used in this section, the term "highly indebted country" means any country designated as a "Highly Indebted Country" in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before December 19, 1989.

(Pub. L. 98–181, title I [title IX, §905A], as added Pub. L. 101–240, title IV, §402(b), Dec. 19, 1989, 103 Stat. 2501.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3912(d) of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 104–208, div. A, title II, §2224(c), Sept. 30, 1996, 110 Stat. 3009–415.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONGRESSIONAL FINDINGS

Pub. L. 101–240, title IV, §402(a), Dec. 19, 1989, 103 Stat. 2501, provided that: "The Congress finds that—

"(1) since the adoption of the International Lending Supervision Act of 1983 [12 U.S.C. 3901 et seq.], the credit quality of loans by United States banking institutions to highly indebted countries has deteriorated and the prospects for full repayment of such loans have diminished;

"(2) in general during this period, the level of country exposure and transfer risk associated with loans by United States banking institutions to highly indebted countries has not been adequately reflected in the reserve levels established by many individual United States banking institutions or the reserve requirements imposed by Federal banking agencies pursuant to such Act;

"(3) during the last 3 years and particularly in recent months, United States banking institutions have increased their reserves for possible losses from loans to highly indebted countries but such reserves remain, in some cases, significantly lower than reserves established by banking institutions in a number of

foreign countries and may not be adequate to deal with potential risks; and

"(4) in order to fulfill the purposes of such Act, the Federal banking agencies should take a more active role in reviewing reserve levels established by United States banking institutions for potential losses from loans to highly indebted countries and in requiring appropriate levels of both special and general reserves to reflect the increased risk of such loans."

¹ [See References in Text note below.](#)

§3905. Accounting for fees on international loans

(a)(1) In order to avoid excessive debt service burdens on debtor countries, no banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes such fee over the effective life of each such loan.

(2)(A) Each appropriate Federal banking agency shall promulgate such regulations as are necessary to further carry out the provisions of this subsection.

(B) The requirement of paragraph (1) shall take effect on November 30, 1983.

(b)(1) Subject to subsection (a), the appropriate Federal banking agencies shall promulgate regulations for accounting for agency, commitment, management and other fees charged by a banking institution in connection with an international loan.

(2) Such regulations shall establish the accounting treatment of such fees for regulatory, supervisory, and disclosure purposes to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

(3) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this subsection within one hundred and twenty days after November 30, 1983.

(Pub. L. 98-181, title I [title IX, §906], Nov. 30, 1983, 97 Stat. 1279.)

§3906. Collection and disclosure of international lending data

(a) Submission of information to Federal banking agencies

Each appropriate Federal banking agency shall require, by regulation, each banking institution with foreign country exposure to submit, no fewer than four times each calendar year, information regarding such exposure in a format prescribed by such regulations.

(b) Disclosure of information to the public

Each appropriate Federal banking agency shall require, by regulation, banking institutions to disclose to the public information regarding material foreign country exposure in relation to assets and to capital.

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98-181, title I [title IX, §907], Nov. 30, 1983, 97 Stat. 1280.)

§3907. Capital adequacy

(a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate. Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained by an insured depository institution increases in

times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution.

(2) Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.

(b)(1) Failure of a banking institution to maintain capital at or above its minimum level as established pursuant to subsection (a) may be deemed by the appropriate Federal banking agency, in its discretion, to constitute an unsafe and unsound practice within the meaning of section 1818 of this title.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the appropriate Federal banking agency may issue a directive to a banking institution that fails to maintain capital ¹ at or above its required level as established pursuant to subsection (a).

(B)(i) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking agency describing the means and timing by which the banking institution shall achieve its required capital level.

(ii) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 1818(i) of this title to the same extent as an effective and outstanding order issued pursuant to section 1818(b) of this title which has become final.

(3)(A) Each appropriate Federal banking agency may consider such banking institution's progress in adhering to any plan required under this subsection whenever such banking institution, or an affiliate thereof, or the holding company which controls such banking institution, seeks the requisite approval of such appropriate Federal banking agency for any proposal which would divert earnings, diminish capital, or otherwise impede such banking institution's progress in achieving its minimum capital level.

(B) Such appropriate Federal banking agency may deny such approval where it determines that such proposal would adversely affect the ability of the banking institution to comply with such plan.

(C) The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall encourage governments, central banks, and regulatory authorities of other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international lending.

(Pub. L. 98-181, title I [title IX, §908], Nov. 30, 1983, 97 Stat. 1280; Pub. L. 111-203, title VI, §616(c), July 21, 2010, 124 Stat. 1615.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203 inserted at end "Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 616(e) of Pub. L. 111-203, set out as a note under section 1467a of this title.

¹ *So in original. Probably should be "capital".*

§3908. Foreign loan evaluations

(a) Projects requiring an economic feasibility evaluation; content of evaluation

(1) In any case in which one or more banking institutions extend credit, whether by loan, lease, guarantee, or otherwise, which individually or in the aggregate exceeds \$20,000,000, to finance any project which has as a major objective the construction or operation of any mining operation, any metal or mineral primary processing operation, any fabricating facility or operation, or any metal-making operations (semi and finished) located outside the United States or its territories and possessions, a written economic feasibility evaluation of such foreign project shall be prepared and approved in writing by a senior official of the banking institution, or, if more than one banking institution is involved, the lead banking institution, prior to the extension of such credit.

(2) Such evaluation shall—

(A) take into account the profit potential of the project, the impact of the project on world markets, the inherent competitive advantages and disadvantages of the project over the entire life of the project, and the likely effect of the project upon the overall long-term economic development of the country in which the project is located; and

(B) consider whether the extension of credit can reasonably be expected to be repaid from revenues generated by such foreign project without regard to any subsidy, as defined in international agreements, provided by the government involved or any instrumentality of any country.

(b) Review of evaluation by Federal banking agencies

Such economic feasibility evaluations shall be reviewed by representatives of the appropriate Federal banking agencies whenever an examination by such appropriate Federal banking agency is conducted.

(c) Other statutory authorities applicable

(1) The authorities of the Federal banking agencies contained in section 1818 of this title and in section 3909 of this title, except those contained in section 3909(d) of this title, shall be applicable to this section.

(2) No private right of action or claim for relief may be predicated upon this section.

(Pub. L. 98-181, title I [title IX, §909], Nov. 30, 1983, 97 Stat. 1281.)

§3909. General authorities

(a) Rules and regulations

(1) The appropriate Federal banking agencies are authorized to interpret and define the terms used in this chapter, and each appropriate Federal banking agency shall prescribe rules or regulations or issue orders as necessary to effectuate the purposes of this chapter and to prevent evasions thereof.

(2) The appropriate Federal banking agency is authorized to apply the provisions of this chapter to any affiliate of an insured depository institution, but only to affiliates for which it is the appropriate Federal banking agency, in order to promote uniform application of this chapter or to prevent evasions thereof.

(3) For purposes of this section, the term "affiliate" shall have the same meaning as in section 371c of this title, except that the term "member bank" in such section shall be deemed to refer to an "insured depository institution", as such term is defined in section 1813(c)(2) of this title.

(b) Systems uniformity

The appropriate Federal banking agencies shall establish uniform systems to implement the authorities provided under this chapter.

(c) Existing authorities

(1) The powers and authorities granted in this chapter shall be supplemental to and shall not be deemed in any manner to derogate from or restrict the authority of each appropriate Federal banking

agency under section 1818 of this title or any other law including the authority to require additional capital or reserves.

(2) Any such authority may be used by any appropriate Federal banking agency to ensure compliance by a banking institution with the provisions of this chapter and all rules, regulations, or orders issued pursuant thereto.

(d) Civil penalties; assessment and collection

(1) Any banking institution which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such banking institution, who violates any provision of this chapter, or any rule, regulation, or order, issued under this chapter, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues.

(2) Such violations shall be deemed to be a violation of a final order under section 1818(i)(2) of this title and the penalty shall be assessed and collected by the appropriate Federal banking agency under the procedures established by, and subject to the rights afforded to parties in, such section.

(Pub. L. 98–181, title I [title IX, §910], Nov. 30, 1983, 97 Stat. 1282; Pub. L. 109–351, title VII, §713(b), Oct. 13, 2006, 120 Stat. 1995.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–351, §713(b)(1), substituted "insured depository institution" for "insured bank".

Subsec. (a)(3). Pub. L. 109–351, §713(b)(2), substituted "an 'insured depository institution', as such term is defined in section 1813(c)(2)" for "an 'insured bank', as such term is used in section 1813(h)".

§3910. Audit authority of Government Accountability Office

(a) Scope of audit

(1) Under regulations of the Comptroller General, the Comptroller General shall audit the appropriate Federal banking agencies (as defined in section 3902 of this title), but may carry out an onsite examination of an open insured bank or bank holding company only if the appropriate Federal banking agency has consented in writing.

(2) An audit under this subsection may include a review or evaluation of the international regulation, supervision, and examination activities of the appropriate Federal banking agency, including the coordination of such activities with similar activities of regulatory authorities of a foreign government or international organization.

(3) Audits of the Federal Reserve Board and Federal Reserve banks may not include—

(A) transactions for, or with, a foreign central bank, government of a foreign country, or nonprivate international financing organization;

(B) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, or open market operations;

(C) transactions made under the direction of the Federal Open Market Committee; or

(D) a part of a discussion or communication among or between members of the Board of Governors of the Federal Reserve System and officers and employees of the Federal Reserve System related to subparagraphs (A) through (C) of this paragraph.

(b) Limits on disclosure

(1)(A) Except as provided in this subsection, an officer or employee of the Government Accountability Office may not disclose information identifying an open bank, an open bank holding company, or a customer of an open or closed bank or bank holding company.

(B) The Comptroller General may disclose information related to the affairs of a closed bank or

closed bank holding company identifying a customer of the closed bank or closed bank holding company only if the Comptroller General believes the customer had a controlling influence in the management of the closed bank or closed bank holding company or was related to or affiliated with a person or group having a controlling influence.

(2) An officer or employee of the Government Accountability Office may discuss a customer, bank, or bank holding company with an official of an appropriate Federal banking agency and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State.

(3) This subsection does not authorize an officer or employee of an appropriate Federal banking agency to withhold information from a committee of the Congress authorized to have the information.

(c) Records, property, workpapers, correspondence, and documents; accessibility

(1)(A) To carry out this section, all records and property of or used by an appropriate Federal banking agency, including samples of reports of examinations of a bank or bank holding company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General, including such records and property pertaining to the coordination of international regulation, supervisor and examination activities of an appropriate Federal banking agency.

(B) The Comptroller General shall give each appropriate Federal banking agency a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out an audit.

(C) Each appropriate Federal banking agency shall give the Comptroller General suitable and lockable offices and furniture, telephones, and access to copying facilities.

(2) Except for the temporary removal of workpapers of the Comptroller General that do not identify a customer of an open or closed bank or bank holding company, an open bank, or an open bank holding company, all workpapers of the Comptroller General and records and property of or used by an appropriate Federal banking agency that the Comptroller General possesses during an audit, shall remain in such agency. The Comptroller General shall prevent unauthorized access to records or property.

(Pub. L. 98-181, title I [title IX, §911], Nov. 30, 1983, 97 Stat. 1282; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (b)(1)(A), (2). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

§3911. Equal representation for Federal Deposit Insurance Corporation and the Office of Thrift Supervision

(a) In general

As one of the 4 Federal bank regulatory and supervisory agencies, and as the insurer of the United States banks involved in international lending, the Federal Deposit Insurance Corporation shall be given equal representation with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.

(b) Office of Thrift Supervision

As one of the 4 Federal bank regulatory and supervisory agencies, the Office of Thrift Supervision shall be given equal representation with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation on the

Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.

(Pub. L. 98–181, title I [title IX, §912], Nov. 30, 1983, 97 Stat. 1284; Pub. L. 109–351, title VII, §713(a), Oct. 13, 2006, 120 Stat. 1995.)

EDITORIAL NOTES

AMENDMENTS

2006—Pub. L. 109–351 inserted "and the Office of Thrift Supervision" after "Federal Deposit Insurance Corporation" in section catchline, designated existing provisions as subsec. (a), inserted heading, substituted "As one of the 4" for "As one of the three", and added subsec. (b).

§3912. Repealed. Pub. L. 104–208, div. A, title II, §2224(c), Sept. 30, 1996, 110 Stat. 3009–415

Section, Pub. L. 98–181, title I [title IX, §913], Nov. 30, 1983, 97 Stat. 1284; Pub. L. 100–418, title III, §3121(e), Aug. 23, 1988, 102 Stat. 1379, directed Secretary of the Treasury and certain Federal banking agencies to report to Congress, no later than 6 months after Nov. 30, 1983, regarding changes that could improve international lending operations of banking institutions.

CHAPTER 41—EXPEDITED FUNDS AVAILABILITY

Sec.

- 4001. Definitions.
- 4002. Expedited funds availability schedules.
- 4003. Safeguard exceptions.
- 4004. Disclosure of funds availability policies.
- 4005. Payment of interest.
- 4006. Miscellaneous provisions.
- 4007. Effect on State law.
- 4008. Regulations and reports by Board.
- 4009. Administrative enforcement.
- 4010. Civil liability.

§4001. Definitions

For purposes of this chapter—

(1) Account

The term "account" means a demand deposit account or other similar transaction account at a depository institution.

(2) Board

The term "Board" means the Board of Governors of the Federal Reserve System.

(3) Business day

The term "business day" means any day other than a Saturday, Sunday, or legal holiday.

(4) Cash

The term "cash" means United States coins and currency, including Federal Reserve notes.

(5) Cashier's check

The term "cashier's check" means any check which—

(A) is drawn on a depository institution;

(B) is signed by an officer or employee of such depository institution; and

(C) is a direct obligation of such depository institution.

(6) Certified check

The term "certified check" means any check with respect to which a depository institution certifies that—

(A) the signature on the check is genuine; and

(B) such depository institution has set aside funds which—

(i) are equal to the amount of the check; and

(ii) will be used only to pay such check.

(7) Check

The term "check" means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.

(8) Check clearinghouse association

The term "check clearinghouse association" means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.

(9) Check processing region

The term "check processing region" means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.

(10) Consumer account

The term "consumer account" means any account used primarily for personal, family, or household purposes.

(11) Depository check

The term "depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board.

(12) Depository institution

The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 461(b)(1)(A) of this title. Such term also includes an office, branch, or agency of a foreign bank located in the United States.

(13) Local originating depository institution

The term "local originating depository institution" means any originating depository institution which is located in the same check processing region as the receiving depository institution.

(14) Noncash item

The term "noncash item" means—

(A) a check or other demand item to which a passbook, certificate, or other document is attached;

(B) a check or other demand item which is accompanied by special instructions, such as a request for special advise of payment or dishonor; or

(C) any similar item which is otherwise classified as a noncash item in regulations of the Board.

(15) Nonlocal originating depository institution

The term "nonlocal originating depository institution" means any originating depository institution which is not a local depository institution.

(16) Proprietary ATM

The term "proprietary ATM" means an automated teller machine which is—

(A) located—

(i) at or adjacent to a branch of the receiving depository institution; or

(ii) in close proximity, as defined by the Board, to a branch of the receiving depository institution; or

(B) owned by, operated exclusively for, or operated by the receiving depository institution.

(17) Originating depository institution

The term "originating depository institution" means the branch of a depository institution on which a check is drawn.

(18) Nonproprietary ATM

The term "nonproprietary ATM" means an automated teller machine which is not a proprietary ATM.

(19) Participant

The term "participant" means a depository institution which—

(A) is located in the same geographic area as that served by a check clearinghouse association; and

(B) exchanges checks through the check clearinghouse association, either directly or through an intermediary.

(20) Receiving depository institution

The term "receiving depository institution" means the branch of a depository institution or the proprietary ATM, located in the United States, in which a check is first deposited.

(21) State

The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the Virgin Islands.

(22) Teller's check

The term "teller's check" means any check issued by a depository institution and drawn on another depository institution.

(23) United States

The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(24) Unit of general local government

The term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

(25) Wire transfer

The term "wire transfer" has such meaning as the Board shall prescribe by regulations.

(Pub. L. 100–86, title VI, §602, Aug. 10, 1987, 101 Stat. 635; Pub. L. 115–174, title II, §208(a)(1), May 24, 2018, 132 Stat. 1312.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title VI of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 635, known as the Expedited Funds Availability Act, which enacted this chapter, amended section 248a of this title, and enacted provisions set out as notes under sections 248a and 4001 of this title. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

2018—Par. (20). Pub. L. 115–174, §208(a)(1)(A), inserted ", located in the United States," after "ATM".

Pars. (21), (23). Pub. L. 115–174, §208(a)(1)(B), (C), inserted "American Samoa, the Commonwealth of the Northern Mariana Islands, Guam," after "Puerto Rico,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–174, title II, §208(b), May 24, 2018, 132 Stat. 1313, provided that: "The amendments made by this section [amending this section and section 4002 of this title] shall take effect on the date that is 30 days after the date of enactment of this Act [May 24, 2018]."

EFFECTIVE DATE

Pub. L. 100–86, title VI, §613, Aug. 10, 1987, 101 Stat. 652, provided that:

"(a) DATE OF ENACTMENT.—Except as provided in subsection (b), this title [enacting this chapter, amending section 248a of this title, and enacting provisions set out as notes under this section and section 248a of this title] shall take effect on the date of the enactment of this title [Aug. 10, 1987].

"(b) 1 YEAR AFTER DATE OF ENACTMENT.—Sections 603, 604, 605, 606, 610, and 611 [enacting sections 4002 to 4005, 4009, and 4010 of this title] shall take effect on September 1, 1988."

SHORT TITLE

Pub. L. 100–86, title VI, §601, Aug. 10, 1987, 101 Stat. 635, provided that: "This title [enacting this chapter, amending section 248a of this title, and enacting provisions set out as notes under this section and section 248a of this title] may be cited as the 'Expedited Funds Availability Act'."

SEPARABILITY

If any provision of Pub. L. 100–86 or the application thereof to any person or circumstances is held invalid, the remainder of Pub. L. 100–86 and the application of the provision to other persons not similarly situated or to other circumstances not to be affected thereby, see section 1205 of Pub. L. 100–86, set out as a note under section 226 of this title.

§4002. Expedited funds availability schedules

(a) Next business day availability for certain deposits

(1) Cash deposits; wire transfers

Except as provided in subsection (e) and in section 4003 of this title, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution,

such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) Government checks; certain other checks

Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

(i) is drawn on the Treasury of the United States; and

(ii) is endorsed only by the person to whom it was issued;

(B) a check which—

(i) is drawn by a State;

(ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a State;

and

(iv) is endorsed only by the person to whom it was issued;

(C) a check which—

(i) is drawn by a unit of general local government;

(ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and

(iv) is endorsed only by the person to whom it was issued;

(D) the first \$200 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

(i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

(ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and

(iii) is endorsed only by the person to whom it was issued.

(b) Permanent schedule

(1) Availability of funds deposited by local checks

Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) Availability of funds deposited by nonlocal checks

Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) Time period adjustments for cash withdrawal of certain checks

(A) In general

Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) 5 p.m. cash availability

Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) \$200 availability

Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D).

(4) Applicability

This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) Temporary schedule

(1) Availability of local checks

(A) In general

Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 4003 of this title, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B) Time period adjustment for cash withdrawal of certain checks

(i) In general

Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) 5 p.m. cash availability

Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) \$200 availability

Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) Availability of nonlocal checks

Subject to subsections (a)(2), (d), and (e) of this section and section 4003 of this title, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) Applicability

This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) Time period adjustments

(1) Reduction generally

Notwithstanding any other provision of law, the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) Extension for certain deposits in noncontiguous States or territories

Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) Deposits at ATM

(1) Nonproprietary ATM

(A) In general

Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) Deposits described in this paragraph ¹

A deposit is described in this subparagraph if it is—

- (i) a cash deposit;
- (ii) a deposit made by a check described in subsection (a)(2);
- (iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or
- (iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(2) Proprietary ATM—temporary and permanent schedules

The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(3) Study and report on ATM's

The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after August 10, 1987, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) Check return; notice of nonpayment

No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

- (1) such checks be physically returned to such depository institution; or
- (2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

(Pub. L. 100–86, title VI, §603, Aug. 10, 1987, 101 Stat. 637; Pub. L. 101–625, title X, §1001, Nov. 28, 1990, 104 Stat. 4424; Pub. L. 102–242, title II, §227(a), (b)(1), Dec. 19, 1991, 105 Stat. 2307; Pub. L. 111–203, title X, §1086(a), (e), July 21, 2010, 124 Stat. 2085, 2086; Pub. L. 115–174, title II, §208(a)(2), May 24, 2018, 132 Stat. 1312.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (d)(2)(A). Pub. L. 115–174 inserted "American Samoa, the Commonwealth of the Northern

Mariana Islands, Guam," after "Puerto Rico,".

2010—Subsec. (a)(2)(D). Pub. L. 111–203, §1086(e)(1), substituted "\$200" for "\$100".

Subsecs. (b)(3)(C), (c)(1)(B)(iii). Pub. L. 111–203, §1086(e)(2), (3), substituted "\$200" for "\$100" in heading.

Subsec. (d)(1). Pub. L. 111–203, §1086(a), inserted ", jointly with the Director of the Bureau of Consumer Financial Protection," after "Board".

1991—Subsec. (e)(1). Pub. L. 102–242, §227(b)(1)(A), struck out "—temporary schedule" after "ATM" in heading.

Subsec. (e)(1)(C). Pub. L. 102–242, §227(a), struck out subpar. (C) which read as follows: "This paragraph shall apply with respect to funds deposited at a nonproprietary automated teller machine after August 31, 1988, and prior to the expiration of the 2-year period beginning on November 28, 1990."

Subsec. (e)(2) to (4). Pub. L. 102–242, §227(a), (b)(1)(B), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to permanent schedule for funds deposited at nonproprietary automated teller machines.

1990—Subsec. (e)(1)(A). Pub. L. 101–625, §1001(1), substituted "4" for "6".

Subsec. (e)(1)(C). Pub. L. 101–625, §1001(2), substituted "prior to the expiration of the 2-year period beginning on November 28, 1990" for "before September 1, 1990".

Subsec. (e)(2)(D). Pub. L. 101–625, §1001(3), substituted "the expiration of the 2-year period beginning on November 28, 1990" for "September 1, 1990".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–174 effective 30 days after May 24, 2018, see section 208(b) of Pub. L. 115–174, set out as a note under section 4001 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

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

§4003. Safeguard exceptions

(a) New accounts

Notwithstanding section 4002 of this title, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board, jointly with the Director of the Bureau of Consumer Financial Protection, may establish) beginning on the date such account is established—

(1) Next business day availability of cash and certain items

Except as provided in paragraph (3), in the case of—

- (A) any cash deposited in such account;
- (B) any funds received by such depository institution by wire transfer for deposit in such account;
- (C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and
- (D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 4002(a)(2) of this title,

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) Availability of other items

In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 4002(b), 4002(c), or paragraphs ¹(1) of section 4002(e) of this title.

(3) Limitation relating to certain checks in excess of \$5,000

In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000—

(A) paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and

(B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) Large or redeposited checks; repeated overdrafts

The Board, jointly with the Director of the Bureau of Consumer Financial Protection, may, by regulation, establish reasonable exceptions to any time limitation established under subsection (a)(2), (b), (c), or (e) of section 4002 of this title for—

(1) the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;

(2) checks that have been returned unpaid and redeposited; and

(3) deposit accounts which have been overdrawn repeatedly.

(c) Reasonable cause exception

(1) In general

In accordance with regulations which the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall prescribe, subsections (a)(2), (b), (c), and (e) of section 4002 of this title shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) Basis for determination

No determination under this subsection may be based on any class of checks or persons.

(3) Overdraft fees

If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

(A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;

(B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and

(C) the amount of the check is collected from the originating depository institution.

(4) Compliance

Each agency referred to in section 4009(a) of this title shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall

describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) Emergency conditions

Subject to such regulations as the Board, jointly with the Director of the Bureau of Consumer Financial Protection, may prescribe, subsections (a)(2), (b), (c), and (e) of section 4002 of this title shall not apply to funds deposited by check in any receiving depository institution in the case of—

- (1) any interruption of communication facilities;
- (2) suspension of payments by another depository institution;
- (3) any war; or
- (4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) Prevention of fraud losses

(1) In general

The Board, jointly with the Director of the Bureau of Consumer Financial Protection, may, by regulation or order, suspend the applicability of this chapter, or any portion thereof, to any classification of checks if the Board, jointly with the Director of the Bureau of Consumer Financial Protection, determines that—

- (A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and
- (B) suspension of this chapter, or such portion of this chapter, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) Sunset provision

No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) Report to Congress

(A) Notice of each suspension

Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall transmit a report of such action 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.

(B) Contents of report

Each report under subparagraph (A) shall contain—

- (i) the specific reason for prescribing the regulation or issuing the order;
- (ii) evidence considered by the Board, jointly with the Director of the Bureau of Consumer Financial Protection, in making the determination under paragraph (1) with respect to such regulation or order; and
- (iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) Notice of exception; availability within reasonable time

(1) In general

If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

- (A) the depository institution shall provide notice in the manner provided in paragraph (2) of—
 - (i) the time period within which the funds shall be made available for withdrawal; and
 - (ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this chapter, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board, jointly with the Director of the Bureau of Consumer Financial Protection.

(2) Time for notice

The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board, jointly with the Director of the Bureau of Consumer Financial Protection.

(D) In the case of a deposit to which subsection (b)(1) or (b)(2) applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

(E) In the case of a deposit to which subsection (b)(3) applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.

(3) Subsequent determinations

If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

(Pub. L. 100–86, title VI, §604, Aug. 10, 1987, 101 Stat. 642; Pub. L. 102–242, title II, §§225, 227(b)(2), Dec. 19, 1991, 105 Stat. 2307, 2308; Pub. L. 111–203, title X, §1086(b), July 21, 2010, 124 Stat. 2085.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsecs. (a) to (e). Pub. L. 111–203, §1086(b)(1), inserted ", jointly with the Director of the Bureau of Consumer Financial Protection," after "Board" wherever appearing.

Subsec. (f)(1)(B), (2)(C). Pub. L. 111–203, §1086(b)(2), substituted "Board, jointly with the Director of the Bureau of Consumer Financial Protection." for "Board."

1991—Subsec. (a)(2). Pub. L. 102–242, §227(b)(2), struck out "and (2)" after "paragraphs (1)".

Subsec. (b). Pub. L. 102–242, §225(1), inserted "(a)(2)," after "subsection".

Subsec. (c)(1). Pub. L. 102–242, §225(2), substituted "(a)(2)" for "(a)(2)(F)".

Subsec. (d). Pub. L. 102–242, §225(3), inserted "(a)(2)," after "subsections".

Subsec. (f)(1)(A)(i). Pub. L. 102–242, §225(4), substituted "time period within which" for "day".

Subsec. (f)(2)(D), (E). Pub. L. 102–242, §225(5), added subpars. (D) and (E).

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.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100-86, set out as a note under section 4001 of this title.

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

§4004. Disclosure of funds availability policies

(a) Notice for new accounts

Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) Preprinted deposit slips

All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board, jointly with the Director of the Bureau of Consumer Financial Protection, in regulations, that deposited items may not be available for immediate withdrawal.

(c) Mailing of notice

(1) First mailing after enactment

In the first regularly scheduled mailing to customers occurring after September 1, 1988, but not more than 60 days after September 1, 1988, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before September 1, 1988.

(2) Subsequent changes

A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) Upon request

Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

(d) Posting of notice

(1) Specific notice at manned teller stations

Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which

describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) General notice at automated teller machines

In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) Notice of interest payment policy

If a depository institution described in section 4005(b) of this title begins the accrual of interest or dividends at a later date than the date described in section 4005(a) of this title with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) Model disclosure forms

(1) Prepared by Board and Bureau

The Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) Use of forms to achieve compliance

A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

- (A) uses any appropriate model form or clause as published by the Board, jointly with the Director of the Bureau of Consumer Financial Protection,,¹ or
- (B) uses any such model form or clause and changes such form or clause by—
 - (i) deleting any information which is not required by this chapter; or
 - (ii) rearranging the format.

(3) Voluntary use

Nothing in this chapter requires the use of any such model form or clause prescribed by the Board, jointly with the Director of the Bureau of Consumer Financial Protection, under this subsection.

(4) Notice and comment

Model disclosure forms and clauses shall be adopted by the Board, jointly with the Director of the Bureau of Consumer Financial Protection, only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5.

(Pub. L. 100–86, title VI, §605, Aug. 10, 1987, 101 Stat. 644; Pub. L. 111–203, title X, §1086(c), July 21, 2010, 124 Stat. 2086.)

EDITORIAL NOTES

REFERENCES IN TEXT

After enactment, referred to in the heading of subsec. (c)(1), probably means after the effective date of this section, which is Sept. 1, 1988.

AMENDMENTS

2010—Subsecs. (b), (d)(2). Pub. L. 111–203, §1086(c)(1), inserted ", jointly with the Director of the Bureau of Consumer Financial Protection," after "Board".

Subsec. (f)(1). Pub. L. 111–203, §1086(c)(2), inserted "and Bureau" after "Board" in heading.

Pub. L. 111–203, §1086(c)(1), inserted ", jointly with the Director of the Bureau of Consumer Financial Protection," after "Board".

Subsec. (f)(2)(A), (3), (4). Pub. L. 111–203, §1086(c)(1), inserted ", jointly with the Director of the Bureau of Consumer Financial Protection," after "Board".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

¹ So in original.

§4005. Payment of interest

(a) In general

Except as provided in subsection (b) or (c) and notwithstanding any other provision of law, interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.

(b) Special rule for credit unions

Subsection (a) shall not apply to an account at a depository institution described in section 461(b)(1)(A)(iv) of this title if the depository institution—

(1) begins the accrual of interest or dividends at a later date than the date described in subsection (a) with respect to all funds, including cash, deposited in such account; and

(2) provides notice of the interest payment policy in the manner required under section 4004(e) of this title.

(c) Exception for checks returned unpaid

No provision of this chapter shall be construed as requiring the payment of interest or dividends on funds deposited by a check which is returned unpaid.

(Pub. L. 100–86, title VI, §606, Aug. 10, 1987, 101 Stat. 646.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

§4006. Miscellaneous provisions

(a) After-hours deposits

For purposes of this chapter, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

(b) Availability at start of business day

Except as provided in subsections (b)(3) and (c)(1)(B) of section 4002 of this title, if any provision of this chapter requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

(c) Effect on policies of depository institutions

No provision of this chapter shall be construed as—

- (1) prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this chapter; or
- (2) affecting a depository institution's right—
 - (A) to accept or reject a check for deposit;
 - (B) to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;
 - (C) to charge back the depositor's account for the amount of such check; or
 - (D) to claim a refund of such provisional credit.

(d) Prohibition on freezing certain funds in an account

In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this chapter, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this chapter) solely because the funds so deposited are not yet available for withdrawal.

(e) Employee training on and compliance with requirements of this chapter

Each depository institution shall—

- (1) take such actions as may be necessary fully to inform each employee (who performs duties subject to the requirements of this chapter) of the requirements of this chapter; and
- (2) establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

(f) Adjustments to dollar amounts for inflation

The dollar amounts under this chapter shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of \$25. (Pub. L. 100–86, title VI, §607, Aug. 10, 1987, 101 Stat. 646; Pub. L. 111–203, title X, §1086(f), July 21, 2010, 124 Stat. 2086.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title VI of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 635, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–203 added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§4007. Effect on State law

(a) In general

Any law or regulation of any State in effect on September 1, 1989, which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be

made available for withdrawal in a shorter period of time than the period of time provided in this chapter or in regulations prescribed by the Board under this chapter (as in effect on September 1, 1989) shall—

(1) supersede the provisions of this chapter and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and

(2) apply to all federally insured depository institutions located within such State.

(b) Override of certain State laws

Except as provided in subsection (a), this chapter and regulations prescribed under this chapter shall supersede any provision of the law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this chapter or such regulations.

(Pub. L. 100–86, title VI, §608, Aug. 10, 1987, 101 Stat. 647.)

§4008. Regulations and reports by Board

(a) In general

After notice and opportunity to submit comment in accordance with section 553(c) of title 5, the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall prescribe regulations—

- (1) to carry out the provisions of this chapter;
- (2) to prevent the circumvention or evasion of such provisions; and
- (3) to facilitate compliance with such provisions.

(b) Regulations relating to improvement of check processing system

In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and depository institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks;

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

- (i) automate the process of reading endorsements; and
- (ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determines whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) Regulatory responsibility of Board for payment system

(1) Responsibility for payment system

In order to carry out the provisions of this chapter, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) Regulations

The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) Reports

(1) Implementation progress reports

(A) Required reports

The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after August 10, 1987.

(B) Contents of report

Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 4002 of this title, and

(ii) the impact of this chapter on consumers and depository institutions.

(2) Evaluation of temporary schedule report

(A) Report required

The Board shall transmit a report to both Houses of the Congress not later than 2 years after August 10, 1987, regarding the effects the temporary schedule established under section 4002(c) of this title have had on depository institutions and the public.

(B) Contents of report

Such report shall also assess the potential impact the implementation of the schedule established in section 4002(b) of this title will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

(3) Comptroller General evaluation report

Not later than 6 months after September 1, 1988, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this chapter.

(e) Consultations

In prescribing regulations under subsections (a) and (b), the Board and the Director of the Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.

(f) Electronic clearinghouse study

(1) Study required

The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing

telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

(2) Consultation; factors to be studied

In connection with the study required under paragraph (1), the Board shall—

(A) consult with appropriate experts in telecommunications technology; and

(B) consider all practical and legal impediments to the development of an electronic clearinghouse process.

(3) Report required

The Board shall report its conclusions to the Congress within 9 months of August 10, 1987.

(Pub. L. 100–86, title VI, §609, Aug. 10, 1987, 101 Stat. 647; Pub. L. 111–203, title X, §1086(d), July 21, 2010, 124 Stat. 2086.)

EDITORIAL NOTES

CODIFICATION

In subsec. (d)(3), "September 1, 1988" substituted for "section 603(b) takes effect" on authority of section 613(b) of Pub. L. 100–86, set out as an Effective Date note under section 4001 of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1086(d)(1), inserted ", jointly with the Director of the Bureau of Consumer Financial Protection," after "Board" in introductory provisions.

Subsec. (e). Pub. L. 111–203, §1086(d)(2), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: "In prescribing regulations under subsections (a) and (b) of this section, the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EXCEPTIONS IN AREAS WHERE MAJOR DISASTER EXISTS

Pub. L. 105–18, title V, §50002, June 12, 1997, 111 Stat. 211, provided that:

"(a) **TRUTH IN LENDING ACT.**—During the 240-day period beginning on the date of enactment of this Act [June 12, 1997], the Board of Governors of the Federal Reserve System may make exceptions to the Truth in Lending Act [15 U.S.C. 1601 et seq.] for transactions within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170], has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, if the Board determines that the exception can reasonably be expected to alleviate hardships to the public resulting from such disaster that outweigh possible adverse effects.

"(b) **EXPEDITED FUNDS AVAILABILITY ACT.**—During the 240-day period beginning on the date of enactment of this Act [June 12, 1997], the Board of Governors of the Federal Reserve System may make exceptions to the Expedited Funds Availability Act [12 U.S.C. 4001 et seq.] for depository institution offices located within any area referred to in subsection (a) of this section if the Board determines that the exception can reasonably be expected to alleviate hardships to the public resulting from such disaster that outweigh possible adverse effects.

"(c) **TIME LIMIT ON EXCEPTIONS.**—Any exception made under this section shall expire not later than September 1, 1998.

"(d) **PUBLICATION REQUIRED.**—The Board of Governors of the Federal Reserve System shall publish in the Federal Register a statement that—

"(1) describes any exception made under this section; and

"(2) explains how the exception can reasonably be expected to produce benefits to the public that outweigh possible adverse effects."

Similar provisions were contained in the following prior acts:

Pub. L. 103-76, §2, Aug. 12, 1993, 107 Stat. 752.

Pub. L. 102-485, §3, Oct. 23, 1992, 106 Stat. 2772.

§4009. Administrative enforcement

(a) Administrative enforcement

Compliance with the requirements imposed under this chapter, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this chapter, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) Additional powers

(1) Violation of this chapter treated as violation of other Acts

For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act.

(2) Enforcement authority under other Acts

In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

(c) Enforcement by Board

(1) In general

Except to the extent that enforcement of the requirements imposed under this chapter is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(2) Additional remedy

If the Board determines that—

(A) any depository institution which is not a depository institution described in subsection

(a), or

(B) any other person subject to the authority of the Board under this chapter, including any person subject to the authority of the Board under section 4004(d)(2) or 4008(c) of this title,

has failed to comply with any requirement imposed by this chapter or by the Board under this chapter, the Board may issue an order prohibiting any depository institution, any Federal Reserve bank, or any other person subject to the authority of the Board from engaging in any activity or transaction which directly or indirectly involves such noncomplying depository institution or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks).

(d) Procedural rules

The authority of the Board to prescribe regulations under this chapter does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this chapter.

(Pub. L. 100–86, title VI, §610, Aug. 10, 1987, 101 Stat. 649; Pub. L. 101–73, title VII, §744(d), Aug. 9, 1989, 103 Stat. 438; Pub. L. 102–242, title II, §212(h), Dec. 19, 1991, 105 Stat. 2303.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–242, §212(h)(2), inserted at end "The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."

Subsec. (a)(1). Pub. L. 102–242, §212(h)(1), added par. (1) and struck out former par. (1) which read as follows: "section 8 of the Federal Deposit Insurance Act in the case of—

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;"

1989—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

§4010. Civil liability

(a) Civil liability

Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this chapter or any regulation prescribed under this chapter with

respect to any person other than another depository institution is liable to such person in an amount equal to the sum of—

- (1) any actual damage sustained by such person as a result of the failure;
- (2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or
(B) in the case of a class action, such amount as the court may allow, except that—
 - (i) as to each member of the class, no minimum recovery shall be applicable; and
 - (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the depository institution involved; and
- (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) Class action awards

In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

- (1) the amount of any actual damages awarded;
- (2) the frequency and persistence of failures of compliance;
- (3) the resources of the depository institution;
- (4) the number of persons adversely affected; and
- (5) the extent to which the failure of compliance was intentional.

(c) Bona fide errors

(1) General rule

A depository institution may not be held liable in any action brought under this section for a violation of this chapter if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) Examples

Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this chapter is not a bona fide error.

(d) Jurisdiction

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) Reliance on Board rulings

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Authority to establish rules regarding losses and liability among depository institutions

The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

(Pub. L. 100–86, title VI, §611, Aug. 10, 1987, 101 Stat. 650.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100–86, set out as a note under section 4001 of this title.

CHAPTER 42—LOW-INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP

SUBCHAPTER I—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

Sec.

- 4101. General prepayment limitation.
- 4102. Notice of intent.
- 4103. Appraisal and preservation value of eligible low-income housing.
- 4104. Annual authorized return and preservation rents.
- 4105. Federal cost limits and limitations on plans of action.
- 4106. Information from Secretary.
- 4107. Plan of action.
- 4108. Prepayment and voluntary termination.
- 4109. Incentives to extend low-income use.
- 4110. Incentives for transfer to qualified purchasers.
- 4111. Mandatory sale for housing exceeding Federal cost limits.
- 4112. Criteria for approval of plan of action involving incentives.
- 4113. Assistance for displaced tenants.
- 4114. Permissible prepayment or voluntary termination and modification of commitments.
- 4115. Timetable for approval of plan of action.
- 4116. Resident homeownership program.
- 4117. Delegated responsibility to State agencies.
- 4118. Consultations with other interested parties.
- 4119. Definitions.
- 4120. Notice to tenants.
- 4121. Definitions of qualified and priority purchaser and related party rule.
- 4122. Preemption of State and local laws.
- 4123. Severability.
- 4124. Authorization of appropriations.
- 4125. State preservation project assistance.

SUBCHAPTER II—TECHNICAL ASSISTANCE AND CAPACITY BUILDING

- 4141. Authority.
- 4142. Purposes.
- 4143. Grants for building resident capacity and funding predevelopment costs.
- 4144. Grants for other purposes.
- 4145. Delivery of assistance through intermediaries.
- 4146. Definitions.
- 4147. Funding.

EDITORIAL NOTES

CODIFICATION

Subtitles A and B of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100–242, title II, as revised generally by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat.

4249, comprise subchapter I of this chapter. Prior to the general revision by Pub. L. 101–625 subtitles A and B (§§201–235) of the Emergency Low Income Housing Preservation Act of 1987, Pub. L. 100–242, title II, Feb. 5, 1988, 101 Stat. 1877, as amended by Pub. L. 100–628, title X, §§1021–1027, Nov. 7, 1988, 102 Stat. 3270, 3271; Pub. L. 101–235, title II, §§201, 202(a)–(c), 203(b), Dec. 15, 1989, 103 Stat. 2037, 2038; Pub. L. 101–402, §1, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101–494, §§1(c), 2(a), Oct. 31, 1990, 104 Stat. 1185, were set out as a note under section 1715l of this title and amended section 1715z–6 of this title.

Subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100–242, title II, as added by Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3765, comprises subchapter II of this chapter. Another subtitle C of title II of Pub. L. 100–242 amended sections 1472, 1485, and 1487 of Title 42, The Public Health and Welfare.

SUBCHAPTER I—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

§4101. General prepayment limitation

(a) Prepayment and termination

An owner of eligible low-income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title. An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 1715t of this title only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title.

(b) Foreclosure

A mortgagee may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low-income housing project only if the mortgagee also conveys title to the project to the Secretary in connection with a claim for insurance benefits.

(c) Effect of unauthorized prepayment

Any prepayment of a mortgage on eligible low-income housing or termination of the mortgage insurance on such housing not in compliance with the provisions of this subchapter shall be null and void and any low-income affordability restrictions on the housing shall continue to apply to the housing.

(Pub. L. 100–242, title II, §211, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 101–625, title VI, §605, Nov. 28, 1990, 104 Stat. 4278, provided that: "This subtitle [subtitle A (§§601–605) of title VI of Pub. L. 101–625, enacting this chapter, amending sections 1715z–6 and 1715z–15 of this title and section 1437f of Title 42, The Public Health and Welfare, and enacting provisions set out below] shall take effect on the date of the enactment of this Act [Nov. 28, 1990]."

SHORT TITLE

Pub. L. 100–242, title II, §201, as added by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, provided that: "This title [enacting this chapter, amending section 1715z–15 of this title and sections 1437f, 1472, 1485, and 1487 of Title 42, The Public Health and Welfare, and enacting provisions set out below] may be cited as the 'Low-Income Housing Preservation and Resident Homeownership Act of 1990'."

APPLICABILITY

Pub. L. 100–242, title II, §235, as added by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat.

4274, provided that: "Subject to section 605 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101-625, set out above], the requirements of this subtitle [subtitle B (§§211-235) of title II of Pub. L. 100-242, enacting this subchapter] shall apply to any project that is eligible low-income housing on or after November 1, 1987."

REGULATIONS

Pub. L. 102-550, title III, §332, Oct. 28, 1992, 106 Stat. 3773, provided that: "Except as otherwise provided in this title [enacting sections 4141 to 4147 of this title, amending sections 1715z-1, 1715z-6, 4103, 4105 to 4112, 4116, 4119, 4121, 4122, 4124, and 4125 of this title, enacting provisions set out as notes under this section and sections 1715z-6, 4109, and 4117 of this title, and amending provisions set out as a note under this section], the Secretary of Housing and Urban Development shall issue interim regulations implementing this title and the amendments made by this title not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall take effect upon issuance. The Secretary shall issue final regulations implementing this title and the amendments made by this title after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance."

LOW-INCOME HOUSING PRESERVATION

Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2883, provided in part: "That of the total amount provided under this head, \$350,000,000 shall be available for use in conjunction with properties that are eligible for assistance under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) [see Short Title note above] or the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) [see Codification note set out preceding this section], of which \$75,000,000 shall be available for obligation until March 1, 1997 for projects (1) that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (2) whose submissions were delayed as a result of their location in areas that were designated as a Federal disaster area in a Presidential Disaster Declaration; or (3) whose processing was, in fact or in practical effect, suspended, deferred, or interrupted for a period of twelve months or more because of differing interpretations, by the Secretary and an owner or by the Secretary and a State or local rent regulatory agency, concerning the timing of filing eligibility or the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPRHA, as amended [12 U.S.C. 4103], if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993; and of which, up to \$100,000,000 may be used for rental assistance to prevent displacement of families residing in projects whose owners prepay their mortgages; and the balance of which shall be available from the effective date of this Act [Sept. 26, 1996] for sales to preferred priority purchasers: *Provided further*, That with the exception of projects described in clauses (1), (2), or (3) of the preceding proviso, the Secretary shall, notwithstanding any other provision of law, suspend further processing of preservation applications which have not heretofore received approval of a plan of action: *Provided further*, That \$150,000,000 of amounts recaptured from interest reduction payment contracts for section 236 [12 U.S.C. 1715z-1] projects whose owners prepay their mortgages during fiscal year 1997 shall be rescinded: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of \$5,000 per unit or \$500,000 per project or the equivalent of eight times the most recently published monthly fair market rent for the area in which the project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit owners and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act, for the purpose of preserving the low- and moderate-income character of the housing: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPRHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each low-income family, and moderate-income family who is elderly or disabled or is residing in a low-vacancy area, residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one

year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 [42 U.S.C. 1437f] or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That the tenant-based assistance made available under the preceding two provisos are in lieu of benefits provided in subsections [sic] 223(b), (c), and (d) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4113(b), (c), (d)]: *Provided further*, That any sales shall be funded using the capital grant available under section 220(d)(3)(A) of LIHPHA [12 U.S.C. 4110(d)(3)(A)]: *Provided further*, That any extensions shall be funded using a non-interest-bearing capital (direct) loan by the Secretary not in excess of the amount of the cost of rehabilitation approved in the plan of action plus 65 percent of the property's preservation equity and under such other terms and conditions as the Secretary may prescribe: *Provided further*, That any capital grant shall be limited to seven times, and any capital loan limited to six times, the annual fair market rent for the project, as determined using the fair market rent for fiscal year 1997 for the area in which the project is located, using the appropriate apartment sizes and mix in the eligible project, except where, upon the request of a priority purchaser, the Secretary determines that a greater amount is necessary and appropriate to preserve low-income housing: *Provided further*, That section 241(f) of the National Housing Act [12 U.S.C. 1715z-6(f)] is repealed and insurance under such section shall not be offered as an incentive under LIHPHA and ELIHPA: *Provided further*, That up to \$10,000,000 of the amount of \$350,000,000 made available by a preceding proviso in this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act [Sept. 26, 1996], but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, a priority purchaser may utilize assistance under the HOME Investment Partnerships Act [42 U.S.C. 12721 et seq.] or the Low Income Housing Tax Credit [see 26 U.S.C. 42]: *Provided further*, That projects with approved plans of action which exceed the limitations on eligibility for funding imposed by this Act may submit revised plans of action which conform to these limitations by March 1, 1997, and retain the priority for funding otherwise applicable from the original date of approval of their plan of action, subject to securing any additional necessary funding commitments by August 1, 1997."

Pub. L. 104-134, title I, §101(e) [title II], Apr. 26, 1996, 110 Stat. 1321-257, 1321-267; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part that: "Of the total amount provided under this head, \$624,000,000, plus amounts recaptured from interest reduction payment contracts for section 236 [12 U.S.C. 1715z-1] projects whose owners prepay their mortgages during fiscal year 1996 (which amounts shall be transferred and merged with this account), shall be for use in conjunction with properties that are eligible for assistance under the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPHA) [see Short Title note above] or the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA) [see Codification note set out preceding this section]: *Provided*, That prior to August 15, 1996, funding to carry out plans of action shall be limited to sales of projects to non-profit organizations, tenant-sponsored organizations, and other priority purchasers: *Provided further*, That of the amount made available by this paragraph, up to \$10,000,000 shall be available for preservation technical assistance grants pursuant to section 253 of the Housing and Community Development Act of 1987 [12 U.S.C. 4143], as amended: *Provided further*, That with respect to amounts made available by this paragraph, after August 15, 1996, if the Secretary determines that the demand for funding may exceed amounts available for such funding, the Secretary (1) may determine priorities for distributing available funds, including giving priority funding to tenants displaced due to mortgage prepayment and to projects that have not yet been funded but which have approved plans of action; and (2) may impose a temporary moratorium on applications by potential recipients of such funding: *Provided further*, That an owner of eligible low-income housing may prepay the mortgage or request voluntary termination of a mortgage insurance contract, so long as said owner agrees not to raise rents for sixty days after such prepayment: *Provided further*, That an owner of eligible low-income housing who has not timely filed a second notice under section 216(d) [12 U.S.C. 4106(d)] prior to the effective date of this Act [Apr. 26, 1996] may file such notice by April 15, 1996: *Provided further*, That such developments have been determined to have preservation equity at least equal to the lesser of \$5,000 per unit or \$500,000 per project or the equivalent of eight times the most recently published fair market rent for the area in which the

project is located as the appropriate unit size for all of the units in the eligible project: *Provided further*, That the Secretary may modify the regulatory agreement to permit owners and priority purchasers to retain rental income in excess of the basic rental charge in projects assisted under section 236 of the National Housing Act [12 U.S.C. 1715z-1], for the purpose of preserving the low and moderate income character of the housing: *Provided further*, That the Secretary may give priority to funding and processing the following projects provided that the funding is obligated not later than September 15, 1996: (1) projects with approved plans of action to retain the housing that file a modified plan of action no later than August 15, 1996 to transfer the housing; (2) projects with approved plans of action that are subject to a repayment or settlement agreement that was executed between the owner and the Secretary prior to September 1, 1995; (3) projects for which submissions were delayed as a result of their location in areas that were designated as a Federal disaster area in a Presidential Disaster Declaration; and (4) projects whose processing was, in fact, or in practical effect, suspended, deferred, or interrupted for a period of nine months or more because of differing interpretations, by the Secretary and an owner concerning the time of the ability of an uninsured section 236 [12 U.S.C. 1715z-1] property to prepay or by the Secretary and a State or local rent regulatory agency, concerning the effect of a presumptively applicable State or local rent control law or regulation on the determination of preservation value under section 213 of LIHPHA, as amended [12 U.S.C. 4103], if the owner of such project filed notice of intent to extend the low-income affordability restrictions of the housing, or transfer to a qualified purchaser who would extend such restrictions, on or before November 1, 1993: *Provided further*, That eligible low-income housing shall include properties meeting the requirements of this paragraph with mortgages that are held by a State agency as a result of a sale by the Secretary without insurance, which immediately before the sale would have been eligible low-income housing under LIHPHA: *Provided further*, That notwithstanding any other provision of law, subject to the availability of appropriated funds, each unassisted low-income family residing in the housing on the date of prepayment or voluntary termination, and whose rent, as a result of a rent increase occurring no later than one year after the date of the prepayment, exceeds 30 percent of adjusted income, shall be offered tenant-based assistance in accordance with section 8 [42 U.S.C. 1437f] or any successor program, under which the family shall pay no less for rent than it paid on such date: *Provided further*, That any family receiving tenant-based assistance under the preceding proviso may elect (1) to remain in the unit of the housing and if the rent exceeds the fair market rent or payment standard, as applicable, the rent shall be deemed to be the applicable standard, so long as the administering public housing agency finds that the rent is reasonable in comparison with rents charged for comparable unassisted housing units in the market or (2) to move from the housing and the rent will be subject to the fair market rent of the payment standard, as applicable, under existing program rules and procedures: *Provided further*, That rents and rent increases for tenants of projects for which plans of action are funded under section 220(d)(3)(B) of LIHPHA [12 U.S.C. 4110(d)(3)(B)] shall be governed in accordance with the requirements of the program under which the first mortgage is insured or made (sections 236 or 221(d)(3) BMIR [12 U.S.C. 1715z-1, 4111(d)(3)], as appropriate): *Provided further*, That the immediately foregoing proviso shall apply hereafter to projects for which plans of action are to be funded under such section 220(d)(3)(B) [12 U.S.C. 4110(d)(3)(B)], and shall apply to any project that has been funded under such section starting one year after the date that such project was funded: *Provided further*, That up to \$10,000,000 of the amount made available by this paragraph may be used at the discretion of the Secretary to reimburse owners of eligible properties for which plans of action were submitted prior to the effective date of this Act [Apr. 26, 1996], but were not executed for lack of available funds, with such reimbursement available only for documented costs directly applicable to the preparation of the plan of action as determined by the Secretary, and shall be made available on terms and conditions to be established by the Secretary: *Provided further*, That, notwithstanding any other provision of law, effective October 1, 1996, the Secretary shall suspend further processing of preservation applications which do not have approved plans of action."

For similar provisions see Pub. L. 104-120, §2(b), Mar. 28, 1996, 110 Stat. 834.

CONDITIONS OF ASSISTANCE

Pub. L. 102-550, title III, §314, Oct. 28, 1992, 106 Stat. 3770, provided that:

"(a) ELIHPA OF 1987.—The Secretary may not require, as a condition of eligibility for or receipt of technical assistance made available under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102-139 [105 Stat. 736, see Tables for classification]) (including any phase of a grant), that an applicant participate in a training program sponsored or conducted by the Department of Housing and Urban Development for acquisition of eligible low income housing under the provisions of the Emergency Low Income Housing Preservation Act of 1987 [see Codification note above], and may not provide any preference or priority for such assistance for any applicant based on participation in such a program.

"(b) LIHPRHA OF 1990.—The Secretary may require, as a condition of eligibility for or receipt of technical assistance made available under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102–139) (including any phase of a grant), that an applicant participate in a training program sponsored or conducted by the Department of Housing and Urban Development for acquisition of eligible low-income housing under this title [enacting sections 4141 to 4147 of this title, amending sections 1715z–1, 1715z–6, 4103, 4105 to 4112, 4116, 4119, 4121, 4122, 4124, and 4125 of this title, enacting provisions set out as notes under this section and sections 1715z–6, 4109, and 4117 of this title, and amending provisions set out as a note under this section], and may provide preference or priority for such assistance for applicants based on participation in such a program, but only if the program is made available on a nationwide basis not later than March 1, 1993."

TRANSITION PROVISIONS

Pub. L. 101–625, title VI, §604, Nov. 28, 1990, 104 Stat. 4277, as amended by Pub. L. 102–550, title III, §313, Oct. 28, 1992, 106 Stat. 3769, provided that:

"(a) HOUSING ELIGIBLE FOR ELECTION.—Any owner of housing that becomes eligible low-income housing before January 1, 1991 and who, before such date, filed a notice of intent under section 222 of the Emergency Low Income Housing Preservation Act of 1987 [formerly set out in a note under section 1715l of this title] (as such section existed before the date of the enactment of this Act [Nov. 28, 1990]) or under section 212 of such Act [12 U.S.C. 4102] (as amended by section 601(a)) may elect to be subject to (1) the provisions of such Act as in effect before the date of the enactment of this Act, or (2) the provisions of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [see Short Title note above], after the date of the enactment of this Act. The Secretary shall establish procedures for owners to make the election under the preceding sentence. An owner that elects to be subject to the provisions of the Emergency Low Income Housing Preservation Act of 1987 shall comply with section 212(b), section 217(a)(2), and section 217(c) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4102(b) and 4107(a)(2), (c)].

"(b) RIGHT OF CONVERSION TO NEW SYSTEM.—Any owner who has filed a plan of action on or before October 11, 1990, shall have the right to convert to the system of incentives and restrictions under this subtitle [subtitle A of title VI of Pub. L. 101–625, see Effective Date note above], with such adjustments as the Secretary determines to be appropriate to compensate for the value of any incentives the owner received under the Emergency Low Income Housing Preservation Act of 1987 [see Codification note preceding this section]. Owners filing plans after such date shall not have any right under this subsection.

"(c) EFFECTIVENESS OF REPEALED PROVISIONS.—Notwithstanding the amendment made by section 601(a) [enacting this chapter], the provisions of the Emergency Low Income Housing Preservation Act of 1987 (as in effect immediately before the date of the enactment of this Act [Nov. 28, 1990]) shall apply with respect to any housing for which the election under subsection (a)(1) is made. With respect to housing for which such an election is made—

"(1) in making incentives under section 224 of such Act [formerly set out in a note under section 1715l of this title] available to such housing, the Secretary—

"(A) shall, for approvable plans of action, provide assistance sufficient to enable a nonprofit organization that has purchased or will purchase an eligible low income housing project to meet project oversight costs; and

"(B) may not refuse to offer incentives referred to in such section to any owner who filed a notice of intent under section 222 of such Act before October 15, 1991, based solely on the date of filing of the plan of action for the housing; and

"(2) the provisions of section 233(1)(A)(i) of such Act [formerly set out in a note under section 1715l of this title] shall not apply, and the term 'eligible low income housing' shall, for purposes of such Act, shall [sic] include housing financed by a loan or mortgage that is insured or held by the Secretary or a State or State agency under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715l(d)(3)] and receiving loan management assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] due to a conversion from section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

"(d) REGULATIONS.—Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 28, 1990], the Secretary of Housing and Urban Development shall, subject to the provisions of section 553 of title 5, United States Code, publish proposed rules to implement this subtitle and the amendments made by this subtitle. Not later than 45 days after the expiration of the period under the preceding sentence the Secretary shall issue interim or final rules to implement such provisions."

§4102. Notice of intent

(a) Filing with Secretary

An owner of eligible low-income housing that intends to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section 4108 of this title, extend the low-income affordability restrictions of the housing in accordance with section 4109 of this title, or transfer the housing to a qualified purchaser in accordance with section 4110 of this title, shall file with the Secretary a notice indicating such intent in the form and manner as the Secretary shall prescribe.

(b) Filing with State or local government, tenants, and mortgagee

The owner, upon filing a notice of intent under this section, shall simultaneously file the notice of intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

(c) Ineligibility for filing

An owner shall not be eligible to file a notice of intent under this section if the mortgage covering the housing—

(1) falls into default on or after November 28, 1990; or

(2)(A) fell into default before, but is current as of, November 28, 1990; and

(B) the owner does not agree to recompense the appropriate Insurance Fund, in the amount the Secretary determines appropriate, for any losses sustained by the Fund as a result of any work-out or other arrangement agreed to by the Secretary and the owner with respect to the defaulted mortgage.

The Secretary shall carry out this subsection in a manner consistent with the provisions of section 1701z-11 of this title.

(Pub. L. 100-242, title II, §212, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249.)

§4103. Appraisal and preservation value of eligible low-income housing

(a) Appraisal

Upon receiving notice of intent regarding an eligible low-income housing project indicating an intent to extend the low-income affordability restrictions under section 4109 of this title or transfer the housing under section 4110 of this title, the Secretary shall provide for determination of the preservation value of the housing, as follows:

(1) Appraisers

The preservation value shall be determined by 2 independent appraisers, one of whom shall be selected by the Secretary and one of whom shall be selected by the owner. The appraisals shall be conducted not later than 4 months after filing the notice of intent under section 4102 of this title, and the owner shall submit to the Secretary the appraisal made by the owner's selected appraiser not later than 90 days after receipt of the notice under paragraph (2). If the 2 appraisers fail to agree on the preservation value, and the Secretary and the owner also fail to agree on the preservation value, the Secretary and the owner shall jointly select and jointly compensate a third appraiser, whose appraisal shall be binding on the parties.

(2) Notice

Not later than 30 days after the filing of a notice of intent to seek incentives under section 4109 of this title or transfer the property under section 4110 of this title, the Secretary shall provide written notice to the owner filing the notice of intent of—

- (A) the need for the owner to acquire an appraisal of the property under paragraph (1);
- (B) the rules and guidelines for such appraisals;
- (C) the filing deadline for submission of the appraisal under paragraph (1);
- (D) the need for an appraiser retained by the Secretary to inspect the housing and project financial records; and
- (E) any delegation to the appropriate State agency by the Secretary of responsibilities regarding the appraisal.

(3) Timeliness

The Secretary may approve a plan of action to receive incentives under section 4109 or 4110 of this title only based upon an appraisal conducted in accordance with this subsection that is not more than 30 months old.

(b) Preservation value

For purposes of this subchapter, the preservation value of eligible low-income housing appraised under this section shall be—

- (1) for purposes of extending the low-income affordability restrictions and receiving incentives under section 4109 of this title, the fair market value of the property based on the highest and best use of the property as residential rental housing; and
- (2) for purposes of transferring the property under section 4110 or 4111 of this title, the fair market value of the housing based on the highest and best use of the property.

(c) Guidelines

The Secretary shall provide written guidelines for appraisals of preservation value, which shall assume repayment of the existing federally assisted mortgage, termination of the existing low-income affordability restrictions, simultaneous termination of any Federal rental assistance, and costs of compliance with any State or local laws of general applicability. The guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Secretary. The guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual project operating expenses during the preceding 3 years) or projected operating expenses after conversion in determining preservation value. The guidelines established by the Secretary shall not be inconsistent with customary appraisal standards. The guidelines shall also meet the following requirements:

(1) Residential rental value

In the case of preservation value determined under subsection (b)(1), the guidelines shall assume conversion of the housing to market-rate rental housing and shall establish methods for (A) determining rehabilitation expenditures that would be necessary to bring the housing up to quality standards required to attract and sustain a market rate tenancy upon conversion, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multifamily rental housing.

(2) Highest and best use value

In the case of preservation value determined under subsection (b)(2), the guidelines shall assume conversion of the housing to highest and best use for the property and shall establish methods for (A) determining any rehabilitation expenditures that would be necessary to convert the housing to such use, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

(Pub. L. 100–242, title II, §213, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4250; amended Pub. L. 102–550, title III, §302, Oct. 28, 1992, 106 Stat. 3763.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-550 inserted "simultaneous termination of any Federal rental assistance," before "and costs" in first sentence.

§4104. Annual authorized return and preservation rents

(a) Annual authorized return

Pursuant to an appraisal under section 4103 of this title, the Secretary shall determine the annual authorized return on the appraised housing, which shall be equal to 8 percent of the preservation equity (as such term is defined in section 4119(8) of this title).

(b) Preservation rents

The Secretary shall also determine the aggregate preservation rents under this subsection for each project appraised under section 4103 of this title. The aggregate preservation rents shall be used solely for the purposes of comparison with Federal cost limits under section 4105 of this title. Actual rents received by an owner (or a qualified purchaser) shall be determined pursuant to section 4109, 4110, or 4111 of this title. The aggregate preservation rents shall be established as follows:

(1) Extension of affordability limits

The aggregate preservation rent for purposes of receiving incentives pursuant to extension of the low-income affordability restrictions under section 4109 of this title shall be the gross potential income for the project, determined by the Secretary, that would be required to support the following costs:

- (A) The annual authorized return determined under subsection (a).
- (B) Debt service on any rehabilitation loan for the housing.
- (C) Debt service on the federally-assisted mortgage for the housing.
- (D) Project operating expenses.
- (E) Adequate reserves.

(2) Sale

The aggregate preservation rent for purposes of receiving incentives pursuant to sale under section 4110 or 4111 of this title shall be the gross income for the project determined by the Secretary, that would be required to support the following costs:

- (A) Debt service on the loan for acquisition of the housing.
- (B) Debt service on any rehabilitation loan for the housing.
- (C) Debt service on the federally-assisted mortgage for the housing.
- (D) Project operating expenses.
- (E) Adequate reserves.

(c) Future financing

Neither this section, nor any plan of action or use agreement implementing this section, shall restrict an owner from obtaining a new loan or refinancing an existing loan secured by the project, or from distributing the proceeds of such a loan; except that, in conjunction with such refinancing—

(1) the owner shall provide for adequate rehabilitation pursuant to a capital needs assessment to ensure long-term sustainability of the property satisfactory to the lender or bond issuance agency;

(2) any resulting budget-based rent increase shall include debt service on the new financing, commercially reasonable debt service coverage, and replacement reserves as required by the lender; and

(3) for tenants of dwelling units not covered by a project- or tenant-based rental subsidy, any rent increases resulting from the refinancing transaction may not exceed 10 percent per year, except that—

(A) any tenant occupying a dwelling unit as of time of the refinancing may not be required to pay for rent and utilities, for the duration of such tenancy, an amount that exceeds the greater of—

- (i) 30 percent of the tenant's income; or

(ii) the amount paid by the tenant for rent and utilities immediately before such refinancing; and

(B) this paragraph shall not apply to any tenant who does not provide the owner with proof of income.

Paragraph (3) may not be construed to limit any rent increases resulting from increased operating costs for a project.

(Pub. L. 100–242, title II, §214, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4251; amended Pub. L. 114–94, div. G, title LXXVII, §77002, Dec. 4, 2015, 129 Stat. 1790.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (c). Pub. L. 114–94 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

IMPLEMENTATION

Pub. L. 114–94, div. G, title LXXVII, §77003, Dec. 4, 2015, 129 Stat. 1791, provided that: "The Secretary of Housing and Urban Development shall issue any guidance that the Secretary considers necessary to carry out the provisions added by the amendments made by this title [amending this section and section 4112 of this title] not later than the expiration of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 2015]."

§4105. Federal cost limits and limitations on plans of action

(a) Determination of relationship to Federal cost limits

(1) Initial determination

For each eligible low-income housing project appraised under section 4103(a) of this title, the Secretary shall determine whether the aggregate preservation rents for the project determined under paragraph (1) or (2) of section 4104(b) of this title exceed the amount determined by multiplying 120 percent of the fair market rental (established under section 1437f(c) of title 42) for the market area in which the housing is located by the number of dwelling units in the project (according to appropriate unit sizes).

(2) Relevant local markets

If the aggregate preservation rents for a project exceeds the amount determined under paragraph (1), the Secretary shall determine whether such aggregate rents exceed the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the housing is located by the number of units in the project (according to the appropriate unit sizes). A relevant local market area shall be an area geographically smaller than a market area established by the Secretary under section 1437f(c)(1) of title 42 that is identifiable as a distinct rental market area. The Secretary may rely on the appraisal to determine the relevant local market areas and prevailing rents in such local areas and any other information the Secretary determines is appropriate.

(3) Effect

For purposes of this subchapter, the aggregate preservation rents shall be considered to exceed the Federal cost limits under this subsection only if the aggregate preservation rents exceed the amount determined under paragraph (1) and the amount determined under paragraph (2).

(b) Limitations on action pursuant to Federal cost limits

(1) Housing within Federal cost limits

If the aggregate preservation rents for an eligible low-income housing project do not exceed the Federal cost limit, the owner may not prepay the mortgage on the housing or terminate the insurance contract with respect to the housing, except as permitted under section 4114 of this title. The owner may—

(A) file a plan of action under section 4107 of this title to receive incentives under section 4109 of this title; or

(B) file a second notice of intent under section 4106(d) of this title indicating an intention to transfer the housing under section 4110 of this title and take actions pursuant to such section.

(2) Housing exceeding Federal cost limits

If the aggregate preservation rents for an eligible low-income housing project exceed the Federal cost limit, the owner may—

(A) file a plan of action under section 4107 of this title to receive incentives under section 4109 of this title if the owner agrees to accept incentives under such sections in an amount that shall not exceed the Federal cost limit;

(B) file a second notice of intent under section 4106(d) of this title indicating an intention to transfer the housing under section 4110 of this title and take actions pursuant to such section if the owner agrees to transfer the housing at a price that shall not exceed the Federal cost limit; or

(C) file a second notice of intent under section 4106(d) of this title indicating an intention to prepay the mortgage or voluntarily terminate the insurance, subject to the mandatory sale provisions under section 4111 of this title.

(Pub. L. 100–242, title II, §215, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4252; amended Pub. L. 102–550, title III, §317(a)(1), Oct. 28, 1992, 106 Stat. 3772.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–550 made technical amendment to reference to section 1437f(c)(1) of title 42 to reflect correction of corresponding provision of original act.

§4106. Information from Secretary

(a) Information to owners terminating affordability restrictions

The Secretary shall provide each owner who submits a notice of intent to terminate the low-income affordability restrictions on the housing under section 4108 of this title with information under this section not later than 6 months after receipt of the notice of intent. The information shall include a description of the criteria for such termination specified under section 4108 of this title and the documentation required to satisfy such criteria.

(b) Information to owners extending low-income affordability restrictions

The Secretary shall provide each owner who submits notice of intent to extend the low-income affordability restrictions on the housing under section 4109 of this title or transfer the housing under section 4110 of this title to a qualified purchaser with information under this subsection not later than 9 months after receipt of the notice of intent. The information shall include any information necessary for the owner to prepare a plan of action under section 4107 of this title, including the following:

(1) Preservation values

A statement of the preservation value of the housing determined under paragraphs (1) and (2) of section 4103(b) of this title.

(2) Preservation rent

A statement of the preservation rent for the housing as calculated under section 4104(b) of this title.

(3) Federal cost limits

A statement of the applicable Federal cost limits for the market area (or relevant local market area, if applicable) in which the housing is located, which shall explain the limitations under sections 4109 and 4110 of this title of the amount of assistance that the Secretary may provide based on such cost limits.

(4) Federal cost limit analysis

A statement of whether the aggregate preservation rents exceed the Federal cost limits and a direction to the owner to file a plan of action under section 4107 of this title or submit a second notice of intent under subsection (d), whichever is applicable.

(c) Availability to tenants

The Secretary shall make any information provided to the owner under subsections (a) and (b) available to the tenants of the housing, together with other information relating to the rights and opportunities of the tenants.

(d) Second notice of intent

(1) Filing

Each owner of eligible low-income housing that elects to transfer housing under section 4110 of this title shall submit to the Secretary, in such form and manner as the Secretary prescribes, notice of intent to sell the housing under section 4110 of this title. To be eligible to prepay the mortgage or voluntarily terminate the insurance contract on the mortgage, an owner of housing for which the preservation rents exceed the Federal cost limits under section 4105(b) of this title shall submit to the Secretary notice of such intent. The provisions of sections 4111 and 4113 of this title shall apply to any owner submitting a notice under the preceding sentence.

(2) Timing

A second notice of intent under this subsection shall be submitted not later than 30 days after receipt of information from the Secretary under this section. If an owner fails to submit such notice within such period, the notice of intent submitted by the owner under section 4102 of this title shall be void and ineffective for purposes of this subchapter.

(3) Filing with the State or local government, tenants, and mortgagee

Upon filing a second notice of intent under this subsection, the owner shall simultaneously file such notice of the intent with the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located and with the mortgagee, and shall inform the tenants of the housing of the filing.

(Pub. L. 100-242, title II, §216, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4253; amended Pub. L. 102-550, title III, §§303, 317(a)(2), Oct. 28, 1992, 106 Stat. 3763, 3772.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102-550, §317(a)(2), substituted "exceed" for "exceeds".
Subsec. (d)(3). Pub. L. 102-550, §303, added par. (3).

§4107. Plan of action

(a) Submission to Secretary

(1) Timing

Not later than 6 months after receipt of the information from the Secretary under section 4106 of this title an owner seeking to terminate the low-income affordability restrictions through prepayment of the mortgage or voluntary termination under section 4108 of this title, or to extend the low-income affordability restriction on the housing under section 4109 of this title, shall submit a plan of action to the Secretary in such form and manner as the Secretary shall prescribe. Any owner or purchaser seeking a transfer of the housing under section 4110 or 4111 of this title shall submit a plan of action under this section to the Secretary upon acceptance of a bona fide offer under section 4110(b) or (c) of this title or upon making of any bona fide offer under section 4111 of this title.

(2) Copies to tenants

Each owner submitting a plan of action under this section to the Secretary shall also submit a copy to the tenants of the housing. The owner shall simultaneously submit the plan of action to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located. Each owner and the Secretary shall also, upon request, make available to the tenants of the housing and to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located all documentation supporting the plan of action, but not including any information that the Secretary determines is proprietary information. An appropriate agency of such State or local government shall review the plan and advise the tenants of the housing of any programs that are available to assist the tenants in carrying out the purposes of this title.¹

(3) Failure to submit

If the owner does not submit a plan of action to the Secretary within the 6-month period referred to in paragraph (1) (or the applicable longer period), the notice of intent shall be ineffective for purposes of this subchapter and the owner may not submit another notice of intent under section 4102 of this title until 6 months after the expiration of such period.

(b) Contents

(1) Termination of affordability restrictions

If the plan of action proposes to terminate the low-income affordability restrictions through prepayment or voluntary termination in accordance with section 4108 of this title, the plan shall include—

- (A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;
- (B) a description of any proposed changes in the low-income affordability restrictions;
- (C) a description of any change in ownership that is related to prepayment or voluntary termination;
- (D) an assessment of the effect of the proposed changes on existing tenants;
- (E) an analysis of the effect of the proposed changes on the supply of housing affordable to low- and very low-income families or persons in the community within which the housing is located and in the area that the housing could reasonably be expected to serve; and
- (F) any other information that the Secretary determines is necessary to achieve the purposes of this title.¹

(2) Extension of affordability restrictions

If the plan of action proposes to extend the low-income affordability restrictions of the housing in accordance with section 4109 of this title or transfer the housing to a qualified purchaser in accordance with section 4110 of this title, the plan shall include—

- (A) a description of any proposed changes in the status or terms of the mortgage or regulatory agreement;
- (B) a description of the Federal incentives requested (including cash flow projections), and analyses of how the owner will address any physical or financial deficiencies and maintain the low-income affordability restrictions of the housing;

(C) a description of any assistance from State or local government agencies, including low-income housing tax credits, that have been offered to the owner or purchaser or for which the owner or purchaser has applied or intends to apply;

(D) a description of any transfer of the property, including the identity of the transferee and a copy of any documents of sale; and

(E) any other information that the Secretary determines is necessary to achieve the purposes of this title.¹

(c) Revisions

An owner may from time to time revise and amend the plan of action as may be necessary to obtain approval of the plan under this subchapter. The owner shall submit any revision to the Secretary and to the tenants of the housing and make available to the Secretary and tenants all documentation supporting any revision, but not including any information that the Secretary determines is proprietary information.

(Pub. L. 100–242, title II, §217, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4254; amended Pub. L. 102–550, title III, §304, Oct. 28, 1992, 106 Stat. 3763.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(2) and (b)(1)(F), (2)(E), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–550, §304(a), inserted after second sentence "Each owner and the Secretary shall also, upon request, make available to the tenants of the housing and to the office of the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located all documentation supporting the plan of action, but not including any information that the Secretary determines is proprietary information."

Subsec. (c). Pub. L. 102–550, §304(b), inserted before period at end "and make available to the Secretary and tenants all documentation supporting any revision, but not including any information that the Secretary determines is proprietary information".

¹ [*See References in Text note below.*](#)

§4108. Prepayment and voluntary termination

(a) Approval

The Secretary may approve a plan of action that provides for termination of the low-income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) implementation of the plan of action will not—

(A) materially increase economic hardship for current tenants, and will not in any event result in (i) a monthly rental payment by any current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower), or (ii) in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower); or

(B) involuntarily displace current tenants (except for good cause) where comparable and affordable housing is not readily available determined without regard to the availability of

Federal housing assistance that would address any such hardship or involuntary displacement; and

(2) the supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect—

(A) the availability of decent, safe, and sanitary housing affordable to low-income and very low-income families or persons in the area that the housing could reasonably be expected to serve;

(B) the ability of low-income and very low-income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

(C) the housing opportunities of minorities in the community within which the housing is located.

(b) Standards and procedure for written findings

(1) Standards

A written finding under subsection (a) shall be based on an analysis of the evidence considered by the Secretary in reaching such finding and shall contain documentation of such evidence.

(2) Procedure and criteria

The Secretary shall, by regulation, develop (A) a procedure for determining whether the conditions under paragraphs (1) and (2) of subsection (a) exist, (B) requirements for evidence on which such determinations are based, and (C) criteria on which such determinations are based.

(c) Disapproval

If the Secretary determines a plan of action to prepay a mortgage or terminate an insurance contract fails to meet the requirements of subsection (a), the Secretary shall disapprove the plan, the notice of intent filed under section 4102 of this title by such owner shall not be effective for purposes of this subchapter, and the owner may, in order to receive incentives under this subchapter, file a new notice of intent under such section.

(Pub. L. 100–242, title II, §218, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4256; amended Pub. L. 102–550, title III, §305, Oct. 28, 1992, 106 Stat. 3763.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsecs. (b), (c). Pub. L. 102–550 added subsec. (b) and redesignated former subsec. (b) as (c).

§4109. Incentives to extend low-income use

(a) Agreements by Secretary

After approving a plan of action from an owner of eligible low-income housing that includes the owner's plan to extend the low-income affordability restrictions of the housing, the Secretary shall, subject to the availability of appropriations for such purpose, enter into such agreements as are necessary to enable the owner to receive (for each year after the approval of the plan of action) the annual authorized return for the housing determined under section 4104(a) of this title, pay debt service on the federally-assisted mortgage covering the housing, pay debt service on any loan for rehabilitation of the housing, and meet project operating expenses and establish adequate reserves. The Secretary shall take into account the Federal cost limits under section 4105(a) of this title for the housing when providing incentives under subsections ¹(b)(2) and (3) of this section. The Secretary shall take such actions as are necessary to ensure that owners receive the annual authorized return for the housing determined under section 4104(a) of this title during the period in which rent increases are phased in as provided in section 4112(a)(2)(E) of this title, including (in order of preference) (1) allowing the owner access to residual receipt accounts (pursuant to subsection (b)(1) of this section),

(2) deferring remittance of excess rent payments, and (3) providing an increase in rents permitted under an existing contract under section 1437f of title 42 (pursuant to subsection (b)(2) of this section).

(b) Permissible incentives

Such agreements may include one or more of the following incentives:

- (1) Increased access to residual receipts accounts.
- (2) Subject to the availability of amounts provided in appropriations Acts—
 - (A) an increase in the rents permitted under an existing contract under section 1437f of title 42, or
 - (B) additional assistance under section 1437f of title 42 or an extension of any project-based assistance attached to the housing; and
- (3) An increase in the rents on units occupied by current tenants as permitted under section 4112 of this title.
- (4) Financing of capital improvements under section 201 of the Housing and Community Development Amendments of 1978.
- (5) Financing of capital improvements through provision of insurance for a second mortgage under section 1715z–6 of this title.
- (6) In the case of housing defined in section 4119(1)(A)(iii) of this title, redirection of the Interest Reduction Payment subsidies to a second mortgage.
- (7) Access by the owner to a portion of the preservation equity in the housing through provision of insurance for a second mortgage loan insured under section 1715z–6(f) ² of this title or a non-insured mortgage loan approved by the Secretary and the mortgagee.
- (8) Other incentives authorized in law.

With respect to any housing with a mortgage insured or otherwise assisted pursuant to section 1715z–1 of this title, the provisions of subsections (f) and (g) of section 1715z–1 of this title notwithstanding, the fair market rental charge for each unit in such housing may be increased in accordance with this subsection, but the owner shall pay to the Secretary all rental charges collected in excess of the basic rental charges, in an amount not greater than the fair market rental charges as such charges would have been established under section 1715z–1(f) of this title absent the requirements of this paragraph.

(Pub. L. 100–242, title II, §219, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4256; amended Pub. L. 102–550, title III, §306, Oct. 28, 1992, 106 Stat. 3764.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (b)(4), is section 201 of Pub. L. 95–557, title II, Oct. 31, 1978, 92 Stat. 2084, which enacted section 1715z–1a of this title and amended section 1715z–1 of this title.

Section 1715z–6(f) of this title, referred to in subsec. (b)(7), was repealed by Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 inserted "(for each year after the approval of the plan of action)" after "receive" and inserted at end "The Secretary shall take such actions as are necessary to ensure that owners receive the annual authorized return for the housing determined under section 4104(a) of this title during the period in which rent increases are phased in as provided in section 4112(a)(2)(E) of this title, including (in order of preference) (1) allowing the owner access to residual receipt accounts (pursuant to subsection (b)(1) of this section), (2) deferring remittance of excess rent payments, and (3) providing an increase in rents permitted under an existing contract under section 1437f of title 42 (pursuant to subsection (b)(2) of this section)."

STATUTORY NOTES AND RELATED SUBSIDIARIES

STUDY OF PROJECTS ASSISTED UNDER FLEXIBLE SUBSIDY PROGRAM

Pub. L. 102-550, title III, §318, Oct. 28, 1992, 106 Stat. 3772, directed the Secretary to conduct a study of certain housing projects assisted under 12 U.S.C. 1715z-1 or the proviso of 12 U.S.C. 1715l(d)(5) and submit a report to the Congress regarding any findings and conclusions of the study not later than the expiration of the 1-year period beginning on Oct. 28, 1992.

¹ *So in original. Probably should be "subsection".*

² *See References in Text note below.*

§4110. Incentives for transfer to qualified purchasers

(a) In general

With respect to any eligible low-income housing for which an owner has submitted a second notice of intent under section 4106(d) of this title to transfer the housing to a qualified purchaser, the owner shall offer the housing for transfer to qualified purchasers as provided in this section. The Secretary shall issue regulations describing the means by which potential qualified purchasers shall be notified of the availability of the housing for sale. The Secretary shall take into account the Federal cost limits under section 4105(a) of this title for the housing when providing incentives under section 4109(b)(2) and (b)(3) of this title (pursuant to subsection (d)(3) of this section).

(b) Right of first offer to priority purchasers

(1) Negotiation period

For the 12-month period beginning on the receipt by the Secretary of a second notice of intent under section 4106(d) of this title with respect to such housing, the owner may offer to sell and negotiate a sale of the housing only with priority purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 4103(b)(2) of this title. The owner or the purchaser shall submit a plan of action under section 4107 of this title for any sale under this subsection, which shall include any request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.

(2) Expression of interest

During such period, priority purchasers may submit written notice to the Secretary stating their interest in acquiring the housing. Such notice shall be made in the form and include such information as the Secretary may prescribe.

(3) Information

Within 30 days of receipt of an expression of interest by a priority purchaser, the Secretary shall provide such purchaser with information on the assistance available from the Federal Government to facilitate a transfer and the owner shall provide appropriate information on the housing, as determined by the Secretary.

(c) Right of refusal for other qualified purchasers

If no bona fide offer to purchase any eligible low-income housing subject to this section that meets the requirements of subsection (b) is made and accepted during the period under such subsection, during the 3-month period beginning upon the expiration of the 12-month period under subsection (b)(1), the owner of the housing may offer to sell and may sell the housing only to qualified purchasers. The negotiated sale price may not exceed the preservation value of the housing determined under section 4103(b)(2) of this title. The owner or purchaser shall submit a plan of action under section 4107 of this title for any sale under this subsection, which shall include any

request for assistance under this section, upon the acceptance of any bona fide offer meeting the requirements of this paragraph.¹

(d) Assistance

(1) Approval

If the qualified purchaser is a resident council, the Secretary may not approve a plan of action for assistance under this section unless the council's proposed resident homeownership program meets the requirements under section 4116 of this title. For all other qualified purchasers, the Secretary may not approve the plan unless the Secretary finds that the criteria for approval under section 4112 of this title have been satisfied.

(2) Amount

Subject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approvable plans of action, provide assistance sufficient to enable qualified purchasers (including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 4116 of this title) to—

(A) acquire the eligible low-income housing from the current owner for a purchase price not greater than the preservation equity of the housing;

(B) pay the debt service on the federally-assisted mortgage covering the housing;

(C) pay the debt service on any loan for the rehabilitation of the housing;

(D) meet project operating expenses and establish adequate reserves for the housing, and in the case of a priority purchaser, meet project oversight costs;

(E) receive a distribution equal to an 8 percent annual return on any actual cash investment (from sources other than assistance provided under this title ²) made to acquire or rehabilitate the project;

(F) in the case of a priority purchaser, receive a reimbursement of all reasonable transaction expenses associated with the acquisition, loan closing, and implementation of an approved plan of action; and

(G) in the case of an approved resident homeownership program, cover the costs of training for the resident council, homeownership counseling and training, the fees for the nonprofit entity or public agency working with the resident council and costs related to relocation of tenants who elect to move.

(3) Incentives

(A) In general

For all qualified purchasers of housing under this subsection, the Secretary may provide assistance for an approved plan of action in the form of 1 or more of the incentives authorized under section 4109(b) of this title, except that the incentive under such section 4109(b)(7) of this title may include an acquisition loan under section 1715z-6(f) ² of this title.

(B) Priority purchasers

Where the qualified purchaser is a priority purchaser, the Secretary may provide assistance for an approved plan of action (in the form of a grant) for each unit in the housing in an amount, as determined by the Secretary, that does not exceed the present value of the total of the projected published fair market rentals for existing housing (established by the Secretary under section 1437f(c) of title 42) for the next 10 years (or such longer period if additional assistance is necessary to cover the costs referred to in paragraph (2)).

(Pub. L. 100-242, title II, §220, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4257; amended Pub. L. 102-550, title III, §307, Oct. 28, 1992, 106 Stat. 3764.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in subsec. (d)(2)(E), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 1715z–6(f) of this title, referred to in subsec. (d)(3)(A), was repealed by Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885.

AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102–550, §307(a), inserted "(including all priority purchasers other than resident councils acquiring under the homeownership program authorized by section 4116 of this title)" after "purchasers".

Subsec. (d)(2)(D). Pub. L. 102–550, §307(b), inserted before semicolon at end ", and in the case of a priority purchaser, meet project oversight costs".

Subsec. (d)(2)(E), (F). Pub. L. 102–550, §307(c), (d), amended subpars. (E) and (F) generally. Prior to amendment, subpars. (E) and (F) read as follows:

"(E) receive an adequate return (as determined by the Secretary) on any actual cash investment made to acquire the project;

"(F) in the case of a priority purchaser, receive an adequate reimbursement for transaction expenses relating to acquisition of the housing, subject to approval by the Secretary; and".

Subsec. (d)(3)(A). Pub. L. 102–550, §307(e), struck out "any residual receipts for the housing transferred [sic] to the selling owner shall be deducted from the sale price of the housing under subsection (b) or (c) of this section and" after "except that".

¹ *So in original. Probably should be "subsection."*

² *See References in Text note below.*

§4111. Mandatory sale for housing exceeding Federal cost limits

(a) In general

With respect to any eligible low-income housing for which the aggregate preservation rents determined under section 4104(b) of this title exceed the Federal cost limit, the owner shall offer the housing for sale to qualified purchasers as provided in this section.

(b) Right of first refusal to priority purchasers

(1) Duration and required sale

For the 12-month period beginning upon the receipt by the Secretary of the second notice of intent under section 4106(d) of this title with respect to such housing, the owner of the housing may offer to sell and may sell the housing only to priority purchasers. If, during such period, a priority purchaser makes a bona fide offer to purchase the housing for a sale price not less than the preservation value of the housing determined under section 4103(b)(2) of this title, the Secretary shall require the owner to sell the housing pursuant to such offer.

(2) Expression of interest

During the period under paragraph (1), priority purchasers shall have the opportunity to submit written notice to the owner and the Secretary stating their interest in acquiring the housing. Such written notice shall be in such form and include such information as the Secretary may prescribe.

(3) Information from Secretary

Not later than 30 days after receipt of any notice under paragraph (2), the Secretary shall provide such purchaser with information on the assistance available from the Federal Government to facilitate a transfer and the owner shall provide such purchaser with appropriate information on the housing, as determined by the Secretary.

(c) Right of refusal for other qualified purchasers

If no bona fide offer to purchase any eligible low-income housing subject to this section that meets the requirements of subsection (b) is made during the period under such subsection, during the 3-month period beginning upon the expiration of the 12-month period under subsection (b)(1), the owner of the housing may offer to sell and may sell the housing only to qualified purchasers. If, during such period, a qualified purchaser makes a bona fide offer to purchase the housing for a sale price not less than the preservation value of the housing determined under section 4103(b)(2) of this title, the Secretary shall require the owner to sell the housing pursuant to such offer.

(d) Assistance

(1) Federal cost limit

Subject to the availability of amounts approved in appropriations Acts, the Secretary shall, for approvable plans of action, provide to qualified purchasers assistance under section 1437f of title 42 sufficient to produce a gross income potential equal to the amount determined by multiplying 120 percent of the prevailing rents in the relevant local market area in which the housing is located by the number of units in the project (according to appropriate unit sizes), and any other incentives authorized under section 4109(b) of this title that would have been provided to a qualified purchaser under section 4110 of this title.

(2) Additional assistance

From amounts made available under section 4124(b) of this title, the Secretary may make grants to assist in the completion of sales and transfers under this section to any qualified purchasers. Any grant under this paragraph shall be in an amount not exceeding the difference between the preservation value for the housing (determined under section 4103(b)(2) of this title) and the level of assistance under paragraph (1) of this subsection.

(3) Securing State and local funding

The Secretary shall assist any qualified purchaser of such housing in securing funding and other assistance (including tax and assessment reductions) from State and local governments to facilitate a sale under this section.

(Pub. L. 100–242, title II, §221, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4259; amended Pub. L. 102–550, title III, §317(a)(3), Oct. 28, 1992, 106 Stat. 3772.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–550 substituted "than" for "that" before "the preservation".

§4112. Criteria for approval of plan of action involving incentives

(a) In general

The Secretary may approve a plan of action for extension of the low-income affordability restrictions on any eligible low-income housing or transfer the housing to a qualified purchaser (other than a resident council) only upon finding that—

(1) due diligence has been given to ensuring that the package of incentives is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this title; ¹

(2) binding commitments have been made to ensure that—

(A) the housing will be retained as housing affordable for very low-income families or persons, low-income families or persons, and moderate-income families or persons for the remaining useful life of such housing (as determined under subsection (c));

(B) throughout such period, adequate expenditures will be made for maintenance and operation of the housing and that the project meets housing standards established by the Secretary under subsection (d), as determined by inspections conducted under such subsection

by the Secretary;

(C) current tenants will not be involuntarily displaced (except for good cause);

(D) any increase in rent contributions for current tenants will be to a level that does not exceed 30 percent of the adjusted income of the tenant or the published existing fair market rent for comparable housing established under section 1437f(c) of title 42, whichever is lower, except that the rent contributions of any tenants occupying the housing at the time of any increase may not be reduced by reason of this subparagraph (except with respect to tenants receiving section 8 [42 U.S.C. 1437f] assistance in accordance with subparagraph (E)(ii) of this paragraph);

(E)(i) any resulting increase in rents for current tenants (except for increases made necessary by increased operating costs)—

(I) shall be phased in equally over a period of not less than 3 years, if such increase is 30 percent or more; and

(II) shall be limited to not more than 10 percent per year if such increase is more than 10 percent but less than 30 percent; and

(ii) assistance under section 1437f of title 42 shall be provided, to the extent available under appropriation Acts, if necessary to mitigate any adverse effect on current income-eligible very low- and low-income tenants; and ²

(F)(i) rents for units becoming available to new tenants shall be at levels approved by the Secretary that will ensure, to the extent practicable, that the units will be available and affordable to the same proportions of very low-income families or persons, low-income families or persons, and moderate-income families or persons (including families or persons whose incomes are 95 percent or more of area median income) as resided in the housing as of January 1, 1987 (based on the area median income limits established by the Secretary in February 1987), or the date the plan of action is approved, whichever date results in the highest proportion of very low-income families, except that this limitation shall not prohibit a higher proportion of very low-income families from occupying the housing; and

(ii) in approving rents under this paragraph, the Secretary shall take into account any additional incentives provided under this subchapter;

(G) future rent adjustments shall be—

(i) made by applying an annual factor (to be determined by the Secretary) to the portion of rent attributable to operating expenses for the housing and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs; and

(ii) subject to a procedure, established by the Secretary, for owners to apply for rent increases not adequately compensated by annual adjustment under clause (i), under which the Secretary may increase rents in excess of the amount determined under clause (i) only if the Secretary determines such increases are necessary to reflect extraordinary necessary expenses of owning and maintaining the housing; and

(H) any savings from reductions in operating expenses due to management efficiencies shall be deposited in project reserves for replacement and the owner shall have periodic access to such reserves, to the extent the Secretary determines that the level of reserves is adequate and that the housing is maintained in accordance with the standards established under subsection (d); and

(3) no incentives under section 4109 of this title (other than to purchasers under section 4110 of this title) may be provided until the Secretary determines the project meets housing standards under subsection (d), except that incentives under such section and other incentives designed to correct deficiencies in the project may be provided.

(b) Implementation

Any agreement to maintain the low-income affordability restrictions for the remaining useful life

of the housing may be made through execution of a new regulatory agreement, modifications to the existing regulatory agreement or mortgage, or, in the case of the prepayment of a mortgage or voluntary termination of mortgage insurance, a recorded instrument.

(c) Determination of remaining useful life

(1) "Remaining useful life" defined

For purposes of this title,¹ the term "remaining useful life" means, with respect to eligible low-income housing, the period during which the physical characteristics of the housing remain in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced as becomes necessary.

(2) Standards

The Secretary shall, by rule under section 553 of title 5, establish standards for determining when the useful life of an eligible low-income housing project has expired. The determination shall be made on the record after opportunity for a hearing.

(3) Owner petition

The Secretary shall establish a procedure under which owners of eligible low-income housing may petition the Secretary for a determination that the useful life of such housing has expired. The procedure shall not permit such a petition before the expiration of the 50-year period beginning upon the approval of a plan of action under this subchapter with respect to such housing. In making a determination pursuant to a petition under this paragraph, the Secretary shall presume that the useful life of the housing has not expired, and the owner shall have the burden of proof in establishing such expiration. The Secretary may not determine that the useful life of any housing has expired if such determination results primarily from failure to make regular and reasonable repairs and replacement, as became necessary.

(4) Tenant and community comment and appeal

In making a determination regarding the useful life of any housing pursuant to a petition submitted under paragraph (3), the Secretary shall provide for comment by tenants of the housing and interested persons and organizations with respect to the petition. The Secretary shall also provide the tenants and interested persons and organizations with an opportunity to appeal a determination under this subsection.

(d) Housing standards

(1) Establishment and inspection

The Secretary shall, by regulation, establish standards regarding the physical condition in which any eligible low income housing project receiving incentives under this subchapter shall be maintained. The Secretary shall inspect each such project not less than annually to ensure that the project is in compliance with such standards.

(2) Sanctions

(A) In general

The Secretary shall take any action appropriate to require the owner of any housing not in compliance with such standards to bring such housing into compliance with the standards, including—

(i) directing the mortgagee, with respect to an equity take-out loan under section 1715z–6(f) ¹ of this title, to withhold the disbursement to the owner of any escrowed loan proceeds and requiring that such proceeds be used for repair of the housing; and

(ii) reduce the amount of the annual authorized return, as determined by the Secretary, for the period ending upon a determination by the Secretary that the project is in compliance with the standards and requiring that such amounts be used for repair.

(B) Continued compliance

To ensure continued compliance with the standards for a project subject to any action under subparagraph (A), the Secretary may also limit access of the owner to such amounts and use of such amounts for not more than the 2-year period beginning upon the determination that the project is in compliance with the standards.

(C) Removal of assistance

If, upon inspection, the Secretary determines that any eligible low income housing project has failed to comply with the standards established under this subsection for 2 consecutive years, the Secretary may take 1 or more of the following actions:

(i) Subject to availability of amounts provided in appropriations Acts, provide assistance under sections 1437f(b) and 1437f(o) of title 42 (other than project-based assistance attached to the housing) for any tenant eligible for such assistance who desires to terminate occupancy in the housing. For each unit in the housing vacated pursuant to the provision of assistance under this clause, the Secretary may, notwithstanding any other law or contract for assistance, cancel the provision of project-based assistance attached to the housing for 1 dwelling unit, if the housing is receiving such assistance.

(ii) In the case of housing for which an equity take-out loan has been made under section 1715z-6(f) ¹ of this title, declare such loan to be in default and accelerate the maturity date of the loan.

(iii) Declare any rehabilitation loan insured or provided by the Secretary (with respect to the housing) to be in default and accelerate the maturity date of the loan.

(iv) Suspend payments under or terminate any contract for project-based rental assistance under section 1437f of title 42.

(v) Take any other action authorized by law or the project regulatory agreement to ensure that the housing will be brought into compliance with the standards established under this subsection.

(e) Distribution and residual receipts

(1) Authority

After December 4, 2015, the owner of a property subject to a plan of action or use agreement pursuant to this section shall be entitled to distribute—

(A) annually, all surplus cash generated by the property, but only if the owner is in material compliance with such use agreement including compliance with prevailing physical condition standards established by the Secretary; and

(B) notwithstanding any conflicting provision in such use agreement, any funds accumulated in a residual receipts account, but only if the owner is in material compliance with such use agreement and has completed, or set aside sufficient funds for completion of, any capital repairs identified by the most recent third party capital needs assessment.

(2) Operation of property

An owner that distributes any amounts pursuant to paragraph (1) shall—

(A) continue to operate the property in accordance with the affordability provisions of the use agreement for the property for the remaining useful life of the property;

(B) as required by the plan of action for the property, continue to renew or extend any project-based rental assistance contract for a term of not less than 20 years; and

(C) if the owner has an existing multi-year project-based rental assistance contract for less than 20 years, have the option to extend the contract to a 20-year term.

(Pub. L. 100-242, title II, §222, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4260; amended Pub. L. 102-550, title III, §§308, 317(a)(4), Oct. 28, 1992, 106 Stat. 3764, 3772; Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316; Pub. L. 114-94, div. G, title LXXVII, §77001, Dec. 4, 2015, 129 Stat. 1790.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1) and (c)(1), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 1715z–6(f) of this title, referred to in subsec. (d)(2)(A)(i), (C)(ii), was repealed by Pub. L. 104–204, title II, Sept. 26, 1996, 110 Stat. 2885.

CODIFICATION

Amendment by Pub. L. 103–327 is based on section 601(a)–(d) of title VI of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

AMENDMENTS

2015—Subsec. (e). Pub. L. 114–94 added subsec. (e).

1994—Subsec. (a)(2)(D). Pub. L. 103–327 temporarily amended subpar. (D) to read as follows: "monthly rent contributions by current and future tenants, including tenants receiving assistance under section 1437f of title 42, shall not exceed the lesser of—

"(i) 30 percent of the adjusted income of the tenant; or

"(ii) 90 percent of the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the eligible low-income housing is located; except that the rent contributions of tenants (other than tenants receiving assistance under section 1437f of title 42) occupying the housing at the time of any increase may not be reduced under this subparagraph." See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(E)(ii). Pub. L. 103–327, which directed the temporary amendment of par. (1)(E)(ii) by substituting a period for "; and" and inserting at end "For any section 8 assistance provided under this subchapter, whether through the extension of an existing contract or the provision of a new contract for assistance, the Secretary shall have the discretion to adjust contract rents within the limits established under section 4105 of this title, irrespective of the comparable rent requirements set forth in section 1437f(c) of title 42. Notwithstanding any provision of law to the contrary, any conflict pertaining to the computation of contract rents arising from differences between this subchapter and section 1437f of title 42 shall, subject to the prior approval of the Secretary, be resolved in favor of this subchapter; and", was executed by making the amendments to par. (2)(E)(ii) to reflect the probable intent of Congress. See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(E)(iii). Pub. L. 103–327 temporarily added cl. (iii) which read as follows:

"(iii)(I) to retain the tenant occupancy profile required by subparagraph (F)(i), tenants that are determined by the Secretary to be low-income tenants at initial income certification upon occupancy, or at the time of implementation of a plan of action (whichever occurs last), shall pay for rent an amount that is not less than the lesser of—

"(aa) 30 percent of 45 percent of median income for the area (as determined by the Secretary and adjusted for family size); or

"(bb) 90 percent of the actual rent paid for a comparable unit in comparable unassisted housing in the market area in which the eligible low-income housing is located.

Subject to subclause (II), payment of this minimum rent shall be a condition of continued occupancy and eligibility for section 8 assistance.

"(II) Notwithstanding the rents required under subclause (I), a tenant who occupies a unit designated for occupancy by low-income persons and families, and who becomes a very low-income tenant, shall be provided with the next available unit designated for occupancy by very low-income persons and families, and, until such unit becomes available, shall pay for rent not more than the amount chargeable as rent under section 1437a(a) of title 42. Such tenant shall not be evicted for nonpayment of rent if the rent amounts set forth in this subclause are paid. The costs resulting from the difference between rents required under subclause (I) and the rents permitted under this subclause shall be incorporated into the section 8 contract for units designated for occupancy by low-income persons or families; and". See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2)(F). Pub. L. 103–327, which directed the temporary amendment of par. (1)(F) by substituting "to the extent practicable, the units becoming available to new tenants shall be" for "rents for units becoming available to new tenants shall be at levels approved by the Secretary that will ensure, to the extent practicable, that the units will be" in cl. (i), adding cl. (ii), and redesignating former cl. (ii) as (iii), was executed by making the amendments to par. (2)(F) to reflect the probable intent of Congress. Cl. (ii) read as follows: "in

order to maintain the proportions of very low- and low-income families and persons required by clause (i), owners shall be required to apply any required Federal preference rules only with respect to tenants within each low- or very low-income category, in accordance with the approved tenant profile; and". See Effective and Termination Dates of 1994 Amendment note below.

1992—Subsec. (a)(2)(A). Pub. L. 102–550, §317(a)(4)(A), substituted "low-income" for "low income" after "families or persons,".

Subsec. (a)(2)(G)(i). Pub. L. 102–550, §308(b), substituted ", where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs" for "by making changes in the annual authorized return under section 4104 of this title".

Subsec. (c)(2). Pub. L. 102–550, §317(a)(4)(B), substituted "a hearing" for "an hearing".

Subsec. (d)(2)(B). Pub. L. 102–550, §317(a)(4)(C), inserted "the" after "that".

Subsec. (d)(2)(C)(ii). Pub. L. 102–550, §317(a)(4)(D), substituted "in default" for "default".

Subsec. (e). Pub. L. 102–550, §308(a), struck out subsec. (e) which read as follows: "(e) WINDFALL PROFITS.—The Secretary shall submit a report to the Congress not later than 90 days after November 28, 1990, evaluating the availability, quality, and reliability of data to measure the accessibility of decent, affordable housing in all areas where properties are eligible to submit a notice of intent to prepay under section 4102 of this title. To prevent payment of windfall profits, the Secretary may make available incentive payments under section 4109 or 4110 of this title only to owners in those rental markets where there is an inadequate supply of decent, affordable housing, if the Secretary determines that adequate data can be obtained to permit objective and fair implementation or where necessary to accomplish the other public policy objectives under this chapter. The Secretary shall implement this subsection in a manner consistent with the process established by this chapter."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316, provided in part that: "Section 601 [amending this section and section 4119 of this title and enacting provisions set out below] of title VI of S. 2281 (103d Cong., 2d Sess[.]), as reported to the Senate on July 13 (legislative day, July 11), 1994 (S. Rep. 103–307), is hereby incorporated into this Act [Pub. L. 103–327], and such section 601 is deemed enacted into law upon enactment of this Act [Sept. 28, 1994]: *Provided*, That the provisions of such section 601 shall be effective only during fiscal year 1995."

Section 601(f) of title VI of S. 2281, One-Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327, title II [title VI, §601(f)], Sept. 28, 1994, 108 Stat. 2316, provided in part, that:

"(1) IN GENERAL.—Except as provided in paragraph (2), this section [amending this section and section 4119 of this title] shall take effect on the date of enactment of this Act [Sept. 28, 1994].

"(2) EXCEPTION.—If an owner of eligible low-income housing has a plan of action that has been approved by the Secretary and that is being implemented as of the date of enactment of this Act [Sept. 28, 1994], subsections (a), (b), (c), and (d) [amending this section] shall not apply to current tenants of such housing until the first date on which the next annual rent adjustments are made following the date of enactment of this Act."

¹ [*See References in Text note below.*](#)

² [*So in original. The word "and" probably should not appear.*](#)

§4113. Assistance for displaced tenants

(a) Section 1437f assistance

Each low-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low income housing shall, subject to the availability or ¹ amounts provided under appropriations Acts, receive tenant-based assistance under section 1437f of title 42. To the extent sufficient amounts are made available under appropriations Acts, in each fiscal year the Secretary shall reserve from amounts made available under section

4124(a) of this title or, if necessary, under section 1437c(c) of title 42, such amounts as the Secretary determines are necessary to provide assistance payments for low-income families displaced during the fiscal year.

(b) Relocation assistance

The Secretary shall coordinate with public housing agencies to ensure that any very low- or low-income family displaced from eligible low-income housing as the result of the prepayment of the mortgage (or termination of the mortgage insurance contract) on such housing is able to acquire a suitable, affordable dwelling unit in the area of the housing from which the family is displaced. The Secretary shall require the owner of such housing to pay 50 percent of the moving expenses of each family relocated, except that such percentage shall be increased to the extent that State or local law of general applicability requires a higher payment by the owner.

(c) Continued occupancy

(1) In general

Each owner that prepays the mortgage (or terminates the mortgage insurance contract) on eligible low-income housing shall, as provided in paragraph (3), allow the tenants occupying units in such housing on the date of the submission of notice of intent under section 4102 of this title to remain in the housing for a period of 3 years, at rent levels (except for increases necessary for increased operating costs) existing at the time of prepayment.

(2) Provision of assistance by owner

In any case in which the Secretary requires an owner to allow tenants to occupy units under paragraph (1), an owner may fulfill the requirements of such paragraph by providing such assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same period and at a rental cost to the tenant not in excess of the rental amount the tenant would have been required to pay in the housing of the owner, except that the tenant must freely agree to waive the right to occupy the unit in the owner's housing.

(3) Applicability to low-vacancy areas and special needs tenants

The provisions of this subsection shall apply only to—

(A) eligible low income housing located in a low-vacancy area (as such term is defined by the Secretary); and

(B) tenants in any eligible low-income housing in any area who have special needs restricting their ability to relocate (including elderly tenants and tenants with disabilities), as determined under regulations established by the Secretary.

(d) Required acceptance of section 1437f assistance

An owner who prepays the mortgage (or terminates the mortgage insurance contract) on eligible low-income housing and maintains the housing for residential rental occupancy may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the rent of a dwelling unit in such property to any person, or discriminate against any person in the terms, conditions, or privileges of rental of a dwelling (or in the provision of services or facilities in connection therewith), because the person receives assistance under section 1437f of title 42.

(e) Regional pools

In providing assistance under this section, the Secretary shall allocate the assistance on a regional basis through the regional offices of the Department of Housing and Urban Development. The Secretary shall allocate assistance under this section in a manner so that the total number of assisted units in each such region available for occupancy by, and affordable to, lower income families and persons does not decrease because of the prepayment or payment of a mortgage on eligible low-income housing or the termination of an insurance contract on such housing.

(f) Enhanced voucher assistance for certain tenants

(1) Authority

In lieu of benefits under subsections (b), (c), and (d), and subject to the availability of appropriated amounts, each family described in paragraph (2) shall be offered enhanced voucher assistance under section 1437f(t) of title 42.

(2) Eligible families

A family described in this paragraph is a family that is—

- (A)(i) a low-income family; or
- (ii) a moderate-income family that is: (I) an elderly family; (II) a disabled family; or (III) residing in a low-vacancy area; and
- (B) residing in eligible low-income housing on the date of the prepayment of the mortgage or voluntary termination of the insurance contract.

(Pub. L. 100–242, title II, §223, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4264; amended Pub. L. 105–276, title V, §550(d), Oct. 21, 1998, 112 Stat. 2610; Pub. L. 106–74, title V, §538(c), Oct. 20, 1999, 113 Stat. 1123.)

EDITORIAL NOTES

AMENDMENTS

1999—Subsec. (f). Pub. L. 106–74 added subsec. (f).

1998—Subsec. (a). Pub. L. 105–276 substituted "tenant-based assistance under section 1437f of title 42" for "assistance under the certificate and voucher programs under sections 1437f(b) and 1437f(o)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of Title 42, The Public Health and Welfare.

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

§4114. Permissible prepayment or voluntary termination and modification of commitments

(a) In general

Notwithstanding any limitations on prepayment or voluntary termination under this subchapter, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of section 4113 of this title, under one of the following circumstances:

(1)(A) The Secretary approves a plan of action under section 4109(a) of this title, but does not provide the assistance approved in such plan during the 15-month period beginning on the date of approval.

(B) After the date that the housing would have been eligible for prepayment pursuant to the terms of the mortgage (notwithstanding this subchapter), the Secretary approves a plan of action under section 4110 or 4111 of this title, but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 6-month period beginning on the date of approval.

(C) The Secretary approves a plan of action under section 4110 or 4111 of this title for any eligible low-income housing not covered by subparagraph (B), but does not provide the assistance approved in such plan before the earlier of (i) the expiration of the 2-month period beginning on

the commencement of the 1st fiscal year beginning after such approval, or (ii) the expiration of the 9-month period beginning on the date of approval.

(2) An owner who intended to transfer the housing to a qualified purchaser under section 4110 or 4111 of this title, and fully complied with the provisions of such section, did not receive any bona fide offers from any qualified purchasers within the applicable time periods.

In the event that the purchaser under the plan of action is unable to consummate the purchase for reasons other than the failure of the Secretary to provide incentives, an owner may terminate the low-income affordability restrictions through prepayment or voluntary termination subject to the provisions of sections 4110 and 4111 of this title.

(b) Section 1437f rental assistance

When providing rental assistance under section 1437f of title 42, the Secretary may enter into a contract with an owner, contingent upon the future availability of appropriations for the purpose of renewing expiring contracts for rental assistance as provided in appropriations Acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and the approved plan of action shall provide that, if the Secretary is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Secretary, upon the request of the owner, shall take the following actions (subject to the limitations under the following paragraphs):

(1) Modification of commitments

Modify the binding commitments made pursuant to section 4112(a)(2) of this title that are dependent on such rental assistance.

(2) Termination of plan of action

Permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with provisions of section 4113 of this title.

At least 30 days before making a request under this subsection, an owner shall notify the Secretary of the owner's intention to submit the request. The Secretary shall have a period of 90 days following receipt of such notice to take action to extend the rental assistance contract and to continue the binding commitments under section 4112(a)(2) of this title.

(Pub. L. 100–242, title II, §224, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4265.)

§4115. Timetable for approval of plan of action

(a) Notification of deficiencies

Not later than 60 days after receipt of a plan of action, the Secretary shall notify the owner in writing of any deficiencies that prevent the plan of action from being approved. If deficiencies are found, such notice shall describe alternative ways in which the plan may be revised to meet the criteria for approval.

(b) Notification of approval

(1) In general

Not later than 180 days after receipt of a plan of action, or such longer period as the owner requests, the Secretary shall notify the owner in writing whether the plan of action, including any revisions, is approved. If approval is withheld, the notice shall describe—

(A) the reasons for withholding approval; and

(B) the actions that could be taken to meet the criteria for approval.

(2) Opportunity to revise

The Secretary shall subsequently give the owner a reasonable opportunity to revise the plan of action and seek approval.

(c) Delayed approval

If the Secretary does not approve a plan of action within the period under subsection (b), the Secretary shall provide incentives and assistance under this subchapter in the amount that the owner would have received if the Secretary had complied with such time limitations. The preceding sentence shall not apply if the plan of action was not approved because of deficiencies. An owner may bring an action in the appropriate Federal district court to enforce this subsection.

(Pub. L. 100–242, title II, §225, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4266.)

§4116. Resident homeownership program

(a) Formation of resident council

Tenants seeking to purchase eligible low-income housing in accordance with section 4110 of this title shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Secretary. The resident council shall work with a public or private nonprofit organization or a public body (including an agency or instrumentality thereof). Such organization or public body shall have experience to enable it to help the tenants consider their options and to develop the capacity necessary to own and manage the housing, where appropriate, and shall be approved by the Secretary.

(b) Other program requirements and limitations

(1) Sales to residents

As a condition of approval of a plan of action involving homeownership program under this subchapter, the resident council shall prepare a workable plan acceptable to the Secretary for giving all residents an opportunity to become owners, which plan shall identify—

- (A) the price at which the resident council intends to transfer ownership interests in, or shares representing, units in the housing;
- (B) the factors that will influence the establishment of such price;
- (C) how such price compares to the estimated appraised value of the ownership interests or shares;
- (D) the underwriting standard the resident council plans to use (or reasonably expects a public or private lender to use) for potential tenant purchasers;
- (E) the financing arrangements the tenants are expected to pursue or be provided; and
- (F) a workable schedule of sale (subject to the limitations of paragraph (8)) based on estimated tenant incomes.

(2) Approval of method of conversion and limitation on conditions of approval

The Secretary shall approve the method for converting the housing to homeownership, which may involve acquisition of ownership interests in, or shares representing, the units in a project under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership). The Secretary may not require the prepayment of the mortgage on eligible low-income housing for the approval of a plan of action involving a homeownership program for the housing.

(3) Required conditions

The Secretary shall require that the form of homeownership impose appropriate conditions, including conditions to assure that—

- (A) the number of initial owners that are very low-income, lower income, or

moderate-income persons at initial occupancy meet standards required or approved by the Secretary;

(B) occupancy charges payable by the owners meet requirements established by the Secretary;

(C) the aggregate incomes of initial and subsequent owners and other sources of funds for the project are sufficient to permit occupancy charges to cover the full operating costs of the housing and any debt service;

(D) each initial owner occupies the unit it acquires; and

(E) the low-income affordability restrictions shall continue to apply to any rental units in the housing for any period during which such units remain rental units.

(4) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use 50 percent of the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to the project, operating and replacement reserves for the project, additional homeownership opportunities in the project, and other project-related activities approved by the Secretary. The remaining 50 percent of such proceeds shall be returned to the Secretary for use under section 4110 of this title, subject to availability under appropriations Acts. Such entity shall keep, and make available to the Secretary, all records necessary to calculate accurately payments due the Secretary under this paragraph.

(5) Restrictions on resale by homeowners

(A) In general

(i) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(ii) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer.

(iii) Promissory note required

The homeowner shall execute a promissory note equal to the difference, if any, between the market value and the purchase price, payable to the Secretary, together with a mortgage securing the obligation of the note.

(B) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(i) the contribution to equity paid by the family;

(ii) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(iii) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers

ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(C) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in subparagraph (A)(iii).

(D) Use of recaptured funds

Any net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this paragraph shall be paid to the HOME Investment Trust Fund for the unit of general local government in which the housing is located. If the housing is located in a unit of general local government that is not a participating jurisdiction (as such term is defined in section 12704 of title 42), any such net sales proceeds shall be paid to the HOME Investment Trust Fund for the State in which the housing is located. With respect to any proceeds transferred to a HOME Investment Trust Fund under this subparagraph, the Secretary shall take such actions as are necessary to ensure that the proceeds shall be immediately available for eligible activities to expand the supply of affordable housing under section 12742 of title 42. The Secretary shall require the maintenance of any records necessary to calculate accurately payments due under this paragraph.

(6) Protection of nonpurchasing families

(A) Eviction

No tenant residing in a dwelling unit in a property on the date the Secretary approves a plan of action may be evicted by reason of a homeownership program approved under this subchapter.

(B) Rental assistance

If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall ensure that rental assistance under section 1437f of title 42 is available for use by each otherwise qualified tenant (that meets the eligibility requirements under such section) in that or another property. Any system for preferences established under section 1437f(d)(1)(A) or 1437f(o)(6)(A) of title 42 shall not apply to the provision of assistance to such families.

(C) Relocation assistance

The resident council shall also inform each such tenant that if the tenant chooses to move, the owner will pay relocation assistance in accordance with the approved homeownership program.

(7) Qualified management

As a condition of approval of a homeownership program under this subchapter, the resident council shall have demonstrated its abilities to manage eligible properties by having done so effectively and efficiently for a period of not less than 3 years or by entering into a contract with a qualified management entity that meets such standards as the Secretary may prescribe to ensure that the property will be maintained in a decent, safe, and sanitary condition.

(8) Timely homeownership

Except in the case of limited equity cooperatives, resident councils shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the resident council shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent with the purpose of providing housing for very

low-income families. The resident council shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(9) Records and audit of resident councils

(A) Maintenance

Each resident council shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such resident council of the proceeds of assistance received under this subchapter (including any proceeds from sales under paragraphs (4) and (5)(D)), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(B) Access

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subchapter.

(C) Audit

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the resident council that are pertinent to assistance received under this subchapter.

(10) Assumption conditions

Any entity that assumes a mortgage covering low-income housing in connection with the acquisition of the housing from an owner under this section must comply with any low-income affordability restrictions for the remaining useful life of the housing as determined under section 4112(c) of this title.

(Pub. L. 100-242, title II, §226, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4267; amended Pub. L. 102-550, title III, §309, Oct. 28, 1992, 106 Stat. 3765; Pub. L. 105-276, title V, §514(b)(2)(A), Oct. 21, 1998, 112 Stat. 2548.)

EDITORIAL NOTES

AMENDMENTS

1998—Subsec. (b)(6)(B). Pub. L. 105-276, which directed the substitution of "Any system for preferences established under section 1437f(d)(1)(A) or 1437f(o)(6)(A)" for "The requirement for giving preferences to certain categories of eligible families under sections 1437f(d)(1)(A) and 1437f(o)(3)" in second sentence, was executed by making the substitution for text which included the word "preference" rather than "preferences" to reflect the probable intent of Congress.

1992—Subsec. (b)(2). Pub. L. 102-550, §309(1), inserted "and limitation on conditions of approval" in heading and inserted at end of text "The Secretary may not require the prepayment of the mortgage on eligible low-income housing for the approval of a plan of action involving a homeownership program for the housing."

Subsec. (b)(3)(E). Pub. L. 102-550, §309(2), added subpar. (E).

Subsec. (b)(8). Pub. L. 102-550, §309(3), substituted "Except in the case of limited equity cooperatives, resident" for "Resident".

Subsec. (b)(10). Pub. L. 102-550, §309(4), struck out ", as determined by the Secretary," after "entity that assumes", substituted "4112(c)" for "4112(d)", and struck out at end "This requirement shall only apply to an entity, such as a cooperative association, that, as determined by the Secretary, intends to own the housing on a permanent basis."

§4117. Delegated responsibility to State agencies

(a) In general

In addition to any responsibilities delegated under section 4103(c) of this title, the Secretary shall delegate some or all responsibility for implementing this subchapter to a State housing agency if such agency submits a preservation plan acceptable to the Secretary.

(b) Approval

State preservation plans shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. The Secretary may approve plans that contain—

- (1) an inventory of low-income housing located within the State that is or will be eligible low-income housing under this subchapter within 5 years;
- (2) a description of the agency's experience in the area of multifamily financing and restructuring;
- (3) a description of the administrative resources that the agency will commit to the processing of plans of action in accordance with this subchapter;
- (4) a description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with this subchapter;
- (5) an independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;
- (6) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of title 42 that the proposed activities are consistent with the approved housing strategy of the State within which the eligible low-income housing is located; and
- (7) such other certifications or information that the Secretary determines to be necessary or appropriate to achieve the purposes of this subchapter.

(c) Implementation agreements

The Secretary may enter into any agreements necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of this subchapter.

(Pub. L. 100–242, title II, §227, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4270.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS

Pub. L. 102–550, title III, §315, Oct. 28, 1992, 106 Stat. 3770, provided that: "The Secretary of Housing and Urban Development shall issue interim regulations implementing section 227 of the Housing and Community Development Act of 1987 (as amended by section 601(a) of the Cranston-Gonzalez National Affordable Housing Act) [12 U.S.C. 4117] not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], which shall take effect upon issuance. The Secretary shall issue final regulations implementing such section 227 after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance."

§4118. Consultations with other interested parties

The Secretary shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of this title ¹ and shall give consideration to the views of any such agency when making determinations under this subchapter. The Secretary shall also confer with appropriate interested parties that the Secretary believes could assist in the development of a plan of action that best achieves the purposes of this subchapter.

(Pub. L. 100–242, title II, §228, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104

Stat. 4271.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

¹ [*See References in Text note below.*](#)

§4119. Definitions

For purposes of this subchapter:

(1) The term "eligible low-income housing" means any housing financed by a loan or mortgage—

(A) that is—

(i) insured or held by the Secretary under section 1715l(d)(3) of this title and receiving loan management assistance under section 1437f of title 42 due to a conversion from section 1701s of this title;

(ii) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 1715l(d)(5) of this title;

(iii) insured, assisted, or held by the Secretary or a State or State agency under section 1715z–1 of this title; or

(iv) held by the Secretary and formerly insured under a program referred to in clause (i), (ii), or (iii); and

(B) that, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Secretary.

(2) The term "Federal cost limit" means, for any eligible low-income housing, the amount determined under section 4105(a) of this title.

(3) The term "low-income affordability restrictions" means limits imposed by regulation or regulatory agreement on tenant rents, rent contributions, or income eligibility in eligible low-income housing.

(4) The terms "low-income families or persons" and "very low-income families or persons" mean families or persons whose incomes do not exceed the respective levels established for low-income families and very low-income families, respectively, under section 1437a(b)(2) of title 42.

(5) The term "moderate-income families or persons" means families or persons whose incomes are between 80 percent and 95 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(6) The term "nonprofit organization" means any private, nonprofit organization that—

(A) is organized or chartered under State or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its principal purposes significant activities related to the provision of decent housing that is affordable to very low-, low-, and moderate-income families.

(7) The term "owner" means the current or subsequent owner or owners of eligible low-income housing.

(8) The term "preservation equity" means, for any eligible low-income housing—

(A) for purposes of determining the authorized return under section 4104(a) of this title and providing incentives to extend the low-income affordability restrictions on the housing under section 4109 of this title—

(i) the preservation value of the housing determined under section 4103(b)(1) of this title; less

(ii) any debt secured by the property; and

(B) for purposes of determining incentives under section ¹ 4110 and 4111 of this title and determining the amount of an acquisition loan under the provisions of section 1715z-6(f)(3) ² of this title—

(i) the preservation value of the housing determined under section 4103(b)(2) of this title; less

(ii) the outstanding balance of the federally-assisted mortgage or mortgages for the housing.

(9) The term "preservation value" means, for any eligible low-income housing, the applicable value determined under paragraph (1) or (2) of section 4103(b) of this title.

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

(11) The term "resident council" means any incorporated nonprofit organization or association that—

(A) is representative of the residents of the housing;

(B) adopts written procedures providing for the election of officers on a regular basis; and

(C) has a democratically elected governing board, elected by the residents of the housing.

(Pub. L. 100-242, title II, §229, as added Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4271; amended Pub. L. 102-550, title III, §§310, 317(a)(5), Oct. 28, 1992, 106 Stat. 3765, 3772; Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1715z-6(f) of this title, referred to in par. (8)(B), was repealed by Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2885.

CODIFICATION

Amendment by Pub. L. 103-327 is based on section 601(e) of title VI of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

AMENDMENTS

1994—Par. (4). Pub. L. 103-327 temporarily amended par. (4) to read as follows:

"(4)(A) The term 'low-income tenants' means families or persons with incomes that exceed 50 percent of the median income for the area (as determined by the Secretary with adjustments for family size) but do not exceed 80 percent of the median income for the area (as determined by the Secretary with adjustments for family size).

"(B) The term 'very low-income tenants' means families or persons with incomes that are less than or equal to 50 percent of the median income for the area (as determined by the Secretary with adjustments for family size)." See Effective and Termination Dates of 1994 Amendment note below.

1992—Par. (1)(A)(i). Pub. L. 102-550, §310, substituted "receiving loan management assistance under section 1437f of title 42 due to a conversion from section 1701s of this title" for "assisted under section 1701s of this title or section 1437f of title 42".

Par. (11)(A). Pub. L. 102-550, §317(a)(5), substituted "residents" for "resident".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by Pub. L. 103–327 effective only during fiscal year 1995, see provision of title II of Pub. L. 103–327 set out as a note under section 4112 of this title.

¹ *So in original. Probably should be "sections".*

² *See References in Text note below.*

§4120. Notice to tenants

Where a provision of this subchapter requires that information or material be given to tenants of the housing, the requirement may be met by (1) posting a copy of the information or material in readily accessible locations within each affected building, or posting notices in each such location describing the information or material and specifying a location, as convenient to the tenants as is reasonably practical, where a copy may be examined, and (2) supplying a copy of the information or material to a representative of the tenants.

(Pub. L. 100–242, title II, §230, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4273.)

§4121. Definitions of qualified and priority purchaser and related party rule

(a) Priority purchaser

The term "priority purchaser" means (A) a resident council organized to acquire the housing in accordance with a resident homeownership program that meets the requirements of section 4121 ¹ of this title; and (B) any nonprofit organization or State or local agency that agrees to maintain low-income affordability restrictions for the remaining useful life of the housing (as determined under section 4112(d) ² of this title).

(b) Qualified purchaser

The term "qualified purchaser" means any entity that agrees to maintain low-income affordability restrictions for the remaining useful life of the housing (as determined under section 4112(c) of this title), and includes for-profit entities and priority purchasers.

(c) Related parties

Except as provided in subsection (d), the terms "qualified purchaser" and "priority purchaser" do not include any entity that, either directly or indirectly, is wholly or partially owned or controlled by the owner of the housing being transferred under this subchapter, is under whole or partial common control with such owner, or has any financial interest in such owner or in which such owner has any financial interest. The Secretary shall issue any regulations appropriate to implement the preceding sentence.

(d) Management exception

A qualified purchaser shall not be precluded from retaining as a property management entity a company that is owned or controlled by the selling owner or a principal thereof if retention of the management company is neither a condition of sale nor part of consideration paid for sale and the property management contract is negotiated by the qualified purchaser on an arm's length basis.

(Pub. L. 100–242, title II, §231, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4273; amended Pub. L. 102–550, title III, §317(a)(6), Oct. 28, 1992, 106 Stat. 3772.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 substituted "4112(c)" for "4112(d)".

¹ *So in original. Probably should be section "4116".*

² *So in original. Probably should be section "4112(c)".*

§4122. Preemption of State and local laws

(a) In general

No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that—

(1) restricts or inhibits the prepayment of any mortgage described in section 4119(1) of this title (or the voluntary termination of any insurance contract pursuant to section 1715t of this title) on eligible low income housing;

(2) restricts or inhibits an owner of such housing from receiving the authorized annual return provided under section 4104 of this title;

(3) is inconsistent with any provision of this subchapter, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives authorized under this subchapter (including authorization to increase rental rates, transfer the housing, obtain secondary financing, or use the proceeds of any of such incentives); or

(4) in its applicability to low-income housing is limited only to eligible low-income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

Any law, regulation, or restriction described under paragraph (1), (2), (3), or (4) shall be ineffective and any eligible low-income housing exempt from the law, regulation, or restriction, only to the extent that it violates the provisions of this subsection.

(b) Effect

This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of this subchapter, such as any law or regulation relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both housing receiving Federal assistance and nonassisted housing. This section shall not preempt, annul, or alter any contractual restrictions or obligations existing before November 28, 1990, that prevent or limit an owner of eligible low-income housing from prepaying the mortgage on the housing (or terminating the insurance contract on the housing).

(Pub. L. 100–242, title II, §232, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4273; amended Pub. L. 102–550, title III, §311, Oct. 28, 1992, 106 Stat. 3765.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 substituted ", such as any law or regulation" for "and" after "subchapter".

§4123. Severability

If any provision of this subchapter, or the application of such provision with respect to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to any other person or circumstance, shall not be affected by such holding.

(Pub. L. 100–242, title II, §233, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4274.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1815, known as the Housing and Community Development Act of 1987. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 5301 of Title 42, The Public Health and Welfare, and Tables.

§4124. Authorization of appropriations

(a) In general

There are authorized to be appropriated for assistance and incentives authorized under this subchapter \$638,252,784 for fiscal year 1993 and \$665,059,401 for fiscal year 1994.

(b) Grants

Subject to approval in appropriation Acts, not more than \$50,000,000 of the amounts made available under subsection (a) for fiscal year 1993, and not more than \$50,000,000 of the amounts made available under subsection (a) for fiscal year 1994, shall be available for grants under section 4111(d)(2) of this title.

(Pub. L. 100–242, title II, §234, as added Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4274; amended Pub. L. 102–550, title III, §301, Oct. 28, 1992, 106 Stat. 3762.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–550 amended section generally. Prior to amendment, section read as follows:

"(a) GENERAL.—There are authorized to be appropriated for assistance and incentives authorized under this chapter \$425,000,000 for fiscal year 1991 and \$858,000,000 for fiscal year 1992.

"(b) GRANTS.—Of the amounts made available under subsection (a) of this section, not more than \$100,000,000 for each of fiscal years 1991 and 1992 shall be available for grants under section 4111(d)(2) of this title, subject to approval in appropriations Acts."

§4125. State preservation project assistance

(1) In general

Upon application by a State or local housing authority (including public housing agencies), the Secretary of Housing and Urban Development may make available, from sources of assistance appropriated to preserve the low and moderate income status of projects with expiring Federal use restrictions, assistance to such State or local housing authorities for use in preventing the loss of housing affordable for low and moderate income families that is assisted under a State program under the terms of which the owner may prepay a State assisted or subsidized mortgage on such housing. The application of the State or local housing authority shall demonstrate to the Secretary that the total amount of incentives provided to the owner to induce the owner to preserve the low and moderate income status of the project shall not exceed the level of incentives which may be provided to a similarly situated project with expiring Federal use restrictions under subtitle B of title II of the Housing and Community Development Act of 1987 [12 U.S.C. 4101 et seq.].

(2) Section 1437f

Any assistance under section 1437f of title 42 made available pursuant to this section may be used (i) to supplement any assistance available on existing section 8 [42 U.S.C. 1437f] contracts, or (ii) to

provide additional assistance to structures to ensure that all units occupied by tenants who are lower income families (as such term is defined in section 1437a(b) of title 42) pay rents not exceeding 30 percent of their adjusted incomes. Any project receiving assistance hereunder shall be subject to standards, inspections and sanctions established by the Secretary under section 222(d) of the Housing and Community Development Act of 1987 [12 U.S.C. 4112(d)]. Any such section 8 [42 U.S.C. 1437f] assistance shall be provided for a term and at the fair market rent levels or such higher levels used as applicable for eligible low-income housing that receives incentives under subtitle B of title II of the Housing and Community Development Act of 1987 [12 U.S.C. 4101 et seq.].

(3) Restriction

Assistance may be provided under this section only to State and local housing authorities that require any housing receiving such assistance to remain affordable for lower and moderate income tenants for the period during which assistance under this section is received.

(Pub. L. 101–625, title VI, §613(b), Nov. 28, 1990, 104 Stat. 4280; Pub. L. 102–550, title III, §317(b), Oct. 28, 1992, 106 Stat. 3772.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Housing and Community Development Act of 1987, referred to in pars. (1) and (2), is Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1815. Subtitle B of title II of the Act is classified generally to this subchapter (§4101 et seq.). For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 5301 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 which comprises this chapter.

AMENDMENTS

1992—Par. (2). Pub. L. 102–550 substituted "222(d)" for "224(e)".

SUBCHAPTER II—TECHNICAL ASSISTANCE AND CAPACITY BUILDING

§4141. Authority

The Secretary of Housing and Urban Development may provide technical assistance and capacity building to further the preservation program established under this title.^{[1](#)}

(Pub. L. 100–242, title II, §251, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3766.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

¹ [*See References in Text note below.*](#)

§4142. Purposes

The purposes of this subchapter are—

(1) to promote the ability of residents of eligible low-income housing to meaningfully participate in the preservation process established by this title ¹ and affect decisions about the future of their housing;

(2) to promote the ability of community-based nonprofit housing developers and resident councils to acquire, rehabilitate, and competently own and manage eligible housing as rental or cooperative housing for low- and moderate-income people; and

(3) to assist the Secretary in discharging the obligation under section 4110 of this title to notify potential qualified purchasers of the availability of properties for sale and to otherwise facilitate the coordination and oversight of the preservation program established under this title.¹

(Pub. L. 100–242, title II, §252, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3766.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in pars. (1) and (3), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

¹ [See References in Text note below.](#)

§4143. Grants for building resident capacity and funding predevelopment costs

(a) In general

Assistance made available under this section shall be used for direct assistance grants to resident organizations and community-based nonprofit housing developers and resident councils to assist the acquisition of specific projects (including the payment of reasonable administrative expenses to participating intermediaries).

(b) Allocation

30 percent of the assistance made available under this section shall be used for resident capacity grants in accordance with subsection (d). The remainder shall be used for predevelopment grants in connection with specific projects in accordance with subsection (e).

(c) Limitation on grant amounts

A resident capacity grant under subsection (d) may not exceed \$30,000 per project and a grant under subsection (e) for predevelopment costs may not exceed \$200,000 per project, exclusive of any fees paid to a participating intermediary by the Secretary for administering the program.

(d) Resident capacity grants

(1) Use

Resident capacity grants under this subsection shall be available to eligible applicants to cover expenses for resident outreach, incorporation of a resident organization or council, conducting democratic elections, training, leadership development, legal and other technical assistance to the board of directors, staff and members of the resident organization or council.

(2) Eligible housing

Grants under this subsection may be provided with respect to eligible low-income housing for which the owner has filed a notice of intent under subchapter I of this chapter or title II of the

Emergency Low Income Housing Preservation Act of 1987 (pursuant to section 604 of the Cranston-Gonzalez National Affordable Housing Act).

(e) Predevelopment grants

(1) Use

Predevelopment grants under this subsection shall be made available to community-based nonprofit housing developers and resident councils to cover the cost of organizing a purchasing entity and pursuing an acquisition, including third party costs for training, development consulting, legal, appraisal, accounting, environmental, architectural and engineering, application fees, and sponsor's staff and overhead costs.

(2) Eligible housing

Such grants may only be made available with respect to any eligible low-income housing project for which the owner has filed an initial notice of intent to transfer the housing to a qualified purchaser in accordance with section 4110 of this title, or has filed a notice of intent and entered into a binding agreement to sell the housing to a resident organization or nonprofit organization.

(3) Phase-in of grant payments

Grant payments under this subsection shall be made in phases, based on performance benchmarks established by the Secretary in consultation with intermediaries selected under section 4145(b) of this title.

(f) Grant applications

Grant applications for assistance under subsections (d) and (e) shall be received monthly on a rolling basis and approved or rejected on at least a quarterly basis by intermediaries selected under section 4145(b) of this title.

(g) Appeal

If an application for assistance under subsections ¹(d) or (e) is denied, the applicant shall have the right to appeal the denial to the Secretary and receive a binding determination within 30 days of the appeal.

(Pub. L. 100–242, title II, §253, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3766.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title II of the Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (d)(2), probably means title II of Pub. L. 100–242, Feb. 5, 1988, 102 Stat. 1877, prior to being amended generally by Pub. L. 101–625, §601(a), which was known as the Emergency Low Income Housing Preservation Act of 1987 and which was classified principally as a note under section 1715l of this title. Title II of Pub. L. 100–242 was amended generally by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, and is now known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

Section 604 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (d)(2), is section 604 of Pub. L. 101–625, which is set out as a note under section 4101 of this title.

¹ *So in original. Probably should be "subsection".*

§4144. Grants for other purposes

The Secretary may provide grants under this subchapter—

(1) to resident-controlled or community-based nonprofit organizations with experience in resident education and organizing for the purpose of conducting community, city or county wide outreach and training programs to identify and organize residents of eligible low-income housing; and

(2) to State and local government agencies and nonprofit intermediaries for the purpose of carrying out such activities as the Secretary deems appropriate to further the preservation program established under this title.¹

(Pub. L. 100–242, title II, §254, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3767.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in par. (2), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

¹ [*See References in Text note below.*](#)

§4145. Delivery of assistance through intermediaries

(a) In general

The Secretary shall approve and disburse assistance under section 4143 of this title through eligible intermediaries selected by the Secretary under subsection (b). If the Secretary does not receive an acceptable proposal from an intermediary offering to administer assistance under this section in a given State, the Secretary shall administer the program in such State directly.

(b) Selection of eligible intermediaries

(1) In general

The Secretary shall develop criteria to select eligible intermediaries, through a competitive process, to administer assistance under this subchapter. The process shall include provision for a reasonable administrative fee.

(2) Priority

With respect to all forms of grants available under section 4143 of this title, such criteria shall give priority to applications from eligible intermediaries with demonstrated expertise or experience with the program established under this title ¹ or under the Emergency Low Income Housing Preservation Act of 1987.

(3) Criteria

The criteria developed under this subsection shall—

(A) not assign any preference or priority to applications from eligible intermediaries based on their previous participation in administering or receiving Federal grants or loans (but may exclude applicants who have failed to perform under prior contracts of a similar nature);

(B) require an applicant to prepare a proposal that demonstrates adequate staffing, qualifications, prior experience, and a plan for participation; and

(C) permit an applicant to serve as the administrator of assistance made available under section 4143(d) or (e) of this title, based on the applicant's suitability and interest.

(4) Geographic coverage

The Secretary may select more than 1 State or regional intermediary for a single State or region. The number of intermediaries chosen for each State or region may be based on the number of

eligible low-income housing projects in the State or region, provided there is no duplication of geographic coverage by intermediaries in the administration of the direct assistance grant program.

(5) National nonprofit intermediaries

National nonprofit intermediaries shall be selected to administer the assistance made available under section 4143 of this title only with respect to States or regions for which no other eligible intermediary, acceptable to the Secretary, has submitted a proposal to participate.

(6) Preference

With respect to assistance made available under section 4144 of this title, preference shall be given to eligible regional, State, and local intermediaries, over national nonprofit organizations.

(c) Conflicts of interest

Eligible intermediaries selected under subsection (b) to disburse assistance under section 4143 of this title shall certify that they will serve only as delegated program administrators, charged with the responsibility for reviewing and approving grant applications on behalf of the Secretary. Selected intermediaries shall—

(1) establish appropriate procedures for grant administration and fiscal management, pursuant to standards established by the Secretary; and

(2) receive a reasonable administrative fee, except that they may not provide other services to grant recipients with respect to projects that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved.

(d) "Eligible intermediary" defined

For purposes of this section, the term "eligible intermediary" means a State, regional, or national organization (including a quasi-public organization) or a State or local housing agency that—

(1) has as a central purpose the preservation of existing affordable housing and the prevention of displacement;

(2) does not receive direct Federal appropriations for operating support;

(3) in the case of a national nonprofit organization, has been in existence for at least 5 years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26;

(4) in the case of a regional or State nonprofit organization, has been in existence for at least 3 years prior to the date of application and has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26 or is otherwise a tax-exempt entity;

(5) has a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities and, with respect to intermediaries administering assistance under section 4143 of this title, has experience with the allocation or administration of grant or loan funds; and

(6) meets standards of fiscal responsibility established by the Secretary.

(Pub. L. 100–242, title II, §255, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3767.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in subsec. (b)(2), means title II of Pub. L. 100–242, as amended by Pub. L. 101–625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (b)(2), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which was classified principally as a note under section 17151 of this title. Title II of Pub. L. 100–242 was amended generally by Pub. L. 101–625, title VI, §601(a), Nov.

28, 1990, 104 Stat. 4249, and is now known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of this title and Tables.

¹ See References in Text note below.

§4146. Definitions

For purposes of this subchapter—

(1) the term "community-based nonprofit housing developer" means a nonprofit community development corporation that—

(A) has been classified by the Internal Revenue Service as an exempt organization under section 501(c)(3) of title 26;

(B) has been in existence for at least 2 years prior to the date of the grant application;

(C) has a record of service to low- and moderate-income people in the community in which the project is located;

(D) is organized at the neighborhood, city, county or multi-county level; and

(E) in the case of a corporation acquiring eligible housing under subchapter I of this chapter, agrees to form a purchaser entity that conforms to the definition of a community-based nonprofit organization under such subchapter and agrees to use its best efforts to secure majority tenant consent to the acquisition of the project for which grant assistance is requested; and

(2) the terms "eligible low-income housing", "nonprofit organization", "owner", and "resident council" have the meanings given such terms in section 4119 of this title.

(Pub. L. 100–242, title II, §256, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3769.)

§4147. Funding

The Secretary shall use not more than \$25,000,000 of the amounts made available under section 4124(a) of this title for fiscal year 1993, and not more than \$25,000,000 of the amounts made available under section 4124(a) of this title for fiscal year 1994, to carry out this subchapter. Of any amounts made available to carry out this subchapter in any appropriation Act, 90 percent shall be set aside for use in accordance with section 4143 of this title and 10 percent shall be set aside for use in accordance with subsection ¹ 4144 of this title.

(Pub. L. 100–242, title II, §257, as added Pub. L. 102–550, title III, §312, Oct. 28, 1992, 106 Stat. 3769.)

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

CHAPTER 43—ACTIONS AGAINST PERSONS COMMITTING BANK FRAUD CRIMES

SUBCHAPTER I—DECLARATIONS PROVIDING NEW CLAIMS TO UNITED STATES

Sec.

4201. Filing of confidential declarations by private persons.

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SUBCHAPTER I—DECLARATIONS PROVIDING NEW CLAIMS TO UNITED STATES

§4201. Filing of confidential declarations by private persons

(a) In general

Any person may file a declaration of a violation giving rise to an action for civil penalties under section 1833a of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States.

(b) Place of filing

A declaration under subsection (a) shall be filed with the Attorney General of the United States or with an agent designated by the Attorney General for receiving declarations under this section.

(Pub. L. 101–647, title XXV, §2561, Nov. 29, 1990, 104 Stat. 4894.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 101–647, title XXV, §2560, Nov. 29, 1990, 104 Stat. 4893, provided that: "This subtitle [subtitle H (§§2560–2594) of title XXV of Pub. L. 101–647, enacting this chapter and section 3059A of Title 18, Crimes and Criminal Procedure, and amending section 1831k of this title] may be cited as the 'Financial Institutions Anti-Fraud Enforcement Act of 1990'."

§4202. Contents of declarations

A declaration filed pursuant to section 4201 of this title shall—

(1) set forth the name and address of the declarant and the basis for the declarant's knowledge of the facts alleged;

(2) allege under oath or affirmation specific facts, relating to a particular transaction or transactions, which constitute a prima facie case of a violation giving rise to an action for civil penalties under section 1833a of this title affecting a depository institution insured by the Federal Deposit Insurance Corporation or any other agency or entity of the United States;

(3) contain at least 1 new factual element necessary to establish a prima facie case that was unknown to the Government at the time of filing; and

(4) set forth all facts supporting the allegation of a violation described in paragraph (2) known to the declarant, along with the names of material witnesses and the nature and location of documentary evidence known to the declarant.

(Pub. L. 101–647, title XXV, §2562, Nov. 29, 1990, 104 Stat. 4894.)

§4203. Confidentiality of declarations

(a) Period of confidentiality

A declarant and the declarant's agents shall not disclose the existence or filing of a declaration filed pursuant to section 4201 of this title until—

(1) the declarant receives notice that the Attorney General has concluded that an action should not be pursued under section 4206(b) of this title;

(2) the declarant receives notice of an award pursuant to section 4206(c) of this title; or

(3) the declarant is granted a contract to pursue an action under section 4205(b) or 4207 of this title.

(b) Maintenance of confidentiality to prevent prejudice

(1) Notwithstanding any other law, the contents of a declaration shall not be disclosed by the declarant if the disclosure would prejudice or compromise in any way the completion of any government investigation or any criminal or civil case that may arise out of, or make use of, information contained in a declaration, but information contained in a declaration may be disclosed as required by duly issued and authorized legal process.

(2) The Attorney General may in a circumstance described in paragraph (1) notify a declarant that continued confidentiality is required under this subsection notwithstanding paragraph (1) or (2) of subsection (a).

(c) Loss of rights

A declarant who discloses, except as provided by this chapter,¹ the existence or filing of a declaration or the contents thereof to anyone other than a duly authorized Federal or State investigator or the declarant's attorney shall immediately lose all rights under this subchapter.

(Pub. L. 101–647, title XXV, §2563, Nov. 29, 1990, 104 Stat. 4894.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this title", and was translated as reading "this subtitle", meaning subtitle H of title XXV of Pub. L. 101–647, known as the Financial Institutions Anti-Fraud Enforcement Act of 1990, which is classified principally to this chapter, as the probable intent of Congress. For complete classification of subtitle H to the Code, see Short Title note set out under section 4201 of this title and Tables.

¹ [*See References in Text note below.*](#)

§4204. Ineligibility to file valid declarations

(a) In general

A declaration filed pursuant to section 4201 ¹ of this title and in accordance with sections 4202 and 4203 of this title is valid unless—

(1) the declaration is filed by a current or former officer or employee of a Federal or State government agency or instrumentality who discovered or gathered the information in the declaration, in whole or in part, while acting within the course of the declarant's government employment;

(2) the declaration is filed by a person who knowingly participated in the violation of section 1517 of title 18 or any of the sections of title 18 referred to in section 1833a(c) of this title, or any other fraudulent conduct with respect to which the declaration is made;

(3) the declaration is filed by an institution-affiliated party (as defined in section 1813(u) of this title) who withheld information during the course of any bank examination or investigation authorized pursuant to section 1820 of this title which such party owed a fiduciary duty to disclose;

(4) the declaration is filed by a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

(5) the declaration consists of allegations or transactions that have been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or Government Accountability Office report, hearing, audit or investigation, by any other government source, or by the news media, unless the person providing the declaration is the original source of the information.

(b) "Original source" defined

For the purposes of subsection (a)(5), the term "original source" means a person who has direct and independent knowledge of the information contained in the declaration and who voluntarily provided the information to the government prior to the disclosure.

(c) Notice of invalidity

If the Attorney General determines at any time that a declaration is invalid under this section, that a declaration fails to meet the requirements of section 4202 of this title, or that a declaration has been disclosed in violation of section 4203 of this title, the Attorney General shall notify the person who filed the declaration in writing that the declaration is invalid, and the declarant shall not enjoy any of the rights of the declarant listed in section 4205 or 4206 of this title.

(Pub. L. 101–647, title XXV, §2564, Nov. 29, 1990, 104 Stat. 4895; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4201 of this title, referred to in subsec. (a), was in the original "section 811", and was translated as reading "section 2561", meaning section 2561 of Pub. L. 101–647, as the probable intent of Congress, because Pub. L. 101–647 does not contain a section 811.

AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

¹ [*See References in Text note below.*](#)

§4205. Rights of declarants; participation in actions, awards

(a) In general

A person who has filed a declaration that meets the requirements of sections 4201 through 4204 of this title shall have the rights stated in this section.

(b) Civil action

If the Attorney General determines that a cause of action referred to in section 4201 of this title based on the declaration should be referred to private counsel pursuant to subchapter III, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute the action, and the declarant and the declarant's counsel shall act in accordance with subchapter III.

(c) Criminal conviction

(1) When the United States obtains a criminal conviction and the Attorney General determines that the conviction was based in whole or in part on the information contained in a valid declaration filed under section 4201 of this title the Attorney General may, in his discretion, pay a reward to the declarant ¹

(2) In determining the size of any award under paragraph (1), the Attorney General may, in the Attorney General's discretion, consider any appropriate factor, including—

- (A) the seriousness of the offense for which the conviction was obtained;
- (B) the extent to which the facts alleged in the declaration contributed to the conviction;
- (C) the number of offenders apprehended pursuant to information provided by the declarant;
- (D) whether or not the offender was previously under investigation by any law enforcement agency when the declaration was filed;
- (E) the extent to which the declarant cooperated in the development of the Government's case and its presentation at trial;
- (F) the sentences and fines imposed on the offender and other offenders in related cases;
- (G) the extent to which other sources of private information were relied upon; and
- (H) the hardship to the declarant and any expenses the declarant incurred in preparing the declaration.

(d) Share of funds and assets

(1) When the United States acquires funds or assets pursuant to the execution of a judgment, order, or settlement and the Attorney General determines that the judgment, order, or settlement was based in whole or in part on the information contained in a valid declaration filed under section 4201 of this title, the declarant shall have the right to share in the recovery as follows:

(A)(i) The declarant shall be entitled to 20 percent to 30 percent of any recovery up to the first \$1,000,000 recovered, 10 percent to 20 percent of the next \$4,000,000 recovered, and 5 percent to 10 percent of the next \$5,000,000 recovered.

(ii) In calculating an award under clause (i), the Attorney General may consider the size of the overall recovery and the usefulness of the information provided by the declarant.

(B) When a declarant has received an award under subsection (c), the Attorney General may subtract the amount of that reward from any recovery under this subsection.

(2)(A) When more than 1 declarant has provided information leading to a recovery under this subsection, the Attorney General shall first calculate the size of the total award under paragraph (1)(A) and then distribute that amount according to the contribution made by each declarant.

(B) In distributing any such award between 2 or more declarants, the Attorney General may, in the Attorney General's discretion, consider any appropriate factor.

(e) Repealed. Pub. L. 107–273, div. A, title III, §301(c)(3), Nov. 2, 2002, 116 Stat. 1781

(f) Appropriate Federal banking agency exception

For purposes of this section, funds or assets acquired by the United States shall not include any funds or assets acquired by any appropriate Federal banking agency acting in any capacity or the Resolution Trust Corporation acting in any capacity, except for any civil money penalties recovered by a Federal banking agency through a final judgment, order or settlement.

(Pub. L. 101-647, title XXV, §2565, Nov. 29, 1990, 104 Stat. 4896; Pub. L. 107-273, div. A, title III, §301(c)(3), Nov. 2, 2002, 116 Stat. 1781.)

EDITORIAL NOTES

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107-273 substituted "the Attorney General may, in his discretion, pay a reward to the declarant" for ", the declarant shall have the right to receive not less than \$5,000 and not more than \$100,000, any such award to be paid from the Financial Institution Information Award Fund established under section 4209 of this title."

Subsec. (e). Pub. L. 107-273 struck out heading and text of subsec. (e). Text read as follows:

"(1) No person shall receive both an award under this section and a reward under either section 1831k of this title or section 3509A of title 18 for providing the same or substantially similar information.

"(2) When a person qualifies for both an award under this section and a reward under either section 1831k of this title or section 3509A of title 18 for providing the same or substantially similar information, the person may notify the Attorney General in writing of the person's election to seek an award under this section or a reward under such other section."

¹ So in original. Probably should be followed by a period.

§4206. Rights of declarants; notifications; Government accountability

(a) In general

A person who has filed a declaration that meets the requirements of sections 4201 through 4204 of this title shall have the rights stated in this section.

(b) Notice of decision not to pursue

If, after review, the Attorney General concludes that the information contained in a declaration should not be pursued in a civil or criminal proceeding, the Attorney General shall so notify the declarant in writing and shall provide a brief statement of the reasons that the declaration will not be pursued.

(c) Judgment, order, or settlement

(1) When the United States obtains a judgment, order, or settlement based in whole or in part on a valid declaration filed under section 4201 of this title, the Attorney General shall notify the declarant in writing of such fact.

(2) A notice described in paragraph (1) shall contain—

(A) the Attorney General's determination of the amount of the award due the declarant under subsection (c) or (d) of section 4205 of this title upon recovery by the United States; and

(B) a short statement of reasons for the amount of the award.

(d) Notice of pendency of investigation or proceeding

If the Attorney General has not provided the declarant with notice under subsection (b) or a notice of invalidity pursuant to section 4204 of this title within the time period set forth in subsection (e), the Attorney General shall notify the declarant in writing that—

(1) there is a pending investigation or proceeding in the course of which the declarant's allegations are being addressed; or

(2) the declarant's allegations have not yet been addressed.

(e) Time for notices

(1) In the case of a valid declaration filed not more than 3 years after November 29, 1990, the Attorney General shall send notification to a declarant pursuant to subsection (d) not later than 3 years after the date of filing of the declaration.

(2)(A) Subject to subparagraph (B), in the case of a declaration filed more than 3 years after November 29, 1990, the Attorney General shall send notification not later than 1 year after the date of filing of the declaration.

(B) If the Attorney General certifies that it is in the interest of the United States to give further consideration to the information provided in the declaration for an additional 90-day period, the Attorney General shall so notify the declarant in writing.

(f) Confidentiality of notices

All notices provided to a declarant under this section shall be kept confidential by the declarant in the same manner, and subject to the same penalties, as the declaration under section 4203 of this title.

(Pub. L. 101-647, title XXV, §2566, Nov. 29, 1990, 104 Stat. 4897.)

§4207. Unreviewed declarations; petition to pursue action as private contractor

(a) Notification

(1) If, pursuant to section 4206(d)(2) of this title, the Attorney General notifies a declarant that the declarant's allegations have not yet been addressed, the declarant may notify the Attorney General to award a contract pursuant to subchapter III to pursue the case.

(2) A declarant's notification under paragraph (1) shall be filed with the Attorney General not later than 30 days after the date of service of notice under section 4206(d)(2) of this title, and the Attorney General shall respond to the notification not later than 30 days after receipt.

(b) Contents of response

In response to a notification under subsection (a)(1), the Attorney General shall—

- (1) grant a contract pursuant to subchapter III; or
- (2) proceed with an action.

(c) Grant of contract

If the Attorney General decides to grant a contract, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute an action, and the declarant and the declarant's counsel shall act in accordance with subchapter III.

(Pub. L. 101-647, title XXV, §2567, Nov. 29, 1990, 104 Stat. 4898.)

§4208. Nonreviewability of action by Attorney General

Notwithstanding any other law, no court shall have jurisdiction over any claim based on any action taken by the Attorney General or any refusal to take action under this subchapter, except for failure to provide notification under section 4206 of this title.

(Pub. L. 101-647, title XXV, §2568, Nov. 29, 1990, 104 Stat. 4898.)

§4209. Repealed. Pub. L. 107-273, div. A, title III, §301(c)(3), Nov. 2, 2002, 116 Stat. 1781

Section, Pub. L. 101-647, title XXV, §2569, Nov. 29, 1990, 104 Stat. 4898, related to Financial Institution Information Award Fund.

§4210. Sources of payments to declarants

Notwithstanding any other law, an award under this chapter ¹ may be paid to a declarant, or to an individual providing information, from the amounts recovered through civil actions based in whole or in part on the information provided in a valid declaration under this chapter.¹
(Pub. L. 101–647, title XXV, §2570, Nov. 29, 1990, 104 Stat. 4899.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", and was translated as reading "this subtitle", meaning subtitle H of title XXV of Pub. L. 101–647, known as the Financial Institutions Anti-Fraud Enforcement Act of 1990, which is classified principally to this chapter, as the probable intent of Congress. For complete classification of subtitle H to the Code, see Short Title note set out under section 4201 of this title and Tables.

¹ [*See References in Text note below.*](#)

§4211. Repealed. Pub. L. 105–362, title X, §1001(e), Nov. 10, 1998, 112 Stat. 3291

Section, Pub. L. 101–647, title XXV, §2571, Nov. 29, 1990, 104 Stat. 4899, related to Government accountability and public reports on processing of declarations.

§4212. Protection for declarants

A declarant under this subchapter shall enjoy the protections of section 3059A(e) ¹ of title 18.
(Pub. L. 101–647, title XXV, §2572, Nov. 29, 1990, 104 Stat. 4899.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3059A(e) of title 18, referred to in text, was repealed by Pub. L. 107–273, div. A, title III, §301(c)(2), Nov. 2, 2002, 116 Stat. 1781.

¹ [*See References in Text note below.*](#)

§4213. Promulgation of regulations

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this subchapter.
(Pub. L. 101–647, title XXV, §2573, Nov. 29, 1990, 104 Stat. 4899.)

SUBCHAPTER II—DECLARATIONS PROVIDING UNITED STATES WITH NEW INFORMATION CONCERNING RECOVERY OF ASSETS

§4221. Filing of confidential declarations by private persons identifying specific assets

(a) In general

After the United States obtains a final judgment or settlement in any action referred to in section 4201 of this title, any person may file a declaration identifying specific assets which might be recovered by the United States in satisfaction of that judgment or settlement.

(b) Place of filing

A declaration under subsection (a) shall be filed with the Attorney General of the United States or with an agent designated by him for receiving declarations under this section.

(Pub. L. 101-647, title XXV, §2576, Nov. 29, 1990, 104 Stat. 4899.)

§4222. Contents of declarations

A declaration filed pursuant to section 4221 of this title shall—

(1) set forth the name and address of the declarant and the basis for the declarant's knowledge of the facts alleged;

(2) allege under oath or affirmation specific facts indicating the nature, location, and approximate dollar value of the asset or assets and the names of all persons known to the declarant to have possession, custody, or control of the asset or assets; and

(3) allege under oath or affirmation specific facts that establish a prima facie case showing that the asset is legally subject to attachment, garnishment, sequestration, or other proceeding in satisfaction of the judgment referred to in section 4221 of this title.

(Pub. L. 101-647, title XXV, §2577, Nov. 29, 1990, 104 Stat. 4900.)

§4223. Confidentiality of declarations

(a) Period of confidentiality

A declarant and the declarant's agents shall not disclose the existence or filing of a declaration filed pursuant to section 4221 of this title until:

(1) the declarant receives notice that the Attorney General has concluded that an action should not be pursued under section 4226(b) of this title;

(2) the declarant receives notice of an award pursuant to section 4226(c) of this title; or

(3) the declarant is granted a contract to pursue an action under section 4225(b) or 4227 of this title.

(b) Maintenance of confidentiality to prevent prejudice

(1) Notwithstanding any other law, the contents of a declaration shall not be disclosed by the declarant if the disclosure would prejudice or compromise in any way the completion of any government investigation or any criminal or civil case that may arise out of, or make use of, information contained in a declaration, but information contained in a declaration may be disclosed as required by duly issued and authorized legal process.

(2) The Attorney General may in a circumstance described in paragraph (1) notify a declarant that continued confidentiality is required under this subsection notwithstanding paragraph (1) or (2) of subsection (a).

(c) Loss of rights

A declarant who discloses, except as provided by this subchapter, the existence or filing of a declaration or the contents thereof to anyone other than a duly authorized Federal or State investigator or the declarant's attorney shall immediately lose all rights under this subchapter.

(Pub. L. 101-647, title XXV, §2578, Nov. 29, 1990, 104 Stat. 4900.)

§4224. Ineligibility to file valid declarations

(a) In general

A declaration filed pursuant to section 4221 of this title and in accordance with sections 4222 and 4223 of this title is valid unless—

(1) the declaration is filed by a current or former officer or employee of a Federal or State government agency or instrumentality who discovered or gathered the information in the declaration, in whole or in part, while acting within the course of the declarant's government employment;

(2) the declaration is filed by a person who knowingly participated in the violation of section 1517 of title 18 or any of the sections of title 18 referred to in section 4201 ¹ of this title, or any other fraudulent conduct with respect to which the declaration is made;

(3) the declaration is filed by an institution-affiliated party (as defined in section 1813(u) of this title) who withheld information during the course of any bank examination or investigation authorized pursuant to section 1820 of this title which such party owed a fiduciary duty to disclose;

(4) the declaration is filed by a member of the immediate family of the individual whose activities are the subject of the declaration or where, in the discretion of the Attorney General, it appears the individual could benefit from the award; or

(5) the declaration identifies an asset or assets the nature, location, or possible recovery of which has been disclosed to a member of the public in a criminal, civil, or administrative proceeding, in a congressional, administrative, or Government Accountability Office report, hearing, audit or investigation, by any other government source, or by the news media, unless the person providing the declaration is the original source of the information.

(b) "Original source" defined

For the purposes of subsection (a)(5), the term "original source" means a person who has direct and independent knowledge of the information contained in the declaration and who voluntarily provided the information to the government prior to the disclosure.

(c) Notice of invalidity

If the Attorney General determines at any time that a declaration is invalid under this section, that a declaration fails to meet the requirements of section 4222 of this title, or that a declaration has been disclosed in violation of section 4223 of this title, the Attorney General shall notify the person who filed the declaration in writing that the declaration is invalid, and the declarant shall not enjoy any of the rights of the declarant listed in section 4225 or 4226 of this title.

(Pub. L. 101–647, title XXV, §2579, Nov. 29, 1990, 104 Stat. 4900; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

¹ *So in original. Probably should be section "1833a(c)".*

§4225. Rights of declarants; participation in actions, awards

(a) In general

A person who has filed a declaration that meets the requirements of sections 4221 through 4224 of this title shall have the rights stated in this section.

(b) Civil action

If the Attorney General determines that a proceeding to recover the asset or assets identified in the declaration should be referred to private counsel pursuant to subchapter III, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute the action, and the declarant and the declarant's counsel shall act in accordance with subchapter III.

(c) Share of assets

When the United States recovers any asset or assets specifically identified in a valid declaration filed under section 4221 of this title and the Attorney General determines that the asset or assets would not have been recovered if the declaration had not been filed, the declarant shall have the right to share in the recovery in the amount of 20 percent to 30 percent of any recovery up to the first \$1,000,000 recovered, 10 percent to 20 percent of the next \$4,000,000 recovered, and 5 percent to 10 percent of the next \$5,000,000 recovered.

(d) Prohibition of double awards

(1) No person shall receive both an award under this section and a reward under either section 1831k of this title or section 3509A ¹ of title 18 for providing the same or substantially similar information.

(2) When a person qualifies for both an award under this section and a reward under either section 1831k of this title or section 3509A ¹ of title 18 for providing the same or substantially similar information, the person may notify the Attorney General in writing of the person's election to seek an award under this section or a reward under such other section.

(e) Appropriate Federal banking agency exception

For purposes of this section, funds or assets acquired by the United States shall not include any funds or assets acquired by any appropriate Federal banking agency acting in any capacity or the Resolution Trust Corporation acting in any capacity, except for any civil money penalties recovered by a Federal banking agency through a final judgement, order, or settlement.

(Pub. L. 101-647, title XXV, §2580, Nov. 29, 1990, 104 Stat. 4901.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3509A of title 18, referred to in subsec. (d), probably is a reference to former section 3059A of title 18, which was repealed by Pub. L. 107-273, div. A, title III, §301(c)(2), Nov. 2, 2002, 116 Stat. 1781.

¹ [*See References in Text note below.*](#)

§4226. Rights of declarants; notifications; Government accountability

(a) In general

A person who has filed a declaration that meets the requirements of sections 4221 through 4224 of this title shall have the rights stated in this section.

(b) Notice of decision not to pursue

If, after review, the Attorney General concludes that the information contained in a declaration should not be pursued in a proceeding to recover the asset or assets, the Attorney General shall so notify the declarant in writing and shall provide a brief statement of the reasons that the declaration will not be pursued.

(c) Judgment, order, or settlement

(1) When the United States obtains a final judgment, order, or settlement transferring to the United States title to an asset or assets identified in a valid declaration filed under section 4221 ¹ of this title,

the Attorney General shall notify the declarant in writing of the entry of the judgment, order, or settlement.

(2) A notice described in paragraph (1) shall contain—

(A) the Attorney General's determination of the amount of the award due the declarant under section 4225(c) of this title upon recovery by the United States; and

(B) a short statement of reasons for the amount of the award.

(d) Notice of pendency of investigation or proceeding

(1) Subject to paragraph (2), if the Attorney General has not provided the declarant with notice under subsection (b) or a notice of invalidity pursuant to section 4224 of this title within 1 year after the date of filing of the declaration, the Attorney General shall notify the declarant in writing that—

(A) there is a pending investigation or proceeding in the course of which the declarant's allegations are being addressed; or

(B) the declarant's allegations have not yet been addressed.

(2) If the Attorney General certifies that it is in the interest of the United States to give further consideration to the information provided in the declaration for an additional 90-day period, the Attorney General shall so notify the declarant in writing.

(e) Confidentiality of notices

All notices provided to a declarant under this section shall be kept confidential by the declarant in the same manner, and subject to the same penalties, as the declaration under section 4223 of this title.

(Pub. L. 101–647, title XXV, §2581, Nov. 29, 1990, 104 Stat. 4902.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4221 of this title, referred to in subsec. (c)(1), was in the original "section 831", and was translated as reading "section 2576", meaning section 2576 of Pub. L. 101–647, as the probable intent of Congress, because Pub. L. 101–647 does not contain a section 831.

¹ [*See References in Text note below.*](#)

§4227. Unreviewed declarations; petition to pursue action as private contractor

(a) Notification

(1) If, pursuant to section 4226(d)(1)(B) of this title, the Attorney General notifies a declarant that the declarant's allegations have not yet been addressed, the declarant may notify the Attorney General to award a contract pursuant to subchapter III to pursue the case.

(2) A declarant's notification under paragraph (1) shall be filed with the Attorney General not later than 30 days after the date of service of notice under section 4226(d)(1)(B) of this title, and the Attorney General shall respond to the notification not later than 30 days after receipt.

(b) Contents of response

In response to a notification under subsection (a)(1), the Attorney General shall—

(1) grant a contract pursuant to subchapter III; or

(2) proceed with an action.

(c) Grant of contract

If the Attorney General decides to grant a contract, the declarant, after consultation with the Attorney General, shall have the right to select counsel to prosecute an action, and the declarant and the declarant's counsel shall act in accordance with subchapter III.

(Pub. L. 101–647, title XXV, §2582, Nov. 29, 1990, 104 Stat. 4903.)

§4228. Nonreviewability of action by Attorney General

Notwithstanding any other law, no court shall have jurisdiction over any claim based on any action taken by the Attorney General or any refusal to take action under this subchapter, except for failure to provide notification under section 4226 of this title.

(Pub. L. 101–647, title XXV, §2583, Nov. 29, 1990, 104 Stat. 4903.)

§4229. Protection for declarants

A declarant under this subchapter shall enjoy the protections of section 3059A(e) ¹ of title 18.

(Pub. L. 101–647, title XXV, §2584, Nov. 29, 1990, 104 Stat. 4903.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3059A(e) of title 18, referred to in text, was repealed by Pub. L. 107–273, div. A, title III, §301(c)(2), Nov. 2, 2002, 116 Stat. 1781.

¹ [*See References in Text note below.*](#)

§4230. Promulgation of regulations

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this subchapter.

(Pub. L. 101–647, title XXV, §2585, Nov. 29, 1990, 104 Stat. 4903.)

SUBCHAPTER III—USE OF PRIVATE LEGAL RESOURCES

§4241. Authority to enter into contracts for private counsel

(a) In general

The Attorney General may enter into contracts retaining private counsel to furnish legal services, including representation in investigation, negotiation, compromise, settlement, litigation, and execution of judgments in the case of any civil action referred to in section 4201 of this title or section 4225 of this title.

(b) Terms and conditions

Each contract under subsection (a) shall include the provisions described in section 4244 of this title and such other terms and conditions as the Attorney General considers necessary and appropriate to protect the interests of the United States.

(c) Limitation of fee

The amount of the contingency fee payable for legal services furnished under a contract described in subsection (a) shall not exceed the contingency fee that counsel engaged in the private practice of law in the jurisdiction wherein the legal services are furnished typically charge clients for furnishing the same or comparable legal services.

(d) Contingent fees

Notwithstanding section 3302(b) of title 31, a contract under this section shall provide that a fee that the United States pays private counsel for services is payable from the amount recovered and shall be based on a percentage of the civil penalties or assets recovered.

(Pub. L. 101-647, title XXV, §2588, Nov. 29, 1990, 104 Stat. 4905.)

§4242. Contract decisions nonreviewable

Notwithstanding any other law, no court shall have jurisdiction over any claim based on the Attorney General's decision to refuse to enter into a contract for legal services referred to in section 4241 of this title.

(Pub. L. 101-647, title XXV, §2589, Nov. 29, 1990, 104 Stat. 4905.)

§4243. Representation

Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, private counsel retained under section 4241 of this title may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel, subject to the requirements specified in section 4244 of this title.

(Pub. L. 101-647, title XXV, §2590, Nov. 29, 1990, 104 Stat. 4906.)

§4244. Contract provisions

A contract made with a private counsel under section 4241 of this title shall include—

(1) a provision permitting the Attorney General to terminate either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is in the best interests of the United States;

(2) a provision requiring private counsel to transmit monthly to the Attorney General a report on the services relating to matters handled pursuant to the contract during the preceding month and the progress made during that period; and

(3) a provision requiring that the initiation, settlement, dismissal, or compromise of a claim be approved by a duly appointed officer of the United States.

(Pub. L. 101-647, title XXV, §2591, Nov. 29, 1990, 104 Stat. 4906.)

§4245. Counterclaims

Any counterclaim filed in any action brought on behalf of the United States by private counsel retained under section 4241 of this title may not be asserted unless the counterclaim has been served directly on the Attorney General and the United States Attorney for the judicial district in which, or embracing the place in which, the action is pending. Such service shall be made in accordance with the rules of procedure of the court in which the action on behalf of the United States is pending.

(Pub. L. 101-647, title XXV, §2592, Nov. 29, 1990, 104 Stat. 4906.)

§4246. Awards of costs and fees to prevailing plaintiff

When the United States, through private counsel retained under this subchapter, prevails in any civil action, the court, in its discretion, may allow the United States reasonable attorney's fees and other expenses of litigation as part of the costs.

(Pub. L. 101-647, title XXV, §2593, Nov. 29, 1990, 104 Stat. 4906.)

§4247. Promulgation of regulations

The Attorney General may promulgate any rules, regulations, or guidelines that, in the Attorney General's judgment, are necessary and appropriate to the effective administration of this subchapter. (Pub. L. 101–647, title XXV, §2594, Nov. 29, 1990, 104 Stat. 4906.)

CHAPTER 44—TRUTH IN SAVINGS

Sec.

- 4301. Findings and purpose.
- 4302. Disclosure of interest rates and terms of accounts.
- 4303. Account schedule.
- 4304. Disclosure requirements for certain accounts.
- 4305. Distribution of schedules.
- 4306. Payment of interest.
- 4307. Periodic statements.
- 4308. Regulations.
- 4309. Administrative enforcement.
- 4310. Repealed.
- 4311. Credit unions.
- 4312. Effect on State law.
- 4313. Definitions.

§4301. Findings and purpose

(a) Findings

The Congress hereby finds that economic stability would be enhanced, competition between depository institutions would be improved, and the ability of the consumer to make informed decisions regarding deposit accounts, and to verify accounts, would be strengthened if there was uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed in connection with such accounts.

(b) Purpose

It is the purpose of this chapter to require the clear and uniform disclosure of—

- (1) the rates of interest which are payable on deposit accounts by depository institutions; and
- (2) the fees that are assessable against deposit accounts,

so that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts.

(Pub. L. 102–242, title II, §262, Dec. 19, 1991, 105 Stat. 2334.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 102–242, title II, §261, Dec. 19, 1991, 105 Stat. 2334, provided that: "This subtitle [subtitle F (§§261–274) of title II of Pub. L. 102–242, enacting this chapter] may be cited as the 'Truth in Savings Act'."

SEPARABILITY

If any provision of Pub. L. 102–242 or any application of any provision thereof to any person or circumstance is held invalid, the remainder of Pub. L. 102–242 and the application of any remaining provision of such Act to any other person or circumstance not to be affected by such holding, see section 481 of Pub. L.

102–242, set out as a note under section 1811 of this title.

§4302. Disclosure of interest rates and terms of accounts

(a) In general

Except as provided in subsections (b) and (c), each advertisement, announcement, or solicitation initiated by any depository institution or deposit broker relating to any demand or interest-bearing account offered by an insured depository institution which includes any reference to a specific rate of interest payable on amounts deposited in such account, or to a specific yield or rate of earnings on amounts so deposited, shall state the following information, to the extent applicable, in a clear and conspicuous manner:

(1) The annual percentage yield.

(2) The period during which such annual percentage yield is in effect.

(3) All minimum account balance and time requirements which must be met in order to earn the advertised yield (and, in the case of accounts for which more than 1 yield is stated, each annual percentage yield and the account minimum balance requirement associated with each such yield shall be in close proximity and have equal prominence).

(4) The minimum amount of the initial deposit which is required to open the account in order to obtain the yield advertised, if such minimum amount is greater than the minimum balance necessary to earn the advertised yield.

(5) A statement that regular fees or other conditions could reduce the yield.

(6) A statement that an interest penalty is required for early withdrawal.

(b) Broadcast and electronic media and outdoor advertising exception

The Bureau may, by regulation, exempt advertisements, announcements, or solicitations made by any broadcast or electronic medium or outdoor advertising display not on the premises of the depository institution from any disclosure requirements described in paragraph (4) or (5) of subsection (a) if the Bureau finds that any such disclosure would be unnecessarily burdensome.

(c) Disclosure required for on-premises displays

The disclosure requirements contained in this section shall not apply to any sign (including a rate board) disclosing a rate or rates of interest which is displayed on the premises of the depository institution if such sign contains—

(1) the accompanying annual percentage yield; and

(2) a statement that the consumer should request further information from an employee of the depository institution concerning the fees and terms applicable to the advertised account.

(d) Misleading descriptions of free or no-cost accounts prohibited

No advertisement, announcement, or solicitation made by any depository institution or deposit broker may refer to or describe an account as a free or no-cost account (or words of similar meaning) if—

(1) in order to avoid fees or service charges for any period—

(A) a minimum balance must be maintained in the account during such period; or

(B) the number of transactions during such period may not exceed a maximum number; or

(2) any regular service or transaction fee is imposed.

(e) Misleading or inaccurate advertisements, etc., prohibited

No depository institution or deposit broker shall make any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contracts.

(Pub. L. 102–242, title II, §263, Dec. 19, 1991, 105 Stat. 2334; Pub. L. 102–550, title IX, §957(a), Oct. 28, 1992, 106 Stat. 3896; Pub. L. 104–208, div. A, title II, §2604(b), Sept. 30, 1996, 110 Stat. 3009–471; Pub. L. 111–203, title X, §1100B(1), July 21, 2010, 124 Stat. 2109.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Board" in two places.

1996—Subsec. (c). Pub. L. 104–208 redesignated par. (1) as entire subsec. (c) and subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and struck out former par. (1) heading and heading and text of former par. (2). Text of former par. (2) read as follows: "For purposes of paragraph (1), a sign shall only be considered to be displayed on the premises of a depository institution if the sign is designed to be viewed only from the interior of the premises of the depository institution."

1992—Subsec. (a). Pub. L. 102–550, §957(a)(1), substituted "subsections (b) and (c)" for "subsection (b)".

Subsecs. (c) to (e). Pub. L. 102–550, §957(a)(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§4303. Account schedule

(a) In general

Each depository institution shall maintain a schedule of fees, charges, interest rates, and terms and conditions applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the Bureau shall prescribe. The Bureau shall specify, in regulations, which fees, charges, penalties, terms, conditions, and account restrictions must be included in a schedule required under this subsection. A depository institution need not include in such schedule any information not specified in such regulation.

(b) Information on fees and charges

The schedule required under subsection (a) with respect to any account shall contain the following information:

(1) A description of all fees, periodic service charges, and penalties which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charge, or penalty (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

(3) Any minimum amount required with respect to the initial deposit in order to open the account.

(c) Information on interest rates

The schedule required under subsection (a) with respect to any account shall include the following information:

(1) Any annual percentage yield.

(2) The period during which any such annual percentage yield will be in effect.

(3) Any annual rate of simple interest.

(4) The frequency with which interest will be compounded and credited.

(5) A clear description of the method used to determine the balance on which interest is paid.

(6) The information described in paragraphs (1) through (4) with respect to any period after the end of the period referred to in paragraph (2) (or the method for computing any information described in any such paragraph), if applicable.

(7) Any minimum balance which must be maintained to earn the rates and obtain the yields

disclosed pursuant to this subsection and a clear description of how any such minimum balance is calculated.

(8) A clear description of any minimum time requirement which must be met in order to obtain the yields disclosed pursuant to this subsection and any information described in paragraph (1), (2), (3), or (4) that will apply if any time requirement is not met.

(9) A statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of a withdrawal from the account will not be paid by the depository institution or credited to the account by reason of such withdrawal.

(10) Any provision or requirement relating to nonpayment of interest, including any charge or penalty for early withdrawal, and the conditions under which any such charge or penalty may be assessed.

(d) Other information

The schedule required under subsection (a) shall include such other disclosures as the Bureau may determine to be necessary to allow consumers to understand and compare accounts, including frequency of interest rate adjustments, account restrictions, and renewal policies for time accounts.

(e) Style and format

Schedules required under subsection (a) shall be written in clear and plain language and be presented in a format designed to allow consumers to readily understand the terms of the accounts offered.

(Pub. L. 102–242, title II, §264, Dec. 19, 1991, 105 Stat. 2335; Pub. L. 111–203, title X, §1100B(1), July 21, 2010, 124 Stat. 2109.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsecs. (a), (d). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§4304. Disclosure requirements for certain accounts

The Bureau shall require, in regulations which the Bureau shall prescribe, such modification in the disclosure requirements under this chapter relating to annual percentage yield as may be necessary to carry out the purposes of this chapter in the case of—

(1) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a period of less than 1 year;

(2) variable rate accounts;

(3) accounts which, pursuant to law, do not guarantee payment of a stated rate;

(4) multiple rate accounts; and

(5) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a stated term.

(Pub. L. 102–242, title II, §265, Dec. 19, 1991, 105 Stat. 2336; Pub. L. 102–550, title XVI, §1604(e)(2)(A), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 111–203, title X, §1100B(1), July 21, 2010, 124 Stat. 2109.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" in two places in introductory provisions.

1992—Pub. L. 102–550 made technical amendment to references to "this chapter" wherever appearing to reflect correction of corresponding provision of original act.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§4305. Distribution of schedules

(a) In general

A schedule required under section 4303 of this title for an appropriate account shall be—

- (1) made available to any person upon request;
- (2) provided to any potential customer before an account is opened or a service is rendered; and
- (3) provided to the depositor, in the case of any time deposit which has a maturity of more than 30 days¹ is renewable at maturity without notice from the depositor, at least 30 days before the date of maturity.

(b) Distribution in case of certain initial deposits

If—

- (1) a depositor is not physically present at an office of a depository institution at the time an initial deposit is accepted with respect to an account established by or for such person; and
- (2) the schedule required under section 4303(a) of this title has not been furnished previously to such depositor,

the depository institution shall mail the schedule to the depositor at the address shown on the records of the depository institution for such account no later than 10 days after the date of the initial deposit.

(c) Distribution of notice of certain changes

If—

- (1) any change is made in any term or condition which is required to be disclosed in the schedule required under section 4303(a) of this title with respect to any account; and
- (2) the change may reduce the yield or adversely affect any holder of the account,

all account holders who may be affected by such change shall be notified and provided with a description of the change by mail at least 30 days before the change takes effect.

(d) Distribution in case of accounts established by more than 1 individual or by a group

If an account is established by more than 1 individual or for a person other than an individual, any distribution described in this section with respect to such account meets the requirements of this section if the distribution is made to 1 of the individuals who established the account or 1 individual representative of the person on whose behalf such account was established.

(e) Notice to account holders as of effective date of regulations

For any account for which the depository institution delivers an account statement on a quarterly

or more frequent basis, the depository institution shall include on or with the first regularly scheduled mailing sent after the end of the 6-month period beginning on the date of publication of regulations issued by the Bureau in final form, a statement that the account holder has the right to request an account schedule containing the terms, charges, and interest rates of the account, and that the account holder may wish to request such an account schedule.

(Pub. L. 102-242, title II, §266, Dec. 19, 1991, 105 Stat. 2337; Pub. L. 102-550, title XVI, §1604(e)(1), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 104-208, div. A, title II, §2604(d), Sept. 30, 1996, 110 Stat. 3009-471; Pub. L. 111-203, title X, §1100B(1), July 21, 2010, 124 Stat. 2109.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (e). Pub. L. 111-203 substituted "Bureau" for "Board".

1996—Subsec. (a)(3). Pub. L. 104-208 inserted "has a maturity of more than 30 days" after "deposit which".

1992—Subsec. (e). Pub. L. 102-550 substituted "on or with the first regularly scheduled mailing sent after the end of the 6-month period beginning on the date of publication" for "on or with any regularly scheduled mailing posted or delivered within 180 days after publication".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

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

§4306. Payment of interest

(a) Calculated on full amount of principal

Interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest disclosed pursuant to this chapter.

(b) No particular method of compounding interest required

Subsection (a) shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting of interest.

(c) Date by which interest must accrue

Interest on accounts that are subject to this chapter shall begin to accrue not later than the business day specified for interest-bearing accounts in section 4005 of this title, subject to subsections (b) and (c) of such section.

(Pub. L. 102-242, title II, §267, Dec. 19, 1991, 105 Stat. 2338; Pub. L. 102-550, title XVI, §1604(e)(2)(B), (C), Oct. 28, 1992, 106 Stat. 4084.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsecs. (a), (c). Pub. L. 102–550 made technical amendment to references to "this chapter" to reflect correction of corresponding provision of original act.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§4307. Periodic statements

Each depository institution shall include on or with each periodic statement provided to each account holder at such institution a clear and conspicuous disclosure of the following information with respect to such account:

- (1) The annual percentage yield earned.
- (2) The amount of interest earned.
- (3) The amount of any fees or charges imposed.
- (4) The number of days in the reporting period.

(Pub. L. 102–242, title II, §268, Dec. 19, 1991, 105 Stat. 2338.)

§4308. Regulations

(a) In general

(1) Regulations required

Before the end of the 9-month period beginning on December 19, 1991, the Bureau, after consultation with each agency referred to in section 4309(a) of this title and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this chapter.

(2) Effective date of regulations

The regulations prescribed under paragraph (1) shall take effect not later than 9 months after publication in final form.

(3) Contents of regulations

The regulations prescribed under paragraph (1) may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of accounts as, in the judgment of the Bureau, are necessary or proper to carry out the purposes of this chapter, to prevent circumvention or evasion of the requirements of this chapter, or to facilitate compliance with the requirements of this chapter.

(4) Date of applicability

The provisions of this chapter shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Bureau under this subsection (or by the National Credit Union Administration Bureau ¹ under section 4311(b) ² of this title, in the case of any depository institution described in clause (iv) of section 461(b)(1)(A) of this title).

(b) Model forms and clauses

(1) In general

The Bureau shall publish model forms and clauses for common disclosures to facilitate compliance with this chapter. In devising such forms, the Bureau shall consider the use by depository institutions of data processing or similar automated machines.

(2) Use of forms and clauses deemed in compliance

Nothing in this chapter may be construed to require a depository institution to use any such model form or clause prescribed by the Bureau under this subsection. A depository institution shall be deemed to be in compliance with the disclosure provisions of this chapter if the depository institution—

- (A) uses any appropriate model form or clause as published by the Bureau; or
- (B) uses any such model form or clause and changes it by—
 - (i) deleting any information which is not required by this chapter; or
 - (ii) rearranging the format,

if in making such deletion or rearranging the format, the depository institution does not affect the substance, clarity, or meaningful sequence of the disclosure.

(3) Public notice and opportunity for comment

Model disclosure forms and clauses shall be adopted by the Bureau after duly given notice in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5.

(Pub. L. 102–242, title II, §269, Dec. 19, 1991, 105 Stat. 2338; Pub. L. 102–550, title IX, §957(b), title XVI, §1604(e)(2)(D)–(H), Oct. 28, 1992, 106 Stat. 3897, 4084; Pub. L. 111–203, title X, §1100B(1), July 21, 2010, 124 Stat. 2109.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4311(b) of this title, referred to in subsec. (a)(4), was in the original "section 12(b)", probably meaning section 12(b) of Pub. L. 102–242, and was translated as meaning section 272(b) of Pub. L. 102–242, to reflect the probable intent of Congress. There is no section 12 of Pub. L. 102–242, and section 272(b) of Pub. L. 102–242 relates to regulations prescribed by the National Credit Union Administration Board.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

1992—Pub. L. 102–550, §1604(e)(2)(D)–(H), made technical amendment to references to "this chapter" wherever appearing to reflect correction of corresponding provision of original act.

Subsec. (a)(2). Pub. L. 102–550, §957(b), substituted "9 months" for "6 months".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1604 of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

¹ *So in original. Probably should be "Board".*

² *See References in Text note below.*

§4309. Administrative enforcement

(a) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this chapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by the appropriate Federal banking agency (as defined in section 3(q) of that Act [12 U.S.C. 1813(q)]), with respect to—

(A) insured depository institutions (as defined in section 3(c)(2) of that Act [12 U.S.C. 1813(c)(2)]);

(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]); and

(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]);

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Bureau ¹ in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)]; and

(3) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this chapter.

(b) Additional enforcement powers

(1) Violation of this chapter treated as violation of other Acts

For purposes of the exercise by any agency referred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act.

(2) Enforcement authority under other Acts

In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on such agency by law.

(c) Regulations by agencies other than the Bureau

The authority of the Bureau to issue regulations under this chapter does not impair the authority of any other agency referred to in subsection (a) to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this chapter.

(Pub. L. 102–242, title II, §270, Dec. 19, 1991, 105 Stat. 2339; Pub. L. 102–550, title XVI, §1604(e)(2)(I)–(K), (3), (4), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 111–203, title X, §1100B(1), (2), July 21, 2010, 124 Stat. 2109, 2110.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (a), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of this title. Subtitle E of the Act is classified generally to part E (§5561 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203, §1100B(1), substituted "Bureau" for "Board" wherever appearing.

Subsec. (a). Pub. L. 111–203, §1100B(2)(A), inserted introductory provisions and added par. (1) and struck out former introductory provisions and par. (1) which read as follows: "Compliance with the requirements

imposed under this chapter shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act—

"(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act);

"(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

"(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and".
Subsec. (a)(3). Pub. L. 111–203, §1100B(2)(B), (C), added par. (3).

1992—Pub. L. 102–550 made technical amendment to references to "this chapter" wherever appearing to reflect correction of corresponding provision of original act.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

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

§4310. Repealed. Pub. L. 104–208, div. A, title II, §2604(a), Sept. 30, 1996, 110 Stat. 3009–470

Section, Pub. L. 102–242, title II, §271, Dec. 19, 1991, 105 Stat. 2340; Pub. L. 102–550, title XVI, §1604(e)(2)(L)–(O), Oct. 28, 1992, 106 Stat. 4084, related to civil liability for depository institutions which failed to comply with any requirements of chapter or regulations with respect to account holders.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 104–208, div. A, title II, §2604(a), Sept. 30, 1996, 110 Stat. 3009–470, provided that: "Effective as of the end of the 5-year period beginning on the date of the enactment of this Act [Sept. 30, 1996], section 271 of the Truth in Savings Act (12 U.S.C. 4310) is repealed."

§4311. Credit unions

(a) In general

No regulation prescribed by the Bureau under this chapter shall apply directly with respect to any depository institution described in clause (iv) of section 461(b)(1)(A) of this title.

(b) Regulations prescribed by NCUA

Within 90 days of the effective date of any regulation prescribed by the Bureau under this chapter, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Bureau taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

(Pub. L. 102–242, title II, §272, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102–550, title XVI,

§1604(e)(2)(P), (Q), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 111–203, title X, §1100B(1), (3), July 21, 2010, 124 Stat. 2109, 2110.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1100B(1), substituted "Bureau" for "Board".

Subsec. (b). Pub. L. 111–203, §1100B(3), substituted "regulation prescribed by the Bureau" for "regulation prescribed by the Board" in two places.

1992—Pub. L. 102–550 made technical amendment to references to "this chapter" wherever appearing to reflect correction of corresponding provision of original act.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§4312. Effect on State law

The provisions of this chapter do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this chapter, and then only to the extent of the inconsistency. The Bureau may determine whether such inconsistencies exist.

(Pub. L. 102–242, title II, §273, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102–550, title XVI, §1604(e)(2)(R), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 111–203, title X, §1100B(1), July 21, 2010, 124 Stat. 2109.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board".

1992—Pub. L. 102–550 made technical amendment to references to "this chapter" wherever appearing to reflect correction of corresponding provision of original act.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

§4313. Definitions

For the purposes of this chapter—

(1) Account

The term "account" means any account intended for use by and generally used by consumers primarily for personal, family, or household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

(2) Annual percentage yield

The term "annual percentage yield" means the total amount of interest that would be received on a \$100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the Bureau in regulations.

(3) Annual rate of simple interest

The term "annual rate of simple interest"—

(A) means the annualized rate of interest paid with respect to each compounding period, expressed as a percentage; and

(B) may be referred to as the "annual percentage rate".

(4) Bureau

The term "Bureau" means the Bureau of Consumer Financial Protection.

(5) Deposit broker

The term "deposit broker"—

(A) has the meaning given to such term in section 1831f(f)(1) ¹ of this title; and

(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

(6) Depository institution

The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 461(b)(1)(A) of this title, but does not include any nonautomated credit union that was not required to comply with the requirements of this chapter ¹ as of September 30, 1996, pursuant to the determination of the National Credit Union Administration Bureau. ²

(7) Interest

The term "interest" includes dividends paid with respect to share draft accounts which are accounts within the meaning of paragraph (3).

(8) Multiple rate account

The term "multiple rate account" means any account that has 2 or more annual rates of simple interest which take effect at the same time or in succeeding periods and which are known at the time of disclosure.

(Pub. L. 102–242, title II, §274, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102–550, title XVI, §1604(e)(2)(S), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 103–325, title III, §332, Sept. 23, 1994, 108 Stat. 2232; Pub. L. 104–208, div. A, title II, §2604(c), Sept. 30, 1996, 110 Stat. 3009–471; Pub. L. 111–203, title X, §1100B(1), (4), July 21, 2010, 124 Stat. 2109, 2110.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1831f(f)(1) of this title, referred to in par. (5)(A), was redesignated section 1831f(g)(1) of this title by Pub. L. 102–242, title III, §301(a)(4), Dec. 19, 1991, 105 Stat. 2344.

This chapter, referred to in par. (6), was in the original "this title", and was translated as meaning "this

subtitle", which is subtitle F of title II of Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2334, which enacted this chapter, to reflect the probable intent of Congress.

AMENDMENTS

2010—Pub. L. 111-203, §1100B(1), substituted "Bureau" for "Board" wherever appearing.

Par. (4). Pub. L. 111-203, §1100B(4), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: "The term 'Board' means the Board of Governors of the Federal Reserve System."

1996—Par. (6). Pub. L. 104-208 inserted before period at end ", but does not include any nonautomated credit union that was not required to comply with the requirements of this chapter as of September 30, 1996, pursuant to the determination of the National Credit Union Administration Board".

1994—Par. (1). Pub. L. 103-325 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'account' means any account offered to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts."

1992—Pub. L. 102-550 made technical amendment to reference to "this chapter" in introductory provisions to reflect correction of corresponding provision of original act.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

¹ [*See References in Text note below.*](#)

² [*So in original. Probably should be "Board."*](#)

CHAPTER 45—PAYMENT SYSTEM RISK REDUCTION

SUBCHAPTER I—BILATERAL AND CLEARING ORGANIZATION NETTING

Sec.

- 4401. Findings and purpose.
- 4402. Definitions.
- 4403. Bilateral netting.
- 4404. Clearing organization netting.
- 4405. Preemption.
- 4406. Relationship to other payments systems.
- 4406a. Treatment of contracts with uninsured national banks, uninsured Federal branches and agencies, certain uninsured State member banks, and Edge Act corporations.
- 4407. National emergencies.

SUBCHAPTER II—MULTILATERAL CLEARING ORGANIZATIONS

4421, 4422. Repealed.

SUBCHAPTER I—BILATERAL AND CLEARING ORGANIZATION NETTING

§4401. Findings and purpose

The Congress finds that—

- (1) many financial institutions engage daily in thousands of transactions with other financial institutions directly and through clearing organizations;
- (2) the efficient processing of such transactions is essential to a smoothly functioning economy;
- (3) such transactions can be processed most efficiently if, consistent with applicable contractual terms, obligations among financial institutions are netted;
- (4) such netting procedures would reduce the systemic risk within the banking system and financial markets; and
- (5) the effectiveness of such netting procedures can be assured only if they are recognized as valid and legally binding in the event of the closing of a financial institution participating in the netting procedures.

(Pub. L. 102–242, title IV, §401, Dec. 19, 1991, 105 Stat. 2371.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SEPARABILITY

If any provision of Pub. L. 102–242 or any application of any provision thereof to any person or circumstance is held invalid, the remainder of Pub. L. 102–242 and the application of any remaining provision of such Act to any other person or circumstance not to be affected by such holding, see section 481 of Pub. L. 102–242, set out as a note under section 1811 of this title.

§4402. Definitions

For purposes of this subchapter—

(1) Broker or dealer

The term "broker or dealer" means—

- (A) any company that is registered or licensed under Federal or State law to engage in the business of brokering, underwriting, or dealing in securities in the United States; and
- (B) to the extent consistent with this title,¹ as determined by the Board of Governors of the Federal Reserve System, any company that is an affiliate of a company described in subparagraph (A) and that is engaged in the business of entering into netting contracts.

(2) Clearing organization

The term "clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar organization—

- (A) that provides clearing, netting, or settlement services for its members and—
 - (i) in which all members other than the clearing organization itself are financial institutions or other clearing organizations; or
 - (ii) which is registered as a clearing agency under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or is exempt from such registration by order of the Securities and Exchange Commission; or
- (B) that is registered as a derivatives clearing organization under section 7a–1 of title 7, that has been granted an exemption under section 6(c)(1) of title 7, or that is a multilateral clearing organization (as defined in section 4421 ¹ of this title).

(3) Covered clearing obligation

The term "covered clearing obligation" means an obligation of a member of a clearing organization to make payment to another member of a clearing organization, subject to a netting contract.

(4) Covered contractual payment entitlement

The term "covered contractual payment entitlement" means—

(A) an entitlement of a financial institution to receive a payment, subject to a netting contract from another financial institution; and

(B) an entitlement of a member of a clearing organization to receive payment, subject to a netting contract, from another member of a clearing organization of a covered clearing obligation.

(5) Covered contractual payment obligation

The term "covered contractual payment obligation" means—

(A) an obligation of a financial institution to make payment, subject to a netting contract to another financial institution; and

(B) a covered clearing obligation.

(6) Depository institution

The term "depository institution" means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] (other than clause (vii));

(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 1815 of this title;

(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978 [12 U.S.C. 3101];

(D) a corporation chartered under section 25(a) ¹ of the Federal Reserve Act [12 U.S.C. 611 et seq.]; or

(E) a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.].

(7) Failed financial institution

The term "failed financial institution" means a financial institution that—

(A) fails to satisfy a covered contractual payment obligation when due;

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

(8) Failed member

The term "failed member" means any member that—

(A) fails to satisfy a covered clearing obligation when due,

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings, or

(C) has generally ceased to meet its obligations when due.

(9) Financial institution

The term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Board of Governors of the Federal Reserve System.

(10) Futures commission merchant

The term "futures commission merchant" means a company that is registered or licensed under Federal law to engage in the business of selling futures and options in commodities.

(11) Member

The term "member" means a member of or participant in a clearing organization, and includes

the clearing organization and any other clearing organization with which such clearing organization has a netting contract.

(12) Net entitlement

The term "net entitlement" means the amount by which the covered contractual payment entitlements of a financial institution or member exceed the covered contractual payment obligations of the institution or member after netting under a netting contract.

(13) Net obligation

The term "net obligation" means the amount by which the covered contractual payment obligations of a financial institution or member exceed the covered contractual payment entitlements of the institution or member after netting under a netting contract.

(14) Netting contract

(A) In general

The term "netting contract"—

- (i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and
- (ii) includes the rules of a clearing organization.

(B) Invalid contracts not included

The term "netting contract" does not include any contract or agreement that is invalid under or precluded by Federal law.

(15) Payment

The term "payment" means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.

(Pub. L. 102–242, title IV, §402, Dec. 19, 1991, 105 Stat. 2372; Pub. L. 102–550, title XVI, §1606(a), Oct. 28, 1992, 106 Stat. 4087; Pub. L. 106–554, §1(a)(5) [title I, §§112(a)(2), 123(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–391, 2763A–411; Pub. L. 109–8, title IX, §906(a), Apr. 20, 2005, 119 Stat. 167.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in par. (1)(B), means title IV of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2371. For complete classification of title IV to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in par. (2)(A)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Section 4421 of this title, referred to in par. (2)(B), was repealed by Pub. L. 111–203, title VII, §740, July 21, 2010, 124 Stat. 1729.

Section 25(a) of the Federal Reserve Act, referred to in par. (6), which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

AMENDMENTS

2005—Par. (2)(A)(ii). Pub. L. 109–8, §906(a)(1)(A), inserted before semicolon ", or is exempt from such registration by order of the Securities and Exchange Commission".

Par. (2)(B). Pub. L. 109–8, §906(a)(1)(B), inserted before period at end ", that has been granted an exemption under section 6(c)(1) of title 7, or that is a multilateral clearing organization (as defined in section 4421 of this title)".

Par. (6)(B). Pub. L. 109–8, §906(a)(2)(B), added subpar. (B). Former subpar. (B) redesignated (C).

Par. (6)(C). Pub. L. 109–8, §906(a)(2)(A), (C), redesignated subpar. (B) as (C) and amended it generally. Prior to amendment, subpar. (C) read as follows: "a branch or agency as defined in section 1(b) of the International Banking Act of 1978;". Former subpar. (C) redesignated (D).

Par. (6)(D), (E). Pub. L. 109–8, §906(a)(2)(A), redesignated subpars. (C) and (D) as (D) and (E), respectively.

Par. (11). Pub. L. 109–8, §906(a)(3), inserted before period at end "and any other clearing organization with which such clearing organization has a netting contract".

Par. (14)(A)(i). Pub. L. 109–8, §906(a)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "means a contract or agreement between 2 or more financial institutions or members, that—

"(I) is governed by the laws of the United States, any State, or any political subdivision of any State, and

"(II) provides for netting present or future payment obligations or payment entitlements (including liquidation or close-out values relating to the obligations or entitlements) among the parties to the agreement; and".

Par. (15). Pub. L. 109–8, §906(a)(5), added par. (15).

2000—Pub. L. 106–554, §1(a)(5) [title I, §112(a)(2)], substituted "this subchapter" for "this chapter" in introductory provisions.

Par. (2)(B). Pub. L. 106–554, §1(a)(5) [title I, §123(b)], added subpar. (B) and struck out former subpar. (B) which read as follows: "that performs clearing functions for a contract market designated pursuant to the Commodity Exchange Act."

1992—Par. (14)(B). Pub. L. 102–550 substituted "Federal law" for "Federal commodities law".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

¹ [*See References in Text note below.*](#)

§4403. Bilateral netting

(a) General rule

Notwithstanding any other provision of State or Federal law (other than section 1821(e) of this title, section 5390(c) of this title, section 4617 of this title, section 1787(c) of this title, or any order authorized under section 78eee(b)(2) of title 15), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be terminated, liquidated, accelerated, and netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11).

(b) Limitation on obligation to make payment

The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution shall be equal to its net obligation to such other financial institution, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution shall be equal to its net

entitlement with respect to such other financial institution, and no such right shall exist if there is no net entitlement.

(d) Payment of net entitlement of failed financial institution

The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Effectiveness notwithstanding status as financial institution

This section shall be given effect notwithstanding that a financial institution is a failed financial institution.

(f) Enforceability of security agreements

The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15).

(Pub. L. 102-242, title IV, §403, Dec. 19, 1991, 105 Stat. 2374; Pub. L. 109-8, title IX, §906(b), Apr. 20, 2005, 119 Stat. 168; Pub. L. 109-390, §4(a), Dec. 12, 2006, 120 Stat. 2695; Pub. L. 111-203, title II, §211(c), July 21, 2010, 124 Stat. 1514.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203 inserted "section 5390(c) of this title, section 4617 of this title," after "section 1821(e) of this title,".

2006—Subsec. (a). Pub. L. 109-390 struck out "paragraphs (8)(E), (8)(F), and (10)(B) of" before "section 1821(e)" and "section 1787(c)" and inserted "terminated, liquidated, accelerated, and" after "institutions shall be".

Subsec. (f). Pub. L. 109-390, §4(a)(1), struck out "paragraphs (8)(E), (8)(F), and (10)(B) of" before "section 1821(e)" and "section 1787(c)".

2005—Subsec. (a). Pub. L. 109-8, §906(b)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract."

Subsec. (f). Pub. L. 109-8, §906(b)(2), added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109-390, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of Title 11.

§4404. Clearing organization netting

(a) General rule

Notwithstanding any other provision of State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and any order authorized under section 78eee(b)(2) of title 15), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be terminated, liquidated, accelerated, and netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11).

(b) Limitation of obligation to make payment

The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a member of a clearing organization to receive payment with respect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract, and no such right shall exist if there is no net entitlement.

(d) Entitlement of failed members

The net entitlement, if any, of any failed member of a clearing organization shall be paid to the failed member in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Obligations of failed members

The net obligation, if any, of any failed member of a clearing organization shall be determined in accordance with, and subject to the conditions of, the applicable netting contract.

(f) Limitation on claims for entitlement

A failed member of a clearing organization shall have no recognizable claim against any member of a clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

(g) Effectiveness notwithstanding status as member

This section shall be given effect notwithstanding that a member is a failed member.

(h) Enforceability of security agreements

The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15).

(Pub. L. 102-242, title IV, §404, Dec. 19, 1991, 105 Stat. 2374; Pub. L. 109-8, title IX, §906(c), Apr. 20, 2005, 119 Stat. 168; Pub. L. 109-390, §4(b), Dec. 12, 2006, 120 Stat. 2695.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-390 struck out "paragraphs (8)(E), (8)(F), and (10)(B) of" before "section 1821(e)" and "section 1787(c)" and inserted "terminated, liquidated, accelerated, and" after "organization shall be".

Subsec. (h). Pub. L. 109-390, §4(b)(1), struck out "paragraphs (8)(E), (8)(F), and (10)(B) of" before "section 1821(e)" and "section 1787(c)".

2005—Subsec. (a). Pub. L. 109-8, §906(c)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to

and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract."

Subsec. (h). Pub. L. 109–8, §906(c)(2), added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

§4405. Preemption

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, shall limit or delay application of otherwise enforceable netting contracts in accordance with sections 4403 and 4404 of this title.

(Pub. L. 102–242, title IV, §405, Dec. 19, 1991, 105 Stat. 2375.)

§4406. Relationship to other payments systems

This chapter shall have no effect by implication or otherwise on the validity or legal enforceability of a netting arrangement of any payment system which is not subject to this chapter.

(Pub. L. 102–242, title IV, §406, Dec. 19, 1991, 105 Stat. 2375.)

§4406a. Treatment of contracts with uninsured national banks, uninsured Federal branches and agencies, certain uninsured State member banks, and Edge Act corporations

(a) In general

Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act [12 U.S.C. 1821(e)] shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 4422 ¹ of this title, except that for such purpose—

(1) any reference to the "Corporation as receiver" or "the receiver or the Corporation" shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or an uninsured State member bank;

(2) any reference to the "Corporation" (other than in section 11(e)(8)(D) of such Act [12 U.S.C. 1821(e)(8)(D)]), the "Corporation, whether acting as such or as conservator or receiver", a "receiver", or a "conservator" shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch

or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or an uninsured State member bank; and

(3) any reference to an "insured depository institution" or "depository institution" shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 4422 ¹ of this title.

(b) Liability

The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 4422 ¹ of this title, shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act [12 U.S.C. 1821(e)].

(c) Regulatory authority

(1) In general

The Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 4422 ¹ of this title, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

(2) Specific requirement

In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act [12 U.S.C. 1821(e)], the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(d) Definitions

For purposes of this section, the terms "Federal branch", "Federal agency", and "foreign bank" have the same meanings as in section 3101 of this title.

(Pub. L. 102–242, title IV, §407, as added Pub. L. 109–8, title IX, §906(d)(2), Apr. 20, 2005, 119 Stat. 169.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsecs. (a), (b), and (c)(1), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

Section 4422 of this title, referred to in subsecs. (a) to (c)(1), was repealed by Pub. L. 111–203, title VII, §740, July 21, 2010, 124 Stat. 1729.

Section 11(e)(8)(D) of such Act, referred to in subsec. (a)(2), probably means section 11(e)(8)(D) of the Federal Deposit Insurance Act, which is classified to section 1821(e)(8)(D) of this title.

The Federal Deposit Insurance Act, referred to in subsec. (c)(2), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

PRIOR PROVISIONS

A prior section 407 of Pub. L. 102–242 was renumbered section 407A and is classified to section 4407 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of Title 11.

¹ See References in Text note below.

§4407. National emergencies

The provisions of this chapter may not be construed to limit the authority of the President under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) [now 50 U.S.C. 4301 et seq.] or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(Pub. L. 102–242, title IV, §407A, formerly §407, Dec. 19, 1991, 105 Stat. 2375; renumbered §407A, Pub. L. 109–8, title IX, §906(d)(1), Apr. 20, 2005, 119 Stat. 169.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Trading With the Enemy Act, referred to in text, is act Oct. 6, 1917, ch. 106, 40 Stat. 411, which was classified to sections 1 to 6, 7 to 39 and 41 to 44 of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as chapter 53 (§4301 et seq.) of Title 50. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in text, is Pub. L. 95–223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

SUBCHAPTER II—MULTILATERAL CLEARING ORGANIZATIONS

§§4421, 4422. Repealed. Pub. L. 111–203, title VII, §740, July 21, 2010, 124 Stat. 1729

Section 4421, Pub. L. 102–242, title IV, §408, as added Pub. L. 106–554, §1(a)(5) [title I, §112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–391; amended Pub. L. 111–203, title VII, §749(i), July 21, 2010, 124 Stat. 1748, defined terms used in this subchapter.

Section 4422, Pub. L. 102–242, title IV, §409, as added Pub. L. 106–554, §1(a)(5) [title I, §112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–392, related to multilateral clearing organizations.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§711–754) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 note under section 1a of Title 7, Agriculture.

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§4501. Congressional findings

The Congress finds that—

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

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

regulation is needed to reduce the risk of failure of the enterprises;

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

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

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

(6) an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes;

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2008 AMENDMENT

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

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

SHORT TITLE

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

§4502. Definitions

For purposes of this chapter:

(1) Affiliate

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

(2) Agency

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

(3) Authorizing statutes

The term "authorizing statutes" means—

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

(4) Board

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

(5) Capital distribution

(A) In general

The term "capital distribution" means—

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

(B) Exception

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

(6) Compensation

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

(7) Core capital

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

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

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

(8) Default; in danger of default

(A) Default

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

(B) In danger of default

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

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

(9) Director

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

(10) Enterprise

The term "enterprise" means—

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

(11) Entity-affiliated party

The term "entity-affiliated party" means—

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

(12) Executive officer

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

(13) Limited-life regulated entity

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

(14) Low-income

The term "low-income" means—

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

(15) Median income

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

(16) Moderate-income

The term "moderate-income" means—

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

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

(17) Mortgage purchases

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

(18) Multifamily housing

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

(19) Office of Finance

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

(20) Regulated entity

The term "regulated entity" means—

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

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

(C) any Federal Home Loan Bank.

(21) Single family housing

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

(22) State

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

(23) Total capital

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

(A) The core capital of the enterprise; ¹

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

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

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

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

(24) Very low-income

(A) In general

The term "very low-income" means—

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

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

Director.

(B) Rule of construction

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

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

(25) Violation

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

(26) Conforming mortgage

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

(A) section 302(b)(2) of the Federal National Mortgage Association Charter Act [12 U.S.C. 1717(b)(2)]; or

(B) section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454(a)(2)].

(27) Extremely low-income

The term "extremely low-income" means—

(A) in the case of owner-occupied units, income not in excess of 30 percent of the area median income; and

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

(28) Low-income area

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

(29) Minority census tract

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

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

(A) In general

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

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

- (ii) the number of extremely low-income renter households.

(B) Rule of construction

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

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

(A) In general

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

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

(B) Rule of construction

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

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

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

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

AMENDMENTS

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

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

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

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

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.

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

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

§4503. Protection of taxpayers against liability

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

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

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 effective date of the abolishment under section 1311(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

"(e) EMPLOYEE BENEFIT PROGRAMS.—

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

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

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

"(2) COST DIFFERENTIAL.—

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

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

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

"SEC. 1314. TRANSFER OF PROPERTY AND FACILITIES.

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

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

DEFINITIONS

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

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

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

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

§4512. Director

(a) Establishment of position

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

(b) Appointment; term

(1) Appointment

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

(2) Term

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

(3) Vacancy

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

(4) Service after end of term

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

(5) Transitional provision

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

(c) Deputy Director of the Division of Enterprise Regulation

(1) In general

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

understanding of mortgage securities markets and housing finance.

(2) Functions

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

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

(1) In general

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

(2) Functions

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

(e) Deputy Director for Housing Mission and Goals

(1) In general

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

(2) Functions

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

(3) Considerations

In exercising such functions, powers, and duties, the Deputy Director for Housing Mission and Goals shall consider the differences between the enterprises and the Federal Home Loan Banks, including those described in section 4513(d) of this title.

(f) Acting Director

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

(g) Limitations

The Director and each of the Deputy Directors may not—

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

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

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.

PRIOR PROVISIONS

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

§4513. Duties and authorities of Director

(a) Duties

(1) Principal duties

The principal duties of the Director shall be—

(A) to oversee the prudential operations of each regulated entity; and

(B) to ensure that—

(i) each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls;

(ii) the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities);

(iii) each regulated entity complies with this chapter and the rules, regulations, guidelines, and orders issued under this chapter and the authorizing statutes;

(iv) each regulated entity carries out its statutory mission only through activities that are authorized under and consistent with this chapter and the authorizing statutes; and

(v) the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest.

(2) Scope of authority

The authority of the Director shall include the authority—

(A) to review and, if warranted based on the principal duties described in paragraph (1), reject any acquisition or transfer of a controlling interest in a regulated entity; and

(B) to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity.

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

(A) Consultation

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

(B) Information sharing

To facilitate the consultative process, the Director shall share information with the Board of

Governors of the Federal Reserve System on a regular, periodic basis as determined by the Director and the Board regarding the capital, asset and liabilities, financial condition, and risk management practices of the regulated entities as well as any information related to financial market stability.

(C) Termination of consultation requirement

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

(b) Delegation of authority

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

(c) Litigation authority

(1) In general

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

(2) Subject to suit

Except as otherwise provided by law, the Director shall be subject to suit (other than suits on claims for money damages) by a regulated entity with respect to any matter under this chapter or any other applicable provision of law, rule, order, or regulation under this chapter, in the United States district court for the judicial district in which the regulated entity has its principal place of business, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

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

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

(1) the Banks'—

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

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

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

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).

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

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

§4513a. Federal Housing Finance Oversight Board

(a) In general

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

(b) Limitations

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

(c) Composition

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

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

(d) Meetings

(1) In general

The Board shall meet upon notice by the Director, but in no event shall the Board meet less frequently than once every 3 months.

(2) Special meetings

Either the Secretary of the Treasury, the Secretary of Housing and Urban Development, or the

Chairman of the Securities and Exchange Commission may, upon giving written notice to the Director, require a special meeting of the Board.

(e) Testimony

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

- (1) the safety and soundness of the regulated entities;
- (2) any material deficiencies in the conduct of the operations of the regulated entities;
- (3) the overall operational status of the regulated entities;
- (4) an evaluation of the performance of the regulated entities in carrying out their respective missions;
- (5) operations, resources, and performance of the Agency; and
- (6) such other matters relating to the Agency and its fulfillment of its mission, as the Board determines appropriate.

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

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;
- (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,¹ including the format and the process for collection of such data.

(c) Reports to Congress

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

(d) Contents of reports

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

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

(e) Protection of information

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

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

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.

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

§4515. Personnel

(a) In general

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

(b) Comparability of compensation with Federal banking agencies

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

(c) Personnel of other Federal agencies

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

(d) Outside experts and consultants

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

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

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 ¹ to the total assets of both enterprises.

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

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

(3) Timing of payment

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

(4) "Total assets" defined

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

sum of—

- (A) on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;
- (B) the unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the enterprise that are not included in subparagraph (A); and
- (C) other off-balance-sheet obligations as determined by the Director.

(c) Increased costs of regulation

(1) Increase for inadequate capitalization

The semiannual payments made pursuant to subsection (b) by any regulated entity that is not classified (for purposes of subchapter II) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the regulated entity.

(2) Adjustment for enforcement activities

The Director may adjust the amounts of any semiannual payments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by a regulated entity, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under this Act for a regulated entity are borne only by such regulated entity.

(3) Additional assessment for deficiencies

If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subchapter II) as adequately capitalized or as the result of supervisory or enforcement activities under this Act for a regulated entity, the amount available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.

(d) Surplus

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

(e) Working capital fund

At the end of each year for which an assessment under this section is made, the Director shall remit to each regulated entity any amount of assessment collected from such regulated entity that is attributable to subsection (a)(3) and is in excess of the amount the Director deems necessary to maintain a working capital fund.

(f) Treatment of assessments

(1) Deposit

Amounts received by the Director from assessments under this section may be deposited by the Director in the manner provided in section 192 of this title for monies deposited by the Comptroller of the Currency.

(2) Not Government funds

The amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.

(3) No apportionment of funds

Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15

of title 31 or under any other authority.

(4) Use of funds

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

(5) Availability of oversight fund amounts

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

(6) Treasury investments

(A) Authority

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

(B) Government obligations

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

(g) Budget and financial management

(1) Financial operating plans and forecasts

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

(2) Financial statements

The Agency shall prepare annually a statement of—

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

(3) Financial management systems

The Agency shall implement and maintain financial management systems that—

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

(4) Assertion of internal controls

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

(5) Rule of construction

This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and

Budget with respect to any report, plan, forecast, or other information referred to in paragraph (1) or any jurisdiction or oversight over the affairs or operations of the Agency.

(h) Audit of Agency

(1) In general

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

(2) Report

The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Agency, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Agency at the time submitted to the Congress.

(3) Assistance and costs

For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 6101 of title 41, professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Agency shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

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

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).

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

² *See References in Text note below.*

§4517. Examinations

(a) Annual examination

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

(b) Other examinations

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

(c) Examiners

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

(d) Inspector General

There shall be within the Agency an Inspector General, who shall be appointed in accordance with section 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.)

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

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

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

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

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

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

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

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) ¹ of this title) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the regulated entity at all levels, including in procurement, insurance, and all types of contracts (including contracts for the issuance or guarantee of any debt, equity, or mortgage-related securities, the management of its mortgage and securities portfolios, the making of its equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives). The processes established by each regulated entity for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

(c) Applicability

This section shall apply to all contracts of a regulated entity for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

(d) Inclusion in annual reports

Each regulated entity shall include, in the annual report submitted by the entity to the Director pursuant to section 1723a(k) of this title, section 1456(c) of this title, and section 1440 of this title, as applicable, detailed information describing the actions taken by the entity pursuant to this section,

which shall include a statement of the total amounts paid by the entity to third party contractors since the last such report and the percentage of such amounts paid to businesses described in subsection (b) of this section.

(e) Outreach

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

(f) Diversity in Agency workforce

The Agency shall take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States, which shall include—

(1) heavily recruiting at historically Black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions; and

(4) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring.

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

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).

¹ See *References in Text* note below.

§4521. Annual reports by Director

(a) General report

The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than June 15 of each year, a written report, which shall include—

(1) a description of the actions taken, and being undertaken, by the Director to carry out this chapter;

(2) a description of the financial safety and soundness of each regulated entity, including the results and conclusions of the annual examinations of the regulated entities conducted under section 4517(a) of this title;

(3) any recommendations for legislation to enhance the financial safety and soundness of the regulated entities;

(4) a description of—

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

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

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

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

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

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

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

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

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

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

(b) Report on enforcement actions

Not later than March 15 of each year, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report describing, for the preceding calendar year, the requests by the Director to the Attorney General for enforcement actions under subchapter III and describing the disposition of each request, which shall include statements of—

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

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

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

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

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

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

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

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

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).

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

§4522. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

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

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

(b) Hearings

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

(c) Delay of public disclosure under exceptional circumstances

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

(d) Documents filed under seal in public enforcement hearings

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

(e) Retention of documents

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

(f) Disclosures to Congress

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

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

§4523. Limitation on subsequent employment

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

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

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

(2) Authority to limit offer of guarantee

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

(A) the guarantee is inconsistent with the requirements of this section; or

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

(3) Deposit in Treasury

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

(c) Phase-in

(1) In general

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

(A) provide for uniform pricing among lenders;

(B) provide for adjustments in pricing based on risk levels; and

(C) take into consideration conditions in financial markets.

(2) Rule of construction

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

(d) Information collection and annual analysis

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

(1) a description of—

(A) changes made to up-front fees and annual fees as part of the guarantee fees negotiated with lenders;

(B) changes to the riskiness of the new borrowers compared to previous origination years or book years; and

(C) any adjustments required to improve for future origination years or book years, in order to be in complete compliance with subsection (b); and

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

(e) Enforcement

(1) Required adjustments

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

(2) Noncompliance penalty

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

(3) Rule of construction

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

(f) Expiration

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

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

§4548. Regulations for use of credit scores

The Director shall—

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

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

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

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 1

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

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

(3) Annual report to Congress

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

(4) Protection of identity of individuals

In carrying out this subsection, the Director shall ensure that no property-related or financial information that would enable a borrower to be identified shall be made public.

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

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.

¹ *So in original.*

§4562. Single-family housing goals

(a) In general

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

(1) Purchase-money mortgages

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

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

(2) Refinancing mortgages

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

(b) Goals as a percentage of total mortgage purchases

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

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

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

(d) Determination of compliance

(1) In general

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

(2) Purchase-money mortgage goals

An enterprise shall be considered to be in compliance with a housing goal under subparagraph (A), (B), or (C) of subsection (a)(1) for a year only if, for the type of family described in such

subparagraph, the percentage of the number of conventional, conforming, single-family, owner-occupied, purchase money mortgages purchased by the enterprise in such year that serve such families, meets or exceeds the target for the year for such type of family that is established under subsection (e).

(3) Refinance goal

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

(e) Annual targets

(1) In general

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

(2) Goals targets

(A) Calculation

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

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

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

(B) Establishment of goal targets

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

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

(3) Authority to adjust targets

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

(4) HMDA information

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

(5) Conforming mortgages

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

(f) Notice of determination and enterprise comment

(1) Notice

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

(2) Comment period

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

(g) Use of borrower income

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

(h) Consideration of properties with rental units

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

(i) Goals credit

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

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

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 ¹ requirements related to such units.

(4) Factors

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

(A) national multifamily mortgage credit needs and the ability of the enterprise to provide additional liquidity and stability for the multifamily mortgage market;

(B) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;

(C) the size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

(D) the ability of the enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing described in paragraphs (1) and (2);

(E) the availability of public subsidies; and

(F) the need to maintain the sound financial condition of the enterprise.

(b) Units financed by housing finance agency bonds

The Director shall give full credit toward the achievement of the multifamily special affordable housing goal under this section (for purposes of section 4566 of this title) to dwelling units in multifamily housing that otherwise qualifies under such goal and that is financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, if such bonds, in whole or in part—

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

(c) Measurement of performance

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

(d) Determination of compliance

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

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

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.

¹ So in original.

§4564. Discretionary adjustment of housing goals

(a) Authority

An enterprise may petition the Director in writing at any time during a year to reduce the level of any goal or subgoal for such year established pursuant to this subpart.

(b) Standard for reduction

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

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

(c) Determination

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

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

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) [1](#) Duty

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

(A) Manufactured housing

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

(B) Affordable housing preservation

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

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

(C) Rural markets

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

(b) In general

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

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

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

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

(c) Additional categories

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

(d) Evaluation and reporting of compliance

(1) In general

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

(2) Separate evaluations

In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration__
[2](#)

- (A) the development of loan products, more flexible underwriting guidelines, and other innovative approaches to providing financing to each of such underserved markets;
- (B) the extent of outreach to qualified loan sellers and other market participants in each of such underserved markets;
- (C) the volume of loans purchased in each of such underserved markets relative to the market opportunities available to the enterprise, except that the Director shall not establish specific quantitative targets nor evaluate the enterprises based solely on the volume of loans purchased; and
- (D) the amount of investments and grants in projects which assist in meeting the needs of such underserved markets.

(3) Manufactured housing market

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

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

In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director may not consider any affordable housing fund grant amounts used under section 4567

of this title for eligible activities under subsection (g) of such section.

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

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).

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

² *So in original.*

³ *So in original. Probably should be capitalized.*

§4566. Monitoring and enforcing compliance with housing goals

(a) In general

(1) Authority

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

(2) Guidelines

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

(3) Extent of compliance

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

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

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

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

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

(5) Additional credit

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

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

(1) Notice

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

(2) Response period

(A) In general

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

(B) Extended period

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

(C) Shortened period

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

(D) Failure to respond

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

(3) Consideration of information and final determination

(A) In general

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

- (i) whether the enterprise has failed, or there is a substantial probability that the enterprise will fail, to meet the housing goal; and
- (ii) whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.

(B) Considerations

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

(C) Notice

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

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

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

(1) Requirement

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

(2) Housing plan

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

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

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

(3) Deadline for submission

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

(4) Approval

The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any

plan that the Director determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] (as applicable), this chapter, and any other applicable provision of law.

(5) Notice of approval and disapproval

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

(6) Resubmission

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

(7) Cease and desist orders; civil money penalties

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

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

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 allocated for the Housing Trust Fund under this section to provide affordable housing as described in this subsection.

(2) Permissible designees

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

(3) Distribution to States by needs-based formula

(A) In general

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

(B) Basis for formula

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

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

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

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

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

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

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

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

(C) Priority

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

(4) Allocation of grant amounts

(A) Notice

Not later than 60 days after the date that the Secretary determines the formula amounts described in paragraph (3), the Secretary shall caused ² to be published in the Federal Register a notice that such amounts shall be so available.

(B) Grant amount

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

(C) Minimum State allocations

If the formula amount determined under paragraph (3) for a fiscal year would allocate less than \$3,000,000 to any of the 50 States of the United States or the District of Columbia, the allocation for such State of the United States or the District of Columbia shall be \$3,000,000, and the increase shall be deducted pro rata from the allocations made to all other of the States (as such term is defined in section 4502 of this title).

(5) Allocation plans required

(A) In general

For each year that a State or State designated entity receives a grant under this subsection, the State or State designated entity shall establish an allocation plan. Such plan shall—

- (i) set forth a plan for the distribution of grant amounts received by the State or State designated entity for such year;
- (ii) be based on priority housing needs, as determined by the State or State designated entity in accordance with the regulations established under subsection (g)(2)(D);
- (iii) comply with paragraph (6); and
- (iv) include performance goals that comply with the requirements established by the Secretary pursuant to subsection (g)(2).

(B) Establishment

In establishing an allocation plan under this paragraph, a State or State designated entity shall—

- (i) notify the public of the establishment of the plan;
- (ii) provide an opportunity for public comments regarding the plan;
- (iii) consider any public comments received regarding the plan; and
- (iv) make the completed plan available to the public.

(C) Contents

An allocation plan of a State or State designated entity under this paragraph shall set forth the requirements for eligible recipients under paragraph (8) to apply for such grant amounts, including a requirement that each such application include—

- (i) a description of the eligible activities to be conducted using such assistance; and
- (ii) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assistance will comply with the requirements under this section.

(6) Selection of activities funded using Housing Trust Fund grant amounts

Grant amounts received by a State or State designated entity under this subsection may be used, or committed for use, only for activities that—

- (A) are eligible under paragraph (7) for such use;
- (B) comply with the applicable allocation plan of the State or State designated entity under paragraph (5); and
- (C) are selected for funding by the State or State designated entity in accordance with the process and criteria for such selection established pursuant to subsection (g)(2)(D).

(7) Eligible activities

Grant amounts allocated to a State or State designated entity under this subsection shall be eligible for use, or for commitment for use, only for assistance for—

- (A) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 4565(a)(2)(B) of this title and for operating costs, except that not less than 75 percent of such grant amounts shall be used for the benefit only of extremely low-income families or families with incomes at or below the poverty line (as such term is defined in section 9902 of title 42, including any revision required by such section) applicable to a family of the size involved, and not more than 25 percent for the benefit only of very low-income families; and
- (B) the production, preservation, and rehabilitation of housing for homeownership, including such forms as down payment assistance, closing cost assistance, and assistance for interest rate

buy-downs, that—

(i) is available for purchase only for use as a principal residence by families that qualify both as—

(I) extremely low- and very low-income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

(II) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act [42 U.S.C. 12721 et seq.] shall for purposes of this subsection be considered to refer to assistance from affordable housing fund grant amounts;

(ii) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(1)];

(iii) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12745(b)(3)] and applicable to the participating jurisdiction that is the State in which such housing is located; and

(iv) is made available for purchase only by, or in the case of assistance under this subsection, is made available only to homebuyers who have, before purchase completed a program of independent financial education and counseling from an eligible organization that meets the requirements of section 132 of the Federal Housing Finance Regulatory Reform Act of 2008.³

(8) Tenant protections and public participation

All amounts from the Trust Fund shall be allocated in accordance with, and any eligible activities carried out in whole or in part with grant amounts under this subchapter (including housing provided with such grant amounts) shall comply with and be operated in compliance with—

(A) laws relating to tenant protections and tenant rights to participate in decision making regarding their residences;

(B) laws requiring public participation, including laws relating to Consolidated Plans, Qualified Allocation Plans, and Public Housing Agency Plans; and

(C) fair housing laws and laws regarding accessibility in federally assisted housing, including section 794 of title 29.

(9) Eligible recipients

Grant amounts allocated to a State or State designated entity under this subsection may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity or a nonprofit entity) that—

(A) has demonstrated experience and capacity to conduct an eligible activity under paragraph (7), as evidenced by its ability to—

(i) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

(ii) design, construct or rehabilitate, and market affordable housing for homeownership; or

(iii) provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers;

(B) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

(C) demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

(D) makes such assurances to the State or State designated entity as the Secretary shall, by regulation, require to ensure that the recipient will comply with the requirements of this

subsection during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under paragraph (8) that are engaged in by the recipient and funded with such grant amounts.

(10) Limitations on use

(A) Required amount for homeownership activities

Of the aggregate amount allocated to a State or State designated entity under this subsection not more than 10 percent shall be used for activities under subparagraph (B) of paragraph (7).

(B) Deadline for commitment or use

Grant amounts allocated to a State or State designated entity under this subsection shall be used or committed for use within 2 years of the date that such grant amounts are made available to the State or State designated entity. The Secretary shall recapture any such amounts not so used or committed for use and reallocate such amounts under this subsection in the first year after such recapture.

(C) Use of returns

The Secretary shall, by regulation, provide that any return on a loan or other investment of any grant amount used by a State or State designated entity to provide a loan under this subsection shall be treated, for purposes of availability to and use by the State or State designated entity, as a grant amount authorized under this subsection.

(D) Prohibited uses

The Secretary shall, by regulation—

(i) set forth prohibited uses of grant amounts allocated under this subsection, which shall include use for—

- (I) political activities;
- (II) advocacy;
- (III) lobbying, whether directly or through other parties;
- (IV) counseling services;
- (V) travel expenses; and
- (VI) preparing or providing advice on tax returns;

and for the purposes of this subparagraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26;

(ii) provide that, except as provided in clause (iii), grant amounts of a State or State designated entity may not be used for administrative, outreach, or other costs of—

- (I) the State or State designated entity; or
- (II) any other recipient of such grant amounts; and

(iii) limit the amount of any grant amounts for a year that may be used by the State or State designated entity for administrative costs of carrying out the program required under this subsection, including home ownership counseling, to a percentage of such grant amounts of the State or State designated entity for such year, which may not exceed 10 percent.

(E) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 4565 of this title, the Director may not consider any grant amounts used under this section for eligible activities under paragraph (7). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from such grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(d) Reduction for failure to obtain return of misused funds

If in any year a State or State designated entity fails to obtain reimbursement or return of the full amount required under subsection (e)(1)(B) to be reimbursed or returned to the State or State designated entity during such year—

(1) except as provided in paragraph (2)—

(A) the amount of the grant for the State or State designated entity for the succeeding year, as determined pursuant to this section, shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

(B) the amount of the grant for the succeeding year for each other State or State designated entity whose grant is not reduced pursuant to subparagraph (A) shall be increased by the amount determined by applying the formula established pursuant to this section to the total amount of all reductions for all State or State designated entities for such year pursuant to subparagraph (A); or

(2) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this section will not be made, the State or State designated entity shall pay to the Secretary for reallocation among the other grantees an amount equal to the amount of the reduction for the entity that would otherwise apply under paragraph (1)(A).

(e) Accountability of recipients and grantees

(1) Recipients

(A) Tracking of funds

The Secretary shall—

(i) require each State or State designated entity to develop and maintain a system to ensure that each recipient of assistance under this section uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

(ii) establish minimum requirements for agreements, between the State or State designated entity and recipients, regarding assistance under this section, which shall include—

(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the assistance to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate administration and compliance.

(B) Misuse of funds

(i) Reimbursement requirement

If any recipient of assistance under this section is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the State or State designated entity shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the State or State designated entity for such misused amounts and return to the State or State designated entity any such amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.

(ii) Determination

A determination is made in accordance with this clause if the determination is made by the Secretary or made by the State or State designated entity, provided that—

(I) the State or State designated entity provides notification of the determination to the Secretary for review, in the discretion of the Secretary, of the determination; and

(II) the Secretary does not subsequently reverse the determination.

(2) Grantees

(A) Report

(i) In general

The Secretary shall require each State or State designated entity receiving grant amounts in any given year under this section to submit a report, for such year, to the Secretary that—

(I) describes the activities funded under this section during such year with such grant amounts; and

(II) the ⁴ manner in which the State or State designated entity complied during such year with any allocation plan established pursuant to subsection (c).

(ii) Public availability

The Secretary shall make such reports pursuant to this subparagraph publicly available.

(B) Misuse of funds

If the Secretary determines, after reasonable notice and opportunity for hearing, that a State or State designated entity has failed to comply substantially with any provision of this section, and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

(i) reduce the amount of assistance under this section to the State or State designated entity by an amount equal to the amount of grant amounts which were not used in accordance with this section;

(ii) require the State or State designated entity to repay the Secretary any amount of the grant which was not used in accordance with this section;

(iii) limit the availability of assistance under this section to the State or State designated entity to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this section to the State or State designated entity.

(f) Definitions

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

(1) Extremely low-income renter household

The term "extremely low-income renter household" means a household whose income is not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(2) Recipient

The term "recipient" means an individual or entity that receives assistance from a State or State designated entity from amounts made available to the State or State designated entity under this section.

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

(A) In general

The term "shortage of standard rental units both affordable and available to extremely low-income renter households" means for any State or other geographical area the gap between—

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

(ii) the number of extremely low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of extremely

low-income households as described in subparagraph (A)(ii), there is no shortage.

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

(A) In general

The term "shortage of standard rental units both affordable and available to very low-income renter households" means for any State or other geographical area the gap between—

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

(B) Rule of construction

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

(5) Very low-income family

The term "very low-income family" has the meaning given such term in section 4502 of this title, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 9902(2) of title 42, including any revision required by such section) applicable to a family of the size involved.

(6) Very low-income renter households

The term "very low-income renter households" means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(g) Regulations

(1) In general

The Secretary shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

(A) a requirement that the Secretary ensure that the use of grant amounts under this section by States or State designated entities is audited not less than annually to ensure compliance with this section;

(B) authority for the Secretary to audit, provide for an audit, or otherwise verify a State or State designated entity's activities to ensure compliance with this section;

(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee or recipient to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants;

(D) requirements for a process for application to, and selection by, each State or State designated entity for activities meeting the State or State designated entity's priority housing needs to be funded with grant amounts under this section, which shall provide for priority in funding to be based upon—

- (i) geographic diversity;
- (ii) ability to obligate amounts and undertake activities so funded in a timely manner;
- (iii) in the case of rental housing projects under subsection (c)(7)(A), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;
- (iv) in the case of rental housing projects under subsection (c)(7)(A), the extent of the duration for which such rents will remain affordable;
- (v) the extent to which the application makes use of other funding sources; and

(vi) the merits of an applicant's proposed eligible activity;

(E) requirements to ensure that grant amounts provided to a State or State designated entity under this section that are used for rental housing under subsection (c)(7)(A) are used only for the benefit of extremely low- and very low-income families; and

(F) requirements and standards for establishment, by a State or State designated entity, for use of grant amounts in 2009 and subsequent years of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts.

(h) Affordable housing trust fund

If, after July 30, 2008, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this chapter for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (c), the Secretary shall in such subsequent year and any remaining years referred to in subsection (c) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (c) in such year. Notwithstanding any other provision of law, assistance provided using amounts transferred to such affordable housing trust fund pursuant to this subsection may not be used for any of the activities specified in clauses (i) through (vi) of subsection (c)(9)(D).

(i) Funding accountability and transparency

Any grant under this section to a grantee by a State or State designated entity, any assistance provided to a recipient by a State or State designated entity, and any grant, award, or other assistance from an affordable housing trust fund referred to in subsection (h) shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note). Upon the request of the Director of the Office of Management and Budget, the Secretary shall obtain and provide such information regarding any such grants, assistance, and awards as the Director of the Office of Management and Budget considers necessary to comply with the requirements of such Act, as applicable, pursuant to the preceding sentence.

(Pub. L. 102-550, title XIII, §1338, as added Pub. L. 110-289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2712.)

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.

¹ *So in original. Probably should be "this clause."*

² *So in original. Probably should be "cause".*

³ *See References in Text note below.*

⁴ *So in original. A word appears to be missing before "the".*

§4569. Capital Magnet Fund

(a) Establishment

There is established in the Treasury of the United States a trust fund to be known as the Capital Magnet Fund, which shall be a special account within the Community Development Financial Institutions Fund.

(b) Deposits to Trust Fund

The Capital Magnet Fund shall consist of—

- (1) any amounts transferred to the Fund pursuant to section 4567 of this title; and
- (2) any amounts as are or may be appropriated, transferred, or credited to such Fund under any other provisions of law.

(c) Expenditures from Trust Fund

Amounts in the Capital Magnet Fund shall be available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for and increase investment in—

- (1) the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families; and
- (2) economic development activities or community service facilities, such as day care centers, workforce development centers, and health care clinics, which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.

(d) Federal assistance

For purposes of the application of Federal civil rights laws, all assistance provided using amounts in the Capital Magnet Fund shall be considered Federal financial assistance.

(e) Eligible grantees

A grant under this section may be made, pursuant to such requirements as the Secretary of the Treasury shall establish for experience and success in attracting private financing and carrying out the types of activities proposed under the application of the grantee, only to—

- (1) a Treasury certified community development financial institution; or
- (2) a nonprofit organization having as 1 of its principal purposes the development or management of affordable housing.

(f) Eligible uses

Grant amounts awarded from the Capital Magnet Fund pursuant to this section may be used for the purposes described in paragraphs (1) and (2) of subsection (c), including for the following uses:

- (1) To provide loan loss reserves.
- (2) To capitalize a revolving loan fund.
- (3) To capitalize an affordable housing fund.
- (4) To capitalize a fund to support activities described in subsection (c)(2).

(5) For risk-sharing loans.

(g) Applications

(1) In general

The Secretary of the Treasury shall provide, in a competitive application process established by regulation, for eligible grantees under subsection (e) to submit applications for Capital Magnet Fund grants to the Secretary at such time and in such manner as the Secretary shall determine.

(2) Content of application

The application required under paragraph (1) shall include a detailed description of—

(A) the types of affordable housing, economic, and community revitalization projects that support or sustain residents of an affordable housing project funded by a grant under this section for which such grant amounts would be used, including the proposed use of eligible grants as authorized under this section;

(B) the types, sources, and amounts of other funding for such projects; and

(C) the expected time frame of any grant used for such project.

(h) Grant limitation

(1) In general

Any 1 eligible grantee and its subsidiaries and affiliates may not be awarded more than 15 percent of the aggregate funds available for grants during any year from the Capital Magnet Fund.

(2) Geographic diversity

(A) Goal

The Secretary of the Treasury shall seek to fund activities in geographically diverse areas of economic distress, including metropolitan and underserved rural areas in every State.

(B) Diversity defined

For purposes of this paragraph, geographic diversity includes those areas that meet objective criteria of economic distress developed by the Secretary of the Treasury, which may include—

(i) the percentage of low-income families or the extent of poverty;

(ii) the rate of unemployment or underemployment;

(iii) extent of blight and disinvestment;

(iv) projects that target extremely low-, very low-, and low-income families in or outside a designated economic distress area; or

(v) any other criteria designated by the Secretary of the Treasury.

(3) Leverage of funds

Each grant from the Capital Magnet Fund awarded under this section shall be reasonably expected to result in eligible housing, or economic and community development projects that support or sustain an affordable housing project funded by a grant under this section whose aggregate costs total at least 10 times the grant amount.

(4) Commitment for use deadline

Amounts made available for grants under this section shall be committed for use within 2 years of the date of such allocation. The Secretary of the Treasury shall recapture into the Capital Magnet Fund any amounts not so used or committed for use and allocate such amounts in the first year after such recapture.

(5) Prohibited uses

The Secretary shall, by regulation, set forth prohibited uses of grant amounts awarded under this section, which shall include use for—

(A) political activities;

(B) advocacy;

(C) lobbying, whether directly or through other parties;

- (D) counseling services;
- (E) travel expenses; and
- (F) preparing or providing advice on tax returns;

and for the purposes of this paragraph, the prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office as codified in section 501 of title 26.

(6) Additional lobbying restrictions

No assistance or amounts made available under this section may be expended by an eligible grantee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan, or cooperative agreement as such terms are defined in section 1352 of title 31.

(7) Prohibition of consideration of use for meeting housing goals or duty to serve

In determining the compliance of the enterprises with the housing goals under this section and the duty to serve underserved markets under section 4565 of this title, the Director of the Federal Housing Finance Agency may not consider any Capital Magnet Fund amounts used under this section for eligible activities under subsection (f). The Director of the Federal Housing Finance Agency shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from Capital Magnet Fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

(8) Accountability of recipients and grantees

(A) Tracking of funds

The Secretary of the Treasury shall—

(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from the Capital Magnet Fund uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and

(ii) establish minimum requirements for agreements, between the grantee and the Capital Magnet Fund, regarding assistance from the Capital Magnet Fund, which shall include—

(I) appropriate periodic financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and

(II) any other requirements that the Secretary determines are necessary to ensure appropriate grant administration and compliance.

(B) Misuse of funds

If the Secretary of the Treasury determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall—

(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of Capital Magnet Fund grant amounts which were not used in accordance with this section;

(ii) require the grantee to repay the Secretary any amount of the Capital Magnet Fund grant amounts which were not used in accordance with this section;

(iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this section to the grantee.

(i) Periodic reports

(1) In general

The Secretary of the Treasury shall submit a report, on a periodic basis, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the activities to be funded under this section.

(2) Reports available to public

The Secretary of the Treasury shall make the reports required under paragraph (1) publicly available.

(j) Regulations

(1) In general

The Secretary of the Treasury shall issue regulations to carry out this section.

(2) Required contents

The regulations issued under this subsection shall include—

(A) authority for the Secretary to audit, provide for an audit, or otherwise verify an enterprise's activities, to ensure compliance with this section;

(B) a requirement that the Secretary ensure that the allocation of each enterprise is audited not less than annually to ensure compliance with this section;

(C) a requirement that, for the purposes of subparagraphs (A) and (B), any financial statement submitted by a grantee to the Secretary shall be reviewed by an independent certified public accountant in accordance with Statements on Standards for Accounting and Review Services, issued by the American Institute of Certified Public Accountants; and

(D) requirements for a process for application to, and selection by, the Secretary for activities to be funded with amounts from the Capital Magnet Fund, which shall provide that—

(i) funds be fairly distributed to urban, suburban, and rural areas; and

(ii) selection shall be based upon specific criteria, including a prioritization of funding based upon—

(I) the ability to use such funds to generate additional investments;

(II) affordable housing need (taking into account the distinct needs of different regions of the country); and

(III) ability to obligate amounts and undertake activities so funded in a timely manner.

(Pub. L. 102–550, title XIII, §1339, as added Pub. L. 110–289, div. A, title I, §1131(b), July 30, 2008, 122 Stat. 2723.)

SUBPART 3—ENFORCEMENT

§4581. Cease and desist proceedings

(a) Grounds for issuance

The Director may issue and serve a notice of charges under this section upon an enterprise if the Director determines that—

(1) the enterprise has failed to submit a report under section 4547 ¹ of this title, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

(2) the enterprise has failed to submit the information required under subsection (m) or (n) of section 1723a of this title, or subsection (e) or (f) of section 1456 of this title;

(3) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, the enterprise has failed to submit a housing plan that complies with section 4566(c) of this title within the applicable period; or

(4) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, the enterprise has failed to comply with a housing plan under section 4566(c) of this title.

(b) Procedure

(1) Notice of charges

Each notice of charges issued under this section shall contain a statement of the facts constituting the alleged conduct and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such conduct should issue.

(2) Issuance of order

If the Director finds on the record made at a hearing described in paragraph (1) that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 4582(a)(4) of this title), the Director may issue and serve upon the enterprise an order requiring the enterprise to—

(A) submit a report under section 4547 ¹ of this title;

(B) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, submit a housing plan in compliance with section 4566(c) of this title;

(C) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, comply with the housing plan in compliance with section 4566(c) of this title; or

(D) provide the information required under subsection (m) or (n) of section 1723a of this title, or subsection (e) or (f) of section 1456 of this title.

(c) Effective date

An order under this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the enterprise (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subpart. (Pub. L. 102–550, title XIII, §1341, as added Pub. L. 110–289, div. A, title I, §1130(c)(2), July 30, 2008, 122 Stat. 2708.)

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.

¹ [*See References in Text note below.*](#)

§4582. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4581 or 4585 of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4581(b)(1) of this title or determination to impose a penalty under section 4585(c)(1) of this title, unless an earlier or a later date is set by the hearing officer at the request of the enterprise served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the enterprise served fails to appear at the hearing through a duly authorized representative, such enterprise shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(b) Issuance of order

(1) In general

After any such hearing, and within 90 days after the enterprise has been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon the enterprise an order or orders consistent with the provisions of this subpart.

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4583 of this title. Unless such a petition for review is timely filed as provided in section 4583 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102-550, title XIII, §1342, Oct. 28, 1992, 106 Stat. 3965; Pub. L. 110-289, div. A, title I, §1130(e)(3)(A), July 30, 2008, 122 Stat. 2711.)

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 ¹ of this title, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

(2) submit the information required under subsection (m) or (n) of section 1723a of this title or subsection (e) or (f) of section 1456 of this title;

(3) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of this title, submit a housing plan or perform its responsibilities under a remedial order issued pursuant to section 4566(c) of this title within the required period; or

(4) solely with respect to the housing goals established under sections 4562(a) and 4563(a)(1) of

this title, comply with a housing plan for the enterprise under section 4566(c) of this title.

(b) Amount of penalty

The amount of a penalty under this section, as determined by the Director, may not exceed—

(1) for any failure described in paragraph (1), (5), or (6) of subsection (a), \$100,000 for each day that the failure occurs; and

(2) for any failure described in paragraph (2), (3), or (4) of subsection (a), \$50,000 for each day that the failure occurs.

(c) Procedures

(1) Establishment

The Director shall establish standards and procedures governing the imposition of civil money penalties under this section. Such standards and procedures—

(A) shall provide for the Director to notify the enterprise in writing of the determination of the Director to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the enterprise has been given an opportunity for a hearing on the record pursuant to section 4582 of this title; and

(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Factors in determining amount of penalty

In determining the amount of a penalty under this section, the Director shall give consideration to factors including—

(A) the gravity of the offense;

(B) any history of prior offenses;

(C) ability to pay the penalty;

(D) injury to the public;

(E) benefits received;

(F) deterrence of future violations;

(G) the length of time that the enterprise should reasonably take to achieve the goal; and

(H) such other factors as the Director may determine, by regulation, to be appropriate.

(d) Action to collect penalty

If an enterprise fails to comply with an order by the Director imposing a civil money penalty under this section, after the order is no longer subject to review, as provided in sections 4582 and 4583 of this title, the Director may bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorneys' fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Deposit of penalties

The Director shall use any civil money penalties collected under this section to help fund the Housing Trust Fund established under section 4568 of this title.

(Pub. L. 102–550, title XIII, §1345, as added Pub. L. 110–289, div. A, title I, §1130(d)(2), July 30, 2008, 122 Stat. 2709.)

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.

¹ [*See References in Text note below.*](#)

§4586. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Secretary's ¹ discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subpart and that has become final in accordance with sections 4582 and 4583 of this title; and

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

(b) Hearings

All hearings with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the Secretary's ¹ discretion, determines that holding an open hearing would be contrary to the public interest.

(c) Delay of public disclosure under exceptional circumstances

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

(d) Documents filed under seal in public enforcement hearings

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

(e) Retention of documents

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

(f) Disclosures to Congress

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

(Pub. L. 102–550, title XIII, §1346, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110–289, div. A, title I, §1130(e)(3)(C), July 30, 2008, 122 Stat. 2711.)

EDITORIAL NOTES

AMENDMENTS

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

¹ So in original. Probably should be "Director's".

§4587. Notice of service

Any service required or authorized to be made by the Director under this subpart may be made by registered mail or in such other manner reasonably calculated to give actual notice, as the Director may by regulation or otherwise provide.

(Pub. L. 102–550, title XIII, §1347, Oct. 28, 1992, 106 Stat. 3968; Pub. L. 110–289, div. A, title I, §1130(e)(3)(D), July 30, 2008, 122 Stat. 2711.)

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.)

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 issued or guaranteed by the enterprise that are not included in paragraph (1); and
- (3) 0.45 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(b) Federal Home Loan Banks

For purposes of this subchapter, the minimum capital level for each Federal Home Loan Bank shall be the minimum capital required to be maintained to comply with the leverage requirement for the bank established under section 1426(a)(2) of this title.

(c) Establishment of revised minimum capital levels

Notwithstanding subsections (a) and (b) and notwithstanding the capital classifications of the regulated entities, the Director may, by regulations issued under section 4526 of this title, establish a minimum capital level for the enterprises, for the Federal Home Loan Banks, or for both the enterprises and the banks, that is higher than the level specified in subsection (a) for the enterprises or the level specified in subsection (b) for the Federal Home Loan Banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

(d) Authority to require temporary increase

(1) In general

Notwithstanding subsections (a) and (b) and any minimum capital level established pursuant to subsection (c), the Director may, by order, increase the minimum capital level for a regulated entity on a temporary basis, when the Director determines that such an increase is necessary and consistent with the prudential regulation and the safe and sound operations of a regulated entity.

(2) Rescission

The Director shall rescind any temporary minimum capital level established under paragraph (1) when the Director determines that the circumstances or facts no longer justify the temporary

minimum capital level.

(3) Regulations required

The Director shall issue regulations establishing—

(A) standards for the imposition of a temporary increase in minimum capital under paragraph (1);

(B) the standards and procedures that the Director will use to make the determination referred to in paragraph (2); and

(C) a reasonable time frame for periodic review of any temporary increase in minimum capital for the purpose of making the determination referred to in paragraph (2).

(e) Authority to establish additional capital and reserve requirements for particular purposes

The Director may, at any time by order or regulation, establish such capital or reserve requirements with respect to any product or activity of a regulated entity, as the Director considers appropriate to ensure that the regulated entity operates in a safe and sound manner, with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.

(f) Periodic review

The Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal Home Loan Banks, and the minimum capital levels established for such regulated entities pursuant to this section.

(Pub. L. 102-550, title XIII, §1362, Oct. 28, 1992, 106 Stat. 3975; Pub. L. 110-289, div. A, title I, §1111, July 30, 2008, 122 Stat. 2676.)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, §1111(1), substituted "Enterprises" for "In general" in heading.

Subsecs. (b) to (f). Pub. L. 110-289, §1111(2), added subsecs. (b) to (f) and struck out former subsec. (b) which related to minimum capital level during transition period.

§4613. Critical capital levels

(a) Enterprises

For purposes of this subchapter, the critical capital level for each enterprise shall be the sum of—

(1) 1.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.25 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

(3) 0.25 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(b) Federal Home Loan Banks

(1) In general

For purposes of this subchapter, the critical capital level for each Federal Home Loan Bank shall be such amount of capital as the Director shall, by regulation, require.

(2) Consideration of other critical capital levels

In establishing the critical capital level under paragraph (1) for the Federal Home Loan Banks,

the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.

(Pub. L. 102–550, title XIII, §1363, Oct. 28, 1992, 106 Stat. 3976; Pub. L. 110–289, div. A, title I, §1141(a), July 30, 2008, 122 Stat. 2730.)

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–289 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS

Pub. L. 110–289, div. A, title I, §1141(b), July 30, 2008, 122 Stat. 2730, provided that: "Not later than the expiration of the 180-day period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1363(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4613(b)] (as added by this section) establishing the critical capital level under such section."

§4614. Capital classifications

(a) Enterprises

For purposes of this subchapter, the Director shall classify the enterprises according to the following capital classifications:

(1) Adequately capitalized

An enterprise shall be classified as adequately capitalized if the enterprise—

(A) maintains an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise under section 4611 of this title; and

(B) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise under section 4612 of this title.

(2) Undercapitalized

An enterprise shall be classified as undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; or

(B) the enterprise is otherwise classified as undercapitalized under subsection (b)(1) of this section.

(3) Significantly undercapitalized

An enterprise shall be classified as significantly undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise;

(ii) does not maintain an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; and

(iii) maintains an amount of core capital that is equal to or exceeds the critical capital level

established for the enterprise under section 4613 of this title; or

(B) the enterprise is otherwise classified as significantly undercapitalized under subsection (b)(2) of this section or section 4615(b) of this title.

(4) Critically undercapitalized

An enterprise shall be classified as critically undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) does not maintain an amount of core capital that is equal to or exceeds the critical capital level for the enterprise; or

(B) is otherwise classified as critically undercapitalized under subsection (b)(3) of this section or section 4616(b)(5) ¹ of this title.

(b) Federal Home Loan Banks

(1) Establishment and criteria

For purposes of this subchapter, the Director shall, by regulation—

(A) establish the capital classifications specified under paragraph (2) for the Federal Home Loan Banks;

(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and

(C) shall classify the Federal Home Loan Banks according to such capital classifications.

(2) Classifications

The capital classifications specified under this paragraph are—

(A) adequately capitalized;

(B) undercapitalized;

(C) significantly undercapitalized; and

(D) critically undercapitalized.

(c) Discretionary classification

(1) Grounds for reclassification

The Director may reclassify a regulated entity under paragraph (2) if—

(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or the value of collateral pledged as security has decreased significantly or that the value of the property subject to mortgages held by the regulated entity (or securitized in the case of an enterprise) has decreased significantly;

(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or

(C) pursuant to section 4631(b) of this title, the Director deems the regulated entity to be engaging in an unsafe or unsound practice.

(2) Reclassification

In addition to any other action authorized under this chapter, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1), the Director may classify a regulated entity—

(A) as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;

(B) as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and

(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.

(d) Quarterly determination

The Director shall determine the capital classification of the regulated entities for purposes of this subchapter on not less than a quarterly basis (and as appropriate under subsection (c)).

(e) Restriction on capital distributions

(1) In general

A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

(2) Exception

Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(A) is made in connection with the issuance of additional shares or obligations of the regulated entity in at least an equivalent amount; and

(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.

(f) Implementation

Notwithstanding any other provision of this section, during the period beginning on October 28, 1992, and ending upon the effective date of section 4615 of this title (as provided in section 4615(c) ¹ of this title), an enterprise shall be classified as adequately capitalized if the enterprise maintains an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise under section 4612 of this title.

(Pub. L. 102–550, title XIII, §1364, Oct. 28, 1992, 106 Stat. 3976; Pub. L. 110–289, div. A, title I, §§1142(a), 1161(a)(3), July 30, 2008, 122 Stat. 2730, 2779.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4616(b)(5) of this title, referred to in subsec. (a)(4)(B), was redesignated section 4616(b)(6) of this title by Pub. L. 110–289, div. A, title I, §1144(5)(D), July 30, 2008, 122 Stat. 2733.

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

Section 4615(c) of this title, referred to in subsec. (f), was repealed and a new section 4615(c) was added by Pub. L. 110–289, div. A, title I, §1143(6), July 30, 2008, 122 Stat. 2734. The new section 4615(c) does not relate to effective date.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1142(a)(1), substituted "Enterprises" for "In general" in heading.

Subsec. (b). Pub. L. 110–289, §1142(a)(4), added subsec. (b) and struck out former subsec. (b) which related to discretionary classification.

Subsec. (c). Pub. L. 110–289, §1161(a)(3), which directed amendment of subsec. (c) by striking out the last sentence, was not executed as the probable intent of Congress. The amendment was probably intended to strike out the last sentence of former subsec. (c), now subsec. (d), as it existed prior to being struck out by Pub. L. 110–289, §1142(a)(2)(C). See below.

Pub. L. 110–289, §1142(a)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 110–289, §1142(a)(2)(C), struck out last sentence which read as follows: "The first such determination shall be made during the 3-month period beginning on the appointment of the Director."

Pub. L. 110–289, §1142(a)(2)(A), (B), substituted "regulated entities" for "enterprises" and "subsection (c)"

for "subsection (b)".

Subsec. (d). Pub. L. 110–289, §1142(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 110–289, §1142(a)(5), added subsec. (e).

Subsec. (f). Pub. L. 110–289, §1142(a)(3), redesignated subsec. (d) as (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS

Pub. L. 110–289, div. A, title I, §1142(b), July 30, 2008, 122 Stat. 2732, provided that: "Not later than the expiration of the 180-day period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4614(b)] (as added by this section), relating to capital classifications for the Federal Home Loan Banks."

¹ [*See References in Text note below.*](#)

§4615. Supervisory actions applicable to undercapitalized regulated entities

(a) Mandatory actions

(1) Required monitoring

The Director shall—

- (A) closely monitor the condition of any undercapitalized regulated entity;
- (B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized regulated entity under this section; and
- (C) periodically review the plan, restrictions, and requirements applicable to an undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

(2) Capital restoration plan

A regulated entity that is classified as undercapitalized shall, within the time period provided in section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(3) Restriction on capital distributions

A regulated entity that is classified as undercapitalized may not make any capital distribution that would result in the regulated entity being reclassified as significantly undercapitalized or critically undercapitalized.

(4) Restriction of asset growth

An undercapitalized regulated entity shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless—

- (A) the Director has accepted the capital restoration plan of the regulated entity;
- (B) any increase in total assets is consistent with the capital restoration plan; and
- (C) the ratio of tangible equity to assets of the regulated entity increases during the calendar quarter at a rate sufficient to enable the regulated entity to become adequately capitalized within a reasonable time.

(5) Prior approval of acquisitions and new activities

An undercapitalized regulated entity shall not, directly or indirectly, acquire any interest in any entity or engage in any new activity, unless—

- (A) the Director has accepted the capital restoration plan of the regulated entity, the regulated entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

(B) the Director determines that the proposed action will further the purpose of this subchapter.

(b) Reclassification from undercapitalized to significantly undercapitalized

The Director shall reclassify as significantly undercapitalized a regulated entity that is classified as undercapitalized (and the regulated entity shall be subject to the provisions of section 4616 of this title) if—

(1) the regulated entity does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not approve the capital restoration plan submitted by the regulated entity; or

(2) the Director determines that the regulated entity has failed to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director in any material respect.

(c) Other discretionary safeguards

The Director may take, with respect to an undercapitalized regulated entity, any of the actions authorized to be taken under section 4616 of this title with respect to a significantly undercapitalized regulated entity, if the Director determines that such actions are necessary to carry out the purpose of this subchapter.

(Pub. L. 102–550, title XIII, §1365, Oct. 28, 1992, 106 Stat. 3978; Pub. L. 110–289, div. A, title I, §1143, July 30, 2008, 122 Stat. 2732.)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1143(4)(B), added par. (1). Former par. (1) redesignated (2). Pub. L. 110–289, §1143(2), substituted "A regulated entity" for "An enterprise".

Subsec. (a)(2). Pub. L. 110–289, §1143(4)(A), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pub. L. 110–289, §1143(1), (2), substituted "the regulated entity" for "the enterprise" and "A regulated entity" for "An enterprise".

Subsec. (a)(3). Pub. L. 110–289, §1143(4)(A), redesignated par. (2) as (3).

Subsec. (a)(4), (5). Pub. L. 110–289, §1143(4)(C), added pars. (4) and (5).

Subsec. (b). Pub. L. 110–289, §1143(5)(A), (B), substituted "Reclassification" for "Discretionary reclassification" in heading and "shall" for "may" in introductory provisions.

Pub. L. 110–289, §1143(1), (3), substituted "a regulated entity" for "an enterprise" and "the regulated entity" for "the enterprise" in introductory provisions.

Subsec. (b)(1). Pub. L. 110–289, §1143(1), substituted "the regulated entity" for "the enterprise" in two places.

Subsec. (b)(2). Pub. L. 110–289, §1143(5)(C), struck out "make, in good faith, reasonable efforts necessary to" before "comply with" and inserted "in any material respect" before period at end.

Pub. L. 110–289, §1143(1), substituted "the regulated entity" for "the enterprise".

Subsec. (c). Pub. L. 110–289, §1143(6), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "This section shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under section 4611(e) of this title establishing the risk-based capital test."

§4616. Supervisory actions applicable to significantly undercapitalized regulated entities

(a) Mandatory supervisory actions

(1) Capital restoration plan

A regulated entity that is classified as significantly undercapitalized shall, within the time period under section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(2) Restrictions on capital distributions

(A) Prior approval

A regulated entity that is classified as significantly undercapitalized may not make any capital distribution that would result in the regulated entity being reclassified as critically undercapitalized. A regulated entity that is classified as significantly undercapitalized may not make any other capital distribution unless the Director approves the distribution.

(B) Standard for approval

The Director may approve a capital distribution by a regulated entity classified as significantly undercapitalized only if the Director determines that the distribution (i) will enhance the ability of the regulated entity to meet the risk-based capital level and the minimum capital level for the regulated entity promptly, (ii) will contribute to the long-term financial safety and soundness of the regulated entity, or (iii) is otherwise in the public interest.

(b) Specific actions

In addition to any other actions taken by the Director (including actions under subsection (a)), the Director shall carry out this section by taking, at any time, 1 or more of the following actions with respect to a regulated entity that is classified as significantly undercapitalized:

(1) Limitation on increase in obligations

Limit any increase in, or order the reduction of, any obligations of the regulated entity, including off-balance sheet obligations.

(2) Limitation on growth

Limit or prohibit the growth of the assets of the regulated entity or require contraction of the assets of the regulated entity.

(3) Acquisition of new capital

Require the regulated entity to acquire new capital in a form and amount determined by the Director.

(4) Restriction of activities

Require the regulated entity to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the regulated entity.

(5) Improvement of management

Take 1 or more of the following actions:

(A) New election of board

Order a new election for the board of directors of the regulated entity.

(B) Dismissal of directors or executive officers

Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the date on which the regulated entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the enforcement powers of the Director under section 4636a of this title.

(C) Employ qualified executive officers

Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).

(6) Reclassification from significantly to critically undercapitalized

The Director may reclassify as critically undercapitalized a regulated entity that is classified as significantly undercapitalized (and the regulated entity shall be subject to the provisions of section 4617 of this title) if—

(A) the regulated entity does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not

approve the capital restoration plan submitted by the regulated entity; or

(B) the Director determines that the regulated entity has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

(7) Other action

Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the other actions specified in this subsection.

(c) Restriction on compensation of executive officers

A regulated entity that is classified as significantly undercapitalized in accordance with section 4614 of this title may not, without prior written approval by the Director—

(1) pay any bonus to any executive officer; or

(2) provide compensation to any executive officer at a rate exceeding the average rate of compensation of that officer (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became significantly undercapitalized.

(Pub. L. 102–550, title XIII, §1366, Oct. 28, 1992, 106 Stat. 3978; Pub. L. 110–289, div. A, title I, §1144, July 30, 2008, 122 Stat. 2733.)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1144(3), substituted "A regulated entity" for "An enterprise".

Subsec. (a)(2)(A). Pub. L. 110–289, §1144(1)–(3), substituted "A regulated entity" for "An enterprise" in two places, "the regulated entity" for "the enterprise", and, in second sentence, "undercapitalized" for "undercapitalized enterprise".

Subsec. (a)(2)(B). Pub. L. 110–289, §1144(2), (4), substituted "a regulated entity" for "an enterprise" and "the regulated entity" for "the enterprise" wherever appearing.

Subsec. (b). Pub. L. 110–289, §1144(4), (5)(A), (B), substituted "Specific" for "Discretionary supervisory" in heading and "shall carry out this section by taking, at any time, 1 or more" for "may, at any time, take any" and "a regulated entity" for "an enterprise" in introductory provisions.

Subsec. (b)(1) to (4). Pub. L. 110–289, §1144(2), substituted "the regulated entity" for "the enterprise" wherever appearing.

Subsec. (b)(5). Pub. L. 110–289, §1144(5)(E), added par. (5). Former par. (5) redesignated (6).

Pub. L. 110–289, §1144(2), (4), substituted "a regulated entity" for "an enterprise" in introductory provisions and "the regulated entity" for "the enterprise" wherever appearing.

Subsec. (b)(6). Pub. L. 110–289, §1144(5)(C), (D), redesignated par. (5) as (6) and struck out former par. (6) which permitted the Director to appoint a conservator.

Subsec. (b)(7). Pub. L. 110–289, §1144(5)(F), added par. (7).

Subsec. (c). Pub. L. 110–289, §1144(6), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 4614 of this title."

§4617. Authority over critically undercapitalized regulated entities

(a) Appointment of the Agency as conservator or receiver

(1) In general

Notwithstanding any other provision of Federal or State law, the Director may appoint the Agency as conservator or receiver for a regulated entity in the manner provided under paragraph (2) or (4). All references to the conservator or receiver under this section are references to the Agency acting as conservator or receiver.

(2) Discretionary appointment

The Agency may, at the discretion of the Director, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

(3) Grounds for discretionary appointment of conservator or receiver

The grounds for appointing conservator or receiver for any regulated entity under paragraph (2) are as follows:

(A) Assets insufficient for obligations

The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.

(B) Substantial dissipation

Substantial dissipation of assets or earnings due to—

- (i) any violation of any provision of Federal or State law; or
- (ii) any unsafe or unsound practice.

(C) Unsafe or unsound condition

An unsafe or unsound condition to transact business.

(D) Cease and desist orders

Any willful violation of a cease and desist order that has become final.

(E) Concealment

Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

(F) Inability to meet obligations

The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

(G) Losses

The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 4614(a)(1) of this title).

(H) Violations of law

Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

- (i) cause insolvency or substantial dissipation of assets or earnings; or
- (ii) weaken the condition of the regulated entity.

(I) Consent

The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) Undercapitalization

The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 4614(a)(3) of this title), and—

- (i) has no reasonable prospect of becoming adequately capitalized;
- (ii) fails to become adequately capitalized, as required by—
 - (I) section 4615(a)(1) of this title with respect to a regulated entity; or
 - (II) section 4616(a)(1) of this title with respect to a significantly undercapitalized regulated entity;

(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 4622 of this title; or

- (iv) materially fails to implement a capital restoration plan submitted and accepted under

section 4622 of this title.

(K) Critical undercapitalization

The regulated entity is critically undercapitalized, as defined in section 4614(a)(4) of this title.

(L) Money laundering

The Attorney General notifies the Director in writing that the regulated entity has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31.

(4) Mandatory receivership

(A) In general

The Director shall appoint the Agency as receiver for a regulated entity if the Director determines, in writing, that—

- (i) the assets of the regulated entity are, and during the preceding 60 calendar days have been, less than the obligations of the regulated entity to its creditors and others; or
- (ii) the regulated entity is not, and during the preceding 60 calendar days has not been, generally paying the debts of the regulated entity (other than debts that are the subject of a bona fide dispute) as such debts become due.

(B) Periodic determination required for critically undercapitalized regulated entity

If a regulated entity is critically undercapitalized, the Director shall make a determination, in writing, as to whether the regulated entity meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

- (i) not later than 30 calendar days after the regulated entity initially becomes critically undercapitalized; and
- (ii) at least once during each succeeding 30-calendar day period.

(C) Determination not required if receivership already in place

Subparagraph (B) does not apply with respect to a regulated entity in any period during which the Agency serves as receiver for the regulated entity.

(D) Receivership terminates conservatorship

The appointment of the Agency as receiver of a regulated entity under this section shall immediately terminate any conservatorship established for the regulated entity under this chapter.

(5) Judicial review

(A) In general

If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States district court for the judicial district in which the home office of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

(B) Review

Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

(6) Directors not liable for acquiescing in appointment of conservator or receiver

The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

(7) Agency not subject to any other Federal agency

When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

(b) Powers and duties of the Agency as conservator or receiver

(1) Rulemaking authority of the agency

The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) General powers

(A) Successor to regulated entity

The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—

- (i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and
- (ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

(B) Operate the regulated entity

The Agency may, as conservator or receiver—

- (i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;
- (ii) collect all obligations and money due the regulated entity;
- (iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver;
- (iv) preserve and conserve the assets and property of the regulated entity; and
- (v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Agency as conservator or receiver.

(C) Functions of officers, directors, and shareholders of a regulated entity

The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

(D) Powers as conservator

The Agency may, as conservator, take such action as may be—

- (i) necessary to put the regulated entity in a sound and solvent condition; and
- (ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity.

(E) Additional powers as receiver

In any case in which the Agency is acting as receiver, the Agency shall place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity in such manner as the Agency deems appropriate, including through the sale of assets, the transfer of assets to a limited-life regulated entity established under subsection (i), or the exercise of any other rights or privileges granted to the Agency under this paragraph.

(F) Organization of new enterprise

The Agency may, as receiver for an enterprise, organize a successor enterprise that will operate pursuant to subsection (i).

(G) Transfer or sale of assets and liabilities

The Agency may, as conservator or receiver, transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with

respect to such transfer or sale.

(H) Payment of valid obligations

The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity that are due and payable at the time of the appointment of the Agency as conservator or receiver, in accordance with the prescriptions and limitations of this section.

(I) Subpoena authority

(i) In general

(I) Agency authority

The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 4588 of this title.

(II) Applicability of law

The provisions of section 4588 of this title shall apply with respect to the exercise of any power under this subparagraph, in the same manner as such provisions apply under that section.

(ii) Subpoena

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

(iii) Rule of construction

This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 4517 or 4639 of this title.

(J) Incidental powers

The Agency may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

(K) Other provisions

(i) Shareholders and creditors of failed regulated entity

Notwithstanding any other provision of law, the appointment of the Agency as receiver for a regulated entity pursuant to paragraph (2) or (4) of subsection (a) and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (b)(2)(A) shall terminate all rights and claims that the stockholders and creditors of the regulated entity may have against the assets or charter of the regulated entity or the Agency arising as a result of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under subsections (b)(9), (c), and (e).

(ii) Assets of regulated entity

Notwithstanding any other provision of law, for purposes of this section, the charter of a regulated entity shall not be considered an asset of the regulated entity.

(3) Authority of receiver to determine claims

(A) In general

The Agency may, as receiver, determine claims in accordance with the requirements of this

subsection and any regulations prescribed under paragraph (4).

(B) Notice requirements

The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

- (i) promptly publish a notice to the creditors of the regulated entity to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the date of publication of such notice; and
- (ii) republish such notice approximately 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) Mailing required

The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

- (i) at the last address of the creditor appearing in such books; or
- (ii) upon discovery of the name and address of a claimant not appearing on the books of the regulated entity, within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

- (I) on the books of the regulated entity;
- (II) in the claim filed by the claimant; or
- (III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

- (I) a statement of each reason for the disallowance; and
- (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claim

The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) Disallowance of claims filed after filing period

Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the

date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

(D) Authority to disallow claims

(i) In general

The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) Payments to less than fully secured creditors

In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

(iii) Exceptions

No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal Reserve Bank, Federal Home Loan Bank, or the United States Treasury; or

(II) any security interest in the assets of the regulated entity securing any such extension of credit.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the determination of the Agency under subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

(6) Provision for judicial determination of claims

(A) In general

The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

(B) Statute of limitations

A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

(7) Review of claims

(A) Other review procedures

(i) In general

The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Agency may establish both binding and nonbinding processes under this subparagraph, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

(B) Consideration of incentives

The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the Agency has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date on which any claim is filed in accordance with the procedures established under subparagraph (A), the Director shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the date of appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date on which the Agency denies the claim.

(D) Statute of limitations

If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

(9) Payment of claims

(A) In general

The receiver may, in the discretion of the receiver, and to the extent that funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

- (i) allowed by the receiver;
- (ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or
- (iii) determined by the final judgment of any court of competent jurisdiction.

(B) Agreements against the interest of the Agency

No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing and executed by an authorized officer or representative of the regulated entity.

(C) Payment of dividends on claims

The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) Rulemaking authority of the Director

The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of the regulated entity, following satisfaction by the receiver of the principal amount of all creditor claims.

(10) Suspension of legal actions

(A) In general

After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
- (ii) 90 days, in the case of any receiver.

(B) Grant of stay by all courts required

Upon receipt of a request by the conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(11) Additional rights and duties

(A) Prior final adjudication

The Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Agency as conservator or receiver.

(B) Rights and remedies of conservator or receiver

In the event of any appealable judgment, the Agency as conservator or receiver—

(i) shall have all of the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

(ii) shall not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the receiver, or upon the charter, of a regulated entity for which the Agency has been appointed receiver.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets or charter of any regulated entity for which the Agency has been appointed receiver; or

(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

(E) Disposition of assets

In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases; and

(iii) ensures adequate competition and fair and consistent treatment of offerors.

(12) Statute of limitations for actions brought by conservator or receiver

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Agency as conservator or receiver; or

(ii) the date on which the cause of action accrues.

(13) Revival of expired state causes of action

(A) In general

In the case of any tort claim described under clause (ii) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as

conservator or receiver on such claim without regard to the expiration of the statute of limitations applicable under State law.

(B) Claims described

A tort claim referred to under clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

(14) Accounting and recordkeeping requirements

(A) In general

The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

(B) Annual accounting or report

With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(C) Availability of reports

Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

(D) Recordkeeping requirement

After the end of the 6-year period beginning on the date on which the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary, unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(15) Fraudulent transfers

(A) In general

The Agency, as conservator or receiver, may avoid a transfer of any interest of an entity-affiliated party, or any person determined by the conservator or receiver to be a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

- (i) the initial transferee of such transfer or the entity-affiliated party or person for whose benefit such transfer was made; or
- (ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The conservator or receiver may not recover under subparagraph (B) from—

- (i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
- (ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(16) Attachment of assets and other injunctive relief

Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the conservator or receiver under the control of the court, and appointing a trustee to hold such assets.

(17) Standards of proof

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(18) Treatment of claims arising from breach of contracts executed by the conservator or receiver

(A) In general

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the conservator or receiver for the breach of an agreement executed or approved in writing by the conservator or receiver after the date of its appointment, shall be paid as an administrative expense of the conservator or receiver.

(B) No limitation of power

Nothing in this paragraph shall be construed to limit the power of the conservator or receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(19) General exceptions

(A) Limitations

The rights of the conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 4402 through 4407 of this title.¹

(B) Mortgages held in trust

(i) In general

Any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or agency capacity by a regulated entity for the benefit of any person other than the regulated entity shall not be available to satisfy the claims of creditors generally, except that nothing in this clause shall be construed to expand or otherwise affect the authority of any regulated entity.

(ii) Holding of mortgages

Any mortgage, pool of mortgages, or interest in a pool of mortgages described in clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

(iii) Liability of conservator or receiver

The liability of the conservator or receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance with the regulations of the Director.

(c) Priority of expenses and unsecured claims

(1) In general

Unsecured claims against a regulated entity, or the receiver therefor, that are proven to the

satisfaction of the receiver shall have priority in the following order:

- (A) Administrative expenses of the receiver.
- (B) Any other general or senior liability of the regulated entity (which is not a liability described under subparagraph (C) or (D)).²
- (C) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (D)).
- (D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

(2) Creditors similarly situated

All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

- (A) the Director determines that such action is necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and
- (B) all creditors that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (e)(2).

(3) Definition

As used in this subsection, the term "administrative expenses of the receiver" includes—

- (A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a failed regulated entity or liquidating or otherwise resolving the affairs of a failed regulated entity; and
- (B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

(d) Provisions relating to contracts entered into before appointment of conservator or receiver

(1) Authority to repudiate contracts

In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

- (A) to which such regulated entity is a party;
- (B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and
- (C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

(2) Timing of repudiation

The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

- (i) limited to actual direct compensatory damages; and
- (ii) determined as of—
 - (I) the date of the appointment of the conservator or receiver; or
 - (II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term "actual direct compensatory damages" shall not

include—

- (i) punitive or exemplary damages;
- (ii) damages for lost profits or opportunity; or
- (iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

- (i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and
- (ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.

(4) Leases under which the regulated entity is the lessee

(A) In general

If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

- (i) be entitled to the contractual rent accruing before the later of the date on which—
 - (I) the notice of disaffirmance or repudiation is mailed; or
 - (II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;
- (ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and
- (iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

(5) Leases under which the regulated entity is the lessor

(A) In general

If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

- (i) treat the lease as terminated by such repudiation; or
- (ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of subparagraph (A)—

- (i) the lessee—
 - (I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and
 - (II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and
- (ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under

clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either—

- (i) treat the contract as terminated by such repudiation; or
- (ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

(7) Service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or receiver shall be—

(i) a claim to be paid in accordance with subsections (b) and (e); and

(ii) deemed to have arisen as of the date on which the conservator or receiver was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the

conservatorship or receivership.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by the conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraphs (9) and (10), and notwithstanding any other provision of this chapter (other than subsection (b)(9)(B) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right of that person to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts; or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (b)(10) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

(D) Certain contracts and agreements defined

In this subsection the following definitions shall apply:

(i) Qualified financial contract

The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term "securities contract"—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option

to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(V) means any margin loan;

(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) means any combination of the agreements or transactions referred to in this clause;

(VIII) means any option to enter into any agreement or transaction referred to in this clause;

(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) Commodity contract

The term "commodity contract" means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause

only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) Forward contract

The term "forward contract" means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date on which the contract is entered into, including a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) Repurchase agreement

The term "repurchase agreement" (including a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in section 78c of title 15), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined for purposes of this clause as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the appropriate Federal banking authority), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause

(I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) Swap agreement

The term "swap agreement" means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vii) Treatment of master agreement as one agreement

Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions

relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) Transfer

The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the regulated entity.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this section, any other Federal law, or the law of any State (other than paragraph (10) of this subsection and subsection (b)(9)(B)), no person shall be stayed or prohibited from exercising—

- (i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;
- (ii) any right under any security agreement or arrangement or other credit enhancement relating to 1 or more such qualified financial contracts; or
- (iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10), or to disaffirm or repudiate any such contract in accordance with subsection (d)(1).

(G) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraphs (A) and (E), and sections 4403 and 4404 of this title, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

(ii) Walkaway clause defined

For purposes of this subparagraph, the term "walkaway clause" means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of the status of such party as a nondefaulting party.

(9) Transfer of qualified financial contracts

In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

(A) transfer to 1 person—

- (i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;
- (ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);
- (iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and
- (iv) all property securing, or any other credit enhancement for any contract described in clause (i), or any claim described in clause (ii) or (iii) under any such contract; or

(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

(10) Notification of transfer

(A) In general

The conservator or receiver shall notify any person that is a party to a contract or transfer by 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship, if—

- (i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity; and
- (ii) such transfer includes any qualified financial contract.

(B) Certain rights not enforceable

(i) Receivership

A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or under section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

- (I) until 5:00 p.m. (Eastern Standard Time) on the business day following the date of the appointment of the receiver; or
- (II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) Conservatorship

A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or under section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

(iii) Notice

For purposes of this paragraph, the conservator or receiver of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity, if the conservator or receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Business day defined

For purposes of this paragraph, the term "business day" means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

- (A) disaffirm or repudiate all qualified financial contracts between—
 - (i) any person or any affiliate of such person; and
 - (ii) the regulated entity in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph

(A) (with respect to such person or any affiliate of such person).

(12) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

(13) Authority to enforce contracts

(A) In general

Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of, or the exercise of rights or powers by, a conservator or receiver, the conservator or receiver may enforce any contract, other than a contract for liability insurance for a director or officer, or a contract or a regulated entity bond, entered into by the regulated entity.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a liability insurance contract for an officer or director, or regulated entity bond under other applicable law.

(C) Consent requirement

(i) In general

Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

- (I) 45 days after the date of appointment of a conservator; or
- (II) 90 days after the date of appointment of a receiver.

(ii) Exceptions

This subparagraph shall not—

- (I) apply to a contract for liability insurance for an officer or director;
- (II) apply to the rights of parties to certain qualified financial contracts under subsection (d)(8); and
- (III) be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

(14) Savings clause

The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as that term is defined in section 78c(a)(47) of title 15), and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(15) Exception for Federal Reserve and Federal Home Loan Banks

No provision of this subsection shall apply with respect to—

- (A) any extension of credit from any Federal Home Loan Bank or Federal Reserve Bank to any regulated entity; or
- (B) any security interest in the assets of the regulated entity securing any such extension of credit.

(e) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

(2) Maximum liability

The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall be not more than the amount that such claimant would have received if the Agency had liquidated the assets and liabilities of the regulated entity without exercising the authority of the Agency under subsection (i).

(f) Limitation on court action

Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

(g) Liability of directors and officers

(1) In general

A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action described in paragraph (2) brought by, on behalf of, or at the request or direction of the Agency, and prosecuted wholly or partially for the benefit of the Agency—

(A) acting as conservator or receiver of such regulated entity; or

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator.

(2) Actions addressed

Paragraph (1) applies in any civil action for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care than gross negligence, including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) No limitation

Nothing in this subsection shall impair or affect any right of the Agency under other applicable law.

(h) Damages

In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

(i) Limited-life regulated entities

(1) Organization

(A) Purpose

The Agency, as receiver appointed pursuant to subsection (a)—

(i) may, in the case of a Federal Home Loan Bank, organize a limited-life regulated entity with those powers and attributes of the Federal Home Loan Bank in default or in danger of default as the Director determines necessary, subject to the provisions of this subsection, and the Director shall grant a temporary charter to that limited-life regulated entity, and that limited-life regulated entity may operate subject to that charter; and

(ii) shall, in the case of an enterprise, organize a limited-life regulated entity with respect to that enterprise in accordance with this subsection.

(B) Authorities

Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life

regulated entity may—

- (i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, except that the liabilities assumed shall not exceed the amount of assets purchased or transferred from the regulated entity to the limited-life regulated entity;
- (ii) purchase such assets of the regulated entity that is in default, or in danger of default as the Agency may, in its discretion, determine to be appropriate; and
- (iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

(2) Charter and establishment

(A) Transfer of charter

(i) Fannie Mae

If the Agency is appointed as receiver for the Federal National Mortgage Association, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

- (I) succeed to the charter of the Federal National Mortgage Association, as set forth in the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.]; and
- (II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal National Mortgage Association is subject, except as otherwise provided in this subsection.

(ii) Freddie Mac

If the Agency is appointed as receiver for the Federal Home Loan Mortgage Corporation, the limited-life regulated entity established under this subsection with respect to such enterprise shall, by operation of law and immediately upon its organization—

- (I) succeed to the charter of the Federal Home Loan Mortgage Corporation, as set forth in the Federal Home Loan Mortgage Corporation Charter Act ¹ [12 U.S.C. 1451 et seq.]; and
- (II) thereafter operate in accordance with, and subject to, such charter, this Act, and any other provision of law to which the Federal Home Loan Mortgage Corporation is subject, except as otherwise provided in this subsection.

(B) Interests in and assets and obligations of regulated entity in default

Notwithstanding subparagraph (A) or any other provision of law—

- (i) a limited-life regulated entity shall assume, acquire, or succeed to the assets or liabilities of a regulated entity only to the extent that such assets or liabilities are transferred by the Agency to the limited-life regulated entity in accordance with, and subject to the restrictions set forth in, paragraph (1)(B);
- (ii) a limited-life regulated entity shall not assume, acquire, or succeed to any obligation that a regulated entity for which a receiver has been appointed may have to any shareholder of the regulated entity that arises as a result of the status of that person as a shareholder of the regulated entity; and
- (iii) no shareholder or creditor of a regulated entity shall have any right or claim against the charter of the regulated entity once the Agency has been appointed receiver for the regulated entity and a limited-life regulated entity succeeds to the charter pursuant to subparagraph (A).

(C) Limited-life regulated entity treated as being in default for certain purposes

A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

(D) Management

Upon its establishment, a limited-life regulated entity shall be under the management of a

board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

(E) Bylaws

The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

(3) Capital stock

(A) No agency requirement

The Agency is not required to pay capital stock into a limited-life regulated entity or to issue any capital stock on behalf of a limited-life regulated entity established under this subsection.

(B) Authority

If the Director determines that such action is advisable, the Agency may cause capital stock or other securities of a limited-life regulated entity established with respect to an enterprise to be issued and offered for sale, in such amounts and on such terms and conditions as the Director may determine, in the discretion of the Director.

(4) Investments

Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal reserve bank.

(5) Exempt tax status

Notwithstanding any other provision of Federal or State law, a limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(6) Winding up

(A) In general

Subject to subparagraphs (B) and (C), not later than 2 years after the date of its organization, the Agency shall wind up the affairs of a limited-life regulated entity.

(B) Extension

The Director may, in the discretion of the Director, extend the status of a limited-life regulated entity for 3 additional 1-year periods.

(C) Termination of status as limited-life regulated entity

(i) In general

Upon the sale by the Agency of 80 percent or more of the capital stock of a limited-life regulated entity, as defined in clause (iv), to 1 or more persons (other than the Agency)—

(I) the status of the limited-life regulated entity as such shall terminate; and

(II) the entity shall cease to be a limited-life regulated entity for purposes of this subsection.

(ii) Divestiture of remaining stock, if any

(I) In general

Not later than 1 year after the date on which the status of a limited-life regulated entity is terminated pursuant to clause (i), the Agency shall sell to 1 or more persons (other than the Agency) any remaining capital stock of the former limited-life regulated entity.

(II) Extension authorized

The Director may extend the period referred to in subclause (I) for not longer than an additional 2 years, if the Director determines that such action would be in the public interest.

(iii) Savings clause

Notwithstanding any provision of law, other than clause (ii), the Agency shall not be required to sell the capital stock of an enterprise or a limited-life regulated entity established with respect to an enterprise.

(iv) Applicability

This subparagraph applies only with respect to a limited-life regulated entity that is established with respect to an enterprise.

(7) Transfer of assets and liabilities

(A) In general

(i) Transfer of assets and liabilities

The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with and subject to the restrictions of paragraph (1).

(ii) Subsequent transfers

At any time after the establishment of a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of the regulated entity in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(iii) Effective without approval

The transfer of any assets or liabilities of a regulated entity in default or in danger of default to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(iv) Equitable treatment of similarly situated creditors

The Agency shall treat all creditors of a regulated entity in default or in danger of default that are similarly situated under subsection (c)(1) in a similar manner in exercising the authority of the Agency under this subsection to transfer any assets or liabilities of the regulated entity to the limited-life regulated entity established with respect to such regulated entity, except that the Agency may take actions (including making payments) that do not comply with this clause, if—

(I) the Director determines that such actions are necessary to maximize the value of the assets of the regulated entity, to maximize the present value return from the sale or other disposition of the assets of the regulated entity, or to minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; and

(II) all creditors that are similarly situated under subsection (c)(1) receive not less than the amount provided in subsection (e)(2).

(v) Limitation on transfer of liabilities

Notwithstanding any other provision of law, the aggregate amount of liabilities of a regulated entity that are transferred to, or assumed by, a limited-life regulated entity may not exceed the aggregate amount of assets of the regulated entity that are transferred to, or purchased by, the limited-life regulated entity.

(8) Regulations

The Agency may promulgate such regulations as the Agency determines to be necessary or appropriate to implement this subsection.

(9) Powers of limited-life regulated entities

(A) In general

Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in

danger of default to which it relates, except that—

(i) the Agency may—

(I) remove the directors of a limited-life regulated entity;

(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity; and

(III) indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

(ii) the board of directors of a limited-life regulated entity—

(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

(B) Stay of judicial action

Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of not longer than 45 days, at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

(10) No Federal status

(A) Agency status

A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

(B) Employee status

Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5 or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

(11) Authority to obtain credit

(A) In general

A limited-life regulated entity may obtain unsecured credit and issue unsecured debt.

(B) Inability to obtain credit

If a limited-life regulated entity is unable to obtain unsecured credit or issue unsecured debt, the Director may authorize the obtaining of credit or the issuance of debt by the limited-life regulated entity—

(i) with priority over any or all of the obligations of the limited-life regulated entity;

(ii) secured by a lien on property of the limited-life regulated entity that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the limited-life regulated entity that is subject to a lien.

(C) Limitations

(i) ³ In general

The Director, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a limited-life regulated entity that is secured by a senior or equal lien on property of the limited-life regulated entity that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by an enterprise) only if—

(I) the limited-life regulated entity is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) Burden of proof

In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

(12) Effect on debts and liens

The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(j) Other Agency exemptions

(1) Applicability

The provisions of this subsection shall apply with respect to the Agency in any case in which the Agency is acting as a conservator or a receiver.

(2) Taxation

The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(3) Property protection

No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

(4) Penalties and fines

The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

(k) Prohibition of charter revocation

In no case may the receiver appointed pursuant to this section revoke, annul, or terminate the charter of an enterprise.

(Pub. L. 102–550, title XIII, §1367, Oct. 28, 1992, 106 Stat. 3980; Pub. L. 110–289, div. A, title I, §1145(a), July 30, 2008, 122 Stat. 2734.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4)(D) and (d)(8)(A), was in the original "this title", meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(16), (17), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Sections 4402 through 4407 of this title, referred to in subsec. (b)(19)(A), was in the original "sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407)", and was translated as reading "sections 402 through 407A of the Federal Deposit Insurance Corporation Improvement Act of 1991", meaning sections 402 to 407A of Pub. L. 102–242, which are classified to sections 4402 to 4407 of this title, to reflect the probable intent of Congress and the renumbering of section 407 of the Act as section 407A by Pub. L. 109–8, title IX, §906(d)(1), Apr. 20, 2005, 119 Stat. 169.

The Gramm-Leach-Bliley Act, referred to in subsec. (d)(14), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (d)(14), is title IV of H.R. 5660, as enacted by Pub. L. 106–554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A–457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (d)(14), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsec. (i)(2)(A)(i)(I), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

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

The Federal Home Loan Mortgage Corporation Charter Act, referred to in subsec. (i)(2)(A)(ii)(I), probably means the Federal Home Loan Mortgage Corporation Act, title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

AMENDMENTS

2008—Pub. L. 110–289 amended section generally. Prior to amendment, section related to appointment of conservators for critically undercapitalized enterprises.

¹ *See References in Text note below.*

² *So in original. A second closing parenthesis probably should precede the period.*

³ *So in original. No cl. (ii) has been enacted.*

§4618. Notice of classification and enforcement action

(a) Notice

Before taking any action referred to in subsection (b), the Director shall provide to the regulated entity written notice of the proposed action, which states the reasons for the proposed action and the information on which the proposed action is based.

(b) Applicability

The requirements of subsection (a) shall apply to the following actions:

(1) Classification or reclassification of a regulated entity within a particular capital classification under section 4614 of this title.

(2) Any discretionary supervisory action pursuant to section 4615 of this title.

(3) Any discretionary supervisory action pursuant to section 4616 of this title except a decision to appoint a conservator under section 4616(b)(6) ¹ of this title.

Notice of classification under paragraph (1) and notice of supervisory actions under paragraph (2) or (3) may be provided together in a single notice under subsection (a).

(c) Response period

(1) In general

During the 30-day period beginning on the date that a regulated entity is provided notice under subsection (a) of a proposed action, the regulated entity may submit to the Director any information relevant to the action that the regulated entity considers appropriate for consideration by the Director in determining whether to take such action. The Director may, at the discretion of the Director, hold an informal administrative hearing to receive and discuss such information and the proposed determination.

(2) Extended period

The Director may extend the period under paragraph (1) for good cause for not more than 30 additional days.

(3) Shortened period

The Director may shorten the period under paragraph (1) if the Director determines that the condition of the regulated entity so requires or the regulated entity consents.

(4) Failure to respond

The failure of a regulated entity to provide information during the response period under this subsection (as extended or shortened) shall waive any right of the regulated entity to comment on the proposed action of the Director.

(d) Consideration of information and determination

After the expiration of the response period under subsection (c) or upon receipt of information provided during such period by the regulated entity, whichever occurs earlier, the Director shall determine whether to take the action proposed, taking into consideration any relevant information submitted by the regulated entity during the response period. The Director shall provide written notice of a determination to take action and the reasons for such determination to the regulated entity, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such notice shall respond to any information submitted during the response period.

(e) Effective date of actions

An action referred to in subsection (b) shall take effect upon receipt by the regulated entity of notice of the determination of the Director under subsection (d), unless otherwise provided in such notice.

(Pub. L. 102–550, title XIII, §1368, Oct. 28, 1992, 106 Stat. 3980; Pub. L. 110–289, div. A, title I, §1145(b)(1), July 30, 2008, 122 Stat. 2767.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4616(b)(6) of this title, referred to in subsec. (b)(3), was repealed and a new par. (6) added by Pub. L. 110–289, div. A, title I, §1144(5)(C), (D), July 30, 2008, 122 Stat. 2733. The new par. (6) does not relate to appointment of a conservator.

AMENDMENTS

2008—Pub. L. 110–289 substituted "a regulated entity" for "an enterprise" and "the regulated entity" for "the enterprise" wherever appearing.

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.

¹ See References in Text note below.

§§4619 to 4621. Repealed. Pub. L. 110–289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767

Section 4619, Pub. L. 102–550, title XIII, §1369, Oct. 28, 1992, 106 Stat. 3981; Pub. L. 110–289, div. A, title I, §1161(a)(6), July 30, 2008, 122 Stat. 2779, related to appointment of conservators.

Section 4620, Pub. L. 102–550, title XIII, §1369A, Oct. 28, 1992, 106 Stat. 3983, related to powers of conservators.

Section 4621, Pub. L. 102–550, title XIII, §1369B, Oct. 28, 1992, 106 Stat. 3984, related to liability protection for conservators.

§4622. Capital restoration plans

(a) Contents

Each capital restoration plan submitted under this subchapter shall set forth a feasible plan for restoring the core capital of the regulated entity subject to the plan to an amount not less than the minimum capital level for the regulated entity and for restoring the total capital of the regulated entity to an amount not less than the risk-based capital level for the regulated entity. Each capital restoration plan shall—

- (1) specify the level of capital the regulated entity will achieve and maintain;
- (2) describe the actions that the regulated entity will take to become classified as adequately capitalized;
- (3) establish a schedule for completing the actions set forth in the plan;
- (4) specify the types and levels of activities (including existing and new programs) in which the regulated entity will engage during the term of the plan; and
- (5) describe the actions that the regulated entity will take to comply with any mandatory and discretionary requirements imposed under this subchapter.

(b) Deadlines for submission

The Director shall, by regulation, establish a deadline for submission of a capital restoration plan, which may not be more than 45 days after the regulated entity is notified in writing that a plan is required. The regulations shall provide that the Director may extend the deadline to the extent that the Director determines it necessary. Any extension of the deadline shall be in writing and for a time certain.

(c) Approval

The Director shall review each capital restoration plan submitted under this section and, not later

than 30 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 30-day period if the Director determines it necessary. The Director shall provide written notice to any regulated entity submitting a plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(d) Resubmission

If the Director disapproves the initial capital restoration plan submitted by the regulated entity, the regulated entity shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.

(Pub. L. 102–550, title XIII, §1369C, Oct. 28, 1992, 106 Stat. 3985; Pub. L. 110–289, div. A, title I, §1145(b)(2), July 30, 2008, 122 Stat. 2767.)

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–289 substituted "regulated entity" for "enterprise" wherever appearing.

§4623. Judicial review of Director action

(a) Jurisdiction

(1) Filing of petition

A regulated entity that is not classified as critically undercapitalized and is the subject of a classification under section 4614 of this title or a discretionary supervisory action taken under this subchapter by the Director (other than action to appoint a conservator under section 4616 or 4617 of this title or action under section 4619 ¹ of this title) may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

(2) Place for filing

A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(b) Scope of review

The Court may modify, terminate, or set aside an action taken by the Director and reviewed by the Court pursuant to this section only if the court finds, on the record on which the Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(c) Unavailability of stay

The commencement of proceedings for judicial review pursuant to this section shall not operate as a stay of any action taken by the Director. Pending judicial review of the action, the court shall not have jurisdiction to stay, enjoin, or otherwise delay any supervisory action taken by the Director with respect to a regulated entity that is classified as significantly or critically undercapitalized or any action of the Director that results in the classification of a regulated entity as significantly or critically undercapitalized.

(d) Limitation on jurisdiction

Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this

subchapter (other than appointment of a conservator under section 4616 or 4617 of this title or action under section 4619 ¹ of this title) or to review, modify, suspend, terminate, or set aside such classification or action.

(Pub. L. 102–550, title XIII, §1369D, Oct. 28, 1992, 106 Stat. 3985; Pub. L. 110–289, div. A, title I, §1145(b)(3), July 30, 2008, 122 Stat. 2767.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsecs. (a)(1) and (d), was repealed by Pub. L. 110–289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1145(b)(3)(B), substituted "A regulated entity" for "An enterprise".

Subsec. (c). Pub. L. 110–289, §1145(b)(3)(A), substituted "a regulated entity" for "an enterprise" in two places.

¹ [*See References in Text note below.*](#)

§4624. Reviews of enterprise assets and liabilities

(a) In general

The Director shall, by regulation, establish criteria governing the portfolio holdings of the enterprises, to ensure that the holdings are backed by sufficient capital and consistent with the mission and the safe and sound operations of the enterprises. In establishing such criteria, the Director shall consider the ability of the enterprises to provide a liquid secondary market through securitization activities, the portfolio holdings in relation to the overall mortgage market, and adherence to the standards specified in section 4513b of this title.

(b) Temporary adjustments

The Director may, by order, make temporary adjustments to the established standards for an enterprise or both enterprises, such as during times of economic distress or market disruption.

(c) Authority to require disposition or acquisition

The Director shall monitor the portfolio of each enterprise. Pursuant to subsection (a) and notwithstanding the capital classifications of the enterprises, the Director may, by order, require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset, if the Director determines that such action is consistent with the purposes of this Act or any of the authorizing statutes.

(Pub. L. 102–550, title XIII, §1369E, as added Pub. L. 110–289, div. A, title I, §1109(a)(2), July 30, 2008, 122 Stat. 2675.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

REGULATIONS

Pub. L. 110–289, div. A, title I, §1109(b), July 30, 2008, 122 Stat. 2675, provided that: "Not later than the expiration of the 180-day period beginning on the effective date of this Act [probably means date of enactment of Pub. L. 110–289, approved July 30, 2008], the Director [of the Federal Housing Finance Agency] shall issue regulations pursuant to section 1369E(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4624(a)] (as added by subsection (a) of this section) establishing the portfolio holdings standards under such section."

SUBCHAPTER III—ENFORCEMENT PROVISIONS

§4631. Cease-and-desist proceedings

(a) Issuance for unsafe or unsound practices and violations

(1) Authority of Director

If, in the opinion of the Director, a regulated entity or any entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or the Office of Finance, or is violating or has violated, or the Director has reasonable cause to believe is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or the Office of Finance or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or entity-affiliated party a notice of charges in respect thereof.

(2) Limitation

The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, with subsection (m) or (n) of section 1723a of this title, with subsection (e) or (f) of section 1456 of this title, or with paragraph (5) of section 1430(j) of this title.

(b) Issuance for unsatisfactory rating

If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of subsection (a).

(c) Procedure

(1) Notice of charges

Each notice of charges under this section shall contain a statement of the facts constituting the alleged practice or violation and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such practice or violation should issue, unless the party served with a notice of charges shall appear at the hearing personally or by a duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order.

(2) Issuance of order

If the Director finds on the record made at such hearing that any practice or violation specified in the notice of charges has been established (or the regulated entity or entity-affiliated party consents pursuant to section 4633(a)(4) of this title), the Director may issue and serve upon the

regulated entity, executive officer, director, or entity-affiliated party an order requiring such party to cease and desist from any such practice or violation and to take affirmative action to correct or remedy the conditions resulting from any such practice or violation.

(d) Affirmative action to correct conditions resulting from violations or activities

The authority under this section and section 4632 of this title to issue any order requiring a regulated entity, executive officer, director, or entity-affiliated party to take affirmative action to correct or remedy any condition resulting from any practice or violation with respect to which such order is issued includes the authority to require a regulated entity or entity-affiliated party—

(1) make ¹ restitution to, or provide reimbursement, indemnification, or guarantee against loss, if—

(A) such entity or party or finance facility was unjustly enriched in connection with such practice or violation; or

(B) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Director;

(2) to require a regulated entity to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of the regulated entity;

(4) to require the regulated entity to dispose of any loan or asset involved;

(5) to require the regulated entity to rescind agreements or contracts;

(6) to require the regulated entity to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(7) to require the regulated entity to take such other action as the Director determines appropriate.

(e) Authority to limit activities

The authority to issue an order under this section or section 4632 of this title includes the authority to place limitations on the activities or functions of the regulated entity or entity-affiliated party or any executive officer or director of the regulated entity or entity-affiliated party.

(f) Effective date

An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon the regulated entity, finance facility,² executive officer, director, or entity-affiliated party concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subchapter.

(Pub. L. 102–550, title XIII, §1371, Oct. 28, 1992, 106 Stat. 3986; Pub. L. 110–289, div. A, title I, §1151, July 30, 2008, 122 Stat. 2767.)

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—Subsecs. (a), (b). Pub. L. 110–289, §1151(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to grounds for issuance against adequately capitalized enterprises and grounds for issuance against undercapitalized, significantly undercapitalized, and critically undercapitalized enterprises, respectively.

Subsec. (c)(1). Pub. L. 110–289, §1151(2)(A), (3)(C), substituted "practice" for "conduct" in two places and inserted ", unless the party served with a notice of charges shall appear at the hearing personally or by a duly

authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order" before period at end.

Subsec. (c)(2). Pub. L. 110–289, §1151(2)(B), (3)(A), (C), inserted "or entity-affiliated party" before "consents" and substituted "director, or entity-affiliated party" for "or director", "the regulated entity" for "the enterprise" in two places, and "practice" for "conduct" wherever appearing.

Subsec. (d). Pub. L. 110–289, §1151(3)(B), (C), (4)(A), in introductory provisions, substituted "a regulated entity" for "an enterprise", "director, or entity-affiliated party" for "or director", and "practice" for "conduct", and inserted "to require a regulated entity or entity-affiliated party" after "includes the authority".

Subsec. (d)(1). Pub. L. 110–289, §1151(4)(B)(i), (ii), in introductory provisions, struck out "to require an executive officer or a director to" before "make restitution" and substituted "loss, if" for "loss to the enterprise to the extent that such person".

Subsec. (d)(1)(A). Pub. L. 110–289, §1151(3)(C), (4)(B)(iii), inserted "such entity or party or finance facility" before "was unjustly" and substituted "practice" for "conduct".

Subsec. (d)(1)(B). Pub. L. 110–289, §1151(4)(B)(iv), added subpar. (B) and struck out former subpar. (B) which read as follows: "engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 4636(b)(3) of this title";.

Subsec. (d)(2). Pub. L. 110–289, §1151(3)(B), substituted "a regulated entity" for "an enterprise".

Subsec. (d)(3). Pub. L. 110–289, §1151(3)(A), substituted "the regulated entity" for "the enterprise".

Subsec. (d)(4). Pub. L. 110–289, §1151(3)(A), (4)(C), substituted "the regulated entity" for "the enterprise" and inserted "loan or" before "asset".

Subsec. (d)(5) to (7). Pub. L. 110–289, §1151(3)(A), substituted "the regulated entity" for "the enterprise".

Subsec. (e). Pub. L. 110–289, §1151(3)(A), (5), substituted "the regulated entity" for "the enterprise" in two places and inserted "or entity-affiliated party" before "or any executive" and before period at end.

Subsec. (f). Pub. L. 110–289, §1151(6), substituted "regulated entity, finance facility," for "enterprise" and "director, or entity-affiliated party" for "or director".

¹ *So in original. Probably should be "to make".*

² *So in original.*

§4632. Temporary cease-and-desist orders

(a) Grounds for issuance

(1) In general

If the Director determines that the actions specified in the notice of charges served upon a regulated entity or any entity-affiliated party pursuant to section 4631(a) of this title, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that entity, or is likely to weaken the condition of that entity prior to the completion of the proceedings conducted pursuant to sections 4631 and 4633 of this title, the Director may—

(A) issue a temporary order requiring that regulated entity or entity-affiliated party to cease and desist from any such violation or practice; and

(B) require that regulated entity or entity-affiliated party to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

(2) Additional requirements

An order issued under paragraph (1) may include any requirement authorized under subsection 4631(d) of this title.

(b) Effective date

An order issued pursuant to subsection (a) shall become effective upon service upon the regulated entity, executive officer, director, or entity-affiliated party and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain

effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 4631 of this title.

(c) Incomplete or inaccurate records

(1) Temporary order

If a notice of charges served under section 4631(a) or (b) of this title specifies on the basis of particular facts and circumstances that the books and records of the regulated entity served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the regulated entity or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that regulated entity, the Director may issue a temporary order requiring—

- (A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or
- (B) affirmative action to restore the books or records to a complete and accurate state.

(2) Effective period

Any temporary order issued under paragraph (1)—

- (A) shall become effective upon service; and
- (B) unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable until the earlier of—
 - (i) the completion of the proceeding initiated under section 4631 of this title in connection with the notice of charges; or
 - (ii) the date the Director determines, by examination or otherwise, that the books and records of the regulated entity are accurate and reflect the financial condition of the regulated entity.

(d) Judicial review

A regulated entity, executive officer, director, or entity-affiliated party that has been served with a temporary order pursuant to this section may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the enterprise, executive officer, director, or entity-affiliated party under section 4631(a) or (b) of this title. Such court shall have jurisdiction to issue such injunction.

(e) Enforcement by Attorney General

In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.

(Pub. L. 102–550, title XIII, §1372, Oct. 28, 1992, 106 Stat. 3988; Pub. L. 110–289, div. A, title I, §1152, July 30, 2008, 122 Stat. 2769.)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1152(1), added subsec. (a) and struck out former subsec. (a) which related to grounds for issuance and scope of temporary cease-and-desist orders.

Subsec. (b). Pub. L. 110–289, §1152(2), substituted "director, or entity-affiliated party" for "or director" and "regulated entity" for "enterprise".

Subsec. (c). Pub. L. 110–289, §1152(3), substituted "regulated entity" for "enterprise" wherever appearing.

Subsec. (d). Pub. L. 110–289, §1152(4), substituted "A regulated entity" for "An enterprise" and "director, or entity-affiliated party" for "or director" in two places.

Subsec. (e). Pub. L. 110–289, §1152(5)(B), which directed the striking of "or may, under the direction and control of the Attorney General, bring such action", was executed by striking "or may, under the direction and

control of the Attorney General, bring such an action" after "such order" to reflect the probable intent of Congress.

Pub. L. 110–289, §1152(5)(A), struck out "request the Attorney General of the United States to" after "Director may".

§4633. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4631, 4636(c), or 4636a of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4631 or 4636a of this title or determination to impose a penalty under section 4636 of this title, unless an earlier or a later date is set by the hearing officer at the request of the party served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the party served fails to appear at the hearing through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist or removal or prohibition order or the imposition of the penalty for which the hearing is held.

(b) Issuance of order

(1) In general

After any such hearing, and within 90 days after the parties have been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subchapter.

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4634 of this title. Unless such a petition for review is timely filed as provided in section 4634 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102–550, title XIII, §1373, Oct. 28, 1992, 106 Stat. 3989; Pub. L. 110–289, div. A, title I, §1153(b)(1)(B), July 30, 2008, 122 Stat. 2774.)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–289, §1153(b)(1)(B)(i), substituted "section 4631, 4636(c), or 4636a of this title" for "section 4631 or 4636(c) of this title".

Subsec. (a)(2). Pub. L. 110–289, §1153(b)(1)(B)(ii), inserted "or 4636a" after "section 4631".

Subsec. (a)(4). Pub. L. 110–289, §1153(b)(1)(B)(iii), which directed amendment of par. (4) by inserting "or removal or prohibition" after "cease and desist", was executed by making the insertion after "cease-and-desist" to reflect the probable intent of Congress.

§4634. Judicial review

(a) Commencement

Any party to a proceeding under section 4631 ¹ 4513b, 4636, or 4636a of this title may obtain review of any final order issued under this chapter by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4633(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subchapter.

(f) No automatic stay

The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

(Pub. L. 102–550, title XIII, §1374, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110–289, div. A, title I, §1153(b)(1)(C), July 30, 2008, 122 Stat. 2775.)

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 substituted "4513b, 4636, or 4636a of this title" for "or 4636 of this title" and "this chapter" for "such section".

¹ *So in original. Probably should be followed by a comma.*

§4635. Enforcement and jurisdiction

(a) Enforcement

The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subchapter or subchapter II, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.

(b) Limitation on jurisdiction

Except as otherwise provided in this subchapter and sections 4619 ¹ and 4623 of this title, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4631, 4632, 4513b, 4636, or 4636a of this title, or subchapter II, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102–550, title XIII, §1375, Oct. 28, 1992, 106 Stat. 3990; Pub. L. 110–289, div. A, title I, §1154, July 30, 2008, 122 Stat. 2775.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsec. (b), was repealed by Pub. L. 110–289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1154(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subchapter or subchapter II of this chapter or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith."

Subsec. (b). Pub. L. 110–289, §1154(2), substituted "4513b, 4636, or 4636a of this title" for "or 4636 of this title".

¹ [*See References in Text note below.*](#)

§4636. Civil money penalties

(a) In general

The Director may impose a civil money penalty in accordance with this section on any regulated entity or any entity-affiliated party. The Director shall not impose a civil penalty in accordance with this section on any regulated entity or any entity-affiliated party for any violation that is addressed under section 4585(a) of this title.

(b) Amount of penalty

(1) First tier

A regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$10,000 for each day during which a violation continues, if such regulated entity or party—

(A) violates any provision of this chapter, the authorizing statutes, or any order, condition, rule, or regulation under this chapter or any authorizing statute;

(B) violates any final or temporary order or notice issued pursuant to this chapter;

(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

(D) violates any written agreement between the regulated entity and the Director.

(2) Second tier

Notwithstanding paragraph (1), a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which a violation, practice, or breach continues, if—

(A) the regulated entity or entity-affiliated party, respectively—

(i) commits any violation described in any subparagraph of paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the regulated entity; or

(iii) breaches any fiduciary duty; and

- (B) the violation, practice, or breach—
 - (i) is part of a pattern of misconduct;
 - (ii) causes or is likely to cause more than a minimal loss to the regulated entity; or
 - (iii) results in pecuniary gain or other benefit to such party.

(3) Third tier

Notwithstanding paragraphs (1) and (2), any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party—

- (A) knowingly—
 - (i) commits any violation described in any subparagraph of paragraph (1);
 - (ii) engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or
 - (iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

(4) Maximum amounts of penalties for any violation described in paragraph (3)

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is—

- (A) in the case of any entity-affiliated party, an amount not to exceed \$2,000,000; and
- (B) in the case of any regulated entity, \$2,000,000.

(c) Procedures

(1) Establishment

The Director shall establish standards and procedures governing the imposition of civil money penalties under subsections (a) and (b). Such standards and procedures—

(A) shall provide for the Director to notify the regulated entity or entity-affiliated party in writing of the Director's determination to impose the penalty, which shall be made on the record;

(B) shall provide for the imposition of a penalty only after the regulated entity, executive officer, or director or entity-affiliated party has been given an opportunity for a hearing on the record pursuant to section 4633 of this title; and

(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) Factors in determining amount of penalty

In determining the amount of a penalty under this section, the Director shall give consideration to such factors as the gravity of the violation, any history of prior violations, the effect of the penalty on the safety and soundness of the regulated entity, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation to be appropriate.

(3) Review of imposition of penalty

The order of the Director imposing a penalty under this section shall not be subject to review, except as provided in section 4634 of this title.

(d) Action to collect penalty

If a regulated entity, executive officer, director, or entity-affiliated party fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1), the Director may bring an action in the United States District Court for the District of Columbia, or the United States district court within the

jurisdiction of which the headquarters of the regulated entity is located, to obtain a monetary judgment against the regulated entity, executive officer, director, or entity-affiliated party and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order of the Director imposing the penalty shall not be subject to review.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Availability of other remedies

Any civil money penalty under this section shall be in addition to any other available civil remedy and may be imposed whether or not the Director imposes other administrative sanctions.

(g) Prohibition of reimbursement or indemnification

A regulated entity may not reimburse or indemnify any individual for any penalty imposed under subsection (b)(3).

(h) Deposit of penalties

The Director shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

(i) Applicability

A penalty under this section may be imposed only for conduct or violations under subsection (a) occurring after October 28, 1992.

(Pub. L. 102–550, title XIII, §1376, Oct. 28, 1992, 106 Stat. 3991; Pub. L. 110–289, div. A, title I, §1155, July 30, 2008, 122 Stat. 2775.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1155(1), added subsec. (a) and struck out former subsec. (a) which related to violations or conduct for which the Director could impose a civil money penalty in accordance with this section.

Subsec. (b). Pub. L. 110–289, §1155(2), added subsec. (b) and struck out former subsec. (b) which related to the amount of penalty the Director could impose for violations or conduct described in former subsection (a).

Subsec. (c)(1)(A). Pub. L. 110–289, §1155(3)(A), (B), substituted "regulated entity" for "enterprise" and inserted "or entity-affiliated party" before "in writing".

Subsec. (c)(1)(B). Pub. L. 110–289, §1155(3)(A), (C), substituted "regulated entity" for "enterprise" and inserted "or entity-affiliated party" before "has been given".

Subsec. (c)(2). Pub. L. 110–289, §1155(3)(A), substituted "regulated entity" for "enterprise".

Subsec. (d). Pub. L. 110–289, §1155(4)(G), struck out "and section 4634 of this title" after "subsection (c)(1)".

Pub. L. 110–289, §1155(4)(F), which directed the striking out of ", or may, under the direction and control of the Attorney General of the United States, bring such an action", was executed by striking out ", or may, under the direction and control of the Attorney General, bring such an action" after "may be available", to reflect the probable intent of Congress.

Pub. L. 110–289, §1155(4)(A)–(E), substituted "director, or entity-affiliated party" for "or director" in two places, "a regulated entity" for "an enterprise", and "the regulated entity" for "the enterprise", inserted ", or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located,"

after "District of Columbia", and struck out "request the Attorney General of the United States to" after "Director may".

Subsec. (g). Pub. L. 110-289, §1155(5), substituted "A regulated entity" for "An enterprise".

§4636a. Removal and prohibition authority

(a) Authority to issue order

(1) In general

The Director may serve upon a party described in paragraph (2), or any officer, director, or management of the Office of Finance a written notice of the intention of the Director to suspend or remove such party from office, or prohibit any further participation by such party, in any manner, in the conduct of the affairs of the regulated entity.

(2) Applicability

A party described in this paragraph is an entity-affiliated party or any officer, director, or management of the Office of Finance, if the Director determines that—

(A) that party, officer, or director has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease and desist order which has become final;

(III) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

(IV) any written agreement between such regulated entity and the Director;

(ii) engaged or participated in any unsafe or unsound practice in connection with any regulated entity or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in subparagraph (A)—

(i) such regulated entity or business institution has suffered or will probably suffer financial loss or other damage; or

(ii) such party has received financial gain or other benefit; and

(C) the violation, practice, or breach described in subparagraph (A)—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity or business institution.

(b) Suspension order

(1) Suspension or prohibition authority

If the Director serves written notice under subsection (a) upon a party subject to that subsection (a), the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

(A) determines that such action is necessary for the protection of the regulated entity; and

(B) serves such party with written notice of the order.

(2) Effective period

Any order issued under this subsection—

(A) shall become effective upon service; and

(B) unless a court issues a stay of such order under subsection (g), shall remain in effect and enforceable until—

- (i) the date on which the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or
- (ii) the effective date of an order issued under subsection (b).

(3) Copy of order

If the Director issues an order under subsection (b) to any party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

(c) Notice, hearing, and order

(1) Notice

A notice under subsection (a) of the intention of the Director to issue an order under this section shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action.

(2) Timing of hearing

A hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after the date of service of notice under subsection (a), unless an earlier or a later date is set by the Director at the request of—

- (A) the party receiving such notice, and good cause is shown; or
- (B) the Attorney General of the United States.

(3) Consent

Unless the party that is the subject of a notice delivered under subsection (a) appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order under this section.

(4) Issuance of order of suspension

The Director may issue an order under this section, as the Director may deem appropriate, if—

- (A) a party is deemed to have consented to the issuance of an order under paragraph (3); or
- (B) upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

(5) Effectiveness of order

Any order issued under paragraph (4) shall become effective at the expiration of 30 days after the date of service upon the relevant regulated entity and party (except in the case of an order issued upon consent under paragraph (3), which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

(d) Prohibition of certain specific activities

Any person subject to an order issued under this section shall not—

- (1) participate in any manner in the conduct of the affairs of any regulated entity or the Office of Finance;
- (2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;
- (3) violate any voting agreement previously approved by the Director; or
- (4) vote for a director, or serve or act as an entity-affiliated party of a regulated entity or as an officer or director of the Office of Finance.

(e) Industry-wide prohibition

(1) In general

Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or the Office of Finance, or prohibited from participating in the conduct of the affairs of a regulated entity or the Office of Finance, may not, while such order is in effect, continue or commence to hold any office in, or

participate in any manner in the conduct of the affairs of, any regulated entity or the Office of Finance.

(2) Exception if Director provides written consent

If, on or after the date on which an order is issued under this section which removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of a regulated entity or the Office of Finance, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity or such Office of Finance described in the written consent. Any such consent shall be publicly disclosed.

(3) Violation of paragraph (1) treated as violation of order

Any violation of paragraph (1) by any person who is subject to an order issued under subsection (h) shall be treated as a violation of the order.

(f) Applicability

This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

(g) Stay of suspension and prohibition of entity-affiliated party

Not later than 10 days after the date on which any entity-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension or prohibition pending the completion of the administrative proceedings pursuant to subsection (c). The court shall have jurisdiction to stay such suspension or prohibition.

(h) Suspension or removal of entity-affiliated party charged with felony

(1) Suspension or prohibition

(A) In general

Whenever any entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity.

(B) Provisions applicable to notice

(i) Copy

A copy of any notice under subparagraph (A) shall be served upon the relevant regulated entity.

(ii) Effective period

A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in subparagraph (A) is finally disposed of, or until terminated by the Director.

(2) Removal or prohibition

(A) In general

If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the

regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director.

(B) Provisions applicable to order

(i) Copy

A copy of any order under subparagraph (A) shall be served upon the relevant regulated entity, at which time the entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

(ii) Effect of acquittal

A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove a party from office or to prohibit further participation in the affairs of a regulated entity pursuant to subsection (a) or (b).

(iii) Effective period

Unless terminated by the Director, any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4).

(3) Authority of remaining board members

(A) In general

If at any time, because of the suspension of 1 or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

(B) Appointment of temporary directors

If all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

(4) Hearing regarding continued participation

(A) In general

Not later than 30 days after the date of service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2), the entity-affiliated party may request in writing an opportunity to appear before the Director to show that the continued service or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity, or threaten to impair public confidence in the regulated entity.

(B) Timing and form of hearing

Upon receipt of a request for a hearing under subparagraph (A), the Director shall fix a time (not later than 30 days after the date of receipt of such request, unless extended at the request of such party) and place at which the entity-affiliated party may appear, personally or through counsel, before the Director or 1 or more designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

(C) Determination

Not later than 60 days after the date of a hearing under subparagraph (B), the Director shall notify the entity-affiliated party whether the suspension or prohibition from participation in any

manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

(5) Rules

The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.

(Pub. L. 102–550, title XIII, §1377, as added Pub. L. 110–289, div. A, title I, §1153(a)(2), July 30, 2008, 122 Stat. 2770.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1377 of Pub. L. 102–550 was renumbered section 1379 and is classified to section 4637 of this title.

§4636b. Criminal penalty

Whoever, being subject to an order in effect under section 4636a of this title, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

(Pub. L. 102–550, title XIII, §1378, as added Pub. L. 110–289, div. A, title I, §1156(a), July 30, 2008, 122 Stat. 2777.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1378 of Pub. L. 102–550 was renumbered section 1379A and is classified to section 4638 of this title.

§4637. Notice after separation from service

The resignation, termination of employment or participation, or separation of an entity-affiliated party shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subchapter against any such entity-affiliated party, if such notice is served before the end of the 6-year period beginning on the date such entity-affiliated party ceases to be associated with the regulated entity.

(Pub. L. 102–550, title XIII, §1379, formerly §1377, Oct. 28, 1992, 106 Stat. 3992; renumbered §1379 and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(1), 1157, July 30, 2008, 122 Stat. 2770, 2777.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1379 of Pub. L. 102–550 was renumbered section 1379B and is classified to section 4639 of this title.

AMENDMENTS

2008—Pub. L. 110–289, §1157(4), which directed the substitution of "regulated entity." for "enterprise." could not be executed because of the prior amendment by Pub. L. 110–289, §1156(b)(1). See below.

Pub. L. 110–289, §1157(3), which directed the substitution of "entity-affiliated party" for "director or officer" wherever appearing, was executed by making the substitution for "director or executive officer" in two places, to reflect the probable intent of Congress.

Pub. L. 110–289, §1157(2), which directed the substitution of "an entity-affiliated party" for "a director or executive officer of an enterprise", was executed by making the substitution for "a director or executive officer of a regulated entity", to reflect the probable intent of Congress and the prior amendment by Pub. L. 110–289, §1156(b)(1). See below.

Pub. L. 110–289, §1157(1), substituted "6-year" for "2-year".

Pub. L. 110–289, §1156(b)(1), substituted "a regulated entity" for "an enterprise" and "the regulated entity" for "the enterprise".

§4638. Private rights of action

This chapter shall not create any private right of action on behalf of any person against a regulated entity, or any director or executive officer of a regulated entity, or impair any existing private right of action under other applicable law.

(Pub. L. 102–550, title XIII, §1379A, formerly §1378, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379A and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(2), July 30, 2008, 122 Stat. 2770, 2777.)

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.

PRIOR PROVISIONS

A prior section 1379A of Pub. L. 102–550 was renumbered section 1379C and is classified to section 4640 of this title.

AMENDMENTS

2008—Pub. L. 110–289, §1156(b)(2), which directed substitution of "a regulated entity" for "an enterprise", was executed by making the substitution in two places to reflect the probable intent of Congress.

§4639. Public disclosure of final orders and agreements

(a) In general

The Director shall make available to the public—

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

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subchapter and that has become final in accordance with sections 4633 and 4634 of this title; and

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

(b) Hearings

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

hearing would be contrary to the public interest.

(c) Delay of public disclosure under exceptional circumstances

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

(d) Documents filed under seal in public enforcement hearings

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

(e) Retention of documents

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

(f) Disclosures to Congress

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

(Pub. L. 102–550, title XIII, §1379B, formerly §1379, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379B and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(3), July 30, 2008, 122 Stat. 2770, 2777.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1379B of Pub. L. 102–550 was renumbered section 1379D and is classified to section 4641 of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–289, §1156(b)(3), substituted "regulated entity" for "enterprise".

§4640. Notice of service

Any service required or authorized to be made by the Director under this subchapter may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

(Pub. L. 102–550, title XIII, §1379C, formerly §1379A, Oct. 28, 1992, 106 Stat. 3993; renumbered §1379C, Pub. L. 110–289, div. A, title I, §1153(a)(1), July 30, 2008, 122 Stat. 2770.)

§4641. Subpoena authority

(a) In general

In the course of or in connection with any proceeding, examination, or investigation under this chapter, the Director or any designated representative thereof, including any person designated to conduct any hearing under this subchapter shall have the authority—

- (1) to administer oaths and affirmations;
- (2) to take and preserve testimony under oath;
- (3) to issue subpoenas and subpoenas duces tecum; and
- (4) to revoke, quash, or modify subpoenas and subpoenas duces tecum.

(b) Witnesses and documents

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

(c) Enforcement

(1) In general

The Director, or any party to proceedings under this subchapter, may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district of the United States in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

(2) Power of court

The courts described under paragraph (1) shall have the jurisdiction and power to order and require compliance with any subpoena issued under paragraph (1).

(d) Fees and expenses

Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an regulated entity enterprise-affiliated party ¹ may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the regulated entity or from its assets.

(e) Penalties

A person shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than 1 year, or both, if that person willfully fails or refuses, in disobedience of a subpoena issued under subsection (c), to—

- (1) attend court;
- (2) testify in court;
- (3) answer any lawful inquiry; or
- (4) produce books, papers, correspondence, contracts, agreements, or such other records as requested in the subpoena.

(Pub. L. 102–550, title XIII, §1379D, formerly §1379B, Oct. 28, 1992, 106 Stat. 3994; renumbered §1379D and amended Pub. L. 110–289, div. A, title I, §§1153(a)(1), 1156(b)(4), 1158, July 30, 2008, 122 Stat. 2770, 2777, 2778.)

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.

CODIFICATION

Pub. L. 110–289, §1158, which directed amendment of section "1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4641)", was executed to this section, which is section 1379D, formerly section 1379B, of the Act, to reflect the probable intent of Congress and the renumbering by Pub. L. 110–289, §1153(a)(1). See 2008 Amendment notes below.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–289, §1158(a)(1)(A), in introductory provisions, struck out "administrative" after "with any", inserted ", examination, or investigation" after "proceeding", substituted "chapter" for "subchapter", and inserted "or any designated representative thereof, including any person designated to conduct any hearing under this subchapter" after "Director". See Codification note above.

Subsec. (a)(4). Pub. L. 110–289, §1158(a)(1)(B), struck out "issued by the Director" before period at end. See Codification note above.

Subsec. (b). Pub. L. 110–289, §1158(a)(2), inserted "or in any territory or other place subject to the jurisdiction of the United States" after "State". See Codification note above.

Subsec. (c). Pub. L. 110–289, §1158(a)(3), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "The Director may request the Attorney General of the United States to bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section or may, under the direction and control of the Attorney General, bring such an action. Such courts shall have jurisdiction and power to order and require compliance therewith." See Codification note above.

Subsec. (d). Pub. L. 110–289, §1158(a)(4), inserted "enterprise-affiliated party" before "may allow". See Codification note above.

Pub. L. 110–289, §1156(b)(4), which directed substitution of "regulated entity" for "enterprise", was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 110–289, §1158(a)(5), added subsec. (e). See Codification note above.

¹ *So in original.*

§4642. Reporting of fraudulent loans

(a) Requirement to report

The Director shall require a regulated entity to submit to the Director a timely report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument, or suspects a possible fraud relating to the purchase or sale of any loan or financial instrument. The Director shall require each regulated entity to establish and maintain procedures designed to discover any such transactions.

(b) Protection from liability for reports

Any regulated entity that, in good faith, makes a report pursuant to subsection (a), and any entity-affiliated party, that, in good faith, makes or requires another to make any such report, shall not be liable to any person under any provision of law or regulation, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement) for such report or for any failure to provide notice of such report to the person who is the subject of such report or any other persons identified in the report.

(Pub. L. 102–550, title XIII, §1379E, as added Pub. L. 110–289, div. A, title I, §1115, July 30, 2008, 122 Stat. 2681.)

CHAPTER 47—COMMUNITY DEVELOPMENT BANKING

SUBCHAPTER I—COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS

Sec.

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SUBCHAPTER I—COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS

§4701. Findings and purposes

(a) Findings

The Congress finds that—

(1) many of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other opportunities;

(2) the restoration and maintenance of the economies of these communities will require coordinated development strategies, intensive supportive services, and increased access to equity investments and loans for development activities, including investment in businesses, housing, commercial real estate, human development, and other activities that promote the long-term economic and social viability of the community; and

(3) community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans, and development services.

(b) Purpose

The purpose of this subchapter is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.

(Pub. L. 103–325, title I, §102, Sept. 23, 1994, 108 Stat. 2163.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in original "this subtitle", meaning subtitle A of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163, which is classified principally to this subchapter. For complete classification of this subtitle to the Code, see Short Title note below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 103–325, §1(a), Sept. 23, 1994, 108 Stat. 2160, provided that: "This Act [see Tables for classification] may be cited as the 'Riegle Community Development and Regulatory Improvement Act of 1994'."

Pub. L. 103–325, title I, §101, Sept. 23, 1994, 108 Stat. 2163, provided that: "This subtitle [subtitle A (§§101–121) of title I of Pub. L. 103–325, enacting this subchapter and section 1772c–1 of this title, amending sections 1766 and 1834a of this title, section 5313 of Title 5, Government Organization and Employees, section 11 of Pub. L. 95–452 set out in the Appendix to Title 5, section 657 of Title 18, Crimes and Criminal Procedure, and section 9101 of Title 31, Money and Finance, and enacting provisions set out as a note under section 11 of Pub. L. 95–452 set out in the Appendix to Title 5] may be cited as the 'Community Development Banking and Financial Institutions Act of 1994'."

§4702. Definitions

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

(1) Administrator

The term "Administrator" means the Administrator of the Fund appointed under section 4703(b) of this title.

(2) Appropriate Federal banking agency

The term "appropriate Federal banking agency" has the same meaning as in section 1813 of this title, and also includes the National Credit Union Administration Board with respect to insured credit unions.

(3) Affiliate

The term "affiliate" has the same meaning as in section 1841(k) of this title.

(4) Board

The term "Board" means the Community Development Advisory Board established under section 4703(d) of this title.

(5) Community development financial institution

(A) In general

The term "community development financial institution" means a person (other than an individual) that—

- (i) has a primary mission of promoting community development;
- (ii) serves an investment area or targeted population;
- (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate;
- (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and
- (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State.

(B) Conditions for qualification of holding companies

(i) Consolidated treatment

A depository institution holding company may qualify as a community development

financial institution only if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements of subparagraph (A).

(ii) Exclusion of subsidiary or affiliate for failure to meet consolidated treatment rule

No subsidiary or affiliate of a depository institution holding company may qualify as a community development financial institution if the holding company and the subsidiaries and affiliates of the holding company do not collectively meet the requirements of subparagraph (A).

(C) Conditions for subsidiaries

No subsidiary of an insured depository institution may qualify as a community development financial institution if the insured depository institution and its subsidiaries do not collectively meet the requirements of subparagraph (A).

(6) Community partner

The term "community partner" means a person (other than an individual) that provides loans, equity investments, or development services, including a depository institution holding company, an insured depository institution, an insured credit union, a nonprofit organization, a State or local government agency, a quasi-governmental entity, and an investment company authorized to operate pursuant to the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.].

(7) Community partnership

The term "community partnership" means an agreement between a community development financial institution and a community partner to provide development services, loans, or equity investments, to an investment area or targeted population.

(8) Depository institution holding company

The term "depository institution holding company" has the same meaning as in section 1813 of this title.

(9) Development services

The term "development services" means activities that promote community development and are integral to lending or investment activities, including—

- (A) business planning;
- (B) financial and credit counseling; and
- (C) marketing and management assistance.

(10) Fund

The term "Fund" means the Community Development Financial Institutions Fund established under section 4703(a) of this title.

(11) Indian reservation

The term "Indian reservation" has the same meaning as in section 1903(10) of title 25, and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

(12) Indian tribe

The term "Indian tribe" means any Indian tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) Insured community development financial institution

The term "insured community development financial institution" means any community

development financial institution that is an insured depository institution or an insured credit union.

(14) Insured credit union

The term "insured credit union" has the same meaning as in section 1752(7) of this title.

(15) Insured depository institution

The term "insured depository institution" has the same meaning as in section 1813 of this title.

(16) Investment area

The term "investment area" means a geographic area (or areas) including an Indian reservation that—

- (A)(i) meets objective criteria of economic distress developed by the Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, rural population outmigration, lag in population growth, and extent of blight and disinvestment; and
- (ii) has significant unmet needs for loans or equity investments; or
- (B) encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of title 26.

(17) Low-income

The term "low-income" means having an income, adjusted for family size, of not more than—

- (A) for metropolitan areas, 80 percent of the area median income; and
- (B) for nonmetropolitan areas, the greater of—
 - (i) 80 percent of the area median income; or
 - (ii) 80 percent of the statewide nonmetropolitan area median income.

(18) State

The term "State" has the same meaning as in section 1813 of this title.

(19) Subsidiary

The term "subsidiary" has the same meaning as in section 1813 of this title, except that a community development financial institution that is a corporation shall not be considered to be a subsidiary of any insured depository institution or depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation.

(20) Targeted population

The term "targeted population" means individuals, or an identifiable group of individuals, including an Indian tribe, who—

- (A) are low-income persons; or
- (B) otherwise lack adequate access to loans or equity investments.

(21) Training program

The term "training program" means the training program operated by the Fund under section 4708 of this title.

(Pub. L. 103–325, title I, §103, Sept. 23, 1994, 108 Stat. 2163.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in par. (6), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

The Alaska Native Claims Settlement Act, referred to in pars. (11) and (12), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For

complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§4703. Establishment of national Fund for community development banking

(a) Establishment

(1) In general

There is established a corporation to be known as the Community Development Financial Institutions Fund that shall have the duties and responsibilities specified by this subchapter and subchapter II of this chapter. The Fund shall have succession until dissolved. The offices of the Fund shall be in Washington, D.C. The Fund shall not be affiliated with or be within any other agency or department of the Federal Government.

(2) Wholly owned Government corporation

The Fund shall be a wholly owned Government corporation in the executive branch and shall be treated in all respects as an agency of the United States, except as otherwise provided in this subchapter.

(b) Management of Fund

(1) Appointment of Administrator

The management of the Fund shall be vested in an Administrator, who shall be appointed by the President. The Administrator shall not engage in any other business or employment during service as the Administrator.

(2) Chief financial officer

The Administrator shall appoint a chief financial officer, who shall have the authority and functions of an agency Chief Financial Officer under section 902 of title 31. In the event of a vacancy in the position of the Administrator or during the absence or disability of the Administrator, the chief financial officer shall perform the duties of the position of Administrator.

(3) Other officers and employees

The Administrator may appoint such other officers and employees of the Fund as the Administrator determines to be necessary or appropriate.

(4) Expedited hiring

During the 2-year period beginning on September 23, 1994, the Administrator may—

(A) appoint and terminate the individuals referred to in paragraphs (2) and (3) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (3) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(c) General powers

In carrying out the functions of the Fund, the Administrator—

(1) shall have all necessary and proper authority to carry out this subchapter and subchapter II of this chapter;

(2) shall have the power to adopt, alter, and use a corporate seal for the Fund, which shall be judicially noticed;

(3) may adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which business of the Fund may be conducted and such rules and regulations as may be necessary or appropriate to implement this subchapter and subchapter II of this chapter;

(4) may enter into, perform, and enforce such agreements, contracts, and transactions as may be

deemed necessary or appropriate to the conduct of activities authorized under this subchapter and subchapter II of this chapter;

(5) may determine the character of and necessity for expenditures of the Fund and the manner in which they shall be incurred, allowed, and paid;

(6) may utilize or employ the services of personnel of any agency or instrumentality of the United States with the consent of the agency or instrumentality concerned on a reimbursable or nonreimbursable basis; and

(7) may execute all instruments necessary or appropriate in the exercise of any of the functions of the Fund under this subchapter and subchapter II of this chapter and may delegate to the officers of the Fund such of the powers and responsibilities of the Administrator as the Administrator deems necessary or appropriate for the administration of the Fund.

(d) Advisory Board

(1) Establishment

There is established an advisory board to the Fund to be known as the Community Development Advisory Board, which shall be operated in accordance with the provisions of chapter 10 of title 5, except that section 1013 of title 5 does not apply to the Board.

(2) Membership

The Board shall consist of 15 members, including—

(A) the Secretary of Agriculture or his or her designee;

(B) the Secretary of Commerce or his or her designee;

(C) the Secretary of Housing and Urban Development or his or her designee;

(D) the Secretary of the Interior or his or her designee;

(E) the Secretary of the Treasury or his or her designee;

(F) the Administrator of the Small Business Administration or his or her designee; and

(G) 9 private citizens, appointed by the President, who shall be selected, to the maximum extent practicable, to provide for national geographic representation and racial, ethnic, and gender diversity, including—

(i) 2 individuals who are officers of existing community development financial institutions;

(ii) 2 individuals who are officers of insured depository institutions;

(iii) 2 individuals who are officers of national consumer or public interest organizations;

(iv) 2 individuals who have expertise in community development; and

(v) 1 individual who has personal experience and specialized expertise in the unique lending and community development issues confronted by Indian tribes on Indian reservations.

(3) Chairperson

The members of the Board specified in paragraph (2)(G) shall select, by majority vote, a chairperson of the Board, who shall serve for a term of 2 years.

(4) Board function

It shall be the function of the Board to advise the Administrator on the policies of the Fund regarding activities under this subchapter. The Board shall not advise the Administrator on the granting or denial of any particular application.

(5) Terms of private members

(A) In general

Each member of the Board appointed under paragraph (2)(G) shall serve for a term of 4 years.

(B) Vacancies

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the previous member was appointed shall be appointed for the remainder of such term. Members may continue to serve following the expiration of their terms until a successor is

appointed.

(6) Meetings

The Board shall meet at least annually and at such other times as requested by the Administrator or the chairperson. A majority of the members of the Board shall constitute a quorum.

(7) Reimbursement for expenses

The members of the Board may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with chapter 10 of title 5.

(8) Costs and expenses

The Fund shall provide to the Board all necessary staff and facilities.

(e) Omitted

(f) Government Corporation Control Act exemption

Section 9107(b) of title 31, shall not apply to deposits of the Fund made pursuant to section 4707 of this title.

(g) Limitation of Fund and Federal liability

The liability of the Fund and the United States Government arising out of any investment in a community development financial institution in accordance with this subchapter shall be limited to the amount of the investment. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, Territory, or the District of Columbia. Nothing in this subsection shall affect the application of any Federal tax law.

(h) Prohibition on issuance of securities

The Fund may not issue stock, bonds, debentures, notes, or other securities.

(i) Omitted

(j) Assisted institutions not United States instrumentalities

A community development financial institution or other organization that receives assistance pursuant to this subchapter shall not be deemed to be an agency, department, or instrumentality of the United States.

(k) Transition period

(1) In general

During the transition period, the Secretary of the Treasury may—

(A) assist in the establishment of the administrative functions of the Fund listed in paragraph (2); and

(B) hire not more than 6 individuals to serve as employees of the Fund during the transition period.

(2) Continued service

Individuals hired in accordance with paragraph (1)(B) may continue to serve as employees of the Fund after the transition period.

(3) Administrative functions

The administrative functions referred to in paragraph (1)(A) shall be limited to—

(A) establishing accounting, information, and recordkeeping systems for the Fund; and

(B) procuring office space, equipment, and supplies.

(4) Expedited hiring

During the transition period, the Secretary of the Treasury may—

(A) appoint and terminate the individuals referred to in paragraph (1)(B) without regard to the civil service laws and regulations; and

(B) fix the compensation of the individuals referred to in paragraph (1)(B) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(5) Certain employees

During the transition period, employees of the Department of the Treasury may only comprise less than one-half of the total number of individuals hired in accordance with paragraph (1)(B).

(6) Transition expenses

Amounts previously appropriated to the Department of the Treasury may be used to pay obligations and expenses of the Fund incurred under this section, and such amounts may be reimbursed by the Fund to the Department of the Treasury from amounts appropriated to the Fund for fiscal year 1995.

(7) "Transition period" defined

For purposes of this subsection, the term "transition period" means the period beginning on September 23, 1994, and ending on the date on which the Administrator is appointed.

(Pub. L. 103–325, title I, §104, Sept. 23, 1994, 108 Stat. 2166; Pub. L. 112–166, §2(w), Aug. 10, 2012, 126 Stat. 1289; Pub. L. 117–286, §4(a)(57), Dec. 27, 2022, 136 Stat. 4311.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 104 of Pub. L. 103–325. Subsecs. (e) and (i) of section 104 of Pub. L. 103–325 amended section 9101 of Title 31, Money and Finance, and section 5313 of Title 5, Government Organization and Employees, respectively.

AMENDMENTS

2022—Subsec. (d)(1). Pub. L. 117–286, §4(a)(57)(A), substituted "chapter 10 of title 5, except that section 1013 of title 5" for "the Federal Advisory Committee Act, except that section 14 of that Act".

Subsec. (d)(7). Pub. L. 117–286, §4(a)(57)(B), substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act."

2012—Subsec. (b)(1). Pub. L. 112–166 struck out ", by and with the advice and consent of the Senate" before period at end of first sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of Title 6, Domestic Security.

ADMINISTRATION OF FUND BY SECRETARY OF THE TREASURY

Pub. L. 104–134, title I, §101(e) [title III], Apr. 26, 1996, 110 Stat. 1321–257, 1321–294; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part: "That notwithstanding any other provision of law, for purposes of administering the Community Development Financial Institutions Fund, the Secretary of the Treasury shall have all powers and rights of the Administrator of the CDBFI Act [12 U.S.C. 4701 et seq.] and the Fund shall be within the Department of the Treasury."

Similar provisions were contained in the following prior appropriations act:

Pub. L. 104–19, title I, July 27, 1995, 109 Stat. 237.

§4703a. Capital investments for neighborhoods disproportionately impacted by

the COVID–19 pandemic

(a) Definitions

In this section—

(1) the term "bank holding company" has the meaning given the term in section 1841 of this title;

(2) the term "eligible institution" means any low- and moderate-income community financial institution that is eligible to participate in the Program;

(3) the term "Emergency Capital Investment Fund" means the Emergency Capital Investment Fund established under subsection (b);

(4) the term "low- and moderate-income community financial institution" means any financial institution that is—

(A)(i) a community development financial institution; or

(ii) a minority depository institution; and

(B)(i) an insured depository institution that is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;

(ii) a bank holding company;

(iii) a savings and loan holding company; or

(iv) a federally insured credit union;

(5) the term "minority" means any Black American, Native American, Hispanic American, Asian American, Native Alaskan, Native Hawaiian, or Pacific Islander;

(6) the term "minority depository institution" means an entity that is—

(A) a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note); or

(B) considered to be a minority depository institution by—

(i) the appropriate Federal banking agency; or

(ii) the National Credit Union Administration, in the case of an insured credit union; or

(C) listed in the Federal Deposit Insurance Corporation's Minority Depository Institutions List published for the Third Quarter 2020.¹

(7) the term "Program" means the Emergency Capital Investment Program established under subsection (b);

(8) the term "savings and loan holding company" has the meaning given the term under section 1467a(a) of this title; and

(9) the "Secretary" means the Secretary of the Treasury.

(b) Establishment

(1) Fund established

There is established in the Treasury of the United States a fund to be known as the "Emergency Capital Investment Fund", which shall be administered by the Secretary.

(2) Program authorized

The Secretary is authorized to establish an emergency program known as the "Emergency Capital Investment Program" to support the efforts of low- and moderate-income community financial institutions to, among other things, provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities, including persistent poverty counties, that may be disproportionately impacted by the economic effects of the COVID–19 pandemic, by providing direct and indirect capital investments in low- and moderate-income community financial institutions consistent with this section.

(c) Purchases

(1) In general

Subject to paragraph (2), the Emergency Capital Investment Fund shall be available to the Secretary, without further appropriation or fiscal year limitation, for the costs of purchases (including commitments to purchase), and modifications of such purchases, of preferred stock and other financial instruments from eligible institutions on such terms and conditions as are determined by the Secretary in accordance with this section.

(2) Purchase limit

The aggregate amount of purchases pursuant to paragraph (1) may not exceed \$9,000,000,000.

(d) Application

(1) Acceptance

The Secretary shall begin accepting applications for capital investments under the Program not later than the end of the 30-day period beginning on December 27, 2020.

(2) Consultation with regulators

For each eligible institution that applies to receive a capital investment under the Program, the Secretary shall consult with the appropriate Federal banking agency or the National Credit Union Administration, as applicable, to determine whether the eligible institution may receive such capital investment.

(3) Eligibility

(A) In general

Only low- and moderate-income community financial institutions shall be eligible to participate in the Program.

(B) Additional criteria

The Secretary may establish additional criteria for participation by an institution in the Program, as the Secretary may determine appropriate in furtherance of the goals of the Program.

(4) Requirement to provide an emergency investment lending plan for communities that may be disproportionately impacted by the economic effects of the COVID–19 pandemic

(A) In general

At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant shall provide the Secretary, along with the appropriate Federal banking agency or the National Credit Union Administration, as applicable, an investment and lending plan that—

(i) demonstrates that not less than 30 percent of the lending of the applicant over the past 2 fiscal years was made directly to low- and moderate income borrowers, to borrowers that create direct benefits for low- and moderate-income populations, to other targeted populations as defined by the Fund, or any combination thereof, as measured by the total number and dollar amount of loans;

(ii) describes how the business strategy and operating goals of the applicant will address community development needs in communities that may be disproportionately impacted by the economic effects of COVID–19, which includes the needs of small businesses, consumers, nonprofit organizations, community development, and other projects providing direct benefits to low- and moderate-income communities, low-income individuals, and minorities within the minority, rural, and urban low-income and underserved areas served by the applicant;

(iii) includes a plan to provide community outreach and communication, where appropriate; ²

(iv) includes details on how the applicant plans to expand or maintain significant lending or investment activity in low- or moderate-income minority communities, especially those that may be disproportionately impacted by COVID–19 to historically disadvantaged

borrowers, and to minorities that have significant unmet capital or financial services needs.

(B) Documentation

In the case of an applicant that is certified as a community development financial institution as of December 27, 2020, for purposes of subparagraph (A)(i), the Secretary may rely on documentation submitted by the applicant to the Fund as part of certification compliance reporting.

(5) Incentives to increase lending and provide affordable credit

(A) Issuance and purchase of preferred stock

An eligible institution that the Secretary approves for participation in the Program may issue to the Secretary, and the Secretary may purchase from such institution, preferred stock that—

(i) provides that the preferred stock will—

(I) be repaid not later than the end of the 10-year period beginning on the date of the capital investment under the Program; or

(II) at the end of such 10-year period, be subject to such additional terms as the Secretary shall prescribe, which shall include a requirement that the stock shall carry the highest dividend or interest rate payable; and

(ii) provides that the term and condition described under clause (i) shall not apply if the application of that term and condition would adversely affect the capital treatment of the stock under current or successor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

(B) Alternative financial instruments

If the Secretary determines that an institution cannot feasibly issue preferred stock as provided under subparagraph (A), such institution may issue to the Secretary, and the Secretary may purchase from such institution, a subordinated debt instrument whose terms are, to the extent possible, consistent with requirements under the Program applicable to the terms of preferred stock issued by institutions participating in the Program, with such adjustments as the Secretary determines appropriate, including by taking into account the tax treatment of payments made with respect to securities issued by such eligible institution.

(6) Requirements on preferred stock and other financial instrument

Any financial instrument issued to the Secretary by a low- and moderate-income community financial institution under the Program shall provide the following:

(A) No dividends, interest or other similar required payments shall have a rate exceeding 2 percent per annum for the first 10 years.

(B) The annual required payment rate of dividends, interest, or other similar payments of a low- and moderate-income community financial institution shall be adjusted downward as follows, based on lending by the institution during the most recent annual period compared to lending by the institution during the annual period ending on September 30, 2020:

(i) No dividends, interest, or other similar payments shall be due within the first 24-month period after the capital investment by the Secretary.

(ii) If the amount of lending by the institution within minority, rural, and urban low-income and underserved communities and to low- and moderate-income borrowers has increased in amount between 200 percent and 400 percent of the amount of the capital investment, the annual payment rate shall not exceed 1.25 percent per annum.

(iii) If the amount of lending by the institution within minority, rural, and urban low-income and underserved communities and to low- and moderate-income borrowers has increased by more than 400 percent of the capital investment, the annual payment rate shall not exceed 0.5 percent per annum.

(7) Contingency of payments based on certain financial criteria

(A) Deferral

Any annual payments under this section shall be deferred in any quarter or payment period if any of the following is true:

- (i) The low- and moderate-income community institution fails to meet the Tier 1 capital ratio or similar ratio as determined by the Secretary.
- (ii) The low- and moderate-income community financial institution fails to achieve positive net income for the quarter or payment period.
- (iii) The low- and moderate-income community financial institution determines that the payment would be detrimental to the financial health of the institution and the Chief Executive Officer and Chief Financial Officer of the institution provide written notice, in a form reasonably satisfactory to the Secretary, of such determination and the basis thereof.

(B) Testing during next payment period

Any annual payment that is deferred under this section shall—

- (i) be tested against the metrics described in subparagraph (A) at the beginning of the next payment period; and
- (ii) continue to be deferred until the metrics described in that subparagraph are no longer applicable.

(8) Requirements in connection with failure to satisfy program goals

Any financial instrument issued to the Secretary by a low- and moderate-income community financial institution under the Program may include such additional terms and conditions as the Secretary determines may be appropriate to provide the holders with rights in the event that such institution fails to satisfy applicable requirements under the Program or to protect the interests of the Federal Government.

(e) Restrictions

(1) In general

Each low- and moderate-income community financial institution may only issue financial instruments or senior preferred stock under this subsection with an aggregate principal amount (or comparable amount) that is—

- (A) not more than \$250,000,000; and
- (B)(i) not more than 7.5 percent of total assets for an institution with assets of more than \$2,000,000,000;
- (ii) not more than 15 percent of total assets for an institution with assets of not less than \$500,000,000 and not more than \$2,000,000,000; and
- (iii) not more than 22.5 percent of total assets for an institution with assets of less than \$500,000,000.

(2) Set-asides

Of the amounts made available under subsection (c)(2), not less than \$4,000,000,000 shall be made available for eligible institutions with total assets of not more than \$2,000,000,000 that timely apply to receive a capital investment under the Program, of which not less than \$2,000,000,000 shall be made available for eligible institutions with total assets of less than \$500,000,000 that timely apply to receive a capital investment under the Program.

(3) Holding of instruments

Holding any instrument of a low- and moderate-income community financial institution described in paragraph (1) shall not give the Secretary or any successor that owns the instrument any rights over the management of the institution in the ordinary course of business.

(4) Sale of interest

(A) In general

With respect to a capital investment made into a low- and moderate-income community financial institution under this section, the Secretary—

- (i) prior to any sale of such capital investment to a third party, shall provide the low- and

moderate-income community financial institution a right of first refusal to buy back the investment under terms that do not exceed a value as determined by an independent third party;

(ii) shall not sell more than 25 percent of the outstanding equity interests of any institution to a single third party without the consent of such institution, which may not be unreasonably withheld; and

(iii) with the permission of the institution, may transfer or sell the interest of the Secretary in the capital investment for no consideration or for a de minimis amount to a mission aligned nonprofit affiliate of an applicant that is an insured community development financial institution.

(B) Calculation of ownership for minority depository institutions

The calculation and determination of ownership thresholds for a depository institution to qualify as a minority depository institution shall exclude any dilutive effect of equity investments by the Federal Government, including under the Program or through the Fund.

(5) Repayment incentives

The Secretary may establish repayment incentives that will apply to capital investments under the Program in a manner that the Secretary determines to be consistent with the purposes of the Program.

(f) Treatment of capital investments

The Secretary shall seek to establish the terms of preferred stock issued under the Program to enable such preferred stock to receive Tier 1 capital treatment.

(g) Outreach to minority communities

The Secretary shall require low- and moderate-income community financial institutions receiving capital investments under the Program to provide community outreach and communication, where appropriate, describing the availability and application process of receiving loans made possible by the Program through organizations, trade associations, and individuals that represent or work within or are members of minority communities.

(h) Restrictions

(1) In general

Not later than the end of the 30-day period beginning on December 27, 2020, the Secretary shall issue rules setting restrictions on executive compensation, share buybacks, and dividend payments for recipients of capital investments under the Program.

(2) Conflicts of interest

(A) Definitions

In this paragraph:

(i) Controlling interest

The term "controlling interest" means owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity.

(ii) Covered entity

The term "covered entity" means an entity in which a covered individual directly or indirectly holds a controlling interest. For the purpose of determining whether an entity is a covered entity, the securities owned, controlled, or held by 2 or more individuals who are related as described in clause (iii)(II) shall be aggregated.

(iii) Covered individual

The term "covered individual" means—

(I) the President, the Vice President, the head of an Executive department, or a Member

of Congress; and

(II) the spouse, child, son-in-law, or daughter-in-law, as determined under applicable common law, of an individual described in subclause (i).

(iv) Executive department

The term "Executive department" has the meaning given the term in section 101 of title 5.

(v) Member of Congress

The term "member of Congress" means a member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(vi) Equity interest

The term "equity interest" means—

(I) a share in an entity, without regard to whether the share is—

(aa) transferable; or

(bb) classified as stock or anything similar;

(II) a capital or profit interest in a limited liability company or partnership; or

(III) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in subclause (I) or (II), respectively.

(B) Prohibition

Notwithstanding any other provision of this section, no covered entity may be eligible for any investment made under the Program.

(C) Requirement

The principal executive officer and the principal financial officer, or individuals performing similar functions, of an entity seeking to receive an investment made under the Program shall, before that investment is approved, certify to the Secretary and the appropriate Federal banking agency or the National Credit Union Administration, as applicable, that the entity is eligible to receive the investment, including that the entity is not a covered entity.

(i) Ineligibility of certain institutions

An institution shall be ineligible to participate in the Program if such institution is designated in Troubled Condition by the appropriate Federal banking agency or the National Credit Union Administration, as applicable, or is subject to a formal enforcement action with its primary Federal regulator that addresses unsafe or unsound lending practices.

(j) Termination of investment authority

(1) In general

The authority to make new capital investments in low- and moderate-income community financial institutions, including commitments to purchase preferred stock or other instruments, provided under the Program shall terminate on the date that is 6 months after the date on which the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates.

(2) Rule of construction

Nothing in this subsection may be construed to limit any other authority of the Secretary not described in paragraph (1).

(k) Collection of data

Notwithstanding the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.)—

(1) any low- and moderate-income community financial institution may collect data described in section 701(a)(1) of that Act (15 U.S.C. 1691(a)(1)) from borrowers and applicants for credit for the sole purpose and exclusive use of monitoring compliance under the plan required under

subsection (d)(4); and

(2) a low- and moderate-income community financial institution that collects the data described in paragraph (1) shall not be subject to adverse action related to that collection by the Bureau of Consumer Financial Protection or any other Federal agency.

(l) Deposit of funds

All funds received by the Secretary in connection with purchases made pursuant this section, including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be deposited into the Fund and used to provide financial and technical assistance pursuant to section 4707 of this title, except that subsection (e) of that section shall be waived.

(m) Direct appropriation

There is appropriated, out of amounts in the Treasury not otherwise appropriated, for fiscal year 2021, \$9,000,000,000, to remain available until expended and to be deposited in the Emergency Capital Investment Fund, to carry out this section.

(n) Administrative expenses

Funds appropriated pursuant to subsection (m) may be used for administrative expenses, including the costs of modifying such investments, and reasonable costs of administering the Program of making, holding, managing, and selling the capital investments.

(o) Administrative provisions

The Secretary may take such actions as the Secretary determines necessary to carry out the authorities in this section, including the following:

(1) The Secretary may use the services of any agency or instrumentality of the United States or component thereof on a reimbursable basis, and any such agency or instrumentality or component thereof is authorized to provide services as requested by the Secretary using all authorities vested in or delegated to that agency, instrumentality, or component.

(2) The Secretary may enter into contracts, including contracts for services authorized by section 3109 of title 5.

(3) The Secretary may designate any bank, savings association, trust company, security broker or dealer, asset manager, or investment adviser as a financial agent of the Federal Government and such institution shall perform all such reasonable duties related to this section as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents to perform reasonable duties related to this section.

(4) The Secretary may exercise any rights received in connection with any preferred stock or other financial instruments or assets purchased or acquired pursuant to the authorities granted under this section.

(5) The Secretary may manage any assets purchased under this section, including revenues and portfolio risks therefrom.

(6) The Secretary may sell, dispose of, transfer, exchange or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any preferred stock or other financial instrument or asset purchased or acquired under this section, upon terms and conditions and at a price determined by the Secretary.

(7) The Secretary may manage or prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this section.

(8) The Secretary may establish and use vehicles to purchase, hold, and sell preferred stock or other financial instruments and issue obligations.

(9) The Secretary may issue such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this section.

(10) The Secretary is authorized to use direct hiring authority to hire employees to administer this section.

(Pub. L. 103–325, title I, §104A, as added Pub. L. 116–260, div. N, title V, §522(a), Dec. 27, 2020, 134 Stat. 2079.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (a)(6)(A), is section 308 of Pub. L. 101–73, which is set out as a note under section 1463 of this title.

The National Emergencies Act, referred to in subsec. (j)(1), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Equal Credit Opportunity Act, referred to in subsec. (k), 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 this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

PURPOSE

Pub. L. 116–260, div. N, title V, §520, Dec. 27, 2020, 134 Stat. 2079, provided that: "The purpose of this subtitle [subtitle B (§§520–524) of title V of div. N of Pub. L. 116–260, enacting this section and provisions set out as notes under this section] is to establish emergency programs to revitalize and provide long-term financial products and service availability for, and provide investments in, low- and moderate-income and minority communities that have disproportionately suffered from the impacts of the COVID–19 pandemic."

CONSIDERATIONS IN EXERCISING AUTHORITIES; REQUIREMENTS FOR CREDITORS

Pub. L. 116–260, div. N, title V, §521, Dec. 27, 2020, 134 Stat. 2079, provided that:

"(a) IN GENERAL.—In exercising the authorities under this subtitle [subtitle B (§§520–524) of title V of div. N of Pub. L. 116–260, enacting this section and provisions set out as notes under this section] and the amendments made by this subtitle, the Secretary of the Treasury shall take into consideration increasing the availability of affordable credit for consumers, small businesses, and nonprofit organizations, including for projects supporting affordable housing, community-serving real estate, and other projects, that provide direct benefits to low- and moderate-income communities, low-income and underserved individuals, and minorities, that have disproportionately suffered from the health and economic impacts of the COVID–19 pandemic.

"(b) REQUIREMENT FOR CREDITORS.—Any creditor participating in a program established under this subtitle or the amendments made by this subtitle shall fully comply with all applicable statutory and regulatory requirements relating to fair lending."

INSPECTOR GENERAL OVERSIGHT

Pub. L. 116–260, div. N, title V, §524, Dec. 27, 2020, 134 Stat. 2089, provided that:

"(a) IN GENERAL.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of any program established under this subtitle [subtitle B (§§520–524) of title V of div. N of Pub. L. 116–260, enacting this section and provisions set out as notes under this section] or the amendments made by this subtitle.

"(b) REPORTING.—The Inspector General of the Department of the Treasury 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 and the Secretary of the Treasury not less frequently than 2 times per year a report relating to the oversight provided by the Office of the Inspector General, including any recommendations for improvements to the programs described in subsection (a)."

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

² *So in original. Probably should be followed by "and".*

§4704. Applications for assistance

(a) Form and procedures

An application for assistance under this subchapter shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

(b) Minimum requirements

Except as provided in sections 4705 and 4712 of this title, the Fund shall require an application—

- (1) to establish that the applicant is, or will be, a community development financial institution;
- (2) to include a comprehensive strategic plan for the organization that contains—

(A) a business plan of not less than 5 years in duration that demonstrates that the applicant will be properly managed and will have the capacity to operate as a community development financial institution that will not be dependent upon assistance from the Fund for continued viability;

(B) an analysis of the needs of the investment area or targeted population and a strategy for how the applicant will attempt to meet those needs;

(C) a plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs, and private sector financial services;

(D) an explanation of how the proposed activities of the applicant are consistent with existing economic, community, and housing development plans adopted by or applicable to an investment area or targeted population; and

(E) a description of how the applicant will coordinate with community organizations and financial institutions which will provide equity investments, loans, secondary markets, or other services to investment areas or targeted populations;

(3) to include a detailed description of the applicant's plans and likely sources of funds to match the amount of assistance requested from the Fund;

(4) in the case of an applicant that has previously received assistance under this subchapter, to demonstrate that the applicant—

(A) has substantially met its performance goals and otherwise carried out its responsibilities under this subchapter and the assistance agreement; and

(B) will expand its operations into a new investment area or serve a new targeted population, offer more products or services, or increase the volume of its business;

(5) in the case of an applicant with a prior history of serving investment areas or targeted populations, to demonstrate that the applicant—

(A) has a record of success in serving investment areas or targeted populations; and

(B) will expand its operations into a new investment area or to serve a new targeted population, offer more products or services, or increase the volume of its current business; and

(6) to include such other information as the Fund deems appropriate.

(c) Preapplication outreach program

The Fund shall provide an outreach program to identify and provide information to potential applicants and may provide technical assistance to potential applicants, but shall not assist in the preparation of any application.

(Pub. L. 103–325, title I, §105, Sept. 23, 1994, 108 Stat. 2170.)

§4705. Community partnerships

(a) Application

An application for assistance may be filed jointly by a community development financial institution and a community partner to carry out a community partnership.

(b) Application requirements

The Fund shall require a community partnership application—

(1) to meet the minimum requirements established for community development financial institutions under section 4704(b) of this title, except that the criteria specified in paragraphs (1) and (2)(A) of section 4704(b) of this title shall not apply to the community partner;

(2) to describe how each coapplicant will participate in carrying out the community partnership and how the partnership will enhance activities serving the investment area or targeted population; and

(3) to demonstrate that the community partnership activities are consistent with the strategic plan submitted by the community development financial institution coapplicant.

(c) Selection criteria

The Fund shall consider a community partnership application based on—

(1) the community development financial institution coapplicant—

(A) meeting the minimum selection criteria described in section 4704 of this title; and

(B) satisfying the selection criteria of section 4706 of this title;

(2) the extent to which the community partner coapplicant will participate in carrying out the partnership;

(3) the extent to which the community partnership will enhance the likelihood of success of the community development financial institution coapplicant's strategic plan; and

(4) the extent to which service to the investment area or targeted population will be better performed by a partnership as opposed to the individual community development financial institution coapplicant.

(d) Limitation on distribution of assistance

Assistance provided upon approval of an application under this section shall be distributed only to the community development financial institution coapplicant, and shall not be used to fund any activities carried out directly by the community partner or an affiliate or subsidiary thereof.

(e) Other requirements and limitations

All other requirements and limitations imposed by this subchapter on a community development financial institution assisted under this subchapter shall apply (in the manner that the Fund determines to be appropriate) to assistance provided to carry out community partnerships. The Fund may establish additional guidelines and restrictions on the use of Federal funds to carry out community partnerships.

(Pub. L. 103–325, title I, §106, Sept. 23, 1994, 108 Stat. 2171.)

§4706. Selection of institutions

(a) Selection criteria

Except as provided in section 4712 of this title, the Fund shall, in its sole discretion, select community development financial institution applicants meeting the requirements of section 4704 of this title for assistance based on—

(1) the likelihood of success of the applicant in meeting the goals of its comprehensive strategic plan;

(2) the experience and background of the management team;

(3) the extent of need for equity investments, loans, and development services within the investment areas or targeted populations;

(4) the extent of economic distress within the investment areas or the extent of need within the targeted populations, as those factors are measured by objective criteria;

(5) the extent to which the applicant will concentrate its activities on serving its investment areas or targeted populations;

(6) the amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the match;

- (7) the extent to which the matching funds are derived from private sources;
- (8) the extent to which the proposed activities will expand economic opportunities within the investment areas or the targeted populations;
- (9) whether the applicant is, or will become, an insured community development financial institution;
- (10) the extent of support from the investment areas or targeted populations;
- (11) the extent to which the applicant is, or will be, community-owned or community-governed;
- (12) the extent to which the applicant will increase its resources through coordination with other institutions or participation in a secondary market;
- (13) in the case of an applicant with a prior history of serving investment areas or targeted populations, the extent of success in serving them; and
- (14) other factors deemed to be appropriate by the Fund.

(b) Geographic diversity

In selecting applicants for assistance, the Fund shall seek to fund a geographically diverse group of applicants, which shall include applicants from metropolitan, nonmetropolitan, and rural areas. (Pub. L. 103–325, title I, §107, Sept. 23, 1994, 108 Stat. 2172.)

§4707. Assistance provided by Fund

(a) Forms of assistance

(1) In general

The Fund may provide—

- (A) financial assistance through equity investments, deposits, credit union shares, loans, and grants; and
- (B) technical assistance—
 - (i) directly;
 - (ii) through grants; or
 - (iii) by contracting with organizations that possess expertise in community development finance, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(2) Equity investments

(A) Limitation on equity investments

The Fund shall not own more than 50 percent of the equity of a community development financial institution and may not control the operations of such institution. The Fund may hold only transferable, nonvoting equity investments in the institution. Such equity investments may provide for convertibility to voting stock upon transfer by the Fund.

(B) Fund deemed not to control

Notwithstanding any other provision of law, the Fund shall not be deemed to control a community development financial institution by reason of any assistance provided under this subchapter for the purpose of any other applicable law to the extent that the Fund complies with subparagraph (A). Nothing in this subparagraph shall affect the application of any Federal tax law.

(3) Deposits

Deposits made pursuant to this section in an insured community development financial institution shall not be subject to any requirement for collateral or security.

(4) Limitations on obligations

Direct loan obligations may be incurred by the Fund only to the extent that appropriations of budget authority to cover their cost, as defined in section 661a(5) of title 2, are made in advance.

(b) Uses of financial assistance

(1) In general

Financial assistance made available under this subchapter may be used by assisted community development financial institutions to serve investment areas or targeted populations by developing or supporting—

(A) commercial facilities that promote revitalization, community stability, or job creation or retention;

(B) businesses that—

(i) provide jobs for low-income people or are owned by low-income people; or

(ii) enhance the availability of products and services to low-income people;

(C) community facilities;

(D) the provision of basic financial services;

(E) housing that is principally affordable to low-income people, except that assistance used to facilitate homeownership shall only be used for services and lending products—

(i) that serve low-income people; and

(ii) that—

(I) are not provided by other lenders in the area; or

(II) complement the services and lending products provided by other lenders that serve the investment area or targeted population; and

(F) other businesses and activities deemed appropriate by the Fund.

(2) Limitations

No assistance made available under this subchapter may be expended by a community development financial institution (or an organization receiving assistance under section 4712 of this title) 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).

(c) Uses of technical assistance

(1) Types of activities

Technical assistance may be used for activities that enhance the capacity of a community development financial institution, such as training of management and other personnel and development of programs and investment or loan products.

(2) Availability of technical assistance

The Fund may provide technical assistance, regardless of whether or not the recipient also receives financial assistance under this section.

(d) Amount of assistance

(1) In general

Except as provided in paragraph (2), the Fund may provide not more than \$5,000,000 of assistance, in the aggregate, during any 3-year period to any 1 community development financial institution and its subsidiaries and affiliates.

(2) Exception

The Fund may provide not more than \$3,750,000 of assistance in addition to the amount specified in paragraph (1) during the same 3-year period to an existing community development financial institution that proposes to establish a subsidiary or affiliate for the purpose of serving an investment area or targeted population outside of any State and outside of any metropolitan area presently served by the institution, if—

(A) the subsidiary or affiliate—

(i) would be a community development financial institution; and

(ii) independently—

(I) meets the selection criteria described in section 4704 of this title; and

(II) satisfies the selection criteria of section 4706 of this title; and

(B) no other application for assistance to serve the investment area or targeted population has been submitted to the Administrator within a reasonable period of time preceding the date of receipt of the application at issue.

(3) Timing of assistance

Assistance may be provided as described in paragraphs (1) and (2) in a lump sum or over a period of time, as determined by the Fund.

(e) Matching requirements

(1) In general

Assistance other than technical assistance shall be matched with funds from sources other than the Federal Government on the basis of not less than one dollar for each dollar provided by the Fund. Such matching funds shall be at least comparable in form and value to assistance provided by the Fund. The Fund shall provide no assistance (other than technical assistance) until a community development financial institution has secured firm commitments for the matching funds required.

(2) Exception

In the case of an applicant with severe constraints on available sources of matching funds, the Fund may permit an applicant to comply with the matching requirements of paragraph (1) by—

(A) reducing such matching requirement by 50 percent; or

(B) permitting an applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such applicant—

(i) has total assets of less than \$100,000;

(ii) serves nonmetropolitan or rural areas; and

(iii) is not requesting more than \$25,000 in assistance.

(3) Limitation

Not more than 25 percent of the total funds disbursed in any fiscal year by the Fund may be matched as authorized under paragraph (2).

(4) Construction of "Federal Government funds"

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

(f) Terms and conditions

(1) Soundness of unregulated institutions

The Fund shall—

(A) ensure, to the maximum extent practicable, that each community development financial institution (other than an insured community development financial institution or depository institution holding company) assisted under this subchapter is financially and managerially sound and maintains appropriate internal controls;

(B) require such institution to submit, not less than once during each 18-month period, a statement of financial condition audited by an independent certified public accountant as part of the report required by section 4714(e)(1) of this title; and

(C) require that all assistance granted under this section is used by the community development financial institution or community development partnership in a manner consistent with the purposes of this subchapter.

(2) Assistance agreement

(A) In general

Before providing any assistance under this subchapter, the Fund and each community development financial institution to be assisted shall enter into an agreement that requires the institution to comply with performance goals and abide by other terms and conditions pertinent to assistance received under this subchapter.

(B) Performance goals

Performance goals shall be negotiated between the Fund and each community development financial institution receiving assistance based upon the strategic plan submitted pursuant to section 4704(b)(2) of this title. Such goals may be modified with the consent of the parties, or as provided in subparagraph (C). Performance goals for insured community development financial institutions shall be determined in consultation with the appropriate Federal banking agency.

(C) Sanctions

The agreement shall provide that, in the event of fraud, mismanagement, noncompliance with this subchapter, or noncompliance with the terms of the agreement, the Fund, in its discretion, may—

- (i) require changes to the performance goals imposed pursuant to subparagraph (B);
- (ii) require changes to the strategic plan submitted pursuant to section 4704(b)(2) of this title;
- (iii) revoke approval of the application;
- (iv) reduce or terminate assistance;
- (v) require repayment of assistance;
- (vi) bar an applicant from reapplying for assistance from the Fund; and
- (vii) take such other actions as the Fund deems appropriate.

(D) Consultation with tribal governments

In reviewing the performance of any assisted community development financial institution, the investment area of which includes an Indian reservation, or the targeted population of which includes an Indian tribe, the Fund shall consult with, and seek input from, any appropriate tribal government.

(g) Authority to sell equity investments and loans

The Fund may, at any time, sell its equity investments and loans, but the Fund shall retain the power to enforce limitations on assistance entered into in accordance with the requirements of this subchapter until the performance goals related to the investment or loan have been met.

(h) No authority to limit supervision and regulation

Nothing in this subchapter shall affect any authority of the appropriate Federal banking agency to supervise and regulate any institution or company.

(Pub. L. 103–325, title I, §108, Sept. 23, 1994, 108 Stat. 2172.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (e)(4), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

§4708. Training

(a) In general

The Fund may operate a training program to increase the capacity and expertise of community

development financial institutions and other members of the financial services industry to undertake community development finance activities.

(b) Program activities

The training program shall provide educational programs to assist community development financial institutions and other members of the financial services industry in developing lending and investment products, underwriting and servicing loans, managing equity investments, and providing development services targeted to areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(c) Participation

The training program shall be made available to community development financial institutions and other members of the financial services industry that serve or seek to serve areas of economic distress, low-income persons, and persons who lack adequate access to loans and equity investments.

(d) Contracting

The Fund may offer the training program described in this section directly or through a contract with other organizations. The Fund may contract to provide the training program through organizations that possess special expertise in community development, without regard to whether the organizations receive or are eligible to receive assistance under this subchapter.

(e) Coordination

The Fund shall coordinate with other appropriate Federal departments or agencies that operate similar training programs in order to prevent duplicative efforts.

(f) Regulatory fee for providing training services

(1) General rule

The Fund may, at the discretion of the Administrator and in accordance with this subsection, assess and collect regulatory fees solely to cover the costs of the Fund in providing training services under a training program operated in accordance with this section.

(2) Persons subject to fee

Fees may be assessed under paragraph (1) only on persons who participate in the training program.

(3) Limitation on manner of collection

Fees may be assessed and collected under this subsection only in such manner as may reasonably be expected to result in the collection of an aggregate amount of fees during any fiscal year which does not exceed the aggregate costs of the Fund for such year in providing training services under a training program operated in accordance with this section ¹

(4) Limitation on amount of fee

The amount of any fee assessed under this subsection on any person may not exceed the amount which is reasonably based on the proportion of the training services provided under a training program operated in accordance with this section which relate to such person.

(Pub. L. 103-325, title I, §109, Sept. 23, 1994, 108 Stat. 2176.)

¹ *So in original. Probably should be followed by a period.*

§4709. Encouragement of private entities

The Fund may facilitate the organization of corporations in which the Federal Government has no ownership interest. The purpose of any such entity shall be to assist community development financial institutions in a manner that is complementary to the activities of the Fund under this subchapter. Any such entity shall be managed exclusively by persons not employed by the Federal

Government or any agency or instrumentality thereof, or by any State or local government or any agency or instrumentality thereof.

(Pub. L. 103-325, title I, §110, Sept. 23, 1994, 108 Stat. 2177.)

§4710. Collection and compilation of information

The Fund shall—

(1) collect and compile information pertinent to community development financial institutions that will assist in creating, developing, expanding, and preserving such institutions; and

(2) make such information available to promote the purposes of this subchapter.

(Pub. L. 103-325, title I, §111, Sept. 23, 1994, 108 Stat. 2177.)

§4711. Investment of receipts and proceeds

(a) Establishment of account

Any dividends on equity investments and proceeds from the disposition of investments, deposits, or credit union shares that are received by the Fund as a result of assistance provided pursuant to section 4707 or 4712 of this title, and any fees received pursuant to section 4708(f) of this title shall be deposited and accredited to an account of the Fund in the United States Treasury (hereafter in this section referred to as "the account") established to carry out the purpose of this subchapter.

(b) Investments

Upon request of the Administrator, the Secretary of the Treasury shall invest amounts deposited in the account in public debt securities with maturities suitable to the needs of the Fund, as determined by the Administrator, and bearing interest at rates determined by the Secretary of the Treasury, comparable to current market yields on outstanding marketable obligations of the United States of similar maturities.

(c) Availability

Amounts deposited into the account and interest earned on such amounts pursuant to this section shall be available to the Fund until expended.

(Pub. L. 103-325, title I, §112, Sept. 23, 1994, 108 Stat. 2177.)

§4712. Capitalization assistance to enhance liquidity

(a) Assistance

(1) In general

The Fund may provide assistance for the purpose of providing capital to organizations to purchase loans or otherwise enhance the liquidity of community development financial institutions, if—

(A) the primary purpose of such organizations is to promote community development; and

(B) any assistance received is matched with funds—

(i) from sources other than the Federal Government;

(ii) on the basis of not less than one dollar for each dollar provided by the Fund; and

(iii) that are comparable in form and value to the assistance provided by the Fund.

(2) Limitation on other assistance

An organization that receives assistance under this section may not receive other financial or technical assistance under this subchapter.

(3) Construction of Federal Government funds

For purposes of this subsection, notwithstanding section 105(a)(9) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(9)], funds provided pursuant to such Act shall be considered to be Federal Government funds.

(b) Selection

The selection of organizations to receive assistance under this section shall be at the discretion of the Fund and in accordance with criteria established by the Fund. In establishing such criteria, the Fund shall take into account the criteria contained in sections 4704(b) and 4706 of this title, as appropriate.

(c) Amount of assistance

The Fund may provide a total of not more than \$5,000,000 of assistance to an organization or its subsidiaries or affiliates under this section during any 3-year period. Assistance may be provided in a lump sum or over a period of time, as determined by the Fund.

(d) Audit and report requirements

Organizations that receive assistance from the Fund in accordance with this section shall—

(1) submit to the Fund, not less than once in every 18-month period, financial statements audited by an independent certified public accountant, as part of the report required by paragraph

(2);

(2) submit an annual report on its activities; and

(3) keep such records as may be necessary to disclose the manner in which any assistance under this section is used.

(e) Limitations on liability

(1) Liability of Fund

The liability of the Fund and the United States Government arising out of the provision of assistance to any organization in accordance with this section shall be limited to the amount of such assistance. The Fund shall be exempt from any assessments and any other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State, or territory. Nothing in this paragraph shall affect the application of Federal tax law.

(2) Liability of Government

This section does not oblige the Federal Government, either directly or indirectly, to provide any funds to any organization assisted pursuant to this section, or to honor, reimburse, or otherwise guarantee any obligation or liability of such an organization. This section shall not be construed to imply that any such organization or any obligations or securities of any such organization are backed by the full faith and credit of the United States.

(f) Use of proceeds

Any proceeds from the sale of loans by an organization assisted under this section shall be used by the seller for community development purposes.

(Pub. L. 103–325, title I, §113, Sept. 23, 1994, 108 Stat. 2178.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (a)(3), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

§4713. Incentives for depository institution participation

(a) Function of Administrator

(1) In general

Of any funds appropriated pursuant to the authorization in section 4718(a) of this title, the funds made available for use in carrying out this section in accordance with section 4718(a)(4) of this title shall be administered by the Administrator of the Fund, in consultation with—

(A) the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and the National Credit Union Administration;

(B) the individuals named pursuant to clauses (ii) and (iv) of section 4703(d)(2)(G) of this title; and

(C) any other representatives of insured depository institutions or other persons as the Administrator may determine to be appropriate.

(2) Applicability of Bank Enterprise Act of 1991

Subject to subsection (b) and the consultation requirement of paragraph (1)—

(A) section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] shall be applicable to the Administrator, for purposes of this section, in the same manner and to the same extent that such section is applicable to the Community Enterprise Assessment Credit Board;

(B) the Administrator shall, for purposes of carrying out this section and section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a]—

(i) have all powers and rights of the Community Enterprise Assessment Credit Board under section 233 of the Bank Enterprise Act of 1991 to administer and enforce any provision of such section 233 which is applicable to the Administrator under this section; and

(ii) shall be subject to the same duties and restrictions imposed on the Community Enterprise Assessment Credit Board; and

(C) the Administrator shall—

(i) have all powers and rights of an appropriate Federal banking agency under section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(b)(2)] to approve or disapprove the designation of qualified distressed communities for purposes of this section and provide information and assistance with respect to any such designation; and

(ii) shall be subject to the same duties imposed on the appropriate Federal banking agencies under such section 233(b)(2).

(3) Awards

The Administrator shall determine the amount of assessment credits, and shall make awards of those credits.

(4) Regulations and guidelines

The Administrator may prescribe such regulations and issue such guidelines as the Administrator determines to be appropriate to carry out this section.

(5) Exceptions to applicability

Notwithstanding paragraphs (1) through (4) of this subsection, subsections (a)(1) and (e)(2) of section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(1), (e)(2)], and any other provision of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] relating to the Bank Enterprise Act of 1991, do not apply to the Administrator for purposes of this subchapter.

(b) Provisions relating to administration of this section

(1) New lifeline accounts

In applying section 233 of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a] for purposes of this section, the Administrator shall treat the provision of new lifeline accounts by an insured depository institution as an activity which is qualified to be taken into account under section 233(a)(2)(A) of such Act.

(2) Determination of assessment credit

For the purpose of this subchapter, section 233(a)(3) of the Bank Enterprise Act of 1991 (12

U.S.C. 1834a(a)(3)) shall be applied by substituting the following text:

"(3) Amount of assessment credit

"The amount of an assessment credit which may be awarded to an insured depository institution to carry out the qualified activities of the institution or of the subsidiaries of the institution pursuant to this section for any semiannual period shall be equal to the sum of—

"(A) with respect to qualifying activities described in paragraph (2)(A), the amount which is equal to—

"(i) 5 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is not a community development financial institution; or

"(ii) 15 percent of the sum of the amounts determined under such subparagraph, in the case of an institution which is a community development financial institution; and

"(B) with respect to qualifying activities described in paragraph (2)(C), 15 percent of the amounts determined under such subparagraph."

(3) Adjustment of percentage

Section 233(a)(5) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(5)] shall be applied for purposes of this section by—

(A) substituting "institutions which are community development financial institutions" for "institutions which meet the community development organization requirements under section 234 [12 U.S.C. 1834b]"; and

(B) substituting "institutions which are not community development financial institutions" for "institutions which do not meet such requirements".

(4) Designation of QDC

Section 233(b)(2) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(b)(2)] shall be applied for purposes of this section without regard to subparagraph (A)(ii) of such section 233(b)(2).

(5) Operation on annual basis

The Administrator may, in the Administrator's discretion, apply section 233 of the Bank Enterprise Act of 1991 for purposes of this section by providing community enterprise assessment credits with respect to annual periods rather than semiannual periods.

(6) Outreach

The Administrator shall ensure that information about the Bank Enterprise Act of 1991 under this section is widely disseminated to all interested parties.

(7) Qualified activities

For the purpose of this subchapter, section 233(a)(2)(A) of the Bank Enterprise Act of 1991 shall be applied by inserting "of the increase" after "the amount".

(Pub. L. 103–325, title I, §114, Sept. 23, 1994, 108 Stat. 2179.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Bank Enterprise Act of 1991, referred to in subsecs. (a)(2), (5) and (b)(6), is subtitle C (§§231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308–2315, which enacted sections 1834 to 1834b of this title, amended section 1817 of this title, and enacted provisions set out as a note under section 1811 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (a)(5), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 114 of Pub. L. 103–325. Subsec. (c) of section 114 of Pub. L. 103–325 amended section 1834a of this title.

§4713a. Guarantees for bonds and notes issued for community or economic development purposes

(a) Definitions

In this section, the following definitions shall apply:

(1) Eligible community development financial institution

The term "eligible community development financial institution" means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

(2) Eligible community or economic development purpose

The term "eligible community or economic development purpose"—

(A) means any purpose described in section 4707(b) of this title; and

(B) includes the provision of community or economic development in low-income or underserved rural areas.

(3) Guarantee

The term "guarantee" means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

(4) Loan

The term "loan" means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

(5) Master servicer

(A) In general

The term "master servicer" means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

(B) Approval criteria for master servicers

The Secretary shall approve or deny any application to become a master servicer under the Program not later than 90 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—

(i) loan administration, servicing, and loan monitoring;

(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;

(iii) managing regional or national originator communication systems and infrastructure;

(iv) developing and implementing training and other risk management strategies on a regional or national basis; and

(v) compliance monitoring, investor relations, and reporting.

(6) Program

The term "Program" means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.

(7) Program administrator

The term "Program administrator" means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).

(8) Qualified issuer

(A) In general

The term "qualified issuer" means a community development financial institution (or any entity designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.

(B) Approval criteria for qualified issuers

(i) In general

The Secretary shall approve a qualified issuer for a guarantee under the Program in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.

(ii) Terms and qualifications

A qualified issuer shall—

(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

(II) provide to the Secretary—

(aa) an acceptable statement of the proposed sources and uses of the funds; and

(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and

(III) certify to the Secretary that the bonds or notes to be guaranteed are to be used for eligible community or economic development purposes.

(C) Department opinion; timing

(i) Department opinion

Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the Secretary shall provide an opinion regarding compliance by the issuer with the requirements of the Program under this section.

(ii) Timing

The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 90 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

(9) Secretary

The term "Secretary" means the Secretary of the Treasury.

(10) Servicer

The term "servicer" means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

(b) Guarantees authorized

The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer, if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

(1) for eligible community or economic development purposes; or

(2) to refinance loans or notes issued for such purposes.

(c) General program requirements

(1) In general

A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to

make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

(2) Relending account

Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

(3) Limitations on unpaid principal balances

The proceeds of guaranteed bonds or notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

- (A) community or economic development loans;
- (B) a relending account, to the extent authorized under paragraph (2); or
- (C) a risk-share pool established under subsection (d).

(4) Repayment

If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

(5) Prohibited uses

The Secretary shall, by regulation—

- (A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and
- (B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—
 - (i) the qualified issuer; or
 - (ii) any recipient of amounts from the guarantee of a bond or note.

(d) Risk-share pool

Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

(e) Guarantees

(1) In general

A guarantee issued under the Program shall—

- (A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;
- (B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Government-guaranteed bonds, and satisfactory to the Secretary;
- (C) represent the full faith and credit of the United States; and
- (D) not exceed 30 years.

(2) Limitations

(A) Annual number of guarantees

The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

(B) Guarantee amount

The Secretary may not guarantee any amount under the Program equal to less than

\$100,000,000, but the total of all such guarantees in any fiscal year may not exceed \$1,000,000,000.

(f) Servicing of transactions

(1) In general

To maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified Program administrators, bond servicers, and a master servicer.

(2) Duties of Program administrator

The duties of a Program administrator shall include—

- (A) approving and qualifying eligible community development financial institution applications for participation in the Program;
- (B) compliance monitoring;
- (C) bond packaging in connection with the Program; and
- (D) all other duties and related services that are customarily expected of a Program administrator.

(3) Duties of servicer

The duties of a servicer shall include—

- (A) billing and collecting loan payments;
- (B) initiating collection activities on past-due loans;
- (C) transferring loan payments to the master servicing accounts;
- (D) loan administration and servicing;
- (E) systematic and timely reporting of loan performance through remittance and servicing reports;
- (F) proper measurement of annual outstanding loan requirements; and
- (G) all other duties and related services that are customarily expected of servicers.

(4) Duties of master servicer

The duties of a master servicer shall include—

- (A) tracking the movement of funds between the accounts of the master servicer and any other servicer;
- (B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;
- (C) monitoring the collection comments and foreclosure actions;
- (D) aggregating the reporting and distribution of funds to trustees and investors;
- (E) removing and replacing a servicer, as necessary;
- (F) loan administration and servicing;
- (G) systematic and timely reporting of loan performance compiled from all bond servicers' reports;
- (H) proper distribution of funds to investors; and
- (I) all other duties and related services that are customarily expected of a master servicer.

(g) Fees

(1) In general

A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Secretary, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

(2) Payment

A qualified issuer shall pay the fee required under this subsection on an annual basis.

(3) Use of fees

Fees collected by the Secretary under this subsection shall be used to reimburse the Department of the Treasury for any administrative costs incurred by the Department in implementing the Program established under this section.

(h) Authorization of appropriations

(1) In general

There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

(2) Use of fees

To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Secretary may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

(i) Investment in guaranteed bonds ineligible for Community Reinvestment Act purposes

Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 [et seq.]).

(j) Administration

(1) Regulations

Not later than 1 year after September 27, 2010, the Secretary shall promulgate regulations to carry out this section.

(2) Implementation

Not later than 2 years after September 27, 2010, the Secretary shall implement this section.

(k) Termination

This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.¹

(Pub. L. 103–325, title I, §114A, as added Pub. L. 111–240, title I, §1134, Sept. 27, 2010, 124 Stat. 2515.)

TERMINATION OF SECTION

For delay of termination of section by Pub. L. 118–47, see Termination Date note below.

EDITORIAL NOTES

REFERENCES IN TEXT

The Community Reinvestment Act of 1977, referred to in subsec. (i), 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.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION DATE

Pub. L. 118–47, div. B, title I, Mar. 23, 2024, 138 Stat. 525, provided in part: "That such section 114A [this section] shall remain in effect until December 31, 2025".

Additional provisions delaying the termination of this section were contained in the following prior appropriation acts:

Pub. L. 117–328, div. E, title I, Dec. 29, 2022, 136 Stat. 4655.

Pub. L. 117–103, div. E, title I, Mar. 15, 2022, 136 Stat. 244.

Pub. L. 116–260, div. E, title I, Dec. 27, 2020, 134 Stat. 1385.

Pub. L. 116–93, div. C, title I, Dec. 20, 2019, 133 Stat. 2439.

Pub. L. 116–6, div. D, title I, Feb. 15, 2019, 133 Stat. 143.

Pub. L. 115–141, div. E, title I, Mar. 23, 2018, 132 Stat. 540.

Pub. L. 115–31, div. E, title I, May 5, 2017, 131 Stat. 331.

Pub. L. 114–113, div. E, title I, Dec. 18, 2015, 129 Stat. 2427.

Pub. L. 113–235, div. E, title I, Dec. 16, 2014, 128 Stat. 2336.

¹ See Termination of Section note below.

§4714. Recordkeeping

(a) In general

A community development financial institution receiving assistance from the Fund shall keep such records, for such periods as may be prescribed by the Fund and necessary to disclose the manner in which any assistance under this subchapter is used and to demonstrate compliance with the requirements of this subchapter.

(b) User profile information

The Fund shall require each community development financial institution or other organization receiving assistance from the Fund to compile such data, as is determined to be appropriate by the Fund, on the gender, race, ethnicity, national origin, or other pertinent information concerning individuals that utilize the services of the assisted institution to ensure that targeted populations and low-income residents of investment areas are adequately served.

(c) Access to records

The Fund shall have access on demand, for the purpose of determining compliance with this subchapter, to any records of a community development financial institution or other organization that receives assistance from the Fund.

(d) Review

Not less than annually, the Fund shall review the progress of each assisted community development financial institution in carrying out its strategic plan, meeting its performance goals, and satisfying the terms and conditions of its assistance agreement.

(e) Reporting

(1) Annual reports

The Fund shall require each community development financial institution receiving assistance under this subchapter to submit an annual report to the Fund on its activities, its financial condition, and its success in meeting performance goals, in satisfying the terms and conditions of its assistance agreement, and in complying with other requirements of this subchapter, in such form and manner as the Fund shall specify.

(2) Availability of reports

The Fund, after deleting or redacting any material as appropriate to protect privacy or proprietary interests, shall make such reports submitted under paragraph (1) available for public inspection.

(Pub. L. 103–325, title I, §115, Sept. 23, 1994, 108 Stat. 2184.)

§4715. Special provisions with respect to institutions that are supervised by Federal banking agencies

(a) Consultation with appropriate agencies

The Fund shall consult with and consider the views of the appropriate Federal banking agency prior to providing assistance under this subchapter to—

- (1) an insured community development financial institution;
- (2) any community development financial institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency; or
- (3) any community development financial institution that has as its community partner an institution that is examined by or subject to the reporting requirements of an appropriate Federal

banking agency.

(b) Requests for information, reports, or records

(1) In general

Except as provided in paragraph (4), notwithstanding any other provisions of this subchapter, prior to directly requesting information from or imposing reporting or recordkeeping requirements on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, the Fund shall consult with the appropriate Federal banking agency to determine if the information requested is available from or may be obtained by such agency in the form, format, or detail required by the Fund.

(2) Timing of response from appropriate Federal banking agency

If the information, reports, or records requested by the Fund pursuant to paragraph (1) are not provided by the appropriate Federal banking agency in less than 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the recordkeeping or reporting requirements directly on such institutions with notice to the appropriate Federal banking agency.

(3) Elimination of duplicative information and reporting requirements

The Fund shall use any information provided the appropriate Federal banking agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and recordkeeping by an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(4) Exception

Notwithstanding paragraphs (1) and (2), the Fund may require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency to provide information with respect to the institution's implementation of its strategic plan or compliance with the terms of its assistance agreement under this subchapter, after providing notice to the appropriate Federal banking agency.

(c) Exclusion for examination reports

Nothing in this section shall be construed to permit the Fund to require an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, to obtain, maintain, or furnish an examination report of any appropriate Federal banking agency or records contained in or related to such a report.

(d) Sharing of information

The Fund and the appropriate Federal banking agency shall promptly notify each other of material concerns about an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency, and share appropriate information relating to such concerns.

(e) Disclosure prohibited

Neither the Fund nor the appropriate Federal banking agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(f) Privilege maintained

The Fund, the appropriate Federal banking agency, and any other party providing information under this section shall not be deemed to have waived any privilege applicable to any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) Exceptions

Nothing in this section shall authorize the Fund or the appropriate Federal banking agency to withhold information from the Congress or prevent it from complying with a request for information from a Federal department or agency in compliance with applicable law.

(h) Sanctions

(1) Notification

The Fund shall notify the appropriate Federal banking agency before imposing any sanction pursuant to the authority in section 4707(f)(2)(C) of this title on an insured community development financial institution or other institution that is examined by or subject to the reporting requirements of that agency.

(2) Exceptions

The Fund shall not impose a sanction referred to in paragraph (1) if the appropriate Federal banking agency, in writing, not later than 30 calendar days after receiving notice from the Fund—

(A) objects to the proposed sanction;

(B) determines that the sanction would—

(i) have a material adverse effect on the safety and soundness of the institution; or

(ii) impede or interfere with an enforcement action against that institution by that agency;

(C) proposes a comparable alternative action; and

(D) specifically explains—

(i) the basis for the determination under subparagraph (B) and, if appropriate, provides documentation to support the determination; and

(ii) how the alternative action suggested pursuant to subparagraph (C) would be as effective as the sanction proposed by the Fund in securing compliance with this subchapter and deterring future noncompliance.

(i) Safety and soundness considerations

The Fund and each appropriate Federal banking agency shall cooperate and respond to requests from each other and from other appropriate Federal banking agencies in a manner that ensures the safety and soundness of the insured community development financial institution or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

(Pub. L. 103–325, title I, §116, Sept. 23, 1994, 108 Stat. 2185.)

§4716. Studies and reports; examination and audit

(a) Annual report by Fund

The Fund shall conduct an annual evaluation of the activities carried out by the Fund and the community development financial institutions and other organizations assisted pursuant to this subchapter, and shall submit a report of its findings to the President and the Congress not later than 120 days after the end of each fiscal year of the Fund. The report shall include financial statements audited in accordance with subsection (f).

(b) Optional studies

The Fund may conduct such studies as the Fund determines necessary to further the purpose of this subchapter and to facilitate investment in distressed communities. The findings of any studies conducted pursuant to this subsection shall be included in the report required by subsection (a).

(c) Native American lending study

(1) In general

The Fund shall conduct a study on lending and investment practices on Indian reservations and

other land held in trust by the United States. Such study shall—

(A) identify barriers to private financing on such lands; and

(B) identify the impact of such barriers on access to capital and credit for Native American populations.

(2) Report

Not later than 12 months after the date on which the Administrator is appointed, the Fund shall submit a report to the President and the Congress that—

(A) contains the findings of the study conducted under paragraph (1);

(B) recommends any necessary statutory and regulatory changes to existing Federal programs; and

(C) makes policy recommendations for community development financial institutions, insured depository institutions, secondary market institutions, and other private sector capital institutions to better serve such populations.

(d) Investment, governance, and role of Fund

Thirty months after the appointment and qualification of the Administrator, the Comptroller General of the United States shall submit to the President and the Congress a study evaluating the structure, governance, and performance of the Fund.

(e) Consultation

In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, the Farm Credit Administration, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, Indian tribal governments, community reinvestment organizations, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

(f) Examination and audit

The financial statements of the Fund shall be audited in accordance with section 9105 of title 31, except that audits required by section 9105(a) of such title shall be performed annually.

(Pub. L. 103–325, title I, §117, Sept. 23, 1994, 108 Stat. 2187; Pub. L. 110–289, div. A, title II, §1216(b), July 30, 2008, 122 Stat. 2792.)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–289 substituted "Federal Housing Finance Agency" for "Federal Housing Finance Board".

§4717. Enforcement

(a) Regulations

(1) In general

Not later than 180 days after the appointment and qualification of the Administrator, the Fund shall promulgate such regulations as may be necessary to carry out this subchapter.

(2) Regulations required

The regulations promulgated under paragraph (1) shall include regulations applicable to community development financial institutions that are not insured depository institutions to—

(A) prevent conflicts of interest on the part of directors, officers, and employees of community development financial institutions as the Fund determines to be appropriate; and

(B) establish such standards with respect to loans by a community development financial

institution to any director, officer, or employee of such institution as the Fund determines to be appropriate, including loan amount limitations.

(b) Administrative enforcement

The provisions of this subchapter, and regulations prescribed and agreements entered into under this subchapter, shall be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by the appropriate Federal banking agency, in the case of an insured community development financial institution. A violation of this subchapter, or any regulation prescribed under or any agreement entered into under this subchapter, shall be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(Pub. L. 103–325, title I, §119, Sept. 23, 1994, 108 Stat. 2188.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (b), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 119 of Pub. L. 103–325. Subsec. (c) of section 119 of Pub. L. 103–325 amended section 657 of Title 18, Crimes and Criminal Procedure.

§4718. Authorization of appropriations

(a) Fund authorization

(1) In general

To carry out this subchapter, there are authorized to be appropriated to the Fund, to remain available until expended—

- (A) \$60,000,000 for fiscal year 1995;
- (B) \$104,000,000 for fiscal year 1996;
- (C) \$107,000,000 for fiscal year 1997; and
- (D) \$111,000,000 for fiscal year 1998;

or such greater sums as may be necessary to carry out this subchapter.

(2) Administrative expenses

(A) In general

Of amounts authorized to be appropriated to the Fund pursuant to this section, not more than \$5,550,000 may be used by the Fund in each fiscal year to pay the administrative costs and expenses of the Fund. Costs associated with the training program established under section 4708 of this title and the technical assistance program established under section 4707 of this title shall not be considered to be administrative expenses for purposes of this paragraph.

(B) Calculations

The amounts referred to in paragraphs (3) and (4) shall be calculated after subtracting the amount referred to in subparagraph (A) of this paragraph from the total amount appropriated to the Fund in accordance with paragraph (1) in any fiscal year.

(3) Capitalization assistance

Not more than 5 percent of the amounts authorized to be appropriated under paragraph (1) may be used as provided in section 4712 of this title.

(4) Availability for funding section 4713 of this title

331/3 percent of the amounts appropriated to the Fund for any fiscal year pursuant to the authorization in paragraph (1) shall be available for use in carrying out section 4713 of this title.

(5) Support of community development financial institutions

The Administrator shall allocate funds authorized under this section, to the maximum extent practicable, for the support of community development financial institutions.

(b) Community Development Credit Union Revolving Loan Fund

There are authorized to be appropriated for the purposes of the Community Development Credit Union Revolving Loan Fund—

- (1) \$4,000,000 for fiscal year 1995;
- (2) \$2,000,000 for fiscal year 1996;
- (3) \$2,000,000 for fiscal year 1997; and
- (4) \$2,000,000 for fiscal year 1998.

(c) Budgetary treatment

Amounts authorized to be appropriated under this section shall be subject to discretionary spending caps, as provided in section 665 ¹ of title 2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

(Pub. L. 103–325, title I, §121, Sept. 23, 1994, 108 Stat. 2189.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 665 of title 2, referred to in subsec. (c), was repealed by Pub. L. 105–33, title X, §10118(a), Aug. 5, 1997, 111 Stat. 695.

¹ [*See References in Text note below.*](#)

§4719. Grants to establish loan-loss reserve funds

(a) Purposes

The purposes of this section are—

- (1) to make financial assistance available from the Fund in order to help community development financial institutions defray the costs of operating small dollar loan programs, by providing the amounts necessary for such institutions to establish their own loan loss reserve funds to mitigate some of the losses on such small dollar loan programs; and
- (2) to encourage community development financial institutions to establish and maintain small dollar loan programs that would help give consumers access to mainstream financial institutions and combat high cost small dollar lending.

(b) Grants

(1) Loan-loss reserve fund grants

The Fund shall make grants to community development financial institutions or to any partnership between such community development financial institutions and any other federally insured depository institution with a primary mission to serve targeted investment areas, as such areas are defined under section 4702(16) of this title, to enable such institutions or any partnership of such institutions to establish a loan-loss reserve fund in order to defray the costs of a small dollar loan program established or maintained by such institution.

(2) Matching requirement

A community development financial institution or any partnership of institutions established pursuant to paragraph (1) shall provide non-Federal matching funds in an amount equal to 50

percent of the amount of any grant received under this section.

(3) Use of funds

Any grant amounts received by a community development financial institution or any partnership between or among such institutions under paragraph (1)—

- (A) may not be used by such institution to provide direct loans to consumers;
- (B) may be used by such institution to help recapture a portion or all of a defaulted loan made under the small dollar loan program of such institution; and
- (C) may be used to designate and utilize a fiscal agent for services normally provided by such an agent.

(4) Technical assistance grants

The Fund shall make technical assistance grants to community development financial institutions or any partnership between or among such institutions to support and maintain a small dollar loan program. Any grant amounts received under this paragraph may be used for technology, staff support, and other costs associated with establishing a small dollar loan program.

(c) Definitions

For purposes of this section—

(1) the term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the same meaning given such term in section 1681a(p) of title 15; and

(2) the term "small dollar loan program" means a loan program wherein a community development financial institution or any partnership between or among such institutions offers loans to consumers that—

- (A) are made in amounts not exceeding \$2,500;
- (B) must be repaid in installments;
- (C) have no pre-payment penalty;
- (D) the institution has to report payments regarding the loan to at least 1 of the consumer reporting agencies that compiles and maintains files on consumers on a nationwide basis; and
- (E) meet any other affordability requirements as may be established by the Administrator.

(Pub. L. 103–325, title I, §122, as added Pub. L. 111–203, title XII, §1206, July 21, 2010, 124 Stat. 2131.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SUBCHAPTER II—SMALL BUSINESS CAPITAL ENHANCEMENT

§4741. Findings and purposes

(a) Findings

The Congress finds that—

- (1) small business concerns are a vital part of the economy, accounting for the majority of new jobs, new products, and new services created in the United States;
- (2) adequate access to debt capital is a critical component for small business development, productivity, expansion, and success in the United States;
- (3) commercial banks are the most important suppliers of debt capital to small business concerns in the United States;

(4) commercial banks and other depository institutions have various incentives to minimize their risk in financing small business concerns;

(5) as a result of such incentives, many small business concerns with economically sound financing needs are unable to obtain access to needed debt capital;

(6) the small business capital access programs implemented by certain States are a flexible and efficient tool to assist financial institutions in providing access to needed debt capital for many small business concerns in a manner consistent with safety and soundness regulations;

(7) a small business capital access program would complement other programs which assist small business concerns in obtaining access to capital; and

(8) Federal policy can stimulate and accelerate efforts by States to implement small business capital access programs by providing an incentive to States, while leaving the administration of such programs to each participating State.

(b) Purposes

By encouraging States to implement administratively efficient capital access programs that encourage commercial banks and other depository institutions to provide access to debt capital for a broad portfolio of small business concerns, and thereby promote a more efficient and effective debt market, the purposes of this subchapter are—

- (1) to promote economic opportunity and growth;
- (2) to create jobs;
- (3) to promote economic efficiency;
- (4) to enhance productivity; and
- (5) to spur innovation.

(Pub. L. 103–325, title II, §251, Sept. 23, 1994, 108 Stat. 2203.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 103–325, title II, §261, Sept. 23, 1994, 108 Stat. 2214, provided that: "This subtitle [subtitle B (§§251–261) of title II of Pub. L. 103–325, enacting this subchapter] shall become effective on January 6, 1996."

SMALL BUSINESS LENDING FUND

Pub. L. 111–240, title IV, subtitle A, Sept. 27, 2010, 124 Stat. 2582, as amended by Pub. L. 113–188, title IX, §901(e), Nov. 26, 2014, 128 Stat. 2020, provided that:

"SEC. 4101. PURPOSE.

"The purpose of this subtitle is to address the ongoing effects of the financial crisis on small businesses by providing temporary authority to the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses.

"SEC. 4102. DEFINITIONS.

"For purposes of this subtitle:

"(1) **APPROPRIATE COMMITTEES OF CONGRESS.**—The term 'appropriate committees of Congress' means—

"(A) the Committee on Small Business and Entrepreneurship, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

"(B) the Committee on Small Business, the Committee on Agriculture, the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

"(2) **APPROPRIATE FEDERAL BANKING AGENCY.**—The term 'appropriate Federal banking agency' has the meaning given such term under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(3) **BANK HOLDING COMPANY.**—The term 'bank holding company' has the meaning given such term under section 2(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(1)).

"(4) **CALL REPORT.**—The term 'call report' means—

"(A) reports of Condition and Income submitted to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

"(B) the Office of Thrift Supervision Thrift Financial Report;

"(C) any report that is designated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, as applicable, as a successor to any report referred to in subparagraph (A) or (B);

"(D) reports of Condition and Income as designated through guidance developed by the Secretary, in consultation with the Director of the Community Development Financial Institutions Fund; and

"(E) with respect to an eligible institution for which no report exists that is described under subparagraph (A), (B), (C), or (D), such other report or set of information as the Secretary, in consultation with the Administrator of the Small Business Administration, may prescribe.

"(5) CDCI.—The term 'CDCI' means the Community Development Capital Initiative created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 [div. A of Pub. L. 110–343, see Short Title note set out under section 5201 of this title].

"(6) CDCI INVESTMENT.—The term 'CDCI investment' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CDCI that has not been repaid.

"(7) CDFI; COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The terms 'CDFI' and 'community development financial institution' have the meaning given the term 'community development financial institution' under the Riegle Community Development and Regulatory Improvement Act of 1994 [Pub. L. 103–325, see Tables for classification].

"(8) CDLF; COMMUNITY DEVELOPMENT LOAN FUND.—The terms 'CDLF' and 'community development loan fund' mean any entity that—

"(A) is certified by the Department of the Treasury as a community development financial institution loan fund;

"(B) is exempt from taxation under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]; and

"(C) had assets less than or equal to \$10,000,000,000 as of the end of the fourth quarter of calendar year 2009.

"(9) CPP.—The term 'CPP' means the Capital Purchase Program created by the Secretary under the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008.

"(10) CPP INVESTMENT.—The term 'CPP investment' means, with respect to any eligible institution, the principal amount of any investment made by the Secretary in such eligible institution under the CPP that has not been repaid.

"(11) ELIGIBLE INSTITUTION.—The term 'eligible institution' means—

"(A) any insured depository institution, which—

"(i) is not controlled by a bank holding company or savings and loan holding company that is also an eligible institution;

"(ii) has total assets of equal to or less than \$10,000,000,000, as reported in the call report of the insured depository institution as of the end of the fourth quarter of calendar year 2009; and

"(iii) is not directly or indirectly controlled by any company or other entity that has total consolidated assets of more than \$10,000,000,000, as so reported;

"(B) any bank holding company which has total consolidated assets of equal to or less than \$10,000,000,000, as reported in the call report of the bank holding company as of the end of the fourth quarter of calendar year 2009;

"(C) any savings and loan holding company which has total consolidated assets of equal to or less than \$10,000,000,000, as reported in the call report of the savings and loan holding company as of the end of the fourth quarter of calendar year 2009; and

"(D) any community development financial institution loan fund which has total assets of equal to or less than \$10,000,000,000, as reported in audited financial statements for the fiscal year of the community development financial institution loan fund that ends in calendar year 2009.

"(12) FUND.—The term 'Fund' means the Small Business Lending Fund established under section 4103(a)(1).

"(13) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given such term under section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

"(14) MINORITY-OWNED AND WOMEN-OWNED BUSINESS.—The terms 'minority-owned business' and 'women-owned business' shall have the meaning given the terms 'minority-owned business' and 'women's business', respectively, under section 21A(r)(4) of the Federal Home Loan Bank Act (12

U.S.C. 1441A(r)(4)).

"(15) PROGRAM.—The term 'Program' means the Small Business Lending Fund Program authorized under section 4103(a)(2).

"(16) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' has the meaning given such term under section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)).

"(17) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(18) SMALL BUSINESS LENDING.—

"(A) IN GENERAL.—The term 'small business lending' means lending, as defined by and reported in an eligible institutions' quarterly call report, where each loan comprising such lending is one of the following types:

"(i) Commercial and industrial loans.

"(ii) Owner-occupied nonfarm, nonresidential real estate loans.

"(iii) Loans to finance agricultural production and other loans to farmers.

"(iv) Loans secured by farmland.

"(B) EXCLUSION.—No loan that has an original amount greater than \$10,000,000 or that goes to a business with more than \$50,000,000 in revenues shall be included in the measure.

"(C) TREATMENT OF HOLDING COMPANIES.—In the case of eligible institutions that are bank holding companies or savings and loan holding companies having one or more insured depository institution subsidiaries, small business lending shall be measured based on the combined small business lending reported in the call report of the insured depository institution subsidiaries.

"(19) VETERAN-OWNED BUSINESS.—

"(A) The term 'veteran-owned business' means a business—

"(i) more than 50 percent of the ownership or control of which is held by 1 or more veterans;

"(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more veterans;

and

"(iii) a significant percentage of senior management positions of which are held by veterans.

"(B) For purposes of this paragraph, the term 'veteran' has the meaning given such term in section 101(2) of title 38, United States Code.

"SEC. 4103. SMALL BUSINESS LENDING FUND.

"(a) FUND AND PROGRAM.—

"(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the 'Small Business Lending Fund', which shall be administered by the Secretary.

"(2) PROGRAMS AUTHORIZED.—The Secretary is authorized to establish the Small Business Lending Fund Program for using the Fund consistent with this subtitle.

"(b) USE OF FUND.—

"(1) IN GENERAL.—Subject to paragraph (2), the Fund shall be available to the Secretary, without further appropriation or fiscal year limitation, for the costs of purchases (including commitments to purchase), and modifications of such purchases, of preferred stock and other financial instruments from eligible institutions on such terms and conditions as are determined by the Secretary in accordance with this subtitle. For purposes of this paragraph and with respect to an eligible institution, the term 'other financial instruments' shall include only debt instruments for which such eligible institution is fully liable or equity equivalent capital of the eligible institution. Such debt instruments may be subordinated to the claims of other creditors of the eligible institution.

"(2) MAXIMUM PURCHASE LIMIT.—The aggregate amount of purchases (and commitments to purchase) made pursuant to paragraph (1) may not exceed \$30,000,000,000.

"(3) PROCEEDS USED TO PAY DOWN PUBLIC DEBT.—All funds received by the Secretary in connection with purchases made pursuant to paragraph (1), including interest payments, dividend payments, and proceeds from the sale of any financial instrument, shall be paid into the general fund of the Treasury for reduction of the public debt.

"(4) LIMITATION ON PURCHASES FROM CDLFS.—

"(A) IN GENERAL.—Not more than 1 percent of the maximum purchase limit of the Program, pursuant to paragraph (2), may be used to make purchases from community development loan funds.

"(B) ELIGIBILITY STANDARDS.—The Secretary, in consultation with the Community Development Financial Institutions Fund, shall develop eligibility criteria to determine the financial ability of a CDLF to participate in the Program and repay the investment. Such criteria shall include the following:

"(i) Ratio of net assets to total assets is at least 20 percent.

"(ii) Ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent.

"(iii) Positive net income measured on a 3-year rolling average.

"(iv) Operating liquidity ratio of at least 1.0 for the 4 most recent quarters and for one or both of the two preceding years.

"(v) Ratio of loans and leases 90 days or more delinquent (including loans sold with full recourse) to total equity plus loan loss reserves is less than 40 percent.

"(C) REQUIREMENT TO SUBMIT AUDITED FINANCIAL STATEMENTS.—CDLFs participating in the Program shall submit audited financial statements to the Secretary, have a clean audit opinion, and have at least 3 years of operating experience.

"(c) CREDITS TO THE FUND.—There shall be credited to the Fund amounts made available pursuant to section 4108, to the extent provided by appropriations Acts.

"(d) TERMS.—

"(1) APPLICATION.—

"(A) INSTITUTIONS WITH ASSETS OF \$1,000,000,000 OR LESS.—Eligible institutions having total assets equal to or less than \$1,000,000,000, as reported in a call report as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

"(B) INSTITUTIONS WITH ASSETS OF MORE THAN \$1,000,000,000 AND LESS THAN OR EQUAL TO \$10,000,000,000.—Eligible institutions having total assets of more than \$1,000,000,000 but less than \$10,000,000,000, as of the end of the fourth quarter of calendar year 2009, may apply to receive a capital investment from the Fund in an amount not exceeding 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

"(C) TREATMENT OF HOLDING COMPANIES.—In the case of an eligible institution that is a bank holding company or a savings and loan holding company having one or more insured depository institution subsidiaries, total assets shall be measured based on the combined total assets reported in the call report of the insured depository institution subsidiaries as of the end of the fourth quarter of calendar year 2009 and risk-weighted assets shall be measured based on the combined risk-weighted assets of the insured depository institution subsidiaries as reported in the call report immediately preceding the date of application.

"(D) TREATMENT OF APPLICANTS THAT ARE INSTITUTIONS CONTROLLED BY HOLDING COMPANIES.—If an eligible institution that applies to receive a capital investment under the Program is under the control of a bank holding company or a savings and loan holding company, then the Secretary may use the Fund to purchase preferred stock or other financial instruments from the top-tier bank holding company or savings and loan holding company of such eligible institution, as applicable. For purposes of this subparagraph, the term 'control' with respect to a bank holding company shall have the same meaning as in section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(2)(a)(2)). For purposes of this subparagraph, the term 'control' with respect to a savings and loan holding company shall have the same meaning as in 10(a)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(2)).

"(E) REQUIREMENT TO PROVIDE A SMALL BUSINESS LENDING PLAN.—At the time that an applicant submits an application to the Secretary for a capital investment under the Program, the applicant shall deliver to the appropriate Federal banking agency, and, for applicants that are State-chartered banks, to the appropriate State banking regulator, a small business lending plan describing how the applicant's business strategy and operating goals will allow it to address the needs of small businesses in the areas it serves, as well as a plan to provide linguistically and culturally appropriate outreach, where appropriate. In the case of eligible institutions that are community development loan funds, this plan shall be submitted to the Secretary. This plan shall be confidential supervisory information.

"(F) TREATMENT OF APPLICANTS THAT ARE COMMUNITY DEVELOPMENT LOAN FUNDS.—Eligible institutions that are community development loan funds may apply to receive a capital investment from the Fund in an amount not exceeding 5 percent of total assets, as reported in the audited financial statements for the fiscal year of the eligible institution that ends in calendar year 2009.

"(2) CONSULTATION WITH REGULATORS.—For each eligible institution that applies to receive a capital investment under the Program, the Secretary shall—

"(A) consult with the appropriate Federal banking agency or, in the case of an eligible institution

that is a nondepository community development financial institution, the Community Development Financial Institution Fund, for the eligible institution, to determine whether the eligible institution may receive such capital investment;

"(B) in the case of an eligible institution that is a State-chartered bank, consider any views received from the State banking regulator of the State of the eligible institution regarding the financial condition of the eligible institution; and

"(C) in the case of a community development financial institution loan fund, consult with the Community Development Financial Institution Fund.

"(3) CONSIDERATION OF MATCHED PRIVATE INVESTMENTS.—

"(A) IN GENERAL.—For an eligible institution that applies to receive a capital investment under the Program, if the entity to be consulted under paragraph (2) would not otherwise recommend the eligible institution to receive the capital investment, the Secretary, in consultation with the entity to be so consulted, may consider whether the entity to be consulted would recommend the eligible institution to receive a capital investment based on the financial condition of the institution if the conditions in subparagraph (B) are satisfied.

"(B) CONDITIONS.—The conditions referred to in subparagraph (A) are as follows:

"(i) CAPITAL SOURCES.—The eligible institution shall receive capital both under the Program and from private, nongovernment investors.

"(ii) AMOUNT OF CAPITAL.—The amount of capital to be received under the Program shall not exceed 3 percent of risk-weighted assets, as reported in the call report immediately preceding the date of application, less the amount of any CDCI investment and any CPP investment.

"(iii) TERMS.—The amount of capital to be received from private, nongovernment investors shall be—

"(I) equal to or greater than 100 percent of the capital to be received under the Program; and

"(II) subordinate to the capital investment made by the Secretary under the Program.

"(4) INELIGIBILITY OF INSTITUTIONS ON FDIC PROBLEM BANK LIST.—

"(A) IN GENERAL.—An eligible institution may not receive any capital investment under the Program, if—

"(i) such institution is on the FDIC problem bank list; or

"(ii) such institution has been removed from the FDIC problem bank list for less than 90 days.

"(B) CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as limiting the discretion of the Secretary to deny the application of an eligible institution that is not on the FDIC problem bank list.

"(C) FDIC PROBLEM BANK LIST DEFINED.—For purposes of this paragraph, the term 'FDIC problem bank list' means the list of depository institutions having a current rating of 4 or 5 under the Uniform Financial Institutions Rating System, or such other list designated by the Federal Deposit Insurance Corporation.

"(5) INCENTIVES TO LEND.—

"(A) REQUIREMENTS ON PREFERRED STOCK AND OTHER FINANCIAL INSTRUMENTS.—Any preferred stock or other financial instrument issued to Treasury by an eligible institution receiving a capital investment under the Program shall provide that—

"(i) the rate at which dividends or interest are payable shall be 5 percent per annum initially;

"(ii) within the first 2 years after the date of the capital investment under the Program, the rate may be adjusted based on the amount of an eligible institution's small business lending. Changes in the amount of small business lending shall be measured against the average amount of small business lending reported by the eligible institution in its call reports for the 4 full quarters immediately preceding the date of enactment of this Act [Sept. 27, 2010], minus adjustments from each quarterly balance in respect of—

"(I) net loan charge offs with respect to small business lending; and

"(II) gains realized by the eligible institution resulting from mergers, acquisitions or purchases of loans after origination and syndication; which adjustments shall be determined in accordance with guidance promulgated by the Secretary; and

"(iii) during any calendar quarter during the initial 2-year period referred to in clause (ii), an institution's rate shall be adjusted to reflect the following schedule, based on that institution's change in the amount of small business lending relative to the baseline—

"(I) if the amount of small business lending has increased by less than 2.5 percent, the dividend or interest rate shall be 5 percent;

- "(II) if the amount of small business lending has increased by 2.5 percent or greater, but by less than 5.0 percent, the dividend or interest rate shall be 4 percent;
- "(III) if the amount of small business lending has increased by 5.0 percent or greater, but by less than 7.5 percent, the dividend or interest rate shall be 3 percent;
- "(IV) if the amount of small business lending has increased by 7.5 percent or greater, and but by less than 10.0 percent, the dividend or interest rate shall be 2 percent; or
- "(V) if the amount of small business lending has increased by 10 percent or greater, the dividend or interest rate shall be 1 percent.

"(B) BASIS OF INITIAL RATE.—The initial dividend or interest rate shall be based on call report data published in the quarter immediately preceding the date of the capital investment under the Program.

"(C) TIMING OF RATE ADJUSTMENTS.—Any rate adjustment shall occur in the calendar quarter following the publication of call report data, such that the rate based on call report data from any one calendar quarter, which is published in the first following calendar quarter, shall be adjusted in that first following calendar quarter and payable in the second following quarter.

"(D) RATE FOLLOWING INITIAL 2-YEAR PERIOD.—Generally, the rate based on call report data from the eighth calendar quarter after the date of the capital investment under the Program shall be payable until the expiration of the 4½-year period that begins on the date of the investment. In the case where the amount of small business lending has remained the same or decreased relative to the institution's baseline in the eighth quarter after the date of the capital investment under the Program, the rate shall be 7 percent until the expiration of the 4½-year period that begins on the date of the investment.

"(E) RATE FOLLOWING INITIAL 4½-YEAR PERIOD.—The dividend or interest rate paid on any preferred stock or other financial instrument issued by an eligible institution that receives a capital investment under the Program shall increase to 9 percent at the end of the 4½-year period that begins on the date of the capital investment under the Program.

"(F) LIMITATION ON RATE REDUCTIONS WITH RESPECT TO CERTAIN AMOUNT.—The reduction in the dividend or interest rate payable to Treasury by any eligible institution shall be limited such that the rate reduction shall not apply to a dollar amount of the investment made by Treasury that is greater than the dollar amount increase in the amount of small business lending realized under this program. The Secretary may issue guidelines that will apply to new capital investments limiting the amount of capital available to eligible institutions consistent with this limitation.

"(G) RATE ADJUSTMENTS FOR S CORPORATION.—Before making a capital investment in an eligible institution that is an S corporation or a corporation organized on a mutual basis, the Secretary may adjust the dividend or interest rate on the financial instrument to be issued to the Secretary, from the dividend or interest rate that would apply under subparagraphs (A) through (F), to take into account any differential tax treatment of securities issued by such eligible institution. For purpose of this subparagraph, the term 'S corporation' has the same meaning as in section 1361(a) of the Internal Revenue Code of 1986 [26 U.S.C. 1361(a)].

"(H) REPAYMENT DEADLINE.—The capital investment received by an eligible institution under the Program shall be evidenced by preferred stock or other financial instrument that—

- "(i) includes, as a term and condition, that the capital investment will—
- "(I) be repaid not later than the end of the 10-year period beginning on the date of the capital investment under the Program; or
- "(II) at the end of such 10-year period, be subject to such additional terms as the Secretary shall prescribe, which shall include a requirement that the stock or instrument shall carry the highest dividend or interest rate payable; and
- "(ii) provides that the term and condition described under clause (i) shall not apply if the application of that term and condition would adversely affect the capital treatment of the stock or financial instrument under current or successor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

"(I) REQUIREMENTS ON FINANCIAL INSTRUMENTS ISSUED BY A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION LOAN FUND.—Any equity equivalent capital issued to the Treasury by a community development loan fund receiving a capital investment under the Program shall provide that the rate at which interest is payable shall be 2 percent per annum for 8 years. After 8 years, the rate at which interest is payable shall be 9 percent.

"(6) ADDITIONAL INCENTIVES TO REPAY.—The Secretary may, by regulation or guidance issued under section 4104(9), establish repayment incentives in addition to the incentive in paragraph (5)(E) that will apply to new capital investments in a manner that the Secretary determines to be consistent with

the purposes of this subtitle.

"(7) CAPITAL PURCHASE PROGRAM REFINANCE.—

"(A) IN GENERAL.—The Secretary shall, in a manner that the Secretary determines to be consistent with the purposes of this subtitle, issue regulations and other guidance to permit eligible institutions to refinance securities issued to Treasury under the CDCI and the CPP for securities to be issued under the Program.

"(B) PROHIBITION ON PARTICIPATION BY NON-PAYING CPP PARTICIPANTS

.—Subparagraph (A) shall not apply to any eligible institution that has missed more than one dividend payment due under the CPP. For purposes of this subparagraph, a CPP dividend payment that is submitted within 60 days of the due date of such payment shall not be considered a missed dividend payment.

"(8) OUTREACH TO MINORITIES, WOMEN, AND VETERANS.—The Secretary shall require eligible institutions receiving capital investments under the Program to provide linguistically and culturally appropriate outreach and advertising in the applicant pool describing the availability and application process of receiving loans from the eligible institution that are made possible by the Program through the use of print, radio, television or electronic media outlets which target organizations, trade associations, and individuals that—

"(A) represent or work within or are members of minority communities;

"(B) represent or work with or are women; and

"(C) represent or work with or are veterans.

"(9) ADDITIONAL TERMS.—The Secretary may, by regulation or guidance issued under section 4104(9), make modifications that will apply to new capital investments in order to manage risks associated with the administration of the Fund in a manner consistent with the purposes of this subtitle.

"(10) MINIMUM UNDERWRITING STANDARDS.—The appropriate Federal banking agency for an eligible institution that receives funds under the Program shall within 60 days issue guidance regarding prudent underwriting standards that must be used for loans made by the eligible institution using such funds.

"SEC. 4104. ADDITIONAL AUTHORITIES OF THE SECRETARY.

"The Secretary may take such actions as the Secretary deems necessary to carry out the authorities in this subtitle, including, without limitation, the following:

"(1) The Secretary may use the services of any agency or instrumentality of the United States or component thereof on a reimbursable basis, and any such agency or instrumentality or component thereof is authorized to provide services as requested by the Secretary using all authorities vested in or delegated to that agency, instrumentality, or component.

"(2) The Secretary may enter into contracts, including contracts for services authorized by section 3109 of title 5, United States Code.

"(3) The Secretary may designate any bank, savings association, trust company, security broker or dealer, asset manager, or investment adviser as a financial agent of the Federal Government and such institution shall perform all such reasonable duties related to this subtitle as financial agent of the Federal Government as may be required. The Secretary shall have authority to amend existing agreements with financial agents, entered into during the 2-year period before the date of enactment of this Act [Sept. 27, 2010], to perform reasonable duties related to this subtitle.

"(4) The Secretary may exercise any rights received in connection with any preferred stock or other financial instruments or assets purchased or acquired pursuant to the authorities granted under this subtitle.

"(5) Subject to section 4103(b)(3), the Secretary may manage any assets purchased under this subtitle, including revenues and portfolio risks therefrom.

"(6) The Secretary may sell, dispose of, transfer, exchange or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any preferred stock or other financial instrument or asset purchased or acquired under this subtitle, upon terms and conditions and at a price determined by the Secretary.

"(7) The Secretary may manage or prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this subtitle.

"(8) The Secretary may establish and use vehicles, subject to supervision by the Secretary, to purchase, hold, and sell preferred stock or other financial instruments and issue obligations.

"(9) The Secretary may, in consultation with the Administrator of the Small Business Administration, issue such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this subtitle.

"SEC. 4105. CONSIDERATIONS.

"In exercising the authorities granted in this subtitle, the Secretary shall take into consideration—

- "(1) increasing the availability of credit for small businesses;
- "(2) providing funding to minority-owned eligible institutions and other eligible institutions that serve small businesses that are minority-, veteran-, and women-owned and that also serve low- and moderate-income, minority, and other underserved or rural communities;
- "(3) protecting and increasing American jobs;
- "(4) increasing the opportunity for small business development in areas with high unemployment rates that exceed the national average;
- "(5) ensuring that all eligible institutions may apply to participate in the program established under this subtitle, without discrimination based on geography;
- "(6) providing transparency with respect to use of funds provided under this subtitle;
- "(7) minimizing the cost to taxpayers of exercising the authorities;
- "(8) promoting and engaging in financial education to would-be borrowers; and
- "(9) providing funding to eligible institutions that serve small businesses directly affected by the discharge of oil arising from the explosion on and sinking of the mobile offshore drilling unit Deepwater Horizon and small businesses in communities that have suffered negative economic effects as a result of that discharge with particular consideration to States along the coast of the Gulf of Mexico.

"SEC. 4106. REPORTS.

"The Secretary shall provide to the appropriate committees of Congress—

- "(1) within 7 days of the end of each month commencing with the first month in which transactions are made under the Program, a written report describing all of the transactions made during the reporting period pursuant to the authorities granted under this subtitle;
- "(2) after the end of March and the end of September, commencing September 30, 2010, a written report on all projected costs and liabilities, all operating expenses, including compensation for financial agents, and all transactions made by the Fund, which shall include participating institutions and amounts each institution has received under the Program; and
- "(3) within 7 days of the end of each calendar quarter commencing with the first calendar quarter in which transactions are made under the Program, a written report detailing how eligible institutions participating in the Program have used the funds such institutions received under the Program.

"SEC. 4107. OVERSIGHT AND AUDITS.

"(a) INSPECTOR GENERAL OVERSIGHT.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of the Program through the Office of Small Business Lending Fund Program Oversight established under subsection (b).

"(b) OFFICE OF SMALL BUSINESS LENDING FUND PROGRAM OVERSIGHT.—

"(1) ESTABLISHMENT.—There is hereby established within the Office of the Inspector General of the Department of the Treasury a new office to be named the 'Office of Small Business Lending Fund Program Oversight' to provide oversight of the Program.

"(2) LEADERSHIP.—The Inspector General shall appoint a Special Deputy Inspector General for SBLF Program Oversight to lead the Office, with commensurate staff, who shall report directly to the Inspector General and who shall be responsible for the performance of all auditing and investigative activities relating to the Program.

"(3) REPORTING.—

"(A) IN GENERAL.—The Inspector General shall issue a report no less than two times a year to the Congress and the Secretary devoted to the oversight provided by the Office, including any recommendations for improvements to the Program.

"(B) RECOMMENDATIONS.—With respect to any deficiencies identified in a report under subparagraph (A), the Secretary shall either—

"(i) take actions to address such deficiencies; or

"(ii) certify to the appropriate committees of Congress that no action is necessary or appropriate.

"(4) COORDINATION.—The Inspector General, in maximizing the effectiveness of the Office, shall work with other Offices of Inspector General, as appropriate, to minimize duplication of effort and ensure comprehensive oversight of the Program.

"(5) TERMINATION.—The Office shall terminate at the end of the 6-month period beginning on the date on which all capital investments are repaid under the Program or the date on which the Secretary determines that any remaining capital investments will not be repaid.

"(6) DEFINITIONS.—For purposes of this subsection:

"(A) OFFICE.—The term 'Office' means the Office of Small Business Lending Fund Program Oversight established under paragraph (1).

"(B) INSPECTOR GENERAL.—The term 'Inspector General' means the Inspector General of the Department of the Treasury.

"(c) REQUIRED CERTIFICATIONS.—

"(1) ELIGIBLE INSTITUTION CERTIFICATION.—Each eligible institution that participates in the Program must certify that such institution is in compliance with the requirements of section 103.121 of title 31, Code of Federal Regulations, a regulation that, at a minimum, requires financial institutions, as that term is defined in 31 U.S.C. 5312(a)(2) and (c)(1)(A), to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

"(2) LOAN RECIPIENTS.—With respect to funds received by an eligible institution under the Program, any business receiving a loan from the eligible institution using such funds after the date of the enactment of this Act [Sept. 27, 2010] shall certify to such eligible institution that the principals of such business have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911) [now 34 U.S.C. 20911]).

"(d) PROHIBITION ON PORNOGRAPHY.—None of the funds made available under this subtitle may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

"SEC. 4108. CREDIT REFORM; FUNDING.

"(a) CREDIT REFORM.—The cost of purchases of preferred stock and other financial instruments made as capital investments under this subtitle shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

"(b) FUNDS MADE AVAILABLE.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the costs of \$30,000,000,000 of capital investments in eligible institutions, including the costs of modifying such investments, and reasonable costs of administering the program of making, holding, managing, and selling the capital investments.

"SEC. 4109. TERMINATION AND CONTINUATION OF AUTHORITIES.

"(a) TERMINATION OF INVESTMENT AUTHORITY.—The authority to make capital investments in eligible institutions, including commitments to purchase preferred stock or other instruments, provided under this subtitle shall terminate 1 year after the date of enactment of this Act [Sept. 27, 2010].

"(b) CONTINUATION OF OTHER AUTHORITIES.—The authorities of the Secretary under section 4104 shall not be limited by the termination date in subsection (a).

"SEC. 4110. PRESERVATION OF AUTHORITY.

"Nothing in this subtitle may be construed to limit the authority of the Secretary under any other provision of law.

"SEC. 4111. ASSURANCES.

"(a) SMALL BUSINESS LENDING FUND SEPARATE FROM TARP.—The Small Business Lending Fund Program is established as separate and distinct from the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 [div. A of Pub. L. 110–343, see Short Title note set out under section 5201 of this title]. An institution shall not, by virtue of a capital investment under the Small Business Lending Fund Program, be considered a recipient of the Troubled Asset Relief Program.

"(b) CHANGE IN LAW.—If, after a capital investment has been made in an eligible institution under the Program, there is a change in law that modifies the terms of the investment or program in a materially adverse respect for the eligible institution, the eligible institution may, after consultation with the appropriate Federal banking agency for the eligible institution, repay the investment without impediment.

"SEC. 4112. STUDY AND REPORT WITH RESPECT TO WOMEN-OWNED, VETERAN-OWNED, AND MINORITY-OWNED BUSINESSES.

"(a) STUDY.—The Secretary shall conduct a study of the impact of the Program on women-owned businesses, veteran-owned businesses, and minority-owned businesses.

"(b) REPORT.—Not later than one year after the date of enactment of this Act [Sept. 27, 2010], the Secretary shall submit to Congress a report on the results of the study conducted pursuant to subsection (a). To the extent possible, the Secretary shall disaggregate the results of such study by ethnic group and gender.

"(c) INFORMATION PROVIDED TO THE SECRETARY.—Eligible institutions that participate in the Program shall provide the Secretary with such information as the Secretary may require to carry out the study required by this section.

"SEC. 4113. SENSE OF CONGRESS.

"It is the sense of Congress that the Federal Deposit Insurance Corporation and other bank regulators are sending mixed messages to banks regarding regulatory capital requirements and lending standards, which is a contributing cause of decreased small business lending and increased regulatory uncertainty at community banks."

§4742. Definitions

For purposes of this subchapter—

(1) the term "Fund" means the Community Development Financial Institutions Fund established under section 4703 of this title;

(2) the term "appropriate Federal banking agency"—

(A) has the same meaning as in section 1813 of this title; and

(B) includes the National Credit Union Administration Board in the case of any credit union the deposits of which are insured in accordance with the Federal Credit Union Act [12 U.S.C. 1751 et seq.];

(3) the term "early loan" means a loan enrolled at a time when the aggregate covered amount of loans previously enrolled under the Program by a particular participating financial institution is less than \$5,000,000;

(4) the term "enrolled loan" means a loan made by a participating financial institution that is enrolled by a participating State in accordance with this subchapter;

(5) the term "financial institution" means any federally chartered or State-chartered commercial bank, savings association, savings bank, or credit union;

(6) the term "participating financial institution" means any financial institution that has entered into a participation agreement with a participating State in accordance with section 4744 of this title;

(7) the term "participating State" means any State that has been approved for participation in the Program in accordance with section 4743 of this title;

(8) the term "passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, except that such term shall not include—

(A) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate (other than the business of passive ownership of real estate); or

(B) the ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase;

(9) the term "Program" means the Small Business Capital Enhancement Program established under this subchapter;

(10) the term "reserve fund" means a fund, established by a participating State, earmarked for a particular participating financial institution, for the purposes of—

(A) depositing all required premium charges paid by the participating financial institution and by each borrower receiving a loan under the Program from a participating financial institution;

(B) depositing contributions made by the participating State; and

(C) covering losses on enrolled loans by disbursing accumulated funds; and

(11) the term "State" means—

- (A) a State of the United States;
- (B) the District of Columbia;
- (C) any political subdivision of a State of the United States, which subdivision has a population in excess of the population of the least populated State of the United States; and
- (D) any other political subdivision of a State of the United States that the Fund determines has the capacity to participate in the program.¹

(Pub. L. 103–325, title II, §252, Sept. 23, 1994, 108 Stat. 2204.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in par. (2)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

¹ *So in original. Probably should be capitalized.*

§4743. Approving States for participation

(a) Application

Any State may apply to the Fund for approval to be a participating State under the Program and to be eligible for reimbursement by the Fund pursuant to section 4747 of this title.

(b) Approval criteria

The Fund shall approve a State to be a participating State, if—

- (1) a specific department or agency of the State has been designated to implement the Program;
- (2) all legal actions necessary to enable such designated department or agency to implement the Program have been accomplished;
- (3) funds in the amount of at least \$1 for every 2 people residing in the State (as of the last decennial census for which data have been released) are available and have been legally committed to contributions by the State to reserve funds, with such funds being available without time limit and without requiring additional legal action, except that such requirements shall not be construed to limit the authority of the State to take action at a later time that results in the termination of its obligation to enroll loans and make contributions to reserve funds;
- (4) the State has prescribed a form of participation agreement to be entered into between it and each participating financial institution that is consistent with the requirements and purposes of this subchapter; and
- (5) the State and the Fund have executed a reimbursement agreement that conforms to the requirements of this subchapter.

(c) Existing State programs

(1) In general

A State that is not a participating State, but that has its own capital access program providing portfolio insurance for business loans (based on a separate loss reserve fund for each financial institution), may apply at any time to the Fund to be approved to be a participating State. The Fund shall approve such State to be a participating State, and to be eligible for reimbursements by the Fund pursuant to section 4747 of this title, if the State—

- (A) satisfies the requirements of subsections (a) and (b); and
- (B) certifies that each affected financial institution has satisfied the requirements of section 4744 of this title.

(2) Applicable terms of participation

(A) Status of institutions

If a State is approved for participation under paragraph (1), each financial institution with a participation agreement in effect with the participating State shall immediately be considered a participating financial institution. Reimbursements may be made under section 4747 ¹ of this title in connection with all contributions made to the reserve fund by the State in connection with lending that occurs on or after the date on which the Fund approves the State for participation.

(B) Effective date of participation

If an amended participation agreement that conforms with section 4745 of this title is required in order to secure participation approval by the Fund, contributions subject to reimbursement under section 4747 of this title shall include only those contributions made to a reserve fund with respect to loans enrolled on or after the date that an amended participation agreement between the participating State and the participating financial institution becomes effective.

(C) Use of accumulated reserve funds

A State that is approved for participation in accordance with this subsection may continue to implement the program ² utilizing the reserve funds accumulated under the State program.

(d) Prior appropriations requirement

The Fund shall not approve a State for participation in the Program until at least \$50,000,000 has been appropriated to the Fund (subject to an appropriations Act), without fiscal year limitation, for the purpose of making reimbursements pursuant to section 4747 of this title and otherwise carrying out this subchapter.

(e) Amendments to agreements

If a State that has been approved to be a participating State wishes to amend its form of participation agreement and continue to be a participating State, such State shall submit such amendment for review by the Fund in accordance with subsection (b)(4). Any such amendment shall become effective only after it has been approved by the Fund.

(Pub. L. 103–325, title II, §253, Sept. 23, 1994, 108 Stat. 2205.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4747 of this title, referred to in subsec. (c)(2)(A), was in the original "section 237" and was translated as reading "section 257" meaning section 257 of Pub. L. 103–325, to reflect the probable intent of Congress. Pub. L. 103–325 does not contain a section 237.

¹ [See References in Text note below.](#)

² [So in original. Probably should be capitalized.](#)

§4744. Participation agreements

(a) In general

A participating State may enter into a participation agreement with any financial institution determined by the participating State, after consultation with the appropriate Federal banking agency, to have sufficient commercial lending experience and financial and managerial capacity to participate in the Program. The determination by the State shall not be reviewable by the Fund.

(b) Participating financial institutions

Upon entering into the participation agreement with the participating State, the financial institution shall become a participating financial institution eligible to enroll loans under the Program.

(Pub. L. 103-325, title II, §254, Sept. 23, 1994, 108 Stat. 2207.)

§4745. Terms of participation agreements

(a) In general

The participation agreement to be entered into by a participating State and a participating financial institution shall include all provisions required by this section, and shall not include any provisions inconsistent with the provisions of this section.

(b) Establishment of separate reserve funds

A separate reserve fund shall be established by the participating State for each participating financial institution. All funds credited to a reserve fund shall be the exclusive property of the participating State. Each reserve fund shall be an administrative account for the purposes of—

(1) receiving all required premium charges to be paid by the borrower and participating financial institution and contributions by the participating State; and

(2) disbursing funds, either to cover losses sustained by the participating financial institution in connection with loans made under the Program, or as contemplated by subsections (d) and (r).

(c) Investment authority

Subject to applicable State law, the participating State may invest, or cause to be invested, funds held in a reserve fund by establishing a deposit account at the participating financial institution in the name of the participating State. In the event that funds in the reserve fund are not deposited in such an account, such funds shall be invested in a form that the participating State determines is safe and liquid.

(d) Earned income and interest

Interest or income earned on the funds credited to a reserve fund shall be deemed to be part of the reserve fund, except that a participating State may, as further specified in the participation agreement, provide authority for the participating State to withdraw some or all of such interest or income earned.

(e) Loan terms and conditions

(1) In general

A loan to be filed for enrollment under the Program may be made with such interest rate, fees, and other terms and conditions as agreed upon by the participating financial institution and the borrower, consistent with applicable law.

(2) Lines of credit

If a loan to be filed for enrollment is in the form of a line of credit, the amount of the loan shall be considered to be the maximum amount that can be drawn by the borrower against the line of credit.

(f) Enrollment process

(1) Filing

(A) In general

A participating financial institution shall file each loan made under the Program for enrollment by completing and submitting to the participating State a form prescribed by the participating State.

(B) Form

The form referred to in subparagraph (A) shall include a representation by the participating financial institution that it has complied with the participation agreement in enrolling the loan

with the State.

(C) Premium charges

Accompanying the completed form shall be the nonrefundable premium charges paid by the borrower and the participating financial institution, or evidence that such premium charges have been deposited into the deposit account containing the reserve fund, if applicable.

(D) Submission

The participation agreement shall require that the items required by this subsection shall be submitted to the participating State by the participating financial institutions not later than 10 calendar days after a loan is made.

(2) Enrollment by State

Upon receipt by the participating State of the filing submitted in accordance with paragraph (1), the participating State shall promptly enroll the loan and make a matching contribution to the reserve fund in accordance with subsection (j), unless the information submitted indicates that the participating financial institution has not complied with the participation agreement in enrolling the loan.

(g) Coverage amount

In filing a loan for enrollment under the Program, the participating financial institution may specify an amount to be covered under the Program that is less than the full amount of the loan.

(h) Premium charges

(1) Minimum and maximum amounts

The premium charges payable to the reserve fund by the borrower and the participating financial institution shall be prescribed by the participating financial institution, within minimum and maximum limits set forth in the participation agreement. The participation agreement shall establish minimum and maximum limits whereby the sum of the premium charges paid in connection with a loan by the borrower and the participating financial institution is not less than 3 percent nor more than 7 percent of the amount of the loan covered under the Program.

(2) Allocation of premium charges

The participation agreement shall specify terms for allocating premium charges between the borrower and the participating financial institution. However, if the participating financial institution is required to pay any of the premium charges, the participation agreement shall authorize the participating financial institution to recover from the borrower the cost of the payment of the participating financial institution, in any manner on which the participating financial institution and the borrower agree.

(i) Restrictions

(1) Actions prohibited

Except as provided in subsection (h) and paragraph (2) of this subsection, the participating State may not—

(A) impose any restrictions or requirements, relating to the interest rate, fees, collateral, or other business terms and conditions of the loan; or

(B) condition enrollment of a loan in the Program on the review by the State of the risk or creditworthiness of a loan.

(2) Effect on other law

Nothing in this subchapter shall affect the applicability of any other law to the conduct by a participating financial institution of its business.

(j) State contributions

In enrolling a loan under the Program, the participating State shall contribute to the reserve fund an amount, as provided for in the participation agreement, which shall not be less than the sum of the

amount of premium charges paid by the borrower and the participating financial institution.

(k) Submission of claims

(1) Filing

If a participating financial institution charges off all or part of an enrolled loan, such participating financial institution may file a claim for reimbursement with the participating State by submitting a form that—

(A) includes the representation by the participating financial institution that it is filing the claim in accordance with the terms of the applicable participation agreement; and

(B) contains such other information as may be required by the participating State.

(2) Timing

Any claim filed under paragraph (1) shall be filed contemporaneously with the action of the participating financial institution to charge off all or part of an enrolled loan. The participating financial institution shall determine when and how much to charge off on an enrolled loan, in a manner consistent with its usual method for making such determinations on business loans that are not enrolled loans under this subchapter.

(l) Elements of claims

A claim filed by a participating financial institution may include the amount of principal charged off, not to exceed the covered amount of the loan. Such claim may also include accrued interest and out-of-pocket expenses, if and to the extent provided for under the participation agreement.

(m) Payment of claims

(1) In general

Except as provided in subsection (n) and paragraph (2) of this subsection, upon receipt of a claim filed in accordance with this section and the participation agreement, the participating State shall promptly pay to the participating financial institution, from funds in the reserve fund, the full amount of the claim as submitted.

(2) Insufficient reserve funds

If there are insufficient funds in the reserve fund to cover the entire amount of a claim of a participating financial institution, the participating State shall pay to the participating financial institution an amount equal to the current balance in the reserve fund. If the enrolled loan for which the claim has been filed—

(A) is not an early loan, such payment shall be deemed fully to satisfy the claim, and the participating financial institution shall have no other or further right to receive any amount from the reserve fund with respect to such claim; or

(B) is an early loan, such payment shall not be deemed fully to satisfy the claim of the participating financial institution, and at such time as the remaining balance of the claim does not exceed 75 percent of the balance in the reserve fund, the participating State shall, upon the request of the participating financial institution, pay any remaining amount of the claim.

(n) Denial of claims

A participating State may deny a claim if a representation or warranty made by the participating financial institution to the participating State at the time that the loan was filed for enrollment or at the time that the claim was submitted was known by the participating financial institution to be false.

(o) Subsequent recovery of claim amount

If, subsequent to payment of a claim by the participating State, a participating financial institution recovers from a borrower any amount for which payment of the claim was made, the participating financial institution shall promptly pay to the participating State for deposit into the reserve fund the amount recovered, less any expenses incurred by the institution in collection of such amount.

(p) Participation agreement terms

(1) In general

In connection with the filing of a loan for enrollment in the Program, the participation agreement—

(A) shall require the participating financial institution to obtain an assurance from each borrower that—

- (i) the proceeds of the loan will be used for a business purpose;
- (ii) the loan will not be used to finance passive real estate ownership; and
- (iii) the borrower is not—

(I) an executive officer, director, or principal shareholder of the participating financial institution;

(II) a member of the immediate family of an executive officer, director, or principal shareholder of the participating financial institution; or

(III) a related interest of any such executive officer, director, principal shareholder, or member of the immediate family;

(B) shall require the participating financial institution to provide assurances to the participating State that the loan has not been made in order to place under the protection of the Program prior debt that is not covered under the Program and that is or was owed by the borrower to the participating financial institution or to an affiliate of the participating financial institution;

(C) may provide that if—

(i) a participating financial institution makes a loan to a borrower that is a refinancing of a loan previously made to the borrower by the participating financial institution or an affiliate of the participating financial institution;

(ii) such prior loan was not enrolled in the Program; and

(iii) additional or new financing is extended by the participating financial institution as part of the refinancing,

the participating financial institution may file the loan for enrollment, with the amount to be covered under the Program not to exceed the amount of any additional or new financing; and

(D) may include additional restrictions on the eligibility of loans or borrowers that are not inconsistent with the provisions and purposes of this subchapter.

(2) Definitions

For purposes of this subsection, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to a participating financial institution as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

(q) Termination clause

In each participation agreement, the participating State shall reserve for itself the ability to terminate its obligation to enroll loans under the Program. Any such termination shall be prospective only, and shall not apply to amounts of loans enrolled under the Program prior to such termination.

(r) Allowable withdrawals from fund

The participation agreement may provide that, if, for any consecutive period of not less than 24 months, the aggregate outstanding balance of all enrolled loans for a participating financial institution is continually less than the outstanding balance in the reserve fund for that participating financial institution, the participating State, in its discretion, may withdraw an amount from the reserve fund to bring the balance in the reserve fund down to the outstanding balance of all such enrolled loans.

(s) Grandfathered provision

(1) Special treatment of premium charges

Notwithstanding subsection (b) or (d), the participation agreement, if explicitly authorized by a statute enacted by the State before September 23, 1994, may allow a participating financial institution to treat the premium charges paid by the participating financial institution and the borrower into the reserve fund, and interest or income earned on funds in the reserve fund that are deemed to be attributable to such premium charges, as assets of the participating financial institution for accounting purposes, subject to withdrawal by the participating financial institution only—

(A) for the payment of claims approved by the participating State in accordance with this section; and

(B) upon the participating financial institution's withdrawal from authority to make new loans under the Program.

(2) Payment of post-withdrawal claims

After any withdrawal of assets from the reserve fund pursuant to paragraph (1)(B), any future claims filed by the participating financial institution on loans remaining in its capital access program portfolio shall only be paid from funds remaining in the reserve fund to the extent that, in the aggregate, such claims exceed the sum of the amount of such withdrawn assets, and interest on that amount, imputed at the same rate as income would have accrued had the amount not been withdrawn.

(3) Conditions for terminating special authority

If the Fund determines that the inclusion in a participation agreement of the provisions authorized by this subsection is resulting in the enrollment of loans under the Program that are likely to have been made without assistance provided under this subchapter, the Fund may notify the participating State that henceforth, the Fund will only make reimbursements to the State under section 4747 of this title with respect to a loan if the participation agreement between the participating State and each participating financial institution has been amended to conform with this section, without exercise of the special authority granted by this subsection.

(Pub. L. 103–325, title II, §255, Sept. 23, 1994, 108 Stat. 2207.)

§4746. Reports

(a) Reserve funds report

On or before the last day of each calendar quarter, a participating State shall submit to the Fund a report of contributions to reserve funds made by the participating State during the previous calendar quarter. If the participating State has made contributions to one or more reserve funds during the previous quarter, the report shall—

(1) indicate the total amount of such contributions;

(2) indicate the amount of contributions which is subject to reimbursement, which shall be equal to the total amount of contributions, unless one of the limitations contained in section 4747 of this title is applicable;

(3) if one of the limitations in section 4747 of this title is applicable, provide documentation of the applicability of such limitation for each loan for which the limitation applies; and

(4) include a certification by the participating State that—

(A) the information provided in accordance with paragraphs (1), (2), and (3) is accurate;

(B) funds in an amount meeting the minimum requirements of section 4743(b)(3) of this title continue to be available and legally committed to contributions by the State to reserve funds, less any amount that has been contributed by the State to reserve funds subsequent to the State being approved for participation in the Program;

(C) there has been no unapproved amendment to any participation agreement or the form of participation agreements; and

(D) the participating State is otherwise implementing the Program in accordance with this subchapter and regulations issued pursuant to section 4749 of this title.

(b) Annual data

Not later than March 31 of each year, each participating State shall submit to the Fund annual data indicating the number of borrowers financed under the Program, the total amount of covered loans, and breakdowns by industry type, loan size, annual sales, and number of employees of the borrowers financed.

(c) Form

The reports and data filed pursuant to subsections (a) and (b) shall be in such form as the Fund may require.

(Pub. L. 103-325, title II, §256, Sept. 23, 1994, 108 Stat. 2212.)

§4747. Reimbursement by Fund

(a) Reimbursements

Not later than 30 calendar days after receiving a report filed in compliance with section 4746 of this title, the Fund shall reimburse the participating State in an amount equal to 50 percent of the amount of contributions by the participating State to the reserve funds that are subject to reimbursement by the Fund pursuant to section 4746 of this title and this section. The Fund shall reimburse participating States, as it receives reports pursuant to section 4746(a) of this title, until available funds are expended.

(b) Size of assisted borrower

The Fund shall not provide any reimbursement to a participating State with respect to an enrolled loan made to a borrower that has 500 or more employees at the time that the loan is enrolled in the Program.

(c) Three-year maximum

The amount of reimbursement to be provided by the Fund to a participating State over any 3-year period in connection with loans made to any single borrower or any group of borrowers among which a common enterprise exists shall not exceed \$75,000. For purposes of this subsection, "common enterprise" shall have the same meaning as in part 32 of title 12 of the Code of Federal Regulations, or any successor to that part.

(d) Loans totaling less than \$2,000,000

In connection with a loan in which the covered amount of the loan plus the covered amount of all previous loans enrolled by a participating financial institution does not exceed \$2,000,000, the amount of reimbursement by the Fund to the participating State shall not exceed the lesser of—

- (1) 75 percent of the sum of the premium charges paid to the reserve fund by the borrower and the participating financial institution; or
- (2) 5.25 percent of the covered amount of the loan.

(e) Loans totaling more than \$2,000,000

In connection with a loan in which the sum of the covered amounts of all previous loans enrolled by the participating financial institution in the Program equals or exceeds \$2,000,000, the amount of reimbursement to be provided by the Fund to the participating State shall not exceed the lesser of—

- (1) 50 percent of the sum of the premium charges paid by the borrower and the participating financial institution; or
- (2) 3.5 percent of the covered amount of the loan.

(f) Other amounts

In connection with the enrollment of a loan that will cause the aggregate covered amount of all enrolled loans to exceed \$2,000,000, the amount of reimbursement by the Fund to the participating State shall be determined—

- (1) by applying subsection (d) to the portion of the loan, which when added to the aggregate

covered amount of all previously enrolled loans equals \$2,000,000; and

(2) by applying subsection (e) to the balance of the loan.

(Pub. L. 103–325, title II, §257, Sept. 23, 1994, 108 Stat. 2212.)

§4748. Reimbursement to Fund

(a) In general

If a participating State withdraws funds from a reserve fund pursuant to terms of the participation agreement permitted by subsection (d) or (r) of section 4745 of this title, such participating State shall, not later than 15 calendar days after such withdrawal, submit to the Fund an amount computed by multiplying the amount withdrawn by the appropriate factor, as determined under subsection (b).

(b) Factor

The appropriate factor shall be obtained by dividing the total amount of contributions that have been made by the participating State to all reserve funds which were subject to reimbursement—

(1) by 2; and

(2) by the total amount of contributions made by the participating State to all reserve funds, including if applicable, contributions that have been made by the State prior to becoming a participating State if the State continued its own capital access program in accordance with section 4743(b) of this title.

(c) Use of reimbursements

The Fund may use funds reimbursed pursuant to this section to make reimbursements under section 4747 of this title.

(Pub. L. 103–325, title II, §258, Sept. 23, 1994, 108 Stat. 2213.)

§4749. Regulations

The Fund shall promulgate appropriate regulations to implement this subchapter.

(Pub. L. 103–325, title II, §259, Sept. 23, 1994, 108 Stat. 2214.)

§4750. Authorization of appropriations

(a) Amount

There are authorized to be appropriated to the Fund \$50,000,000 to carry out this subchapter.

(b) Budgetary treatment

The amount authorized to be appropriated under subsection (a) shall be subject to discretionary spending caps, as provided in section 665 ¹ of title 2, and therefore shall reduce by an equal amount funds made available for other discretionary spending programs.

(Pub. L. 103–325, title II, §260, Sept. 23, 1994, 108 Stat. 2214.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 665 of title 2, referred to in subsec. (b), was repealed by Pub. L. 105–33, title X, §10118(a), Aug. 5, 1997, 111 Stat. 695.

¹ [*See References in Text note below.*](#)

CHAPTER 48—FINANCIAL INSTITUTIONS REGULATORY IMPROVEMENT

Sec.

- 4801. Incorporated definitions.
- 4802. Administrative consideration of burden with new regulations.
- 4803. Streamlining of regulatory requirements.
- 4804. Elimination of duplicative filings.
- 4805. Call report simplification.
- 4805a. Call report simplification.
- 4806. Regulatory appeals process, ombudsman, and alternative dispute resolution.
- 4807. Time limit on agency consideration of completed applications.
- 4808. Revising regulatory requirements for transfers of all types of assets with recourse.
- 4809. "Plain language" requirement for Federal banking agency rules.

§4801. Incorporated definitions

Unless otherwise specifically provided in this chapter, for purposes of this chapter—

(1) the terms "appropriate Federal banking agency", "Federal banking agencies", "insured depository institution", and "State bank supervisor" have the same meanings as in section 1813 of this title; and

(2) the term "insured credit union" has the same meaning as in section 1752 of this title.

(Pub. L. 103–325, title III, §301, Sept. 23, 1994, 108 Stat. 2214.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in original "this title" meaning title III of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2214, which enacted this chapter, sections 633 and 2606 of this title, and section 5329 of Title 31, Money and Finance, amended sections 1, 24, 27, 72, 93, 161, 248, 250, 324, 375a, 375b, 482, 1462a, 1464, 1468, 1813, 1815, 1817, 1819 to 1821, 1823, 1828, 1831f, 1831m, 1831p–1, 1831t, 1842, 1843, 1849, 1865, 1953, 2605, 3201, 3205, 3207, 3351, and 4313 of this title and sections 77c, 78c, 1667c, and 1681g of Title 15, Commerce and Trade, enacted provisions set out as notes under this section, sections 24, 633, 1468, 1820, 1831p–1, and 1831t of this title, and sections 78c and 1667c of Title 15, and amended provisions set out as notes under sections 1825 and 1828 of this title. For complete classification of title III to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

USE OF SUBORDINATED DEBT TO PROTECT FINANCIAL SYSTEM AND DEPOSIT FUNDS FROM "TOO BIG TO FAIL" INSTITUTIONS

Pub. L. 106–102, title I, §108, Nov. 12, 1999, 113 Stat. 1361, provided that:

"(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall conduct a study of—

"(1) the feasibility and appropriateness of establishing a requirement that, with respect to large insured depository institutions and depository institution holding companies the failure of which could have serious adverse effects on economic conditions or financial stability, such institutions and holding companies maintain some portion of their capital in the form of subordinated debt in order to bring market forces and market discipline to bear on the operation of, and the assessment of the viability of, such institutions and companies and reduce the risk to economic conditions, financial stability, and any deposit insurance fund;

"(2) if such requirement is feasible and appropriate, the appropriate amount or percentage of capital that should be subordinated debt consistent with such purposes; and

"(3) the manner in which any such requirement could be incorporated into existing capital standards and other issues relating to the transition to such a requirement.

"(b) REPORT.—Before the end of the 18-month period beginning on the date of the enactment of this Act

[Nov. 12, 1999], the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a report to the Congress containing the findings and conclusions of the Board and the Secretary in connection with the study required under subsection (a), together with such legislative and administrative proposals as the Board and the Secretary may determine to be appropriate.

"(c) DEFINITIONS.—For purposes of subsection (a), the following definitions shall apply:

"(1) BANK HOLDING COMPANY.—The term 'bank holding company' has the meaning given the term in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

"(2) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)].

"(3) SUBORDINATED DEBT.—The term 'subordinated debt' means unsecured debt that—

"(A) has an original weighted average maturity of not less than 5 years;

"(B) is subordinated as to payment of principal and interest to all other indebtedness of the bank, including deposits;

"(C) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

"(D) is not held in whole or in part by any affiliate or institution-affiliated party of the insured depository institution or bank holding company."

STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING

Pub. L. 106–102, title VII, §729, Nov. 12, 1999, 113 Stat. 1476, required the Federal banking agencies (as defined in 12 U.S.C. 1813(z)) to study banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending, and report to Congress on the findings and conclusions, together with appropriate recommendations for legislative or regulatory action, before the end of the 2-year period beginning on Nov. 12, 1999.

TREASURY REPORT ON REDUCED TAXATION AND VIABILITY OF SMALL BANKS

Pub. L. 105–219, title IV, §403, Aug. 7, 1998, 112 Stat. 935, required the Secretary of the Treasury to submit, not later than 1 year after Aug. 7, 1998, a report to the Congress containing recommendations for appropriate legislative and administrative action that would reduce and simplify the tax burden for small banking institutions.

STUDY AND REPORT ON CAPITAL STANDARDS AND THEIR IMPACT ON ECONOMY

Pub. L. 103–325, title III, §328, Sept. 23, 1994, 108 Stat. 2230, directed the Secretary of the Treasury, in consultation with the Federal banking agencies, to conduct a study of the effect that the implementation of risk-based capital standards for depository institutions, including the Basle international capital standards, was having on the safety and soundness of insured depository institutions and economic growth and to submit a report and any capital standard recommendations to Congress before end of the 1-year period beginning on Sept. 23, 1994.

STUDY ON IMPACT OF PAYMENT OF INTEREST ON RESERVES

Pub. L. 103–325, title III, §329, Sept. 23, 1994, 108 Stat. 2230, provided for, not later than 180 days after Sept. 23, 1994, studies and reports to the Congress on the need and impact of payment of interest on sterile reserves.

STUDY AND REPORT ON CONSUMER CREDIT SYSTEM

Pub. L. 103–325, title III, §330, Sept. 23, 1994, 108 Stat. 2231, provided for a study of the process, including any Federal laws, by which credit is made available for consumers and small businesses in order to identify procedures, including any Federal laws, that reduce available credit, increase consumer inconvenience, or increase costs and burdens on insured depository institutions, with a report and recommendations by the Secretary of the Treasury no later than 1 year after Sept. 23, 1994.

STUDY ON CHECK-RELATED FRAUD

Pub. L. 103–325, title III, §333, Sept. 23, 1994, 108 Stat. 2233, provided that the Board of Governors of the Federal Reserve System should conduct a study on the advisability of extending the 1-business-day period specified in 12 U.S.C. 4002(b)(1), regarding availability of funds deposited by local checks, to 2 business days, and report to the Congress no later than 2 years after Sept. 23, 1994.

FEASIBILITY STUDY OF DATA BANK

Pub. L. 103-325, title III, §341, Sept. 23, 1994, 108 Stat. 2238, provided that, not later than 18 months after Sept. 23, 1994, the Federal Financial Institutions Examination Council would study the feasibility, including the costs and benefits to insured depository institutions, of establishing and maintaining a data bank for reports submitted by any depository institution to a Federal banking agency and report to Congress.

TIMELY COMPLETION OF CRA REVIEW

Pub. L. 103-325, title III, §342, Sept. 23, 1994, 108 Stat. 2238, provided that: "The comprehensive regulatory review of the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] that, as of the date of enactment of this Act [Sept. 23, 1994], is being conducted by the Federal banking agencies, shall be completed at the earliest practicable time."

WAIVER OF RIGHT OF RESCISSION FOR CERTAIN REFINANCING TRANSACTIONS

Pub. L. 103-325, title III, §344, Sept. 23, 1994, 108 Stat. 2239, provided that: "Not later than 6 months after the date of enactment of this Act [Sept. 23, 1994], the Board of Governors of the Federal Reserve System, in consultation with the consumer advisory council to such Board, consumers, representatives of consumers, lenders, and other interested parties, shall submit recommendations to the Congress regarding whether a waiver or modification, at the option of a consumer, of the right of rescission under section 125 of the Truth in Lending Act [15 U.S.C. 1635] with respect to transactions which constitute a refinancing or consolidation (with no new advances) of the principal balance then due, and any accrued and unpaid finance charges of an existing extension of credit by a different creditor secured by an interest in the same property, would benefit consumers."

§4802. Administrative consideration of burden with new regulations

(a) Agency considerations

In determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest—

- (1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and
- (2) the benefits of such regulations.

(b) Adequate transition period for new regulations

(1) In general

New regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless—

- (A) the agency determines, for good cause published with the regulation, that the regulation should become effective before such time;
- (B) the regulation is issued by the Board of Governors of the Federal Reserve System in connection with the implementation of monetary policy; or
- (C) the regulation is required to take effect on a date other than the date determined under this paragraph pursuant to any other Act of Congress.

(2) Early compliance

Any person who is subject to a regulation described in paragraph (1) may comply with the regulation before the effective date of the regulation.

(Pub. L. 103-325, title III, §302, Sept. 23, 1994, 108 Stat. 2214.)

§4803. Streamlining of regulatory requirements

(a) Review of regulations; regulatory uniformity

During the 2-year period beginning on September 23, 1994, each Federal banking agency shall, consistent with the principles of safety and soundness, statutory law and policy, and the public interest—

(1) conduct a review of the regulations and written policies of that agency to—

(A) streamline and modify those regulations and policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability;

(B) remove inconsistencies and outmoded and duplicative requirements; and

(C) with respect to regulations prescribed pursuant to section 1828(o) of this title, consider the impact that such standards have on the availability of credit for small business, residential, and agricultural purposes, and on low- and moderate-income communities;

(2) review the extent to which existing regulations require insured depository institutions and insured credit unions to produce unnecessary internal written policies and eliminate such requirements, where appropriate;

(3) work jointly with the other Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or supervisory policies; and

(4) submit a joint report to the Congress at the end of such 2-year period detailing the progress of the agencies in carrying out this subsection.

(b) Review of disclosures

The Board of Governors of the Federal Reserve System, in consultation with the consumer advisory council to such Board, consumers, representatives of consumers, lenders, and other interested persons, shall—

(1) review the regulations and written policies of the Board with respect to disclosures pursuant to the Truth in Lending Act [15 U.S.C. 1601 et seq.] with regard to variable-rate mortgages in order to simplify the disclosures, if necessary, and make the disclosures more meaningful and comprehensible to consumers;

(2) implement any necessary regulatory changes, consistent with applicable law; and

(3) not later than 2 years after completion of the review required by paragraph (1), submit a report to the Congress on the results of its actions taken in accordance with this subsection and any recommended legislative actions.

(Pub. L. 103–325, title III, §303, Sept. 23, 1994, 108 Stat. 2215; Pub. L. 104–208, div. A, title II, §2242, Sept. 30, 1996, 110 Stat. 3009–418.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (b)(1), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 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

1996—Subsec. (a)(2) to (4). Pub. L. 104–208 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

UPDATE ON REVIEW OF REGULATIONS AND PAPERWORK REDUCTIONS

Pub. L. 105–219, title IV, §402, Aug. 7, 1998, 112 Stat. 935, provided that: "Not later than 1 year after the date of enactment of this Act [Aug. 7, 1998], the Federal banking agencies [see 12 U.S.C. 1813(z)] shall

submit a report to the Congress detailing their progress in carrying out section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 [12 U.S.C. 4803(a)], since their submission of the report dated September 23, 1996, as required by section 303(a)(4) of that Act."

§4804. Elimination of duplicative filings

The Federal banking agencies shall work jointly—

- (1) to eliminate, to the extent practicable, duplicative or otherwise unnecessary requests for information in connection with applications or notices to the agencies; and
- (2) to harmonize, to the extent practicable, any inconsistent publication and public notice requirements.

(Pub. L. 103–325, title III, §304, Sept. 23, 1994, 108 Stat. 2215.)

§4805. Call report simplification

(a) Modernization of call report filing and disclosure system

In order to reduce the administrative requirements pertaining to bank reports of condition, savings association financial reports, and bank holding company consolidated and parent-only financial statements, and to improve the timeliness of such reports and statements, the Federal banking agencies shall—

- (1) work jointly to develop a system under which—

(A) insured depository institutions and their affiliates may file such reports and statements electronically; and

(B) the Federal banking agencies may make such reports and statements available to the public electronically; and

- (2) not later than 1 year after September 23, 1994, report to the Congress and make recommendations for legislation that would enhance efficiency for filers and users of such reports and statements.

(b) Uniform reports and simplification of instructions

The Federal banking agencies shall, consistent with the principles of safety and soundness, work jointly—

- (1) to adopt a single form for the filing of core information required to be submitted under Federal law to all such agencies in the reports and statements referred to in subsection (a); and

- (2) to simplify instructions accompanying such reports and statements and to provide an index to the instructions that is adequate to meet the needs of both filers and users.

(c) Review of call report schedule

Each Federal banking agency shall—

- (1) review the information required by schedules supplementing the core information referred to in subsection (b); and

- (2) eliminate requirements that are not warranted for reasons of safety and soundness or other public purposes.

(Pub. L. 103–325, title III, §307, Sept. 23, 1994, 108 Stat. 2217.)

EDITORIAL NOTES

CODIFICATION

Provisions similar to this section are contained in section 4805a of this title.

§4805a. Call report simplification

(a) Modernization of call report filing and disclosure system

In order to reduce the administrative requirements pertaining to bank reports of condition, savings association financial reports, and bank holding company consolidated and parent-only financial statements, and to improve the timeliness of such reports and statements, the Federal banking agencies shall—

(1) work jointly to develop a system under which—

(A) insured depository institutions and their affiliates may file such reports and statements electronically; and

(B) the Federal banking agencies may make such reports and statements available to the public electronically; and

(2) not later than 1 year after December 27, 2000, report to the Congress and make recommendations for legislation that would enhance efficiency for filers and users of such reports and statements.

(b) Uniform reports and simplification of instructions

The Federal banking agencies shall, consistent with the principles of safety and soundness, work jointly—

(1) to adopt a single form for the filing of core information required to be submitted under Federal law to all such agencies in the reports and statements referred to in subsection (a); and

(2) to simplify instructions accompanying such reports and statements and to provide an index to the instructions that is adequate to meet the needs of both filers and users.

(c) Review of call report schedule

Each Federal banking agency shall—

(1) review the information required by schedules supplementing the core information referred to in subsection (b); and

(2) eliminate requirements that are not warranted for reasons of safety and soundness or other public purposes.

(d) Definition

In this section, the term "Federal banking agency" has the same meaning as in section 1813 of this title.

(Pub. L. 106–569, title XII, §1211, Dec. 27, 2000, 114 Stat. 3035.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Financial Regulatory Relief and Economic Efficiency Act of 2000, and also as part of the American Homeownership and Economic Opportunity Act of 2000, and not as part of title III of Pub. L. 103–325 which comprises this chapter.

Provisions similar to this section are contained in section 4805 of this title.

§4806. Regulatory appeals process, ombudsman, and alternative dispute resolution

(a) In general

Not later than 180 days after September 23, 1994, each appropriate Federal banking agency and the National Credit Union Administration Board shall establish an independent intra-agency appellate process. The process shall be available to review material supervisory determinations made at insured depository institutions or at insured credit unions that the agency supervises.

(b) Review process

In establishing the independent appellate process under subsection (a), each agency shall ensure that—

- (1) any appeal of a material supervisory determination by an insured depository institution or insured credit union is heard and decided expeditiously; and
- (2) appropriate safeguards exist for protecting the appellant from retaliation by agency examiners.

(c) Comment period

Not later than 90 days after September 23, 1994, each appropriate Federal banking agency and the National Credit Union Administration Board shall provide public notice and opportunity for comment on proposed guidelines for the establishment of an appellate process under this section.

(d) Agency ombudsman

(1) Establishment required

Not later than 180 days after September 23, 1994, each Federal banking agency and the National Credit Union Administration Board shall appoint an ombudsman.

(2) Duties of ombudsman

The ombudsman appointed in accordance with paragraph (1) for any agency shall—

- (A) act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and
- (B) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(e) Alternative dispute resolution pilot program

(1) In general

Not later than 18 months after September 23, 1994, each Federal banking agency and the National Credit Union Administration Board shall develop and implement a pilot program for using alternative means of dispute resolution of issues in controversy (hereafter in this section referred to as the "alternative dispute resolution program") that is consistent with the requirements of subchapter IV of chapter 5 of title 5 if the parties to the dispute, including the agency, agree to such proceeding.

(2) Standards

An alternative dispute resolution pilot program developed under paragraph (1) shall—

- (A) be fair to all interested parties to a dispute;
- (B) resolve disputes expeditiously; and
- (C) be less costly than traditional means of dispute resolution, including litigation.

(3) Independent evaluation

Not later than 18 months after the date on which a pilot program is implemented under paragraph (1), the Administrative Conference of the United States shall submit to the Congress a report containing—

- (A) an evaluation of that pilot program;
- (B) the extent to which the pilot programs meet the standards established under paragraph (2);
- (C) the extent to which parties to disputes were offered alternative means of dispute resolution and the frequency with which the parties, including the agencies, accepted or declined to use such means; and
- (D) any recommendations of the Conference to improve the alternative dispute resolution procedures of the Federal banking agencies and the National Credit Union Administration Board.

(4) Implementation of program

At any time after completion of the evaluation under paragraph (3)(A), any Federal banking agency and the National Credit Union Administration Board may implement an alternative dispute resolution program throughout the agency, taking into account the results of that evaluation.

(5) Coordination with existing agency ADR programs

(A) Evaluation required

If any Federal banking agency or the National Credit Union Administration maintains an alternative dispute resolution program as of September 23, 1994, under any other provision of law, the Administrative Conference of the United States shall include such program in the evaluation conducted under paragraph (3)(A).

(B) Multiple ADR programs

No provision of this section shall be construed as precluding any Federal banking agency or the National Credit Union Administration Board from establishing more than 1 alternative means of dispute resolution.

(f) Definitions

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

(1) Material supervisory determinations

The term "material supervisory determinations"—

(A) includes determinations relating to—

- (i) examination ratings;
- (ii) the adequacy of loan loss reserve provisions; and
- (iii) loan classifications on loans that are significant to an institution; and

(B) does not include a determination by a Federal banking agency or the National Credit Union Administration Board to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 1831o of this title or section 1790a of this title, as appropriate.

(2) Independent appellate process

The term "independent appellate process" means a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.

(3) Alternative means of dispute resolution

The term "alternative means of dispute resolution" has the meaning given to such term in section 571 of title 5.

(4) Issues in controversy

The term "issues in controversy" means—

(A) any final agency decision involving any claim against an insured depository institution or insured credit union for which the agency has been appointed conservator or receiver or for which a liquidating agent has been appointed, as the case may be;

(B) any final action taken by an agency in the agency's capacity as conservator or receiver for an insured depository institution or by the liquidating agent appointed for an insured credit union; and

(C) any other issue for which the appropriate Federal banking agency or the National Credit Union Administration Board determines that alternative means of dispute resolution would be appropriate.

(g) Effect on other authority

Nothing in this section shall affect the authority of an appropriate Federal banking agency or the National Credit Union Administration Board to take enforcement or supervisory action.

(Pub. L. 103–325, title III, §309, Sept. 23, 1994, 108 Stat. 2218.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104–52, set out as a note preceding section 591 of Title 5, Government Organization and Employees.

§4807. Time limit on agency consideration of completed applications

(a) In general

Each Federal banking agency shall take final action on any application to the agency before the end of the 1-year period beginning on the date on which a completed application is received by the agency.

(b) Waiver by applicant authorized

Any person submitting an application to a Federal banking agency may waive the applicability of subsection (a) with respect to such application at any time.

(Pub. L. 103–325, title III, §343, Sept. 23, 1994, 108 Stat. 2238.)

§4808. Revising regulatory requirements for transfers of all types of assets with recourse

(a) Review and revision of regulations

(1) In general

During the 180-day period beginning on September 23, 1994, each appropriate Federal banking agency shall, consistent with the principles of safety and soundness and the public interest—

(A) review the agency's regulations and written policies relating to transfers of assets with recourse by insured depository institutions; and

(B) in consultation with the other Federal banking agencies, promulgate regulations that better reflect the exposure of an insured depository institution to credit risk from transfers of assets with recourse.

(2) Regulations required

Before the end of the 180-day period beginning on September 23, 1994, each appropriate Federal banking agency shall prescribe the regulations developed pursuant to paragraph (1)(B).

(b) Regulations required

(1) In general

After the end of the 180-day period beginning on September 23, 1994, the amount of risk-based capital required to be maintained, under regulations prescribed by the appropriate Federal banking agency, by any insured depository institution with respect to assets transferred with recourse by such institution may not exceed the maximum amount of recourse for which such institution is contractually liable under the recourse agreement.

(2) Exception for safety and soundness

The appropriate Federal banking agency may require any insured depository institution to maintain risk-based capital in an amount greater than the amount determined under paragraph (1), if the agency determines, by regulation or order, that such higher amount is necessary for safety and soundness reasons.

(c) Coordination with section 1835(b) of this title

This section shall not be construed as superseding the applicability of section 1835(b) of this title.

(d) Definitions

For purposes of this section, the terms "appropriate Federal banking agency", "Federal banking agency", and "insured depository institution" have the same meanings as in section 1813 of this title. (Pub. L. 103–325, title III, §350, Sept. 23, 1994, 108 Stat. 2242.)

§4809. "Plain language" requirement for Federal banking agency rules

(a) In general

Each Federal banking agency shall use plain language in all proposed and final rulemakings published by the agency in the Federal Register after January 1, 2000.

(b) Report

Not later than March 1, 2001, each Federal banking agency shall submit to the Congress a report that describes how the agency has complied with subsection (a).

(c) Definition

For purposes of this section, the term "Federal banking agency" has the meaning given that term in section 1813 of this title.

(Pub. L. 106–102, title VII, §722, Nov. 12, 1999, 113 Stat. 1471.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of title III of Pub. L. 103–322 which comprises this chapter.

CHAPTER 49—HOMEOWNERS PROTECTION

Sec.

4901.	Definitions.
4902.	Termination of private mortgage insurance.
4903.	Disclosure requirements.
4904.	Notification upon cancellation or termination.
4905.	Disclosure requirements for lender paid mortgage insurance.
4906.	Fees for disclosures.
4907.	Civil liability.
4908.	Effect on other laws and agreements.
4909.	Enforcement.
4910.	Construction.

§4901. Definitions

In this chapter, the following definitions shall apply:

(1) Adjustable rate mortgage

The term "adjustable rate mortgage" means a residential mortgage that has an interest rate that is subject to change. A residential mortgage that: (A) does not fully amortize over the term of the obligation; and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this chapter.

(2) Cancellation date

The term "cancellation date" means—

(A) with respect to a fixed rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—

(i) based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, reaches 80 percent of the original value of the property securing the loan; and

(B) with respect to an adjustable rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage—

(i) based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, first reaches 80 percent of the original value of the property securing the loan.

(3) Fixed rate mortgage

The term "fixed rate mortgage" means a residential mortgage that has an interest rate that is not subject to change.

(4) Good payment history

The term "good payment history" means, with respect to a mortgagor, that the mortgagor has not—

(A) made a mortgage payment that was 60 days or longer past due during the 12-month period beginning 24 months before the later of (i) the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title; or

(B) made a mortgage payment that was 30 days or longer past due during the 12-month period preceding the later of (i) the date on which the mortgage reaches the cancellation date, or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title.

(5) Initial amortization schedule

The term "initial amortization schedule" means a schedule established at the time at which a residential mortgage transaction is consummated with respect to a fixed rate mortgage, showing—

(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the amortization period of the loan; and

(B) the unpaid principal balance of the loan after each scheduled payment is made.

(6) Amortization schedule then in effect

The term "amortization schedule then in effect" means, with respect to an adjustable rate mortgage, a schedule established at the time at which the residential mortgage transaction is consummated or, if such schedule has been changed or recalculated, is the most recent schedule under the terms of the note or mortgage, which shows—

(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the remaining amortization period of the loan; and

(B) the unpaid balance of the loan after each such scheduled payment is made.

(7) Midpoint of the amortization period

The term "midpoint of the amortization period" means, with respect to a residential mortgage transaction, the point in time that is halfway through the period that begins upon the first day of

the amortization period established at the time a residential mortgage transaction is consummated and ends upon the completion of the entire period over which the mortgage is scheduled to be amortized.

(8) Mortgage insurance

The term "mortgage insurance" means insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, an individual mortgage or loan involved in a residential mortgage transaction.

(9) Mortgage insurer

The term "mortgage insurer" means a provider of private mortgage insurance, as described in this chapter, that is authorized to transact such business in the State in which the provider is transacting such business.

(10) Mortgagee

The term "mortgagee" means the holder of a residential mortgage at the time at which that mortgage transaction is consummated.

(11) Mortgagor

The term "mortgagor" means the original borrower under a residential mortgage or his or her successors or assignees.

(12) Original value

The term "original value", with respect to a residential mortgage transaction, means the lesser of the sales price of the property securing the mortgage, as reflected in the contract, or the appraised value at the time at which the subject residential mortgage transaction was consummated. In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction.

(13) Private mortgage insurance

The term "private mortgage insurance" means mortgage insurance other than mortgage insurance made available under the National Housing Act [12 U.S.C. 1701 et seq.], title 38, or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(14) Residential mortgage

The term "residential mortgage" means a mortgage, loan, or other evidence of a security interest created with respect to a single-family dwelling that is the principal residence of the mortgagor.

(15) Residential mortgage transaction

The term "residential mortgage transaction" means a transaction consummated on or after the date that is 1 year after July 29, 1998, in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against a single-family dwelling that is the principal residence of the mortgagor to finance the acquisition, initial construction, or refinancing of that dwelling.

(16) Servicer

The term "servicer" has the same meaning as in section 2605(i)(2) of this title, with respect to a residential mortgage.

(17) Single-family dwelling

The term "single-family dwelling" means a residence consisting of 1 family dwelling unit.

(18) Termination date

The term "termination date" means—

(A) with respect to a fixed rate mortgage, the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent

of the original value of the property securing the loan; and

(B) with respect to an adjustable rate mortgage, the date on which the principal balance of the mortgage, based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 78 percent of the original value of the property securing the loan.

(Pub. L. 105–216, §2, July 29, 1998, 112 Stat. 897; Pub. L. 106–569, title IV, §§402(a)(1), (b), 405(a), 406(b)–(d), Dec. 27, 2000, 114 Stat. 2956, 2958, 2959.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 105–216, July 29, 1998, 112 Stat. 897, known as the Homeowners Protection Act of 1998. For complete classification of this Act to the Code, see Short Title note below and Tables.

The National Housing Act, referred to in par. (13), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in par. (13), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A 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 1441 of Title 42 and Tables.

AMENDMENTS

2000—Par. (1). Pub. L. 106–569, §402(b), inserted at end "A residential mortgage that: (A) does not fully amortize over the term of the obligation; and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this chapter."

Par. (2)(B)(i). Pub. L. 106–569, §402(a)(1)(A), substituted "the amortization schedule then in effect" for "amortization schedules".

Par. (4)(A). Pub. L. 106–569, §405(a)(1), inserted "the later of (i)" before "the date on which the mortgage" and ", or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title" before the semicolon.

Par. (4)(B). Pub. L. 106–569, §405(a)(2), inserted "the later of (i)" before "the date on which the mortgage" and ", or (ii) the date that the mortgagor submits a request for cancellation under section 4902(a)(1) of this title" before period at end.

Par. (6). Pub. L. 106–569, §402(a)(1)(D), added par. (6). Former par. (6) redesignated (8).

Par. (7). Pub. L. 106–569, §406(b), added par. (7). Former par. (7) redesignated (9).

Pars. (8) to (11). Pub. L. 106–569, §402(a)(1)(C), redesignated pars. (6) to (9) as (8) to (11), respectively. Former pars. (10) and (11) redesignated (12) and (13), respectively.

Par. (12). Pub. L. 106–569, §406(c), inserted "transaction" after "a residential mortgage" and inserted at end "In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction."

Pub. L. 106–569, §402(a)(1)(C), redesignated par. (10) as (12). Former par. (12) redesignated (14).

Par. (13). Pub. L. 106–569, §402(a)(1)(C), redesignated par. (11) as (13). Former par. (13) redesignated (15).

Par. (14). Pub. L. 106–569, §406(d)(1), substituted "principal residence of the mortgagor" for "primary residence of the mortgagor".

Pub. L. 106–569, §402(a)(1)(C), redesignated par. (12) as (14). Former par. (14) redesignated (16).

Par. (15). Pub. L. 106–569, §406(d)(2), substituted "principal residence of the mortgagor" for "primary residence of the mortgagor".

Pub. L. 106–569, §402(a)(1)(C), redesignated par. (13) as (15). Former par. (15) redesignated (17).

Par. (16). Pub. L. 106–569, §402(a)(1)(C), redesignated par. (14) as (16). Former par. (16) redesignated (18).

Par. (16)(B). Pub. L. 106–569, §402(a)(1)(B), substituted "the amortization schedule then in effect" for "amortization schedules".

Pars. (17), (18). Pub. L. 106–569, §402(a)(1)(C), redesignated pars. (15) and (16) as (17) and (18), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 105–216, §13, July 29, 1998, 112 Stat. 908, provided that: "This Act [enacting this chapter and amending section 1088 of Title 20, Education], other than section 14 [enacting provisions set out as notes under sections 1441a and 1831q of this title and amending provisions set out as a note under section 1831q of this title], shall become effective 1 year after the date of enactment of this Act [July 29, 1998]."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–569, title IV, §401, Dec. 27, 2000, 114 Stat. 2956, provided that: "This title [amending this section and sections 4902, 4903, and 4905 of this title] may be cited as the 'Private Mortgage Insurance Technical Corrections and Clarification Act'."

SHORT TITLE

Pub. L. 105–216, §1(a), July 29, 1998, 112 Stat. 897, provided that: "This Act [enacting this chapter, amending section 1088 of Title 20, Education, enacting provisions set out as notes under sections 1441a and 1831q of this title, and amending provisions set out as a note under section 1831q of this title] may be cited as the 'Homeowners Protection Act of 1998'."

§4902. Termination of private mortgage insurance

(a) Borrower cancellation

A requirement for private mortgage insurance in connection with a residential mortgage transaction shall be canceled on the cancellation date or any later date that the mortgagor fulfills all of the requirements under paragraphs (1) through (4), if the mortgagor—

- (1) submits a request in writing to the servicer that cancellation be initiated;
- (2) has a good payment history with respect to the residential mortgage;
- (3) is current on the payments required by the terms of the residential mortgage transaction; and
- (4) has satisfied any requirement of the holder of the mortgage (as of the date of a request under paragraph (1)) for—
 - (A) evidence (of a type established in advance and made known to the mortgagor by the servicer promptly upon receipt of a request under paragraph (1)) that the value of the property securing the mortgage has not declined below the original value of the property; and
 - (B) certification that the equity of the mortgagor in the residence securing the mortgage is unencumbered by a subordinate lien.

(b) Automatic termination

A requirement for private mortgage insurance in connection with a residential mortgage transaction shall terminate with respect to payments for that mortgage insurance made by the mortgagor—

- (1) on the termination date if, on that date, the mortgagor is current on the payments required by the terms of the residential mortgage transaction; or
- (2) if the mortgagor is not current on the termination date, on the first day of the first month beginning after the date that the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction.

(c) Final termination

If a requirement for private mortgage insurance is not otherwise canceled or terminated in accordance with subsection (a) or (b), in no case may such a requirement be imposed on residential mortgage transactions beyond the first day of the month immediately following the date that is the midpoint of the amortization period of the loan if the mortgagor is current on the payments required by the terms of the mortgage.

(d) Treatment of loan modifications

If a mortgagor and mortgagee (or holder of the mortgage) agree to a modification of the terms or conditions of a loan pursuant to a residential mortgage transaction, the cancellation date, termination date, or final termination shall be recalculated to reflect the modified terms and conditions of such loan.

(e) No further payments

No payments or premiums may be required from the mortgagor in connection with a private mortgage insurance requirement terminated or canceled under this section—

- (1) in the case of cancellation under subsection (a), more than 30 days after the later of—
 - (A) the date on which a request under subsection (a)(1) is received; or
 - (B) the date on which the mortgagor satisfies any evidence and certification requirements under subsection (a)(4);

- (2) in the case of termination under subsection (b), more than 30 days after the termination date or the date referred to in subsection (b)(2), as applicable; and

- (3) in the case of termination under subsection (c), more than 30 days after the final termination date established under that subsection.

(f) Return of unearned premiums

(1) In general

Not later than 45 days after the termination or cancellation of a private mortgage insurance requirement under this section, all unearned premiums for private mortgage insurance shall be returned to the mortgagor by the servicer.

(2) Transfer of funds to servicer

Not later than 30 days after notification by the servicer of termination or cancellation of private mortgage insurance under this chapter with respect to a mortgagor, a mortgage insurer that is in possession of any unearned premiums of that mortgagor shall transfer to the servicer of the subject mortgage an amount equal to the amount of the unearned premiums for repayment in accordance with paragraph (1).

(g) Exceptions for high risk loans

(1) In general

The termination and cancellation provisions in subsections (a) and (b) do not apply to any residential mortgage transaction that, at the time at which the residential mortgage transaction is consummated, has high risks associated with the extension of the loan—

- (A) as determined in accordance with guidelines published by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, in the case of a mortgage loan with an original principal balance that does not exceed the applicable annual conforming loan limit for the secondary market established pursuant to section 1454(a)(2) of this title, so as to require the imposition or continuation of a private mortgage insurance requirement beyond the terms specified in subsection (a) or (b) of this section; or

- (B) as determined by the mortgagee in the case of any other mortgage, except that termination shall occur—

- (i) with respect to a fixed rate mortgage, on the date on which the principal balance of the mortgage, based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan; and

- (ii) with respect to an adjustable rate mortgage, on the date on which the principal balance of the mortgage, based solely on the amortization schedule then in effect for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 77 percent of the original value of the property securing the loan.

(2) Termination at midpoint

A private mortgage insurance requirement in connection with a residential mortgage transaction described in paragraph (1) shall terminate in accordance with subsection (c).

(3) Rule of construction

Nothing in this subsection may be construed to require a residential mortgage or residential mortgage transaction described in paragraph (1)(A) to be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(4) GAO report

Not later than 2 years after July 29, 1998, the Comptroller General of the United States shall submit to the Congress a report describing the volume and characteristics of residential mortgages and residential mortgage transactions that, pursuant to paragraph (1) of this subsection, are exempt from the application of subsections (a) and (b). The report shall—

(A) determine the number or volume of such mortgages and transactions compared to residential mortgages and residential mortgage transactions that are not classified as high-risk for purposes of paragraph (1); and

(B) identify the characteristics of such mortgages and transactions that result in their classification (for purposes of paragraph (1)) as having high risks associated with the extension of the loan and describe such characteristics, including—

(i) the income levels and races of the mortgagors involved;

(ii) the amount of the downpayments involved and the downpayments expressed as percentages of the acquisition costs of the properties involved;

(iii) the types and locations of the properties involved;

(iv) the mortgage principal amounts; and

(v) any other characteristics of such mortgages and transactions that may contribute to their classification as high risk for purposes of paragraph (1), including whether such mortgages are purchase-money mortgages or refinancings and whether and to what extent such loans are low-documentation loans.

(h) Accrued obligation for premium payments

The cancellation or termination under this section of the private mortgage insurance of a mortgagor shall not affect the rights of any mortgagee, servicer, or mortgage insurer to enforce any obligation of such mortgagor for premium payments accrued prior to the date on which such cancellation or termination occurred.

(Pub. L. 105–216, §3, July 29, 1998, 112 Stat. 899; Pub. L. 106–569, title IV, §§402(a)(2), (c)(1), 403(a), 404, 405(b), (c), Dec. 27, 2000, 114 Stat. 2956–2958.)

EDITORIAL NOTES

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, §404(1)(A), inserted "or any later date that the mortgagor fulfills all of the requirements under paragraphs (1) through (4)" after "cancellation date" in introductory provisions.

Subsec. (a)(3), (4). Pub. L. 106–569, §404(1)(B)–(D), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(2). Pub. L. 106–569, §405(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "on the date after the termination date on which the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction."

Subsec. (c). Pub. L. 106–569, §403(a)(1), inserted "on residential mortgage transactions" after "requirement be imposed".

Subsec. (d). Pub. L. 106–569, §402(c)(1)(B), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106–569, §402(c)(1)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1)(B). Pub. L. 106–569, §404(2), substituted "subsection (a)(4)" for "subsection (a)(3)".

Subsec. (f). Pub. L. 106–569, §402(c)(1)(A), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1)(B)(ii). Pub. L. 106–569, §402(a)(2), substituted "the amortization schedule then in effect" for

"amortization schedules".

Subsec. (g). Pub. L. 106–569, §402(c)(1)(A), redesignated subsec. (f) as (g).

Subsec. (g)(1). Pub. L. 106–569, §403(a)(2)(A), struck out "mortgage or" after "do not apply to any residential" in introductory provisions.

Subsec. (g)(2). Pub. L. 106–569, §403(a)(2)(B), struck out "mortgage or" after "in connection with a residential".

Subsec. (g)(3). Pub. L. 106–569, §403(a)(2)(C), substituted "residential mortgage or residential" for "mortgage or".

Subsec. (h). Pub. L. 106–569, §405(c), added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

§4903. Disclosure requirements

(a) Disclosures for new mortgages at time of transaction

(1) Disclosures for non-exempted transactions

In any case in which private mortgage insurance is required in connection with a residential mortgage transaction (other than a residential mortgage transaction described in section 4902(g)(1) of this title), at the time at which the transaction is consummated, the mortgagee shall provide to the mortgagor—

(A) if the transaction relates to a fixed rate mortgage—

(i) a written initial amortization schedule; and

(ii) written notice—

(I) that the mortgagor may cancel the requirement in accordance with section 4902(a) of this title indicating the date on which the mortgagor may request cancellation, based solely on the initial amortization schedule;

(II) that the mortgagor may request cancellation in accordance with section 4902(a) of this title earlier than provided for in the initial amortization schedule, based on actual payments;

(III) that the requirement for private mortgage insurance will automatically terminate on the termination date in accordance with section 4902(b) of this title, and what that termination date is with respect to that mortgage; and

(IV) that there are exemptions to the right to cancellation and automatic termination of a requirement for private mortgage insurance in accordance with section 4902(g) of this title, and whether such an exemption applies at that time to that transaction; and

(B) if the transaction relates to an adjustable rate mortgage, a written notice that—

(i) the mortgagor may cancel the requirement in accordance with section 4902(a) of this title on the cancellation date, and that the servicer will notify the mortgagor when the cancellation date is reached;

(ii) the requirement for private mortgage insurance will automatically terminate on the termination date, and that on the termination date, the mortgagor will be notified of the termination or that the requirement will be terminated as soon as the mortgagor is current on loan payments; and

(iii) there are exemptions to the right of cancellation and automatic termination of a requirement for private mortgage insurance in accordance with section 4902(g) of this title, and whether such an exemption applies at that time to that transaction.

(2) Disclosures for excepted transactions

In the case of a residential mortgage transaction described in section 4902(g)(1) of this title, at the time at which the transaction is consummated, the mortgagee shall provide written notice to the mortgagor that in no case may private mortgage insurance be required beyond the date that is the midpoint of the amortization period of the loan, if the mortgagor is current on payments required by the terms of the residential mortgage.

(3) Annual disclosures

If private mortgage insurance is required in connection with a residential mortgage transaction, the servicer shall disclose to the mortgagor in each such transaction in an annual written statement—

(A) the rights of the mortgagor under this chapter to cancellation or termination of the private mortgage insurance requirement; and

(B) an address and telephone number that the mortgagor may use to contact the servicer to determine whether the mortgagor may cancel the private mortgage insurance.

(4) Applicability

Paragraphs (1) through (3) shall apply with respect to each residential mortgage transaction consummated on or after the date that is 1 year after July 29, 1998.

(b) Disclosures for existing mortgages

If private mortgage insurance was required in connection with a residential mortgage entered into at any time before the effective date of this chapter, the servicer shall disclose to the mortgagor in each such transaction in an annual written statement—

(1) that the private mortgage insurance may, under certain circumstances, be canceled by the mortgagor (with the consent of the mortgagee or in accordance with applicable State law); and

(2) an address and telephone number that the mortgagor may use to contact the servicer to determine whether the mortgagor may cancel the private mortgage insurance.

(c) Inclusion in other annual notices

The information and disclosures required under subsection (b) and subsection (a)(3) may be provided on the annual disclosure relating to the escrow account made as required under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.], or as part of the annual disclosure of interest payments made pursuant to Internal Revenue Service regulations, and on a form promulgated by the Internal Revenue Service for that purpose.

(d) Standardized forms

The mortgagee or servicer may use standardized forms for the provision of disclosures required under this section, which disclosures shall relate to the mortgagor's rights under this chapter.

(Pub. L. 105–216, §4, July 29, 1998, 112 Stat. 902; Pub. L. 106–569, title IV, §§402(c)(2), 403(b), Dec. 27, 2000, 114 Stat. 2957.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), is 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as an Effective Date note under section 4901 of this title.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (c), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–569, §§402(c)(2)(A)(i), 403(b)(1)(A), substituted "residential mortgage transaction (other than a residential mortgage transaction described in section 4902(g)(1) of this title)" for "residential mortgage or mortgage transaction (other than a mortgage or mortgage transaction described in section 4902(f)(1) of this title)" in introductory provisions.

Subsec. (a)(1)(A)(ii)(IV), (B)(iii). Pub. L. 106–569, §402(c)(2)(A)(ii), (iii), substituted "section 4902(g) of

this title" for "section 4902(f) of this title".

Subsec. (a)(2). Pub. L. 106–569, §§402(c)(2)(B), 403(b)(1)(B), substituted "residential mortgage transaction" for "mortgage or mortgage transaction" and "section 4902(g)(1) of this title" for "section 4902(f)(1) of this title".

Subsec. (c). Pub. L. 106–569, §403(b)(2), substituted "subsection (a)(3)" for "paragraphs (1)(B) and (3) of subsection (a)".

Subsec. (d). Pub. L. 106–569, §403(b)(3), inserted before period at end ", which disclosures shall relate to the mortgagor's rights under this chapter".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

§4904. Notification upon cancellation or termination

(a) In general

Not later than 30 days after the date of cancellation or termination of a private mortgage insurance requirement in accordance with this chapter, the servicer shall notify the mortgagor in writing—

(1) that the private mortgage insurance has terminated and that the mortgagor no longer has private mortgage insurance; and

(2) that no further premiums, payments, or other fees shall be due or payable by the mortgagor in connection with the private mortgage insurance.

(b) Notice of grounds

(1) In general

If a servicer determines that a mortgage did not meet the requirements for termination or cancellation of private mortgage insurance under subsection (a) or (b) of section 4902 of this title, the servicer shall provide written notice to the mortgagor of the grounds relied on to make the determination (including the results of any appraisal used to make the determination).

(2) Timing

Notice required by paragraph (1) shall be provided—

(A) with respect to cancellation of private mortgage insurance under section 4902(a) of this title, not later than 30 days after the later of—

(i) the date on which a request is received under section 4902(a)(1) of this title; or

(ii) the date on which the mortgagor satisfies any evidence and certification requirements under section 4902(a)(3) ¹ of this title; and

(B) with respect to termination of private mortgage insurance under section 4902(b) of this title, not later than 30 days after the scheduled termination date.

(Pub. L. 105–216, §5, July 29, 1998, 112 Stat. 903.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4902(a)(3) of this title, referred to in subsec. (b)(2)(A)(ii), was redesignated section 4902(a)(4) of this title by Pub. L. 106–569, title IV, §404(1)(C), Dec. 27, 2000, 114 Stat. 2958.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

¹ [*See References in Text note below.*](#)

§4905. Disclosure requirements for lender paid mortgage insurance

(a) Definitions

For purposes of this section—

(1) the term "borrower paid mortgage insurance" means private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by the borrower;

(2) the term "lender paid mortgage insurance" means private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by a person other than the borrower; and

(3) the term "loan commitment" means a prospective mortgagee's written confirmation of its approval, including any applicable closing conditions, of the application of a prospective mortgagor for a residential mortgage loan.

(b) Exclusion

Sections 4902 through 4904 of this title do not apply in the case of lender paid mortgage insurance.

(c) Notices to mortgagor

In the case of lender paid mortgage insurance that is required in connection with a residential mortgage transaction—

(1) not later than the date on which a loan commitment is made for the residential mortgage transaction, the prospective mortgagee shall provide to the prospective mortgagor a written notice—

(A) that lender paid mortgage insurance differs from borrower paid mortgage insurance, in that lender paid mortgage insurance may not be canceled by the mortgagor, while borrower paid mortgage insurance could be cancelable by the mortgagor in accordance with section 4902(a) of this title, and could automatically terminate on the termination date in accordance with section 4902(b) of this title;

(B) that lender paid mortgage insurance—

(i) usually results in a residential mortgage having a higher interest rate than it would in the case of borrower paid mortgage insurance; and

(ii) terminates only when the residential mortgage is refinanced (under the meaning given such term in the regulations issued by the Board of Governors of the Federal Reserve System to carry out the Truth in Lending Act (15 U.S.C. 1601 et seq.)), paid off, or otherwise terminated; and

(C) that lender paid mortgage insurance and borrower paid mortgage insurance both have benefits and disadvantages, including a generic analysis of the differing costs and benefits of a residential mortgage in the case lender paid mortgage insurance versus borrower paid mortgage insurance over a 10-year period, assuming prevailing interest and property appreciation rates;

(D) that lender paid mortgage insurance may be tax-deductible for purposes of Federal income taxes, if the mortgagor itemizes expenses for that purpose; and

(2) not later than 30 days after the termination date that would apply in the case of borrower paid mortgage insurance, the servicer shall provide to the mortgagor a written notice indicating that the mortgagor may wish to review financing options that could eliminate the requirement for private mortgage insurance in connection with the residential mortgage transaction.

(d) Standard forms

The servicer of a residential mortgage transaction may develop and use a standardized form or forms for the provision of notices to the mortgagor, as required under subsection (c).

(Pub. L. 105–216, §6, July 29, 1998, 112 Stat. 904; Pub. L. 106–569, title IV, §§403(c), 406(a), Dec. 27, 2000, 114 Stat. 2957, 2959.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec.(c)(1)(B)(ii), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 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

2000—Subsec. (c). Pub. L. 106–569, §403(c)(1)(A), struck out "a residential mortgage or" before "a residential mortgage transaction" in introductory provisions.

Subsec. (c)(1)(B)(ii). Pub. L. 106–569, §406(a), inserted "(under the meaning given such term in the regulations issued by the Board of Governors of the Federal Reserve System to carry out the Truth in Lending Act (15 U.S.C. 1601 et seq.))" after "refinanced".

Subsec. (c)(2). Pub. L. 106–569, §403(c)(1)(B), inserted "transaction" before period at end.

Subsec. (d). Pub. L. 106–569, §403(c)(2), inserted "transaction" after "residential mortgage".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

§4906. Fees for disclosures

No fee or other cost may be imposed on any mortgagor with respect to the provision of any notice or information to the mortgagor pursuant to this chapter.

(Pub. L. 105–216, §7, July 29, 1998, 112 Stat. 905.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

§4907. Civil liability

(a) In general

Any servicer, mortgagee, or mortgage insurer that violates a provision of this chapter shall be liable to each mortgagor to whom the violation relates for—

(1) in the case of an action by an individual, or a class action in which the liable party is not subject to section 4909 of this title, any actual damages sustained by the mortgagor as a result of the violation, including interest (at a rate determined by the court) on the amount of actual damages, accruing from the date on which the violation commences;

(2) in the case of—

(A) an action by an individual, such statutory damages as the court may allow, not to exceed

\$2,000; and

(B) in the case of a class action—

(i) in which the liable party is subject to section 4909 of this title, such amount as the court may allow, except that the total recovery under this subparagraph in any class action or series of class actions arising out of the same violation by the same liable party shall not exceed the lesser of \$500,000 or 1 percent of the net worth of the liable party, as determined by the court; and

(ii) in which the liable party is not subject to section 4909 of this title, such amount as the court may allow, not to exceed \$1,000 as to each member of the class, except that the total recovery under this subparagraph in any class action or series of class actions arising out of the same violation by the same liable party shall not exceed the lesser of \$500,000 or 1 percent of the gross revenues of the liable party, as determined by the court;

(3) costs of the action; and

(4) reasonable attorney fees, as determined by the court.

(b) Timing of actions

No action may be brought by a mortgagor under subsection (a) later than 2 years after the date of the discovery of the violation that is the subject of the action.

(c) Limitations on liability

(1) In general

With respect to a residential mortgage transaction, the failure of a servicer to comply with the requirements of this chapter due to the failure of a mortgage insurer or a mortgagee to comply with the requirements of this chapter, shall not be construed to be a violation of this chapter by the servicer.

(2) Rule of construction

Nothing in paragraph (1) shall be construed to impose any additional requirement or liability on a mortgage insurer, a mortgagee, or a holder of a residential mortgage.

(Pub. L. 105–216, §8, July 29, 1998, 112 Stat. 905.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

§4908. Effect on other laws and agreements

(a) Effect on State law

(1) In general

With respect to any residential mortgage or residential mortgage transaction consummated after the effective date of this chapter, and except as provided in paragraph (2), the provisions of this chapter shall supersede any provisions of the law of any State relating to requirements for obtaining or maintaining private mortgage insurance in connection with residential mortgage transactions, cancellation or automatic termination of such private mortgage insurance, any disclosure of information addressed by this chapter, and any other matter specifically addressed by this chapter.

(2) Protection of existing State laws

(A) In general

The provisions of this chapter do not supersede protected State laws, except to the extent that the protected State laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency.

(B) Inconsistencies

A protected State law shall not be considered to be inconsistent with a provision of this chapter if the protected State law—

- (i) requires termination of private mortgage insurance or other mortgage guaranty insurance—
 - (I) at a date earlier than as provided in this chapter; or
 - (II) when a mortgage principal balance is achieved that is higher than as provided in this chapter; or
- (ii) requires disclosure of information—
 - (I) that provides more information than the information required by this chapter; or
 - (II) more often or at a date earlier than is required by this chapter.

(C) Protected State laws

For purposes of this paragraph, the term "protected State law" means a State law—

- (i) regarding any requirements relating to private mortgage insurance in connection with residential mortgage transactions;
- (ii) that was enacted not later than 2 years after July 29, 1998; and
- (iii) that is the law of a State that had in effect, on or before January 2, 1998, any State law described in clause (i).

(b) Effect on other agreements

The provisions of this chapter shall supersede any conflicting provision contained in any agreement relating to the servicing of a residential mortgage loan entered into by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any private investor or note holder (or any successors thereto).

(Pub. L. 105–216, §9, July 29, 1998, 112 Stat. 906.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as an Effective Date note under section 4901 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

§4909. Enforcement

(a) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this chapter shall be enforced under—

- (1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency (as defined in section 3(q) of that Act [12 U.S.C. 1813(q)]), with respect to—

- (A) insured depository institutions (as defined in section 3(c)(2) of that Act [12 U.S.C. 1813(c)(2)]);

(B) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]); and

(C) depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)]);

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)];

(3) part C of title V of the Farm Credit Act of 1971 (12 U.S.C. 2261 et seq.), by the Farm Credit Administration in the case of an institution that is a member of the Farm Credit System; and

(4) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau of Consumer Financial Protection, with respect to any person subject to this chapter.

(b) Additional enforcement powers

(1) Violation of this chapter treated as violation of other Acts

For purposes of the exercise by any agency referred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act.

(2) Enforcement authority under other Acts

In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on such agency by law, subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.].

(c) Enforcement and reimbursement

In carrying out its enforcement activities under this section, each agency referred to in subsection (a) shall—

(1) notify the mortgagee or servicer of any failure of the mortgagee or servicer to comply with 1 or more provisions of this chapter;

(2) with respect to each such failure to comply, require the mortgagee or servicer, as applicable, to correct the account of the mortgagor to reflect the date on which the mortgage insurance should have been canceled or terminated under this chapter; and

(3) require the mortgagee or servicer, as applicable, to reimburse the mortgagor in an amount equal to the total unearned premiums paid by the mortgagor after the date on which the obligation to pay those premiums ceased under this chapter.

(Pub. L. 105–216, §10, July 29, 1998, 112 Stat. 907; Pub. L. 111–203, title X, §1095, July 21, 2010, 124 Stat. 2101.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (b)(2), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of this title. Subtitle E of the Act is classified generally to part E (§5561 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 105–216, July 29, 1998, 112 Stat. 897, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216,

which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(3), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583. Part C of title V of the Act is classified generally to part C (§2261 et seq.) of subchapter V of chapter 23 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1095(1)(A), inserted introductory provisions and added par. (1) and struck out former introductory provisions and par. (1) which read as follows: "Compliance with the requirements imposed under this chapter shall be enforced under—

"(1) section 8 of the Federal Deposit Insurance Act—

"(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act);

"(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

"(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);".

Subsec. (a)(4). Pub. L. 111–203, §1095(1)(B)–(D), added par. (4).

Subsec. (b)(2). Pub. L. 111–203, §1095(2), inserted ", subject to subtitle B of the Consumer Financial Protection Act of 2010" before the period.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

§4910. Construction

(a) PMI not required

Nothing in this chapter shall be construed to impose any requirement for private mortgage insurance in connection with a residential mortgage transaction.

(b) No preclusion of cancellation or termination agreements

Nothing in this chapter shall be construed to preclude cancellation or termination, by agreement between a mortgagor and the holder of the mortgage, of a requirement for private mortgage insurance in connection with a residential mortgage transaction before the cancellation or termination date established by this chapter for the mortgage.

(Pub. L. 105–216, §11, July 29, 1998, 112 Stat. 908.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 year after July 29, 1998, see section 13 of Pub. L. 105–216, set out as a note under section 4901 of this title.

CHAPTER 50—CHECK TRUNCATION

Sec.	
5001.	Findings; purposes.
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5003.	General provisions governing substitute checks.
5004.	Substitute check warranties.
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5017.	Evaluation and report by the Comptroller General.
5018.	Depository services efficiency and cost reduction.

§5001. Findings; purposes

(a) Findings

The Congress finds as follows:

(1) In the Expedited Funds Availability Act [12 U.S.C. 4001 et seq.], enacted on August 10, 1987, the Congress directed the Board of Governors of the Federal Reserve System to consider establishing regulations requiring Federal reserve banks and depository institutions to provide for check truncation, in order to improve the check processing system.

(2) In that same Act, the Congress—

(A) provided the Board of Governors of the Federal Reserve System with full authority to regulate all aspects of the payment system, including the receipt, payment, collection, and clearing of checks, and related functions of the payment system pertaining to checks; and

(B) directed that the exercise of such authority by the Board superseded any State law, including the Uniform Commercial Code, as in effect in any State.

(3) Check truncation is no less desirable in 2003 for both financial service customers and the financial services industry, to reduce costs, improve efficiency in check collections, and expedite funds availability for customers than it was over 15 years ago when Congress first directed the Board to consider establishing such a process.

(b) Purposes

The purposes of this chapter are as follows:

(1) To facilitate check truncation by authorizing substitute checks.

(2) To foster innovation in the check collection system without mandating receipt of checks in electronic form.

(3) To improve the overall efficiency of the Nation's payments system.

(Pub. L. 108–100, §2, Oct. 28, 2003, 117 Stat. 1177.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Expedited Funds Availability Act, referred to in subsec. (a)(1), (2), is title VI of Pub. L. 100–86, Aug. 10, 1987, 101 Stat. 635, which is classified principally to chapter 41 (§4001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 108–100, §20, Oct. 28, 2003, 117 Stat. 1194, provided that: "This Act [enacting this chapter, amending section 412 of this title, and enacting provisions set out as notes under this section] shall take effect at the end of the 12-month period beginning on the date of the enactment of this Act [Oct. 28, 2003], except as otherwise specifically provided in this Act."

SHORT TITLE

Pub. L. 108–100, §1(a), Oct. 28, 2003, 117 Stat. 1177, provided that: "This Act [enacting this chapter, amending section 412 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Check Clearing for the 21st Century Act' or the 'Check 21 Act'."

§5002. Definitions

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

(1) Account

The term "account" means a deposit account at a bank.

(2) Bank

The term "bank" means any person that is located in a State and engaged in the business of banking and includes—

- (A) any depository institution (as defined in section 461(b)(1)(A) of this title);
- (B) any Federal reserve bank;
- (C) any Federal home loan bank; or
- (D) to the extent it acts as a payor—
 - (i) the Treasury of the United States;
 - (ii) the United States Postal Service;
 - (iii) a State government; or
 - (iv) a unit of general local government (as defined in section 4001(24) of this title).

(3) Banking terms

(A) Collecting bank

The term "collecting bank" means any bank handling a check for collection except the paying bank.

(B) Depository bank

The term "depository bank" means—

- (i) the first bank to which a check is transferred, even if such bank is also the paying bank or the payee; or
- (ii) a bank to which a check is transferred for deposit in an account at such bank, even if the check is physically received and indorsed first by another bank.

(C) Paying bank

The term "paying bank" means—

- (i) the bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; or
- (ii) the bank at or through which a check is payable and to which the check is sent for

payment or collection.

(D) Returning bank

(i) In general

The term "returning bank" means a bank (other than the paying or depository bank) handling a returned check or notice in lieu of return.

(ii) Treatment as collecting bank

No provision of this chapter shall be construed as affecting the treatment of a returning bank as a collecting bank for purposes of section 4-202(b) of the Uniform Commercial Code.

(4) Board

The term "Board" means the Board of Governors of the Federal Reserve System.

(5) Business day

The term "business day" has the same meaning as in section 4001(3) of this title.

(6) Check

The term "check"—

(A) means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection or return, including a substitute check and a travelers check; and

(B) does not include a noncash item or an item payable in a medium other than United States dollars.

(7) Consumer

The term "consumer" means an individual who—

(A) with respect to a check handled for forward collection, draws the check on a consumer account; or

(B) with respect to a check handled for return, deposits the check into, or cashes the check against, a consumer account.

(8) Consumer account

The term "consumer account" has the same meaning as in section 4001(10) of this title.

(9) Customer

The term "customer" means a person having an account with a bank.

(10) Forward collection

The term "forward collection" means the transfer by a bank of a check to a collecting bank for settlement or the paying bank for payment.

(11) Indemnifying bank

The term "indemnifying bank" means a bank that is providing an indemnity under section 5005 of this title with respect to a substitute check.

(12) MICR line

The terms "MICR line" and "magnetic ink character recognition line" mean the numbers, which may include the bank routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with generally applicable industry standards.

(13) Noncash item

The term "noncash item" has the same meaning as in section 4001(14) of this title.

(14) Person

The term "person" means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.

(15) Reconverting bank

The term "reconverting bank" means—

- (A) the bank that creates a substitute check; or
- (B) if a substitute check is created by a person other than a bank, the first bank that transfers or presents such substitute check.

(16) Substitute check

The term "substitute check" means a paper reproduction of the original check that—

- (A) contains an image of the front and back of the original check;
- (B) bears a MICR line containing all the information appearing on the MICR line of the original check, except as provided under generally applicable industry standards for substitute checks to facilitate the processing of substitute checks;
- (C) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and
- (D) is suitable for automated processing in the same manner as the original check.

(17) State

The term "State" has the same meaning as in section 1813(a) of this title.

(18) Truncate

The term "truncate" means to remove an original paper check from the check collection or return process and send to a recipient, in lieu of such original paper check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check.

(19) Uniform Commercial Code

The term "Uniform Commercial Code" means the Uniform Commercial Code in effect in a State.

(20) Other terms

Unless the context requires otherwise, the terms not defined in this section shall have the same meanings as in the Uniform Commercial Code.

(Pub. L. 108–100, §3, Oct. 28, 2003, 117 Stat. 1178.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5003. General provisions governing substitute checks

(a) No agreement required

A person may deposit, present, or send for collection or return a substitute check without an agreement with the recipient, so long as a bank has made the warranties in section 5004 of this title with respect to such substitute check.

(b) Legal equivalence

A substitute check shall be the legal equivalent of the original check for all purposes, including any provision of any Federal or State law, and for all persons if the substitute check—

(1) accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and

(2) bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check."

(c) Endorsements

A bank shall ensure that the substitute check for which the bank is the reconverting bank bears all endorsements applied by parties that previously handled the check (whether in electronic form or in the form of the original paper check or a substitute check) for forward collection or return.

(d) Identification of reconverting bank

A bank shall identify itself as a reconverting bank on any substitute check for which the bank is a reconverting bank so as to preserve any previous reconverting bank identifications in conformance with generally applicable industry standards.

(e) Applicable law

A substitute check that is the legal equivalent of the original check under subsection (b) shall be subject to any provision, including any provision relating to the protection of customers, of part 229 of title 12 of the Code of Federal Regulations, the Uniform Commercial Code, and any other applicable Federal or State law as if such substitute check were the original check, to the extent such provision of law is not inconsistent with this chapter.

(Pub. L. 108–100, §4, Oct. 28, 2003, 117 Stat. 1180.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5004. Substitute check warranties

A bank that transfers, presents, or returns a substitute check and receives consideration for the check warrants, as a matter of law, to the transferee, any subsequent collecting or returning bank, the depository bank, the drawee, the drawer, the payee, the depositor, and any endorser (regardless of whether the warrantee receives the substitute check or another paper or electronic form of the substitute check or original check) that—

(1) the substitute check meets all the requirements for legal equivalence under section 5003(b) of this title; and

(2) no depository bank, drawee, drawer, or endorser will receive presentment or return of the substitute check, the original check, or a copy or other paper or electronic version of the substitute check or original check such that the bank, drawee, drawer, or endorser will be asked to make a payment based on a check that the bank, drawee, drawer, or endorser has already paid.

(Pub. L. 108–100, §5, Oct. 28, 2003, 117 Stat. 1181.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5005. Indemnity

(a) Indemnity

A reconverting bank and each bank that subsequently transfers, presents, or returns a substitute check in any electronic or paper form, and receives consideration for such transfer, presentment, or return shall indemnify the transferee, any subsequent collecting or returning bank, the depository bank, the drawee, the drawer, the payee, the depositor, and any endorser, up to the amount described in subsections (b) and (c), as applicable, to the extent of any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

(b) Indemnity amount

(1) Amount in event of breach of warranty

The amount of the indemnity under subsection (a) shall be the amount of any loss (including costs and reasonable attorney's fees and other expenses of representation) proximately caused by a breach of a warranty provided under section 5004 of this title.

(2) Amount in absence of breach of warranty

In the absence of a breach of a warranty provided under section 5004 of this title, the amount of the indemnity under subsection (a) shall be the sum of—

(A) the amount of any loss, up to the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation).

(c) Comparative negligence

(1) In general

If a loss described in subsection (a) results in whole or in part from the negligence or failure to act in good faith on the part of an indemnified party, then that party's indemnification under this section shall be reduced in proportion to the amount of negligence or bad faith attributable to that party.

(2) Rule of construction

Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

(d) Effect of producing original check or copy

(1) In general

If the indemnifying bank produces the original check or a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated) or is otherwise sufficient to determine whether or not a claim is valid, the indemnifying bank shall—

(A) be liable under this section only for losses covered by the indemnity that are incurred up to the time that the original check or copy is provided to the indemnified party; and

(B) have a right to the return of any funds it has paid under the indemnity in excess of those losses.

(2) Coordination of indemnity with implied warranty

The production of the original check, a substitute check, or a copy under paragraph (1) by an indemnifying bank shall not absolve the bank from any liability on a warranty established under this chapter or any other provision of law.

(e) Subrogation of rights

(1) In general

Each indemnifying bank shall be subrogated to the rights of any indemnified party to the extent of the indemnity.

(2) Recovery under warranty

A bank that indemnifies a party under this section may attempt to recover from another party based on a warranty or other claim.

(3) Duty of indemnified party

Each indemnified party shall have a duty to comply with all reasonable requests for assistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other party related to a check that forms the basis for the indemnification.

(Pub. L. 108–100, §6, Oct. 28, 2003, 117 Stat. 1181.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(2), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5006. Expedited recredit for consumers

(a) Recredit claims

(1) In general

A consumer may make a claim for expedited recredit from the bank that holds the account of the consumer with respect to a substitute check, if the consumer asserts in good faith that—

(A) the bank charged the consumer's account for a substitute check that was provided to the consumer;

(B) either—

(i) the check was not properly charged to the consumer's account; or

(ii) the consumer has a warranty claim with respect to such substitute check;

(C) the consumer suffered a resulting loss; and

(D) the production of the original check or a better copy of the original check is necessary to determine the validity of any claim described in subparagraph (B).

(2) 40-day period

Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 40-day period beginning on the later of—

(A) the date on which the financial institution mails or delivers, by a means agreed to by the consumer, the periodic statement of account for such account which contains information

concerning the transaction giving rise to the claim; or

(B) the date on which the substitute check is made available to the consumer.

(3) Extension under extenuating circumstances

If the ability of the consumer to submit the claim within the 40-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 40-day period shall be extended by a reasonable amount of time.

(b) Procedures for claims

(1) In general

To make a claim for an expedited recredit under subsection (a) with respect to a substitute check, the consumer shall provide to the bank that holds the account of such consumer—

(A) a description of the claim, including an explanation of—

- (i) why the substitute check was not properly charged to the consumer's account; or
- (ii) the warranty claim with respect to such check;

(B) a statement that the consumer suffered a loss and an estimate of the amount of the loss;

(C) the reason why production of the original check or a better copy of the original check is necessary to determine the validity of the charge to the consumer's account or the warranty claim; and

(D) sufficient information to identify the substitute check and to investigate the claim.

(2) Claim in writing

(A) In general

The bank holding the consumer account that is the subject of a claim by the consumer under subsection (a) may, in the discretion of the bank, require the consumer to submit the information required under paragraph (1) in writing.

(B) Means of submission

A bank that requires a submission of information under subparagraph (A) may permit the consumer to make the submission electronically, if the consumer has agreed to communicate with the bank in that manner.

(c) Recredit to consumer

(1) Conditions for recredit

The bank shall recredit a consumer account in accordance with paragraph (2) for the amount of a substitute check that was charged against the consumer account if—

(A) a consumer submits a claim to the bank with respect to that substitute check that meets the requirement of subsection (b); and

(B) the bank has not—

(i) provided to the consumer—

(I) the original check; or

(II) a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check, as of the time at which the original check was truncated; and

(ii) demonstrated to the consumer that the substitute check was properly charged to the consumer account.

(2) Timing of recredit

(A) In general

The bank shall recredit the consumer's account for the amount described in paragraph (1) no later than the end of the business day following the business day on which the bank determines the consumer's claim is valid.

(B) Recredit pending investigation

If the bank has not yet determined that the consumer's claim is valid before the end of the 10th business day after the business day on which the consumer submitted the claim, the bank shall recredit the consumer's account for—

(i) the lesser of the amount of the substitute check that was charged against the consumer account, or \$2,500, together with interest if the account is an interest-bearing account, no later than the end of such 10th business day; and

(ii) the remaining amount of the substitute check that was charged against the consumer account, if any, together with interest if the account is an interest-bearing account, not later than the 45th calendar day following the business day on which the consumer submits the claim.

(d) Availability of recredit

(1) Next business day availability

Except as provided in paragraph (2), a bank that provides a recredit to a consumer account under subsection (c) shall make the recredited funds available for withdrawal by the consumer by the start of the next business day after the business day on which the bank recredits the consumer's account under subsection (c).

(2) Safeguard exceptions

A bank may delay availability to a consumer of a recredit provided under subsection (c)(2)(B)(i) until the start of either the business day following the business day on which the bank determines that the consumer's claim is valid or the 45th calendar day following the business day on which the consumer submits a claim for such recredit in accordance with subsection (b), whichever is earlier, in any of the following circumstances:

(A) New accounts

The claim is made during the 30-day period beginning on the business day the consumer account was established.

(B) Repeated overdrafts

Without regard to the charge that is the subject of the claim for which the recredit was made—

(i) on 6 or more business days during the 6-month period ending on the date on which the consumer submits the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or

(ii) on 2 or more business days during such 6-month period, the balance in the consumer account was negative or would have become negative in the amount of \$5,000 or more if checks or other charges to the account had been paid.

(C) Prevention of fraud losses

The bank has reasonable cause to believe that the claim is fraudulent, based on facts (other than the fact that the check in question or the consumer is of a particular class) that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent.

(3) Overdraft fees

No bank that, in accordance with paragraph (2), delays the availability of a recredit under subsection (c) to any consumer account may impose any overdraft fees with respect to drafts drawn by the consumer on such recredited amount before the end of the 5-day period beginning on the date notice of the delay in the availability of such amount is sent by the bank to the consumer.

(e) Reversal of recredit

A bank may reverse a recredit to a consumer account if the bank—

(1) determines that a substitute check for which the bank recredited a consumer account under subsection (c) was in fact properly charged to the consumer account; and

(2) notifies the consumer in accordance with subsection (f)(3).

(f) Notice to consumer

(1) Notice if consumer claim not valid

If a bank determines that a substitute check subject to the consumer's claim was in fact properly charged to the consumer's account, the bank shall send to the consumer, no later than the business day following the business day on which the bank makes a determination—

(A) the original check or a copy of the original check (including an image or a substitute check) that—

- (i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or
- (ii) is otherwise sufficient to determine whether or not the consumer's claim is valid; and

(B) an explanation of the basis for the determination by the bank that the substitute check was properly charged, including a statement that the consumer may request copies of any information or documents on which the bank relied in making the determination.

(2) Notice of recredit

If a bank recredits a consumer account under subsection (c), the bank shall send to the consumer, no later than the business day following the business day on which the bank makes the recredit, a notice of—

- (A) the amount of the recredit; and
- (B) the date the recredited funds will be available for withdrawal.

(3) Notice of reversal of recredit

In addition to the notice required under paragraph (1), if a bank reverses a recredited amount under subsection (e), the bank shall send to the consumer, no later than the business day following the business day on which the bank reverses the recredit, a notice of—

- (A) the amount of the reversal; and
- (B) the date the recredit was reversed.

(4) Mode of delivery

A notice described in this subsection shall be delivered by United States mail or by any other means through which the consumer has agreed to receive account information.

(g) Other claims not affected

Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other law, such as a claim for wrongful dishonor under the Uniform Commercial Code, or from liability for additional damages under section 5005 or 5009 of this title.

(h) Clarification concerning consumer possession

A consumer who was provided a substitute check may make a claim for an expedited recredit under this section with regard to a transaction involving the substitute check whether or not the consumer is in possession of the substitute check.

(i) Scope of application

This section shall only apply to customers who are consumers.

(Pub. L. 108–100, §7, Oct. 28, 2003, 117 Stat. 1182.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5007. Expedited recredit procedures for banks

(a) Recredit claims

(1) In general

A bank may make a claim against an indemnifying bank for expedited recredit for which that bank is indemnified if—

(A) the claimant bank (or a bank that the claimant bank has indemnified) has received a claim for expedited recredit from a consumer under section 5006 of this title with respect to a substitute check or would have been subject to such a claim had the consumer's account been charged;

(B) the claimant bank has suffered a resulting loss or is obligated to recredit a consumer account under section 5006 of this title with respect to such substitute check; and

(C) production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the customer account or any warranty claim connected with such substitute check.

(2) 120-day period

Any claim under paragraph (1) may be submitted by the claimant bank to an indemnifying bank before the end of the 120-day period beginning on the date of the transaction that gave rise to the claim.

(b) Procedures for claims

(1) In general

To make a claim under subsection (a) for an expedited recredit relating to a substitute check, the claimant bank shall send to the indemnifying bank—

(A) a description of—

- (i) the claim, including an explanation of why the substitute check cannot be properly charged to the consumer account; or
- (ii) the warranty claim;

(B) a statement that the claimant bank has suffered a loss or is obligated to recredit the consumer's account under section 5006 of this title, together with an estimate of the amount of the loss or recredit;

(C) the reason why production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the consumer account or the warranty claim; and

(D) information sufficient for the indemnifying bank to identify the substitute check and to investigate the claim.

(2) Requirements relating to copies of substitute checks

If the information submitted by a claimant bank pursuant to paragraph (1) in connection with a claim for an expedited recredit includes a copy of any substitute check for which any such claim is made, the claimant bank shall take reasonable steps to ensure that any such copy cannot be—

(A) mistaken for the legal equivalent of the check under section 5003(b) of this title; or

(B) sent or handled by any bank, including the indemnifying bank, as a forward collection or returned check.

(3) Claim in writing

(A) In general

An indemnifying bank may, in the discretion of the bank, require the claimant bank to submit the information required by paragraph (1) in writing, including a copy of the written or electronically submitted claim, if any, that the consumer provided in accordance with section 5006(b) of this title.

(B) Means of submission

An indemnifying bank that requires a submission of information under subparagraph (A) may permit the claimant bank to make the submission electronically, if the claimant bank has agreed to communicate with the indemnifying bank in that manner.

(c) Recredit by indemnifying bank

(1) Prompt action required

No later than 10 business days after the business day on which an indemnifying bank receives a claim under subsection (a) from a claimant bank with respect to a substitute check, the indemnifying bank shall—

(A) provide, to the claimant bank, the original check (with respect to such substitute check) or a copy of the original check (including an image or a substitute check) that—

(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or

(ii) is otherwise sufficient to determine the bank's claim is not valid; and

(B) recredit the claimant bank for the amount of the claim up to the amount of the substitute check, plus interest if applicable; or

(C) provide information to the claimant bank as to why the indemnifying bank is not obligated to comply with subparagraph (A) or (B).

(2) Recredit does not abrogate other liabilities

Providing a recredit under this subsection to a claimant bank with respect to a substitute check shall not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under section 5005 or 5009 of this title with respect to such check.

(3) Refund to indemnifying bank

If a claimant bank reverses, in accordance with section 5006(e) of this title, a recredit previously made to a consumer account under section 5006(c) of this title, or otherwise receives a credit or recredit with regard to such substitute check, the claimant bank shall promptly refund to any indemnifying bank any amount previously advanced by the indemnifying bank in connection with such substitute check.

(d) Production of original check or a sufficient copy governed by section 5005(d)

If the indemnifying bank provides the claimant bank with the original check or a copy of the original check (including an image or a substitute check) under subsection (c)(1)(A), section 5005(d) of this title shall govern any right of the indemnifying bank to any repayment of any funds the indemnifying bank has reccredited to the claimant bank pursuant to subsection (c).

(Pub. L. 108–100, §8, Oct. 28, 2003, 117 Stat. 1186.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5008. Delays in an emergency

A delay by a bank beyond the time limits prescribed or permitted by this chapter shall be excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of a bank and if the bank uses such diligence as the circumstances require.

(Pub. L. 108–100, §9, Oct. 28, 2003, 117 Stat. 1188.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5009. Measure of damages

(a) Liability

(1) In general

Except as provided in section 5005 of this title, any person who, in connection with a substitute check, breaches any warranty under this chapter or fails to comply with any requirement imposed by, or regulation prescribed pursuant to, this chapter with respect to any other person shall be liable to such person in an amount equal to the sum of—

(A) the lesser of—

- (i) the amount of the loss suffered by the other person as a result of the breach or failure; or
- (ii) the amount of the substitute check; and

(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.

(2) Offset of recredits

The amount of damages any person receives under paragraph (1), if any, shall be reduced by the amount, if any, that the claimant receives and retains as a recredit under section 5006 or 5007 of this title.

(b) Comparative negligence

(1) In general

If a person incurs damages that resulted in whole or in part from the negligence or failure of that person to act in good faith, then the amount of any liability due to that person under subsection (a) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.

(2) Rule of construction

Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.

(Pub. L. 108–100, §10, Oct. 28, 2003, 117 Stat. 1188.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5010. Statute of limitations and notice of claim

(a) Actions under this chapter

(1) In general

An action to enforce a claim under this chapter may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date the cause of action accrues.

(2) Accrual

A cause of action accrues as of the date the injured party first learns, or by which such person reasonably should have learned, of the facts and circumstances giving rise to the cause of action.

(b) Discharge of claims

Except as provided in subsection (c), unless a person gives notice of a claim to the indemnifying or warranting bank within 30 days after the person has reason to know of the claim and the identity of the indemnifying or warranting bank, the indemnifying or warranting bank is discharged from liability in an action to enforce a claim under this chapter to the extent of any loss caused by the delay in giving notice of the claim.

(c) Notice of claim by consumer

A timely claim by a consumer under section 5006 of this title for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).

(Pub. L. 108–100, §11, Oct. 28, 2003, 117 Stat. 1188.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5011. Consumer awareness

(a) In general

Each bank shall provide, in accordance with subsection (b), a brief notice about substitute checks that describes—

(1) how a substitute check is the legal equivalent of an original check for all purposes, including any provision of any Federal or State law, and for all persons, if the substitute check—

(A) accurately represents all of the information on the front and back of the original check as of the time at which the original check was truncated; and

(B) bears the legend: "This is a legal copy of your check. You can use it in the same way you

would use the original check."; and

(2) the consumer recredit rights established under section 5006 of this title when a consumer believes in good faith that a substitute check was not properly charged to the account of the consumer.

(b) Distribution

(1) Existing customers

With respect to consumers who are customers of a bank on the effective date of this chapter and who receive original checks or substitute checks, a bank shall provide the notice described in subsection (a) to each such consumer no later than the first regularly scheduled communication with the consumer after the effective date of this chapter.

(2) New account holders

A bank shall provide the notice described in subsection (a) to each consumer who will receive original checks or substitute checks, other than existing customers referred to in paragraph (1), at the time at which the customer relationship is initiated.

(3) Mode of delivery

A bank may send the notices required by this subsection by United States mail or by any other means through which the consumer has agreed to receive account information.

(4) Consumers who request copies of checks

Notice shall be provided to each consumer of the bank that requests a copy of a check and receives a substitute check, at the time of the request.

(c) Model language

(1) In general

Before the end of the 9-month period beginning on October 28, 2003, the Board shall publish model forms and clauses that a bank may use to describe each of the elements required by subsection (a).

(2) Safe harbor

(A) In general

A bank shall be treated as being in compliance with the requirements of subsection (a) if the bank's substitute check notice uses a model form or clause published by the Board and such model form or clause accurately describes the bank's policies and practices.

(B) Deletion or rearrangement

A bank may delete any information in the model form or clause that is not required by this chapter or rearrange the format.

(3) Use of model language not required

This section shall not be construed as requiring any bank to use a model form or clause that the Board prepares under this subsection.

(Pub. L. 108–100, §12, Oct. 28, 2003, 117 Stat. 1189.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(1), is at the end of the 12-month period beginning on Oct. 28, 2003, except as otherwise specifically provided in this chapter, see section 20 of Pub. L. 108–100, set out as an Effective Date note under section 5001 of this title.

This chapter, referred to in subsec. (c)(2)(B), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act

to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5012. Effect on other law

This chapter shall supersede any provision of Federal or State law, including the Uniform Commercial Code, that is inconsistent with this chapter, but only to the extent of the inconsistency. (Pub. L. 108–100, §13, Oct. 28, 2003, 117 Stat. 1190.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5013. Variation by agreement

(a) Section 5007

Any provision of section 5007 of this title may be varied by agreement of the banks involved.

(b) No other provisions may be varied

Except as provided in subsection (a), no provision of this chapter may be varied by agreement of any person or persons.

(Pub. L. 108–100, §14, Oct. 28, 2003, 117 Stat. 1190.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5014. Regulations

The Board may prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this chapter. (Pub. L. 108–100, §15, Oct. 28, 2003, 117 Stat. 1190.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5015. Study and report on funds availability

(a) Study

In order to evaluate the implementation and the impact of this chapter, the Board shall conduct a study of—

- (1) the percentage of total checks cleared in which the paper check is not returned to the paying bank;
- (2) the extent to which banks make funds available to consumers for local and nonlocal checks prior to the expiration of maximum hold periods;
- (3) the length of time within which depository banks learn of the nonpayment of local and nonlocal checks;
- (4) the increase or decrease in check-related losses over the study period; and
- (5) the appropriateness of the time periods and amount limits applicable under sections 4002 and 4003 of this title, as in effect on October 28, 2003.

(b) Report to Congress

Before the end of the 30-month period beginning on the effective date of this chapter, the Board shall submit a report to the Congress containing the results of the study conducted under this section, together with recommendations for legislative action.

(Pub. L. 108–100, §16, Oct. 28, 2003, 117 Stat. 1190.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

The effective date of this chapter, referred to in subsec. (b), is at the end of the 12-month period beginning on Oct. 28, 2003, except as otherwise specifically provided in this chapter, see section 20 of Pub. L. 108–100, set out as an Effective Date note under section 5001 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L.

108–100, set out as a note under section 5001 of this title.

§5016. Statistical reporting of costs and revenues for transporting checks between reserve banks

In the annual report prepared by the Board for the first full calendar year after October 28, 2003, and in each of the 9 subsequent annual reports by the Board, the Board shall include the amount of operating costs attributable to, and an estimate of the Federal Reserve banks' imputed revenues derived from, the transportation of commercial checks between Federal Reserve bank check processing centers.

(Pub. L. 108–100, §17, Oct. 28, 2003, 117 Stat. 1191.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5017. Evaluation and report by the Comptroller General

(a) Study

During the 5-year period beginning on October 28, 2003, the Comptroller General of the United States shall evaluate the implementation and administration of this chapter, including—

- (1) an estimate of the gains in economic efficiency made possible from check truncation;
- (2) an evaluation of the benefits accruing to consumers and financial institutions from reduced transportation costs, longer hours for accepting deposits for credit within 1 business day, the impact of fraud losses, and an estimate of consumers' share of the total benefits derived from this chapter; and
- (3) an assessment of consumer acceptance of the check truncation process resulting from this chapter, as well as any new costs incurred by consumers who had their original checks returned with their regular monthly statements prior to October 28, 2003.

(b) Report to Congress

Before the end of the 5-year period referred to in subsection (a), the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the evaluation conducted pursuant to subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

(Pub. L. 108–100, §18, Oct. 28, 2003, 117 Stat. 1191.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 108–100, Oct. 28, 2003, 117 Stat. 1177, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective at the end of the 12-month period beginning on Oct. 28, 2003, see section 20 of Pub. L. 108–100, set out as a note under section 5001 of this title.

§5018. Depositary services efficiency and cost reduction

(a) Findings

The Congress finds as follows:

(1) The Secretary of the Treasury has long compensated financial institutions for various critical depositary and financial agency services provided for or on behalf of the United States by—

(A) placing large balances, commonly referred to as "compensating balances", on deposit at such institutions; and

(B) using imputed interest on such funds to offset charges for the various depositary and financial agency services provided to or on behalf of the Government.

(2) As a result of sharp declines in interest rates over the last few years to record low levels, or the public debt outstanding reaching the statutory debt limit, the Department of the Treasury often has had to dramatically increase or decrease the size of the compensating balances on deposit at these financial institutions.

(3) The fluctuation of the compensating balances, and the necessary pledging of collateral by financial institutions to secure the value of compensating balances placed with those institutions, have created unintended financial uncertainty for the Secretary of the Treasury and for the management by financial institutions of their cash and securities.

(4) It is imperative that the process for providing financial services to the Government be transparent, and provide the information necessary for the Congress to effectively exercise its appropriation and oversight responsibilities.

(5) The use of direct payment for services rendered would strengthen cash and debt management responsibilities of the Secretary of the Treasury because the Secretary would no longer need to dramatically increase or decrease the level of such balances when interest rates fluctuate sharply or when the public debt outstanding reaches the statutory debt limit.

(6) An alternative to the use of compensating balances, such as direct payments to financial institutions, would ensure that payments to financial institutions for the services they provide would be made in a more predictable manner and could result in cost savings.

(7) Limiting the use of compensating balances could result in a more direct and cost-efficient method of obtaining those services currently provided under compensating balance arrangements.

(8) A transition from the use of compensating balances to another compensation method must be carefully managed to prevent higher-than-necessary transitional costs and enable participating financial institutions to modify their planned investment of cash and securities.

(b) Authorization of appropriations for services rendered by depositaries and financial agencies of the United States

There are authorized to be appropriated for fiscal years beginning after fiscal year 2003 to the Secretary of the Treasury such sums as may be necessary for reimbursing financial institutions in their capacity as depositaries and financial agents of the United States for all services required or directed by the Secretary of the Treasury, or a designee of the Secretary, to be performed by such financial institutions on behalf of the Secretary of the Treasury or another Federal agency, including services rendered before fiscal year 2004.

(c) Orderly transition

(1) In general

As appropriations authorized in subsection (b) become available, the Secretary of the Treasury shall promptly begin the process of phasing in the use of the appropriations to pay financial institutions serving as depositaries and financial agents of the United States, and transitioning from the use of compensating balances to fund these services.

(2) Post-transition use limited to extraordinary circumstances

(A) In general

Following the transition to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury may use the compensating balances to pay financial institutions serving as depositaries and financial agents of the United States only in extraordinary situations where the Secretary determines that they are needed to ensure the fiscal operations of the Government continue to function in an efficient and effective manner.

(B) Report

Any use of compensating balances pursuant to subparagraph (A) shall promptly be reported by the Secretary of the Treasury to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) Requirements for orderly transition

In transitioning to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury shall take such steps as may be appropriate to—

(A) prevent abrupt financial disruption to the functions of the Department of the Treasury or to the participating financial institutions; and

(B) maintain adequate accounting and management controls to ensure that payments to financial institutions for their banking services provided to the Government as depositaries and financial agents are accurate and that the arrangements last no longer than is necessary.

(4) Reports required

(A) Annual report

(i) In general

For each fiscal year, the Secretary of the Treasury shall submit a report to the Congress on the use of compensating balances and on the use of appropriations authorized in subsection (b) during that fiscal year.

(ii) Inclusion in budget

The report required under clause (i) may be submitted as part of the budget submitted by the President under section 1105 of title 31 for the following fiscal year and if so, the report shall be submitted concurrently to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Final report following transition

(i) In general

Following completion of the transition from the use of compensating balances to the use of the appropriations authorized in subsection (b) to pay financial institutions for their services as depositaries and financial agents of the United States, the Secretary of the Treasury shall submit a report on the transition to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(ii) Contents of report

The report submitted under clause (i) shall include a detailed analysis of—

(I) the cost of transition;

(II) the direct costs of the services being paid from the appropriations authorized in subsection (b); and

(III) the benefits realized from the use of direct payment for such services, rather than the use of compensating balance arrangements.

(d) Omitted

(e) Effective date

Notwithstanding section 20,¹ this section shall take effect on October 28, 2003.

(Pub. L. 108–100, §19, Oct. 28, 2003, 117 Stat. 1191.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 20, referred to in subsec. (e), means section 20 of Pub. L. 108–100, which is set out as an Effective Date note under section 5001 of this title.

CODIFICATION

Section is comprised of section 19 of Pub. L. 108–100. Subsec. (d) of section 19 of Pub. L. 108–100 amended section 412 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

FUNDS FOR REIMBURSEMENT FOR DEPOSITARY AND FINANCIAL AGENCY SERVICES

Pub. L. 108–199, div. F, title II, §218, Jan. 23, 2004, 118 Stat. 321, provided that: "For fiscal year 2004 and each fiscal year thereafter, there are appropriated to the Secretary of the Treasury such sums as may be necessary to reimburse financial institutions in their capacity as depositaries and financial agents of the United States for all services required or directed by the Secretary of the Treasury, or the Secretary's designee, to be performed by such financial institutions on behalf of the Department of the Treasury or other Federal agencies, including services rendered prior to fiscal year 2004."

¹ [*See References in Text note below.*](#)

CHAPTER 51—SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING

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§5101. Purposes and methods for establishing a mortgage licensing system and registry

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American

Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

- (1) Provides uniform license applications and reporting requirements for State-licensed loan originators.
- (2) Provides a comprehensive licensing and supervisory database.
- (3) Aggregates and improves the flow of information to and between regulators.
- (4) Provides increased accountability and tracking of loan originators.
- (5) Streamlines the licensing process and reduces the regulatory burden.
- (6) Enhances consumer protections and supports anti-fraud measures.
- (7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.
- (8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- (9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.
- (10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

(Pub. L. 110–289, div. A, title V, §1502, July 30, 2008, 122 Stat. 2810.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–94, div. G, title LXXXVIII, §88001, Dec. 4, 2015, 129 Stat. 1799, provided that: "This title [amending section 5110 of this title] may be cited as the 'State Licensing Efficiency Act of 2015'."

SHORT TITLE

Pub. L. 110–289, div. A, title V, §1501, July 30, 2008, 122 Stat. 2810, provided that: "This title [enacting this chapter] may be cited as the 'Secure and Fair Enforcement for Mortgage Licensing Act of 2008' or 'S.A.F.E. Mortgage Licensing Act of 2008'."

§5102. Definitions

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

(1) Bureau

The term "Bureau" means the Bureau of Consumer Financial Protection.

(2) Federal banking agency

The term "Federal banking agency" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(3) Depository institution

The term "depository institution" has the same meaning as in section 1813 of this title, and includes any credit union.

(4) Loan originator

(A) In general

The term "loan originator"—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

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

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

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11.

(B) Other definitions relating to loan originator

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

(C) Administrative or clerical tasks

The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) Real estate brokerage activity defined

The term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including—

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

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

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

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

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

(5) Loan processor or underwriter

(A) In general

The term "loan processor or underwriter" means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

(i) a State-licensed loan originator; or

(ii) a registered loan originator.

(B) Clerical or support duties

For purposes of subparagraph (A), the term "clerical or support duties" may include—

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

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

(6) Nationwide mortgage licensing system and registry

The term "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Director under section 5108 of this title.

(7) Nontraditional mortgage product

The term "nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

(8) Registered loan originator

The term "registered loan originator" means any individual who—

(A) meets the definition of loan originator and is an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

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

(9) Residential mortgage loan

The term "residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 1602(v) ¹ of title 15) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(10) Director

The term "Director" means the Director of the Bureau of Consumer Financial Protection.

(11) State

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

(12) State-licensed loan originator

The term "State-licensed loan originator" means any individual who—

(A) is a loan originator;

(B) is not an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(C) is licensed by a State or by the Director under section 5107 of this title and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(13) Unique identifier

(A) In general

The term "unique identifier" means a number or other identifier that—

- (i) permanently identifies a loan originator;
- (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
- (iii) shall not be used for purposes other than those set forth under this chapter.

(B) Responsibility of States

To the greatest extent possible and to accomplish the purpose of this chapter, States shall use unique identifiers in lieu of social security numbers.

(Pub. L. 110–289, div. A, title V, §1503, July 30, 2008, 122 Stat. 2811; Pub. L. 111–203, title X, §1100(2)–(4), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1602(v) of title 15, referred to in par. (9), was redesignated section 1602(w) of title 15 by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Pub. L. 111–203, §1100(4)(A), redesignated pars. (2) to (12) as (3) to (13), respectively.

Par. (1). Pub. L. 111–203, §1100(4)(B), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The term 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation."

Par. (2). Pub. L. 111–203, §1100(4)(B), added par. (2). Former par. (2) redesignated (3).

Par. (5). Pub. L. 111–203, §1100(3), substituted "Director" for "Secretary".

Par. (10). Pub. L. 111–203, §1100(4)(C), added par. (10) and struck out former par. (10). Prior to amendment, text read as follows: "The term 'Secretary' means the Secretary of Housing and Urban Development."

Par. (11)(C). Pub. L. 111–203, §1100(3), substituted "Director" for "Secretary".

Par. (12)(A)(ii). Pub. L. 111–203, §1100(2), substituted "Bureau" for "Federal banking agencies".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

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.

¹ [*See References in Text note below.*](#)

§5103. License or registration required

(a) In general

Subject to the existence of a licensing or registration regime, as the case may be, an individual may not engage in the business of a loan originator without first—

- (1) obtaining, and maintaining annually—

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

(2) obtaining a unique identifier.

(b) Loan processors and underwriters

(1) Supervised loan processors and underwriters

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

(2) Independent contractors

An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator.

(Pub. L. 110–289, div. A, title V, §1504, July 30, 2008, 122 Stat. 2814.)

§5104. State license and registration application and issuance

(a) Background checks

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

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

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

(A) an independent credit report obtained from a consumer reporting agency described in section 1681a(p) of title 15; and

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

(b) Issuance of license

The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

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

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—

(A) during the 7-year period preceding the date of the application for licensing and registration; or

(B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

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

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

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

(6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the State pursuant to section 5107(d)(6) of this title.

(c) Pre-licensing education of loan originators

(1) Minimum educational requirements

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

- (A) 3 hours of Federal law and regulations;
- (B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Approved educational courses

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

(3) Limitation and standards

(A) Limitation

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

(B) Standards

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

(d) Testing of loan originators

(1) In general

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

(2) Qualified test

A written test shall not be treated as a qualified written test for purposes of paragraph (1) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

- (A) ethics;
- (B) Federal law and regulation pertaining to mortgage origination;
- (C) State law and regulation pertaining to mortgage origination;
- (D) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Minimum competence

(A) Passing score

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

(B) Initial retests

An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(C) Subsequent retests

After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

(D) Retest after lapse of license

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

(e) Mortgage call reports

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

(Pub. L. 110–289, div. A, title V, §1505, July 30, 2008, 122 Stat. 2814.)

§5105. Standards for State license renewal

(a) In general

The minimum standards for license renewal for State-licensed loan originators shall include the following:

- (1) The loan originator continues to meet the minimum standards for license issuance.
- (2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

(b) Continuing education for State-licensed loan originators

(1) In general

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

- (A) 3 hours of Federal law and regulations;
- (B) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Approved educational courses

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

(3) Calculation of continuing education credits

A State-licensed loan originator—

- (A) may only receive credit for a continuing education course in the year in which the course is taken; and
- (B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) Instructor credit

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

(5) Limitation and standards

(A) Limitation

To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer any continuing education courses for

loan originators.

(B) Standards

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

(Pub. L. 110–289, div. A, title V, §1506, July 30, 2008, 122 Stat. 2816.)

§5106. System of registration administration by Federal agencies

(a) Development

(1) In general

The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on July 21, 2010.

(2) Registration requirements

In connection with the registration of any loan originator under this subsection, the Bureau shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the identity of the employee, including—

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

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

(b) Coordination

(1) Unique identifier

The Bureau,¹ and the Bureau of Consumer Financial Protection shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(2) Nationwide Mortgage Licensing System and Registry development

To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Bureau,¹ and the Bureau of Consumer Financial Protection concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

(c) Consideration of factors and procedures

In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Bureau shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 5103(a) of this title, shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this chapter.

(Pub. L. 110–289, div. A, title V, §1507, July 30, 2008, 122 Stat. 2817; Pub. L. 111–203, title X, §1100(2), (5), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §1100(5)(A)(i), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The Federal banking agencies shall jointly, through the Federal Financial Institutions Examination Council, and together with the Farm Credit Administration, develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on July 30, 2008."

Subsec. (a)(2). Pub. L. 111–203, §1100(5)(A)(ii), in introductory provisions, substituted "Bureau" for "appropriate Federal banking agency and the Farm Credit Administration" and "identity of the employee" for "employees's identity".

Subsec. (b). Pub. L. 111–203, §1100(5)(B), which directed substitution of "and the Bureau of Consumer Financial Protection" for "through the Financial Institutions Examination Council, and the Farm Credit Administration", was executed in both places those words appeared, to reflect the probable intent of Congress.

Subsecs. (b)(1), (2), (c). Pub. L. 111–203, §1100(2), substituted "Bureau" for "Federal banking agencies".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

¹ So in original. The comma probably should not appear.

§5107. Bureau of Consumer Financial Protection backup authority to establish loan originator licensing system

(a) Backup licensing system

If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on July 30, 2008, or at any time thereafter, the Director determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 5104 and 5105 of this title and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Director shall provide for the establishment and maintenance of a system for the licensing and registration by the Director of loan originators operating in such State as State-licensed loan originators.

(b) Licensing and registration requirements

The system established by the Director under subsection (a) for any State shall meet the requirements of sections 5104 and 5105 of this title for State-licensed loan originators.

(c) Unique identifier

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

(d) State licensing law requirements

For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Director determines the law satisfies the following minimum requirements:

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

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

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

(4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

(5) The State loan originator supervisory authority has established a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.

(6) The State loan originator supervisory authority has established minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.

(e) Temporary extension of period

The Director may extend, by not more than 24 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 5104 and 5105 of this title and subsection (d) if the Director determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

(f) Regulation authority

(1) In general

The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

(2) Considerations

In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.

(Pub. L. 110–289, div. A, title V, §1508, July 30, 2008, 122 Stat. 2818; Pub. L. 111–203, title X, §1100(3), (6), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203, §1100(3), (6)(A), inserted section catchline, struck out former section catchline which read "Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system", and substituted "Director" for "Secretary" wherever appearing in text.

Subsec. (f). Pub. L. 111–203, §1100(6)(B), added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§5108. Backup authority to establish a nationwide mortgage licensing and registry system

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

(Pub. L. 110–289, div. A, title V, §1509, July 30, 2008, 122 Stat. 2819; Pub. L. 111–203, title X, §1100(3), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§5109. Fees

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

(Pub. L. 110–289, div. A, title V, §1510, as added Pub. L. 111–203, title X, §1100(7), July 21, 2010, 124 Stat. 2107.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5109, Pub. L. 110–289, div. A, title V, §1510, July 30, 2008, 122 Stat. 2819, which related to fees, was repealed by Pub. L. 111–203, title X, §1100(7), July 21, 2010, 124 Stat. 2107.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 552a of Title 5, Government Organization and Employees.

§5110. Background checks of loan originators

(a) Access to records

Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State

officials responsible for regulating State-licensed loan originators and other financial service providers to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators or other financial service providers.

(b) Agent

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

(Pub. L. 110–289, div. A, title V, §1511, July 30, 2008, 122 Stat. 2819; Pub. L. 114–94, div. G, title LXXXVIII, §88002, Dec. 4, 2015, 129 Stat. 1799.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–94 inserted "and other financial service providers" after "State-licensed loan originators" and "or other financial service providers" before period at end.

§5111. Confidentiality of information

(a) System confidentiality

Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 5108 of this title, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage or financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) Nonapplicability of certain requirements

Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

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

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

(c) Coordination with other law

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

(d) Public access to information

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

(Pub. L. 110–289, div. A, title V, §1512, July 30, 2008, 122 Stat. 2820; Pub. L. 111–203, title X, §1100(3), July 21, 2010, 124 Stat. 2106; Pub. L. 114–113, div. O, title VII, §703, Dec. 18, 2015, 129 Stat. 3025.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–113 inserted "or financial services" before "industry".

2010—Subsecs. (a), (b)(2). Pub. L. 111–203 substituted "Director" for "Secretary".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§5112. Liability provisions

The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 5108 of this title, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who—

(1) have applied, are applying, or are licensed or registered through the Nationwide Mortgage Licensing System and Registry; and

(2) work in an industry with respect to which persons were licensed or registered through the Nationwide Mortgage Licensing System and Registry on May 24, 2018.

(Pub. L. 110–289, div. A, title V, §1513, as added Pub. L. 111–203, title X, §1100(8), July 21, 2010, 124 Stat. 2107; amended Pub. L. 115–174, title I, §106(c), May 24, 2018, 132 Stat. 1304.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5112, Pub. L. 110–289, div. A, title V, §1513, July 30, 2008, 122 Stat. 2820, which barred liability for good faith actions or omissions by certain entities' officers or employees, was repealed by Pub. L. 111–203, title X, §1100(8), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2018—Pub. L. 115–174 substituted "persons who—" for "persons who are loan originators or are applying for licensing or registration as loan originators." and added pars. (1) and (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–174, title I, §106(d), May 24, 2018, 132 Stat. 1304, provided that: "This section [enacting section 5117 of this title and amending this section] and the amendments made by this section shall take effect on the date that is 18 months after the date of enactment of this Act [May 24, 2018]."

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 552a of Title 5, Government Organization and Employees.

§5113. Enforcement by the Bureau

(a) Summons authority

The Director may—

(1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Director under section 5107 of this title; and

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

(b) Examination authority

(1) In general

If the Director establishes a licensing system under section 5107 of this title for any State, the Director shall appoint examiners for the purposes of administering such section.

(2) Power to examine

Any examiner appointed under paragraph (1) shall have power, on behalf of the Director, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Director under section 5107 of this title whenever the Director determines an examination of any loan originator is necessary to determine the compliance by the originator with this chapter.

(3) Report of examination

Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the Director.

(4) Administration of oaths and affirmations; evidence

In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Director under section 5107 of this title, or with other types of investigations to determine compliance with applicable law and regulations, the Director and examiners appointed by the Director may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) Assessments

The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Director under section 5107 of this title shall be assessed by the Director against the loan originator to meet the Secretary's ¹ expenses in carrying out such examination.

(c) Cease and desist proceeding

(1) Authority of Director

If the Director finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this chapter, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Director under section 5107 of this title, the Director may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing

or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Director may specify in such order. Any such order may, as the Director deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Director may specify, with such provision or regulation with respect to any loan originator.

(2) Hearing

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

(3) Temporary order

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

(4) Review of temporary orders

(A) Review by Director

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

(B) Judicial review

Within—

- (i) 10 days after the date the respondent was served with a temporary cease and desist order entered with a prior hearing before the Director; or
- (ii) 10 days after the Director renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease and desist order entered without a prior hearing before the Director,

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

(C) No automatic stay of temporary order

The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's ¹ order.

(5) Authority of the Director to prohibit persons from serving as loan originators

In any cease and desist proceeding under paragraph (1), the Director may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Director shall determine, any person who has violated this chapter or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) Authority of the Director to assess money penalties

(1) In general

The Director may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by the Director under section 5107 of this title, if the Director finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this chapter or any regulation prescribed by the Director under this chapter or order issued under subsection (c).

(2) Maximum amount of penalty

The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$25,000.

(Pub. L. 110–289, div. A, title V, §1514, July 30, 2008, 122 Stat. 2821; Pub. L. 111–203, title X, §1100(3), (9), July 21, 2010, 124 Stat. 2106, 2107.)

EDITORIAL NOTES

AMENDMENTS

Pub. L. 111–203 substituted "by the Bureau" for "under HUD backup licensing system" in section catchline and "Director" for "Secretary" wherever appearing in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

¹ So in original. Probably should be "Director's".

§5114. State examination authority

In addition to any authority allowed under State law a State licensing agency shall have the authority to conduct investigations and examinations as follows:

(1) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the State licensing agency may review, investigate, or examine any loan originator licensed or required to be licensed under this chapter, as often as necessary in order to carry out the purposes of this chapter.

(2) Each such loan originator shall make available upon request to the State licensing agency the books and records relating to the operations of such originator. The State licensing agency may have access to such books and records and interview the officers, principals, loan originators, employees, independent contractors, agents, and customers of the licensee concerning their business.

(3) The authority of this section shall remain in effect, whether such a loan originator acts or claims to act under any licensing or registration law of such State, or claims to act without such authority.

(4) No person subject to investigation or examination under this section may knowingly

withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(Pub. L. 110–289, div. A, title V, §1515, July 30, 2008, 122 Stat. 2823.)

§5115. Reports and recommendations to Congress

(a) Annual reports

Not later than 1 year after July 30, 2008, and annually thereafter, the Director shall submit a report to Congress on the effectiveness of the provisions of this chapter, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers.

(b) Legislative recommendations

Not later than 6 months after July 30, 2008, the Director shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.], that the Director deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

(Pub. L. 110–289, div. A, title V, §1516, July 30, 2008, 122 Stat. 2824; Pub. L. 111–203, title X, §1100(3), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§5116. Study and reports on defaults and foreclosures

(a) Study required

The Director shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

(b) Preliminary report to Congress

Not later than 6 months after July 30, 2008, the Director shall submit to Congress a preliminary report regarding the study required by this section.

(c) Final report to Congress

Not later than 12 months after July 30, 2008, the Director shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.

(Pub. L. 110–289, div. A, title V, §1517, July 30, 2008, 122 Stat. 2824; Pub. L. 111–203, title X, §1100(3), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§5117. Employment transition of loan originators

(a) Definitions

In this section:

(1) Application State

The term "application State" means a State in which a registered loan originator or a State-licensed loan originator seeks to be licensed.

(2) State-licensed mortgage company

The term "State-licensed mortgage company" means an entity that is licensed or registered under the law of any State to engage in residential mortgage loan origination and processing activities.

(b) Temporary authority to originate loans for loan originators moving from a depository institution to a non-depository institution

(1) In general

Upon becoming employed by a State-licensed mortgage company, an individual who is a registered loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the individual—

(A) has not had—

- (i) an application for a loan originator license denied; or
- (ii) a loan originator license revoked or suspended in any governmental jurisdiction;

(B) has not been subject to, or served with, a cease and desist order—

- (i) in any governmental jurisdiction; or
- (ii) under section 5113(c) of this title;

(C) has not been convicted of a misdemeanor or felony that would preclude licensure under the law of the application State;

(D) has submitted an application to be a State-licensed loan originator in the application State; and

(E) was registered in the Nationwide Mortgage Licensing System and Registry as a loan originator during the 1-year period preceding the date on which the information required under section 5104(a) of this title is submitted.

(2) Period

The period described in this paragraph shall begin on the date on which an individual described in paragraph (1) submits the information required under section 5104(a) of this title and shall end

on the earliest of the date—

- (A) on which the individual withdraws the application to be a State-licensed loan originator in the application State;
- (B) on which the application State denies, or issues a notice of intent to deny, the application;
- (C) on which the application State grants a State license; or
- (D) that is 120 days after the date on which the individual submits the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

(c) Temporary authority to originate loans for State-licensed loan originators moving interstate

(1) In general

A State-licensed loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the State-licensed loan originator—

- (A) meets the requirements of subparagraphs (A), (B), (C), and (D) of subsection (b)(1);
- (B) is employed by a State-licensed mortgage company in the application State; and
- (C) was licensed in a State that is not the application State during the 30-day period preceding the date on which the information required under section 5104(a) of this title was submitted in connection with the application submitted to the application State.

(2) Period

The period described in this paragraph shall begin on the date on which the State-licensed loan originator submits the information required under section 5104(a) of this title in connection with the application submitted to the application State and end on the earliest of the date—

- (A) on which the State-licensed loan originator withdraws the application to be a State-licensed loan originator in the application State;
- (B) on which the application State denies, or issues a notice of intent to deny, the application;
- (C) on which the application State grants a State license; or
- (D) that is 120 days after the date on which the State-licensed loan originator submits the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

(d) Applicability

(1) Employer of loan originators

Any person employing an individual who is deemed to have temporary authority to act as a loan originator in an application State under this section shall be subject to the requirements of this chapter and to applicable State law to the same extent as if that individual was a State-licensed loan originator licensed by the application State.

(2) Engaging in mortgage loan activities

Any individual who is deemed to have temporary authority to act as a loan originator in an application State under this section and who engages in residential mortgage loan origination activities shall be subject to the requirements of this chapter and to applicable State law to the same extent as if that individual was a State-licensed loan originator licensed by the application State.

(Pub. L. 110–289, div. A, title V, §1518, as added Pub. L. 115–174, title I, §106(a), May 24, 2018, 132 Stat. 1302.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 18 months after May 24, 2018, see section 106(d) of Pub. L. 115–174, set out as an Effective Date of 2018 Amendment note under section 5112 of this title.

CHAPTER 52—EMERGENCY ECONOMIC STABILIZATION

Sec.

5201. Purposes.

5202. Definitions.

SUBCHAPTER I—TROUBLED ASSETS RELIEF PROGRAM

5211. Purchases of troubled assets.

5212. Insurance of troubled assets.

5213. Considerations.

5214. Financial Stability Oversight Board.

5215. Reports.

5216. Rights; management; sale of troubled assets; revenues and sale proceeds.

5217. Contracting procedures.

5218. Conflicts of interest.

5219. Foreclosure mitigation efforts.

5219a. Home Affordable Modification Program guidelines.

5219b. Public availability of information of Making Home Affordable Program.

5220. Assistance to homeowners.

5220a. Application of GSE conforming loan limit to mortgages assisted with TARP funds.

5220b. Multifamily mortgage resolution program.

5221. Executive compensation and corporate governance.

5222. Coordination with foreign authorities and central banks.

5223. Minimization of long-term costs and maximization of benefits for taxpayers.

5224. Market transparency.

5225. Graduated authorization to purchase.

5226. Oversight and audits.

5227. Study and report on margin authority.

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5229. Judicial review and related matters.

5230. Termination of authority.

5231. Special Inspector General for the Troubled Asset Relief Program.

5231a. Public-Private Investment Program; additional appropriations for the Special Inspector General for the Troubled Asset Relief Program.

5232. Credit reform.

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5234. Cooperation with the FBI.

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SUBCHAPTER II—BUDGET-RELATED PROVISIONS

5251. Information for congressional support agencies.

5252. Reports by the Office of Management and Budget and the Congressional Budget Office.

5253. Emergency treatment.

SUBCHAPTER III—TAX PROVISIONS

5261. Gain or loss from sale or exchange of certain preferred stock.

§5201. Purposes

The purposes of this chapter are—

- (1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States; and
- (2) to ensure that such authority and such facilities are used in a manner that—
 - (A) protects home values, college funds, retirement accounts, and life savings;
 - (B) preserves homeownership and promotes jobs and economic growth;
 - (C) maximizes overall returns to the taxpayers of the United States; and
 - (D) provides public accountability for the exercise of such authority.

(Pub. L. 110–343, div. A, §2, Oct. 3, 2008, 122 Stat. 3766.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–203, title XIII, §1301, July 21, 2010, 124 Stat. 2133, provided that: "This title [amending sections 1431, 1455, 1719, 5216, and 5225 of this title and enacting provisions set out as a note under section 1455 of this title] may be cited as the 'Pay It Back Act'."

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–22, div. A, §1(a), May 20, 2009, 123 Stat. 1632, provided that: "This division [enacting sections 1715z–25, 1735f–10, 1790e, 5220a, and 5231a of this title, amending sections 1708, 1710, 1715u, 1715z–20, 1715z–23, 1715z–24, 1735f–14, 1782, 1783, 1817, 1823, 1824, 5221, 5225, 5226, 5233, and 5241 of this title, sections 1639a, 1640, and 1641 of Title 15, Commerce and Trade, section 714 of Title 31, Money and Finance, section 3703 of Title 38, Veterans' Benefits, and sections 1437f and 1472 of Title 42, The Public Health and Welfare, repealing section 1735f–10 of this title, enacting provisions set out as notes under this section, sections 1708, 1715u, and 5220 of this title, section 1639a of Title 15, section 3703 of Title 38, and sections 1437f, 1472, and 5301 of Title 42, amending provisions set out as a note under section 5301 of Title 42, and repealing provisions set out as notes under this section and section 5220 of this title] may be cited as the 'Helping Families Save Their Homes Act of 2009'."

Pub. L. 111–22, div. A, title VII, §701, May 20, 2009, 123 Stat. 1660, provided that: "This title [amending section 1437f of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 5220 of this title and section 1437f of Title 42, and repealing provisions set out as notes under this section and section 5220 of this title] may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'."

[Section 704 of Pub. L. 111–22, as amended, formerly set out as a Termination Date of 2009 Amendment note under section 1437f of Title 42, The Public Health and Welfare, which provided that title VII of div. A of Pub. L. 111–22, and the amendments made such title, are repealed, and the requirements under such title terminated, effective Dec. 31, 2014, was repealed by Pub. L. 115–174, title III, §304(a), (c), May 24, 2018, 132 Stat. 1339, effective 30 days after May 24, 2018.]

[Section 701 of Pub. L. 111–22, provisions of law amended by such section, and any regulations promulgated pursuant to such section, as in effect on Dec. 30, 2014, restored and revived, see section 304(b) of Pub. L. 115–174, set out as a note under section 1437f of Title 42, The Public Health and Welfare.]

Pub. L. 111–15, §1, Apr. 24, 2009, 123 Stat. 1603, provided that: "This Act [amending section 5231 of this title and enacting provisions set out as a note under section 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees] may be cited as the 'Special Inspector General for the Troubled Asset Relief Program Act of 2009'."

SHORT TITLE

Pub. L. 110–343, div. A, §1(a), Oct. 3, 2008, 122 Stat. 3765, provided that: "This division [enacting this chapter, amending sections 1715z–23, 1818, 1823, and 1828 of this title, section 5315 of Title 5, Government

Organization and Employees, section 1638 of Title 15, Commerce and Trade, sections 108, 162, and 280G of Title 26, Internal Revenue Code, and sections 301, 1105, and 3101 of Title 31, Money and Finance, enacting provisions set out as notes under section 1638 of Title 15, sections 108, 162, and 280G of Title 26, and section 1105 of Title 31, and amending provisions set out as a note under section 461 of this title] may be cited as the 'Emergency Economic Stabilization Act of 2008'."

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 13501

Ex. Ord. No. 13501, Feb. 6, 2009, 74 F.R. 6983, which established the President's Economic Recovery Advisory Board, was revoked by Ex. Ord. No. 13564, §5, Jan. 31, 2011, 76 F.R. 6310, set out below.

EX. ORD. NO. 13564. ESTABLISHMENT OF THE PRESIDENT'S COUNCIL ON JOBS AND COMPETITIVENESS

Ex. Ord. No. 13564, Jan. 31, 2011, 76 F.R. 6309, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to continue to strengthen the Nation's economy and ensure the competitiveness of the United States and to create jobs, opportunity, and prosperity for the American people by ensuring the availability of non-partisan advice to the President from participants in and experts on the economy, it is hereby ordered as follows:

SECTION 1. There is hereby established within the Department of the Treasury the President's Council on Jobs and Competitiveness (PCJC). The PCJC shall consist of members appointed by the President from among distinguished citizens outside the Federal Government and shall include citizens chosen to serve as representatives of the various sectors of the economy to offer the diverse perspectives of the private sector, employers, and workers on how the Federal Government can best foster growth, competitiveness, innovation, and job creation. The members may also include citizens selected based on their expertise and experience to offer independent advice. The President shall designate a Chair from among the members. A Co-Chair of the President's Council of Advisors on Science and Technology who is not serving in the Federal Government and the Chair and Vice Chair of the President's Export Council shall serve as ex-officio members. The Treasury may provide the PCJC with a staff, as necessary.

SEC. 2. The functions of the PCJC are advisory only. The PCJC shall meet regularly and shall:

(a) solicit ideas from across the country about how to bolster the economy and the prosperity of the American people that can inform the decisionmaking of the President, and with respect to matters deemed appropriate by the President, provide information and recommendations to any executive department or agency (agency) with responsibilities related to the economy, growth, innovation, American competitiveness, or job creation;

(b) report directly to the President on the design, implementation, and evaluation of policies to promote the growth of the American economy, enhance the skills and education of Americans, maintain a stable and sound financial and banking system, create stable jobs for American workers, and improve the long-term prosperity and competitiveness of the American people; and

(c) provide analysis and information with respect to the operation, regulation, and healthy functioning of the economy and other factors that may contribute to the sustainable growth and competitiveness of American industry and the American labor force. As deemed appropriate by the President, this analysis and information shall be provided to the Chairman of the Board of Governors of the Federal Reserve System, the National Economic Council, or any agency with responsibilities related to the economy, growth, innovation, American competitiveness, or job creation.

SEC. 3. *Administration of the PCJC.* (a) All agencies and all offices within the Executive Office of the President shall cooperate with the PCJC and provide such information and assistance to the PCJC as the Chair of the PCJC may request, to the extent permitted by law.

(b) The Department of the Treasury shall provide funding and administrative support for the PCJC to the extent permitted by law and within existing appropriations.

(c) Members of the PCJC shall serve without compensation but may receive transportation expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707), consistent with the availability of funds.

SEC. 4. *Termination.* The PCJC shall terminate 2 years after the date of this order unless extended by the President.

SEC. 5. *Revocation of Executive Order 13501.* Executive Order 13501 of February 6, 2009 (Establishing the President's Economic Recovery Advisory Board), is hereby revoked.

SEC. 6. *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended ([former] 5 U.S.C. App.) [see 5 U.S.C. 1001 et seq.] (the "Act"), may apply to the PCJC, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary of the Treasury in accordance with the guidelines that have been issued by the Administrator of General Services.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§5202. Definitions

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

(1) Appropriate committees of Congress

The term "appropriate committees of Congress" means—

(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and

(B) the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives.

(2) Board

The term "Board" means the Board of Governors of the Federal Reserve System.

(3) Congressional support agencies

The term "congressional support agencies" means the Congressional Budget Office and the Joint Committee on Taxation.

(4) Corporation

The term "Corporation" means the Federal Deposit Insurance Corporation.

(5) Financial institution

The term "financial institution" means any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.

(6) Fund

The term "Fund" means the Troubled Assets Insurance Financing Fund established under section 5212 of this title.

(7) Secretary

The term "Secretary" means the Secretary of the Treasury.

(8) TARP

The term "TARP" means the Troubled Asset Relief Program established under section 5211 of this title.

(9) Troubled assets

The term "troubled assets" means—

(A) residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability; and

(B) any other financial instrument that the Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines the purchase of which is necessary to promote financial market stability, but only upon transmittal of such determination, in writing, to the appropriate committees of Congress.

(Pub. L. 110–343, div. A, §3, Oct. 3, 2008, 122 Stat. 3766.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

SUBCHAPTER I—TROUBLED ASSETS RELIEF PROGRAM

§5211. Purchases of troubled assets

(a) Offices; authority

(1) Authority

The Secretary is authorized to establish the Troubled Asset Relief Program (or "TARP") to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this chapter and the policies and procedures developed and published by the Secretary.

(2) Commencement of program

Establishment of the policies and procedures and other similar administrative requirements imposed on the Secretary by this chapter are not intended to delay the commencement of the TARP.

(3) Establishment of Treasury office

(A) In general

The Secretary shall implement any program under paragraph (1) through an Office of Financial Stability, established for such purpose within the Office of Domestic Finance of the Department of the Treasury, which office shall be headed by an Assistant Secretary of the Treasury, appointed by the President, by and with the advice and consent of the Senate, except that an interim Assistant Secretary may be appointed by the Secretary.

(B) Omitted

(b) Consultation

In exercising the authority under this section, the Secretary shall consult with the Board, the Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the National Credit Union Administration Board, and the Secretary of Housing and Urban Development.

(c) Necessary actions

The Secretary is authorized to take such actions as the Secretary deems necessary to carry out the authorities in this chapter, including, without limitation, the following:

- (1) The Secretary shall have direct hiring authority with respect to the appointment of employees to administer this chapter.
- (2) Entering into contracts, including contracts for services authorized by section 3109 of title 5.
- (3) Designating financial institutions as financial agents of the Federal Government, and such institutions shall perform all such reasonable duties related to this chapter as financial agents of the Federal Government as may be required.
- (4) In order to provide the Secretary with the flexibility to manage troubled assets in a manner designed to minimize cost to the taxpayers, establishing vehicles that are authorized, subject to supervision by the Secretary, to purchase, hold, and sell troubled assets and issue obligations.
- (5) Issuing such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this chapter.

(d) Program guidelines

Before the earlier of the end of the 2-business-day period beginning on the date of the first purchase of troubled assets pursuant to the authority under this section or the end of the 45-day period beginning on October 3, 2008, the Secretary shall publish program guidelines, including the following:

- (1) Mechanisms for purchasing troubled assets.
- (2) Methods for pricing and valuing troubled assets.
- (3) Procedures for selecting asset managers.
- (4) Criteria for identifying troubled assets for purchase.

(e) Preventing unjust enrichment

In making purchases under the authority of this chapter, the Secretary shall take such steps as may be necessary to prevent unjust enrichment of financial institutions participating in a program established under this section, including by preventing the sale of a troubled asset to the Secretary at a higher price than what the seller paid to purchase the asset. This subsection does not apply to troubled assets acquired in a merger or acquisition, or a purchase of assets from a financial institution in conservatorship or receivership, or that has initiated bankruptcy proceedings under title 11.

(Pub. L. 110–343, div. A, title I, §101, Oct. 3, 2008, 122 Stat. 3767.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (2), (c), and (e), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section is comprised of section 101 of div. A of Pub. L. 110–343. Subsec. (a)(3)(B) of section 101 of div. A of Pub. L. 110–343 amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance.

§5212. Insurance of troubled assets

(a) Authority

(1) In general

If the Secretary establishes the program authorized under section 5211 of this title, then the Secretary shall establish a program to guarantee troubled assets originated or issued prior to March 14, 2008, including mortgage-backed securities.

(2) Guarantees

In establishing any program under this subsection, the Secretary may develop guarantees of troubled assets and the associated premiums for such guarantees. Such guarantees and premiums may be determined by category or class of the troubled assets to be guaranteed.

(3) Extent of guarantee

Upon request of a financial institution, the Secretary may guarantee the timely payment of principal of, and interest on, troubled assets in amounts not to exceed 100 percent of such payments. Such guarantee may be on such terms and conditions as are determined by the Secretary, provided that such terms and conditions are consistent with the purposes of this chapter.

(b) Reports

Not later than 90 days after October 3, 2008, the Secretary shall report to the appropriate committees of Congress on the program established under subsection (a).

(c) Premiums

(1) In general

The Secretary shall collect premiums from any financial institution participating in the program established under subsection (a). Such premiums shall be in an amount that the Secretary determines necessary to meet the purposes of this chapter and to provide sufficient reserves pursuant to paragraph (3).

(2) Authority to base premiums on product risk

In establishing any premium under paragraph (1), the Secretary may provide for variations in such rates according to the credit risk associated with the particular troubled asset that is being guaranteed. The Secretary shall publish the methodology for setting the premium for a class of troubled assets together with an explanation of the appropriateness of the class of assets for participation in the program established under this section. The methodology shall ensure that the premium is consistent with paragraph (3).

(3) Minimum level

The premiums referred to in paragraph (1) shall be set by the Secretary at a level necessary to create reserves sufficient to meet anticipated claims, based on an actuarial analysis, and to ensure that taxpayers are fully protected.

(4) Adjustment to purchase authority

The purchase authority limit in section 5225 of this title shall be reduced by an amount equal to the difference between the total of the outstanding guaranteed obligations and the balance in the Troubled Assets Insurance Financing Fund.

(d) Troubled Assets Insurance Financing Fund

(1) Deposits

The Secretary shall deposit fees collected under this section into the Fund established under paragraph (2).

(2) Establishment

There is established a Troubled Assets Insurance Financing Fund that shall consist of the amounts collected pursuant to paragraph (1), and any balance in such fund shall be invested by the Secretary in United States Treasury securities, or kept in cash on hand or on deposit, as necessary.

(3) Payments from Fund

The Secretary shall make payments from amounts deposited in the Fund to fulfill obligations of the guarantees provided to financial institutions under subsection (a).

(Pub. L. 110-343, div. A, title I, §102, Oct. 3, 2008, 122 Stat. 3768.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3) and (c)(1), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5213. Considerations

In exercising the authorities granted in this chapter, the Secretary shall take into consideration—

- (1) protecting the interests of taxpayers by maximizing overall returns and minimizing the impact on the national debt;
- (2) providing stability and preventing disruption to financial markets in order to limit the impact on the economy and protect American jobs, savings, and retirement security;
- (3) the need to help families keep their homes and to stabilize communities;
- (4) in determining whether to engage in a direct purchase from an individual financial institution, the long-term viability of the financial institution in determining whether the purchase represents the most efficient use of funds under this chapter;
- (5) ensuring that all financial institutions are eligible to participate in the program, without discrimination based on size, geography, form of organization, or the size, type, and number of assets eligible for purchase under this chapter;
- (6) providing financial assistance to financial institutions, including those serving low- and moderate-income populations and other underserved communities, and that have assets less than \$1,000,000,000, that were well or adequately capitalized as of June 30, 2008, and that as a result of the devaluation of the preferred government-sponsored enterprises stock will drop one or more capital levels, in a manner sufficient to restore the financial institutions to at least an adequately capitalized level;
- (7) the need to ensure stability for United States public instrumentalities, such as counties and cities, that may have suffered significant increased costs or losses in the current market turmoil;
- (8) protecting the retirement security of Americans by purchasing troubled assets held by or on behalf of an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B) of title 26, except that such authority shall not extend to any compensation arrangements subject to section 409A of such title; and
- (9) the utility of purchasing other real estate owned and instruments backed by mortgages on multifamily properties.

(Pub. L. 110–343, div. A, title I, §103, Oct. 3, 2008, 122 Stat. 3770.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5214. Financial Stability Oversight Board

(a) Establishment

There is established the Financial Stability Oversight Board, which shall be responsible for—

- (1) reviewing the exercise of authority under a program developed in accordance with this chapter, including—

(A) policies implemented by the Secretary and the Office of Financial Stability created under sections 5211 and 5212 of this title, including the appointment of financial agents, the designation of asset classes to be purchased, and plans for the structure of vehicles used to purchase troubled assets; and

(B) the effect of such actions in assisting American families in preserving home ownership, stabilizing financial markets, and protecting taxpayers;

(2) making recommendations, as appropriate, to the Secretary regarding use of the authority under this chapter; and

(3) reporting any suspected fraud, misrepresentation, or malfeasance to the Special Inspector General for the Troubled Assets Relief Program or the Attorney General of the United States, consistent with section 535(b) of title 28.

(b) Membership

The Financial Stability Oversight Board shall be comprised of—

- (1) the Chairman of the Board of Governors of the Federal Reserve System;
- (2) the Secretary;
- (3) the Director of the Federal Housing Finance Agency;
- (4) the Chairman of the Securities Exchange Commission; and
- (5) the Secretary of Housing and Urban Development.

(c) Chairperson

The chairperson of the Financial Stability Oversight Board shall be elected by the members of the Board from among the members other than the Secretary.

(d) Meetings

The Financial Stability Oversight Board shall meet 2 weeks after the first exercise of the purchase authority of the Secretary under this chapter, and monthly thereafter.

(e) Additional authorities

In addition to the responsibilities described in subsection (a), the Financial Stability Oversight Board shall have the authority to ensure that the policies implemented by the Secretary are—

- (1) in accordance with the purposes of this chapter;
- (2) in the economic interests of the United States; and
- (3) consistent with protecting taxpayers, in accordance with section 5223(a) of this title.

(f) Credit review committee

The Financial Stability Oversight Board may appoint a credit review committee for the purpose of evaluating the exercise of the purchase authority provided under this chapter and the assets acquired through the exercise of such authority, as the Financial Stability Oversight Board determines appropriate.

(g) Reports

The Financial Stability Oversight Board shall report to the appropriate committees of Congress and the Congressional Oversight Panel established under section 5233 of this title, not less frequently than quarterly, on the matters described under subsection (a)(1).

(h) Termination

The Financial Stability Oversight Board, and its authority under this section, shall terminate on the expiration of the 15-day period beginning upon the later of—

- (1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or
- (2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110–343, div. A, title I, §104, Oct. 3, 2008, 122 Stat. 3770.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5215. Reports

(a) In general

Before the expiration of the 60-day period beginning on the date of the first exercise of the authority granted in section 5211(a) of this title, or of the first exercise of the authority granted in section 5212 of this title, whichever occurs first, and every 30-day period thereafter, the Secretary shall report to the appropriate committees of Congress, with respect to each such period—

(1) an overview of actions taken by the Secretary, including the considerations required by section 5213 of this title and the efforts under section 5219 of this title;

(2) the actual obligation and expenditure of the funds provided for administrative expenses by section 5228 of this title during such period and the expected expenditure of such funds in the subsequent period; and

(3) a detailed financial statement with respect to the exercise of authority under this chapter, including—

(A) all agreements made or renewed;

(B) all insurance contracts entered into pursuant to section 5212 of this title;

(C) all transactions occurring during such period, including the types of parties involved;

(D) the nature of the assets purchased;

(E) all projected costs and liabilities;

(F) operating expenses, including compensation for financial agents;

(G) the valuation or pricing method used for each transaction; and

(H) a description of the vehicles established to exercise such authority.

(b) Tranche reports to Congress

(1) Reports

The Secretary shall provide to the appropriate committees of Congress, at the times specified in paragraph (2), a written report, including—

(A) a description of all of the transactions made during the reporting period;

(B) a description of the pricing mechanism for the transactions;

(C) a justification of the price paid for and other financial terms associated with the transactions;

(D) a description of the impact of the exercise of such authority on the financial system, supported, to the extent possible, by specific data;

(E) a description of challenges that remain in the financial system, including any benchmarks yet to be achieved; and

(F) an estimate of additional actions under the authority provided under this chapter that may be necessary to address such challenges.

(2) Timing

The report required by this subsection shall be submitted not later than 7 days after the date on which commitments to purchase troubled assets under the authorities provided in this chapter first reach an aggregate of \$50,000,000,000 and not later than 7 days after each \$50,000,000,000 interval of such commitments is reached thereafter.

(c) Regulatory modernization report

The Secretary shall review the current state of the financial markets and the regulatory system and

submit a written report to the appropriate committees of Congress not later than April 30, 2009, analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial markets, including the over-the-counter swaps market and government-sponsored enterprises, and providing recommendations for improvement, including—

(1) recommendations regarding—

(A) whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system; and

(B) enhancement of the clearing and settlement of over-the-counter swaps; and

(2) the rationale underlying such recommendations.

(d) Sharing of information

Any report required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(e) Sunset

The reporting requirements under this section shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110–343, div. A, title I, §105, Oct. 3, 2008, 122 Stat. 3771.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3) and (b)(1)(F), (2), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5216. Rights; management; sale of troubled assets; revenues and sale proceeds

(a) Exercise of rights

The Secretary may, at any time, exercise any rights received in connection with troubled assets purchased under this chapter.

(b) Management of troubled assets

The Secretary shall have authority to manage troubled assets purchased under this chapter, including revenues and portfolio risks therefrom.

(c) Sale of troubled assets

The Secretary may, at any time, upon terms and conditions and at a price determined by the Secretary, sell, or enter into securities loans, repurchase transactions, or other financial transactions in regard to, any troubled asset purchased under this chapter.

(d) Transfer to Treasury

Revenues of, and proceeds from the sale of troubled assets purchased under this chapter, or from the sale, exercise, or surrender of warrants or senior debt instruments acquired under section 5223 of this title shall be paid into the general fund of the Treasury for reduction of the public debt.

(e) Application of sunset to troubled assets

The authority of the Secretary to hold any troubled asset purchased under this chapter before the termination date in section 5230 of this title, or to purchase or fund the purchase of a troubled asset under a commitment entered into before the termination date in section 5230 of this title, is not

subject to the provisions of section 5230 of this title.

(f) Report

The Secretary of the Treasury shall report to Congress every 6 months on amounts received and transferred to the general fund under subsection (d).

(Pub. L. 110–343, div. A, title I, §106, Oct. 3, 2008, 122 Stat. 3773; Pub. L. 111–203, title XIII, §1303, July 21, 2010, 124 Stat. 2133.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–203 added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

§5217. Contracting procedures

(a) Streamlined process

For purposes of this chapter, the Secretary may waive specific provisions of the Federal Acquisition Regulation upon a determination that urgent and compelling circumstances make compliance with such provisions contrary to the public interest. Any such determination, and the justification for such determination, shall be submitted to the Committees on Oversight and Government Reform and Financial Services of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Banking, Housing, and Urban Affairs of the Senate within 7 days.

(b) Additional contracting requirements

In any solicitation or contract where the Secretary has, pursuant to subsection (a), waived any provision of the Federal Acquisition Regulation pertaining to minority contracting, the Secretary shall develop and implement standards and procedures to ensure, to the maximum extent practicable, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in section 1441a(r)(4) [1](#) of this title), and individuals with disabilities and businesses owned by individuals with disabilities (for purposes of this subsection the term "individual with disability" has the same meaning as the term "handicapped individual" as that term is defined in section 632(f) of title 15), in that solicitation or contract, including contracts to asset managers, servicers, property managers, and other service providers or expert consultants.

(c) Eligibility of FDIC

Notwithstanding subsections (a) and (b), the Corporation—

(1) shall be eligible for, and shall be considered in, the selection of asset managers for residential mortgage loans and residential mortgage-backed securities; and

(2) shall be reimbursed by the Secretary for any services provided.

(Pub. L. 110–343, div. A, title I, §107, Oct. 3, 2008, 122 Stat. 3773; Pub. L. 111–5, div. A, title XVI, §1608, Feb. 17, 2009, 123 Stat. 304.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

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

2009—Subsec. (b). Pub. L. 111–5 inserted "and individuals with disabilities and businesses owned by individuals with disabilities (for purposes of this subsection the term 'individual with disability' has the same meaning as the term 'handicapped individual' as that term is defined in section 632(f) of title 15)," after "section 1441a(r)(4) of this title),".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

¹ [*See References in Text note below.*](#)

§5218. Conflicts of interest

(a) Standards required

The Secretary shall issue regulations or guidelines necessary to address and manage or to prohibit conflicts of interest that may arise in connection with the administration and execution of the authorities provided under this chapter, including—

- (1) conflicts arising in the selection or hiring of contractors or advisors, including asset managers;
- (2) the purchase of troubled assets;
- (3) the management of the troubled assets held;
- (4) post-employment restrictions on employees; and
- (5) any other potential conflict of interest, as the Secretary deems necessary or appropriate in the public interest.

(b) Timing

Regulations or guidelines required by this section shall be issued as soon as practicable after October 3, 2008.

(Pub. L. 110–343, div. A, title I, §108, Oct. 3, 2008, 122 Stat. 3774.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5219. Foreclosure mitigation efforts

(a) Residential mortgage loan servicing standards

(1) In general

To the extent that the Secretary acquires mortgages, mortgage backed ¹ securities, and other assets secured by residential real estate, including multifamily housing, the Secretary shall implement a plan that seeks to maximize assistance for homeowners and use the authority of the Secretary to encourage the servicers of the underlying mortgages, considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 1715z-23 of this title or other available programs to minimize foreclosures. In addition, the Secretary may use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures and to remediate lead and asbestos hazards in residential properties.

(2) Waiver of certain provisions in connection with loan modifications

The Secretary shall not be required to apply executive compensation restrictions under section 5221 of this title, or to receive warrants or debt instruments under section 5223 of this title, solely in connection with any loan modification under this section.

(b) Coordination

The Secretary shall coordinate with the Corporation, the Board (with respect to any mortgage or mortgage-backed securities or pool of securities held, owned, or controlled by or on behalf of a Federal reserve bank, as provided in section 5220(a)(1)(C) of this title), the Federal Housing Finance Agency, the Secretary of Housing and Urban Development, and other Federal Government entities that hold troubled assets to attempt to identify opportunities for the acquisition of classes of troubled assets that will improve the ability of the Secretary to improve the loan modification and restructuring process and, where permissible, to permit bona fide tenants who are current on their rent to remain in their homes under the terms of the lease. In the case of a mortgage on a residential rental property, the plan required under this section shall include protecting Federal, State, and local rental subsidies and protections, and ensuring any modification takes into account the need for operating funds to maintain decent and safe conditions at the property.

(c) Consent to reasonable loan modification requests

Upon any request arising under existing investment contracts, the Secretary shall consent, where appropriate, and considering net present value to the taxpayer, to reasonable requests for loss mitigation measures, including term extensions, rate reductions, principal write downs, increases in the proportion of loans within a trust or other structure allowed to be modified, or removal of other limitation on modifications.

(Pub. L. 110-343, div. A, title I, §109, Oct. 3, 2008, 122 Stat. 3774; Pub. L. 111-5, div. B, title VII, §7002, Feb. 17, 2009, 123 Stat. 521; Pub. L. 115-174, title III, §305, May 24, 2018, 132 Stat. 1339.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-174 inserted before period at end "and to remediate lead and asbestos hazards in residential properties".

2009—Subsec. (a). Pub. L. 111-5 designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

¹ So in original. Probably should be "mortgage-backed".

§5219a. Home Affordable Modification Program guidelines

(a) Net present value input data

The Secretary of the Treasury (in this section referred to as the "Secretary") shall revise the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) [12 U.S.C. 5201 et seq.], to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) Web-based site for NPV calculator and application

(1) NPV calculator

In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary's methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) Disclosure

Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) Application

The Secretary shall make a reasonable effort to include on such World Wide Web site a method for homeowners to apply for a mortgage modification under the Home Affordable Modification Program.

(c) Public availability of NPV methodology, computer model, and variables

The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary's methodology and computer model, including all formulae used in such computer model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all non-proprietary variables used in such net present value analysis.

(Pub. L. 111–203, title XIV, §1482, July 21, 2010, 124 Stat. 2203.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (a), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mortgage Reform and Anti-Predatory Lending Act, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Emergency

Economic Stabilization Act of 2008 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§5219b. Public availability of information of Making Home Affordable Program

(a) Revisions to Program guidelines

The Secretary of the Treasury (in this section referred to as the "Secretary") shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) [12 U.S.C. 5201 et seq.], to provide that the data being collected by the Secretary from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (b).

(b) Public availability

Data shall be made available according to the following guidelines:

(1) Not more than 14 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by submitting a report to the Congress, that shall include the following information:

(A) The number of requests for mortgage modifications under the Program that the servicer or lender has received.

(B) The number of requests for mortgage modifications under the Program that the servicer or lender has processed.

(C) The number of requests for mortgage modifications under the Program that the servicer or lender has approved.

(D) The number of requests for mortgage modifications under the Program that the servicer or lender has denied.

(2) Not more than 60 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, the Secretary shall make data tables available to the public at the individual record level. The Secretary shall issue regulations prescribing—

(A) the procedures for disclosing such data to the public; and

(B) such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any mortgage modification applicant, including the deletion or alteration of the applicant's name and identification number.

(Pub. L. 111–203, title XIV, §1483, July 21, 2010, 124 Stat. 2203.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (a), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mortgage Reform and Anti-Predatory Lending Act, and also as part of

the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Emergency Economic Stabilization Act of 2008 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§5220. Assistance to homeowners

(a) Definitions

As used in this section—

(1) the term "Federal property manager" means—

(A) the Federal Housing Finance Agency, in its capacity as conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(B) the Corporation, with respect to residential mortgage loans and mortgage-backed securities held by any bridge depository institution pursuant to section 1821(n) of this title; and

(C) the Board, with respect to any mortgage or mortgage-backed securities or pool of securities held, owned, or controlled by or on behalf of a Federal reserve bank, other than mortgages or securities held, owned, or controlled in connection with open market operations under sections 348a and 353 to 359 of this title,¹ or as collateral for an advance or discount that is not in default;

(2) the term "consumer" has the same meaning as in section 1602 of title 15;

(3) the term "insured depository institution" has the same meaning as in section 1813 of this title; and

(4) the term "servicer" has the same meaning as in section 2605(i)(2) of this title.

(b) Homeowner assistance by agencies

(1) In general

To the extent that the Federal property manager holds, owns, or controls mortgages, mortgage backed² securities, and other assets secured by residential real estate, including multifamily housing, the Federal property manager shall implement a plan that seeks to maximize assistance for homeowners and use its authority to encourage the servicers of the underlying mortgages, and considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under section 1715z–23 of this title or other available programs to minimize foreclosures.

(2) Modifications

In the case of a residential mortgage loan, modifications made under paragraph (1) may include—

(A) reduction in interest rates;

(B) reduction of loan principal; and

(C) other similar modifications.

(3) Tenant protections

In the case of mortgages on residential rental properties, modifications made under paragraph (1) shall ensure—

(A) the continuation of any existing Federal, State, and local rental subsidies and protections; and

(B) that modifications take into account the need for operating funds to maintain decent and

safe conditions at the property.

(4) Timing

Each Federal property manager shall develop and begin implementation of the plan required by this subsection not later than 60 days after October 3, 2008.

(5) Reports to Congress

Each Federal property manager shall, 60 days after October 3, 2008, and every 30 days thereafter, report to Congress specific information on the number and types of loan modifications made and the number of actual foreclosures occurring during the reporting period in accordance with this section.

(6) Consultation

In developing the plan required by this subsection, the Federal property managers shall consult with one another and, to the extent possible, utilize consistent approaches to implement the requirements of this subsection.

(c) Actions with respect to servicers

In any case in which a Federal property manager is not the owner of a residential mortgage loan, but holds an interest in obligations or pools of obligations secured by residential mortgage loans, the Federal property manager shall—

(1) encourage implementation by the loan servicers of loan modifications developed under subsection (b); and

(2) assist in facilitating any such modifications, to the extent possible.

(d) Limitation

The requirements of this section shall not supersede any other duty or requirement imposed on the Federal property managers under otherwise applicable law.

(Pub. L. 110–343, div. A, title I, §110, Oct. 3, 2008, 122 Stat. 3775.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 348a and 353 to 359 of this title, referred to in subsec. (a)(1)(C), was in the original a reference to "section 14 of the Federal Reserve Act (12 U.S.C. 353)". For classification of section 14 to the Code, see Codification note set out under section 353 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECT OF FORECLOSURE ON PREEXISTING TENANCY

Pub. L. 111–22, div. A, title VII, §702, May 20, 2009, 123 Stat. 1660, as amended by Pub. L. 111–203, title XIV, §1484(1), July 21, 2010, 124 Stat. 2204, provided that:

"(a) IN GENERAL.—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title [May 20, 2009], any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

"(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

"(2) the rights of any bona fide tenant—

"(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

"(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other

additional protections for tenants.

"(b) BONA FIDE LEASE OR TENANCY.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

"(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

"(2) the lease or tenancy was the result of an arms-length transaction; and

"(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

"(c) DEFINITION.—For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602). For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed."

[Section 704 of Pub. L. 111–22, as amended, formerly set out as a Termination Date of 2009 Amendment note under section 1437f of Title 42, The Public Health and Welfare, which provided that title VII of div. A of Pub. L. 111–22, and the amendments made such title, are repealed, and the requirements under such title terminated, effective Dec. 31, 2014, was repealed by Pub. L. 115–174, title III, §304(a), (c), May 24, 2018, 132 Stat. 1339, effective 30 days after May 24, 2018.]

[Section 702 of Pub. L. 111–22, provisions of law amended by such section, and any regulations promulgated pursuant to such section, as in effect on Dec. 30, 2014, restored and revived, see section 304(b) of Pub. L. 115–174, set out as a note under section 1437f of Title 42, The Public Health and Welfare.]

¹ [*See References in Text note below.*](#)

² [*So in original. Probably should be "mortgage-backed".*](#)

§5220a. Application of GSE conforming loan limit to mortgages assisted with TARP funds

In making any assistance available to prevent and mitigate foreclosures on residential properties, including any assistance for mortgage modifications, using any amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5211 et seq.], the Secretary shall provide that the limitation on the maximum original principal obligation of a mortgage that may be modified, refinanced, made, guaranteed, insured, or otherwise assisted, using such amounts shall not be less than the dollar amount limitation on the maximum original principal obligation of a mortgage that may be purchased by the Federal Home Loan Mortgage Corporation that is in effect, at the time that the mortgage is modified, refinanced, made, guaranteed, insured, or otherwise assisted using such amounts, for the area in which the property involved in the transaction is located.

(Pub. L. 111–22, div. A, title II, §205, May 20, 2009, 123 Stat. 1654.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in text, is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765. Title I of the Act is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Helping Families Save Their Homes Act of 2009, and not as part of the Emergency Economic Stabilization Act of 2008 which comprises this chapter.

§5220b. Multifamily mortgage resolution program

(a) Establishment

The Secretary of Housing and Urban Development shall develop a program under this subsection to ensure the protection of current and future tenants and at-risk multifamily properties, where feasible, based on criteria that may include—

(1) creating sustainable financing of such properties, that may take into consideration such factors as—

- (A) the rental income generated by such properties; and
- (B) the preservation of adequate operating reserves;

(2) maintaining the level of Federal, State, and city subsidies in effect as of July 21, 2010;

(3) providing funds for rehabilitation; and

(4) facilitating the transfer of such properties, when appropriate and with the agreement of owners, to responsible new owners and ensuring affordability of such properties.

(b) Coordination

The Secretary of Housing and Urban Development may, in carrying out the program developed under this section, coordinate with the Secretary of the Treasury, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and any other Federal Government agency that the Secretary considers appropriate.

(c) Definition

For purposes of this section, the term "multifamily properties" means a residential structure that consists of 5 or more dwelling units.

(d) Prevention of qualification for criminal applicants

(1) In general

No person shall be eligible to begin receiving assistance from the Making Home Affordable Program authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), or any other mortgage assistance program authorized or funded by that Act, on or after 60 days after July 21, 2010, if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years, of any one of the following:

- (A) Felony larceny, theft, fraud, or forgery.
- (B) Money laundering.
- (C) Tax evasion.

(2) Procedures

The Secretary shall establish procedures to ensure compliance with this subsection.

(3) Report

The Secretary shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the implementation of this provision. The report shall also describe the steps taken to implement this subsection.

(Pub. L. 111–203, title XIV, §1481, July 21, 2010, 124 Stat. 2202.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (d)(1), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mortgage Reform and Anti-Predatory Lending Act, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Emergency

Economic Stabilization Act of 2008 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

DEFINITIONS

For definitions of terms contained in this section, see section 5301 of this title.

§5221. Executive compensation and corporate governance

(a) Definitions

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

(1) Senior executive officer

The term "senior executive officer" means an individual who is 1 of the top 5 most highly paid executives of a public company, whose compensation is required to be disclosed pursuant to the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and any regulations issued thereunder, and non-public company counterparts.

(2) Golden parachute payment

The term "golden parachute payment" means any payment to a senior executive officer for departure from a company for any reason, except for payments for services performed or benefits accrued.

(3) TARP recipient

The term "TARP recipient" means any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.

(4) Commission

The term "Commission" means the Securities and Exchange Commission.

(5) Period in which obligation is outstanding; rule of construction

For purposes of this section, the period in which any obligation arising from financial assistance provided under the TARP remains outstanding does not include any period during which the Federal Government only holds warrants to purchase common stock of the TARP recipient.

(b) Executive compensation and corporate governance

(1) Establishment of standards

During the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, each TARP recipient shall be subject to—

- (A) the standards established by the Secretary under this section; and
- (B) the provisions of section 162(m)(5) of title 26, as applicable.

(2) Standards required

The Secretary shall require each TARP recipient to meet appropriate standards for executive compensation and corporate governance.

(3) Specific requirements

The standards established under paragraph (2) shall include the following:

- (A) Limits on compensation that exclude incentives for senior executive officers of the TARP recipient to take unnecessary and excessive risks that threaten the value of such recipient during

the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

(B) A provision for the recovery by such TARP recipient of any bonus, retention award, or incentive compensation paid to a senior executive officer and any of the next 20 most highly-compensated employees of the TARP recipient based on statements of earnings, revenues, gains, or other criteria that are later found to be materially inaccurate.

(C) A prohibition on such TARP recipient making any golden parachute payment to a senior executive officer or any of the next 5 most highly-compensated employees of the TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

(D)(i) A prohibition on such TARP recipient paying or accruing any bonus, retention award, or incentive compensation during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, except that any prohibition developed under this paragraph shall not apply to the payment of long-term restricted stock by such TARP recipient, provided that such long-term restricted stock—

(I) does not fully vest during the period in which any obligation arising from financial assistance provided to that TARP recipient remains outstanding;

(II) has a value in an amount that is not greater than 1/3 of the total amount of annual compensation of the employee receiving the stock; and

(III) is subject to such other terms and conditions as the Secretary may determine is 1 in the public interest.

(ii) The prohibition required under clause (i) shall apply as follows:

(I) For any financial institution that received financial assistance provided under the TARP equal to less than \$25,000,000, the prohibition shall apply only to the most highly compensated employee of the financial institution.

(II) For any financial institution that received financial assistance provided under the TARP equal to at least \$25,000,000, but less than \$250,000,000, the prohibition shall apply to at least the 5 most highly-compensated employees of the financial institution, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

(III) For any financial institution that received financial assistance provided under the TARP equal to at least \$250,000,000, but less than \$500,000,000, the prohibition shall apply to the senior executive officers and at least the 10 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

(IV) For any financial institution that received financial assistance provided under the TARP equal to \$500,000,000 or more, the prohibition shall apply to the senior executive officers and at least the 20 next most highly-compensated employees, or such higher number as the Secretary may determine is in the public interest with respect to any TARP recipient.

(iii) The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary.

(E) A prohibition on any compensation plan that would encourage manipulation of the reported earnings of such TARP recipient to enhance the compensation of any of its employees.

(F) A requirement for the establishment of a Board Compensation Committee that meets the requirements of subsection (c).

(4) Certification of compliance

The chief executive officer and chief financial officer (or the equivalents thereof) of each TARP recipient shall provide a written certification of compliance by the TARP recipient with the

requirements of this section—

(A) in the case of a TARP recipient, the securities of which are publicly traded, to the Securities and Exchange Commission, together with annual filings required under the securities laws; and

(B) in the case of a TARP recipient that is not a publicly traded company, to the Secretary.

(c) Board Compensation Committee

(1) Establishment of Board required

Each TARP recipient shall establish a Board Compensation Committee, comprised entirely of independent directors, for the purpose of reviewing employee compensation plans.

(2) Meetings

The Board Compensation Committee of each TARP recipient shall meet at least semiannually to discuss and evaluate employee compensation plans in light of an assessment of any risk posed to the TARP recipient from such plans.

(3) Compliance by non-SEC registrants

In the case of any TARP recipient, the common or preferred stock of which is not registered pursuant to the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and that has received \$25,000,000 or less of TARP assistance, the duties of the Board Compensation Committee under this subsection shall be carried out by the board of directors of such TARP recipient.

(d) Limitation on luxury expenditures

The board of directors of any TARP recipient shall have in place a company-wide policy regarding excessive or luxury expenditures, as identified by the Secretary, which may include excessive expenditures on—

- (1) entertainment or events;
- (2) office and facility renovations;
- (3) aviation or other transportation services; or
- (4) other activities or events that are not reasonable expenditures for staff development, reasonable performance incentives, or other similar measures conducted in the normal course of the business operations of the TARP recipient.

(e) Shareholder approval of executive compensation

(1) Annual shareholder approval of executive compensation

Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

(2) Nonbinding vote

A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

(3) Deadline for rulemaking

Not later than 1 year after February 17, 2009, the Commission shall issue any final rules and regulations required by this subsection.

(f) Review of prior payments to executives

(1) In general

The Secretary shall review bonuses, retention awards, and other compensation paid to the senior executive officers and the next 20 most highly-compensated employees of each entity receiving TARP assistance before February 17, 2009, to determine whether any such payments were inconsistent with the purposes of this section or the TARP or were otherwise contrary to the public interest.

(2) Negotiations for reimbursement

If the Secretary makes a determination described in paragraph (1), the Secretary shall seek to negotiate with the TARP recipient and the subject employee for appropriate reimbursements to the Federal Government with respect to compensation or bonuses.

(g) No impediment to withdrawal by TARP recipients

Subject to consultation with the appropriate Federal banking agency (as that term is defined in section 1813 of this title), if any, the Secretary shall permit a TARP recipient to repay any assistance previously provided under the TARP to such financial institution, without regard to whether the financial institution has replaced such funds from any other source or to any waiting period, and when such assistance is repaid, the Secretary, at the market price, may liquidate warrants associated with such assistance.

(h) Regulations

The Secretary shall promulgate regulations to implement this section.

(Pub. L. 110–343, div. A, title I, §111, Oct. 3, 2008, 122 Stat. 3776; Pub. L. 111–5, div. B, title VII, §7001, Feb. 17, 2009, 123 Stat. 516; Pub. L. 111–22, div. A, title IV, §403, May 20, 2009, 123 Stat. 1658.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsecs. (a)(1) and (c)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2009—Pub. L. 111–5 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to applicability of requirements, direct purchases of troubled assets, auction purchases of troubled assets, and sunset of provisions, respectively.

Subsec. (g). Pub. L. 111–22 substituted ", at the market price, may liquidate warrants associated with such assistance" for "shall liquidate warrants associated with such assistance at the current market price".

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

§5222. Coordination with foreign authorities and central banks

The Secretary shall coordinate, as appropriate, with foreign financial authorities and central banks to work toward the establishment of similar programs by such authorities and central banks. To the extent that such foreign financial authorities or banks hold troubled assets as a result of extending financing to financial institutions that have failed or defaulted on such financing, such troubled assets qualify for purchase under section 5211 of this title.

(Pub. L. 110–343, div. A, title I, §112, Oct. 3, 2008, 122 Stat. 3777.)

§5223. Minimization of long-term costs and maximization of benefits for taxpayers

(a) Long-term costs and benefits

(1) Minimizing negative impact

The Secretary shall use the authority under this chapter in a manner that will minimize any potential long-term negative impact on the taxpayer, taking into account the direct outlays, potential long-term returns on assets purchased, and the overall economic benefits of the program, including economic benefits due to improvements in economic activity and the availability of credit, the impact on the savings and pensions of individuals, and reductions in losses to the Federal Government.

(2) Authority

In carrying out paragraph (1), the Secretary shall—

(A) hold the assets to maturity or for resale for and until such time as the Secretary determines that the market is optimal for selling such assets, in order to maximize the value for taxpayers; and

(B) sell such assets at a price that the Secretary determines, based on available financial analysis, will maximize return on investment for the Federal Government.

(3) Private sector participation

The Secretary shall encourage the private sector to participate in purchases of troubled assets, and to invest in financial institutions, consistent with the provisions of this section.

(b) Use of market mechanisms

In making purchases under this chapter, the Secretary shall—

(1) make such purchases at the lowest price that the Secretary determines to be consistent with the purposes of this chapter; and

(2) maximize the efficiency of the use of taxpayer resources by using market mechanisms, including auctions or reverse auctions, where appropriate.

(c) Direct purchases

If the Secretary determines that use of a market mechanism under subsection (b) is not feasible or appropriate, and the purposes of the chapter are best met through direct purchases from an individual financial institution, the Secretary shall pursue additional measures to ensure that prices paid for assets are reasonable and reflect the underlying value of the asset.

(d) Conditions on purchase authority for warrants and debt instruments

(1) In general

The Secretary may not purchase, or make any commitment to purchase, any troubled asset under the authority of this chapter, unless the Secretary receives from the financial institution from which such assets are to be purchased—

(A) in the case of a financial institution, the securities of which are traded on a national securities exchange, a warrant giving the right to the Secretary to receive nonvoting common stock or preferred stock in such financial institution, or voting stock with respect to which, ¹ the Secretary agrees not to exercise voting power, as the Secretary determines appropriate; or

(B) in the case of any financial institution other than one described in subparagraph (A), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in paragraph (2)(C).

(2) Terms and conditions

The terms and conditions of any warrant or senior debt instrument required under paragraph (1) shall meet the following requirements:

(A) Purposes

Such terms and conditions shall, at a minimum, be designed—

(i) to provide for reasonable participation by the Secretary, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity security, or a reasonable interest

rate premium, in the case of a debt instrument; and

(ii) to provide additional protection for the taxpayer against losses from sale of assets by the Secretary under this chapter and the administrative expenses of the TARP.

(B) Authority to sell, exercise, or surrender

The Secretary may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection, based on the conditions established under subparagraph (A).

(C) Conversion

The warrant shall provide that if, after the warrant is received by the Secretary under this subsection, the financial institution that issued the warrant is no longer listed or traded on a national securities exchange or securities association, as described in paragraph (1)(A), such warrants shall convert to senior debt, or contain appropriate protections for the Secretary to ensure that the Treasury is appropriately compensated for the value of the warrant, in an amount determined by the Secretary.

(D) Protections

Any warrant representing securities to be received by the Secretary under this subsection shall contain anti-dilution provisions of the type employed in capital market transactions, as determined by the Secretary. Such provisions shall protect the value of the securities from market transactions such as stock splits, stock distributions, dividends, and other distributions, mergers, and other forms of reorganization or recapitalization.

(E) Exercise price

The exercise price for any warrant issued pursuant to this subsection shall be set by the Secretary, in the interest of the taxpayers.

(F) Sufficiency

The financial institution shall guarantee to the Secretary that it has authorized shares of nonvoting stock available to fulfill its obligations under this subsection. Should the financial institution not have sufficient authorized shares, including preferred shares that may carry dividend rights equal to a multiple number of common shares, the Secretary may, to the extent necessary, accept a senior debt note in an amount, and on such terms as will compensate the Secretary with equivalent value, in the event that a sufficient shareholder vote to authorize the necessary additional shares cannot be obtained.

(3) Exceptions

(A) De minimis

The Secretary shall establish de minimis exceptions to the requirements of this subsection, based on the size of the cumulative transactions of troubled assets purchased from any one financial institution for the duration of the program, at not more than \$100,000,000.

(B) Other exceptions

The Secretary shall establish an exception to the requirements of this subsection and appropriate alternative requirements for any participating financial institution that is legally prohibited from issuing securities and debt instruments, so as not to allow circumvention of the requirements of this section.

(Pub. L. 110–343, div. A, title I, §113, Oct. 3, 2008, 122 Stat. 3777.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

¹ So in original. The comma probably should not appear.

§5224. Market transparency

(a) Pricing

To facilitate market transparency, the Secretary shall make available to the public, in electronic form, a description, amounts, and pricing of assets acquired under this chapter, within 2 business days of purchase, trade, or other disposition.

(b) Disclosure

For each type of financial institutions ¹ that sells troubled assets to the Secretary under this chapter, the Secretary shall determine whether the public disclosure required for such financial institutions with respect to off-balance sheet transactions, derivatives instruments, contingent liabilities, and similar sources of potential exposure is adequate to provide to the public sufficient information as to the true financial position of the institutions. If such disclosure is not adequate for that purpose, the Secretary shall make recommendations for additional disclosure requirements to the relevant regulators.

(Pub. L. 110–343, div. A, title I, §114, Oct. 3, 2008, 122 Stat. 3780.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

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

§5225. Graduated authorization to purchase

(a) Authority

The authority of the Secretary to purchase troubled assets under this chapter shall be limited as follows:

(1) Effective upon October 3, 2008, such authority shall be limited to \$250,000,000,000 outstanding at any one time.

(2) If at any time, the President submits to the Congress a written certification that the Secretary needs to exercise the authority under this paragraph, effective upon such submission, such authority shall be limited to \$350,000,000,000 outstanding at any one time.

(3) If, at any time after the certification in paragraph (2) has been made, the President transmits to the Congress a written report detailing the plan of the Secretary to exercise the authority under this paragraph, unless there is enacted, within 15 calendar days of such transmission, a joint resolution described in subsection (c), effective upon the expiration of such 15-day period, such authority shall be limited to \$475,000,000,000.

(4) For purposes of this subsection, the amount of authority considered to be exercised by the Secretary shall not be reduced by—

(A) any amounts received by the Secretary before, on, or after July 21, 2010, from repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authorities granted to the Secretary under this chapter;

(B) any amounts committed for any guarantees pursuant to the TARP that became or become uncommitted; or

(C) any losses realized by the Secretary.

(5) No authority under this chapter may be used to incur any obligation for a program or initiative that was not initiated prior to June 25, 2010.

(b) Aggregation of purchase prices

The amount of troubled assets purchased by the Secretary outstanding at any one time shall be determined for purposes of the dollar amount limitations under subsection (a) by aggregating the purchase prices of all troubled assets held.

(c) Joint resolution of disapproval

(1) In general

Notwithstanding any other provision of this section, the Secretary may not exercise any authority to make purchases under this chapter with regard to any amount in excess of \$350,000,000,000 previously obligated, as described in this section if, within 15 calendar days after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3), there is enacted into law a joint resolution disapproving the plan of the Secretary with respect to such additional amount.

(2) Contents of joint resolution

For the purpose of this section, the term "joint resolution" means only a joint resolution—

(A) that is introduced not later than 3 calendar days after the date on which the report of the plan of the Secretary referred to in subsection (a)(3) is received by Congress;

(B) which does not have a preamble;

(C) the title of which is as follows: "Joint resolution relating to the disapproval of obligations under the Emergency Economic Stabilization Act of 2008"; and

(D) the matter after the resolving clause of which is as follows: "That Congress disapproves the obligation of any amount exceeding the amounts obligated as described in paragraphs (1) and (2) of section 115(a) of the Emergency Economic Stabilization Act of 2008.".

(d) Fast track consideration in House of Representatives

(1) Reconvening

Upon receipt of a report under subsection (a)(3), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such report; ¹

(2) Reporting and discharge

Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the report described in subsection (a)(3). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(3) Proceeding to consideration

After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after Congress receives the report described in subsection (a)(3), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(4) Consideration

The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(e) Fast track consideration in Senate

(1) Reconvening

Upon receipt of a report under subsection (a)(3), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

(2) Placement on calendar

Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(3) Floor consideration

(A) In general

Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3) and ending on the 6th day after the date on which Congress receives a report of the plan of the Secretary described in subsection (a)(3) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(B) Debate

Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(C) Vote on passage

The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(D) Rulings of the chair on procedure

Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(f) Rules relating to Senate and House of Representatives

(1) Coordination with action by other House

If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(A) The joint resolution of the other House shall not be referred to a committee.

(B) With respect to a joint resolution of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on passage shall be on the joint resolution of the other House.

(2) Treatment of joint resolution of other House

If one House fails to introduce or consider a joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

(3) Treatment of companion measures

If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(4) Consideration after passage

(A) In general

If Congress passes a joint resolution, the period beginning on the date the President is presented with the joint resolution and ending on the date the President takes action with respect to the joint resolution shall be disregarded in computing the 15-calendar day period described in subsection (a)(3).

(B) Vetoes

If the President vetoes the joint resolution—

(i) the period beginning on the date the President vetoes the joint resolution and ending on the date the Congress receives the veto message with respect to the joint resolution shall be disregarded in computing the 15-calendar day period described in subsection (a)(3), and

(ii) debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(5) Rules of House of Representatives and Senate

This subsection and subsections (c), (d), and (e) are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(Pub. L. 110–343, div. A, title I, §115, Oct. 3, 2008, 122 Stat. 3780; Pub. L. 111–22, div. A, title II, §202(b), title IV, §402(f), May 20, 2009, 123 Stat. 1643, 1658; Pub. L. 111–203, title XIII, §1302, July 21, 2010, 124 Stat. 2133.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(1), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (c)(2)(C), (D), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. Paragraphs (1) and (2) of section 115(a) of the Act are classified to paragraphs (1) and (2), respectively, of subsec. (a) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111–203, §1302(1)(B), struck out "outstanding at any one time" before the period at the end.

Pub. L. 111–203, §1302(1)(A), which directed substitution of "\$475,000,000,000" for ", \$700,000,000,000, as such amount is reduced by \$1,259,000,000, as such amount is reduced by \$1,244,000,000", was executed by making the substitution for "\$700,000,000,000, as such amount is reduced by \$1,259,000,000,, as such amount is reduced by \$1,244,000,000," to reflect the probable intent of Congress.

Subsec. (a)(4), (5). Pub. L. 111–203, §1302(2), added pars. (4) and (5).

2009—Subsec. (a)(3). Pub. L. 111–22, §402(f), inserted ", as such amount is reduced by \$1,259,000,000," after "\$700,000,000,000".

Pub. L. 111–22, §202(b), inserted of ", as such amount is reduced by \$1,244,000,000," after "\$700,000,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

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

§5226. Oversight and audits

(a) Comptroller General oversight

(1) Scope of oversight

The Comptroller General of the United States shall, upon establishment of the troubled assets relief program ¹ under this chapter (in this section referred to as the "TARP"), commence ongoing oversight of the activities and performance of the TARP and of any agents and representatives of the TARP (as related to the agent or representative's activities on behalf of or under the authority of the TARP), including vehicles established by the Secretary under this chapter. The subjects of such oversight shall include the following:

(A) The performance of the TARP in meeting the purposes of this chapter, particularly those involving—

- (i) foreclosure mitigation;
- (ii) cost reduction;
- (iii) whether it has provided stability or prevented disruption to the financial markets or the banking system;
- (iv) whether it has protected taxpayers; and
- (v) public accountability for the exercise of such authority, including with respect to actions taken by those entities participating in programs established under this chapter.

(B) The financial condition and internal controls of the TARP, its representatives and agents.

(C) Characteristics of transactions and commitments entered into, including transaction type, frequency, size, prices paid, and all other relevant terms and conditions, and the timing, duration and terms of any future commitments to purchase assets.

(D) Characteristics and disposition of acquired assets, including type, acquisition price, current market value, sale prices and terms, and use of proceeds from sales.

(E) Efficiency of the operations of the TARP in the use of appropriated funds.

(F) Compliance with all applicable laws and regulations by the TARP, its agents and representatives.

(G) The efforts of the TARP to prevent, identify, and minimize conflicts of interest involving any agent or representative performing activities on behalf of or under the authority of the TARP.

(H) The efficacy of contracting procedures pursuant to section 5217(b) of this title, including, as applicable, the efforts of the TARP in evaluating proposals for inclusion and contracting to the maximum extent possible of minorities (as such term is defined in 1204(c) ² of the Financial Institutions Reform, Recovery, and Enhancement Act of 1989 ³ (12 U.S.C. 1811 note), women, and minority- and women-owned businesses, including ascertaining and reporting the total amount of fees paid and other value delivered by the TARP to all of its agents and representatives, and such amounts paid or delivered to such firms that are minority- and women-owned businesses (as such terms are defined in section 1441a ³ of this title).

(2) Conduct and administration of oversight

(A) Definition

In this paragraph, the term "governmental unit" has the meaning given under section 101(27) of title 11, and does not include any insured depository institution as defined under section 1813 of this title.

(B) GAO presence

The Secretary shall provide the Comptroller General with appropriate space and facilities in the Department of the Treasury as necessary to facilitate oversight of the TARP until the termination date established in section 5230 ³ of this title.

(C) Access to records

(i) In general

Notwithstanding any other provision of law, and for purposes of reviewing the performance of the TARP, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the TARP, any entity established by the Secretary under this chapter, any entity that is established by a Federal reserve bank and receives funding from the TARP, or any entity (other than a governmental unit) participating in a program established under the authority of this chapter, and to the officers, employees, directors, independent public accountants, financial advisors and any and all other agents and representatives thereof, at such time as the Comptroller General may request.

(ii) Verification

The Comptroller General shall be afforded full facilities for verifying transactions with the balances or securities held by, among others, depositories, fiscal agents, and custodians.

(iii) Copies

The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General determines appropriate.

(D) Agreement by entities

Each contract, term sheet, or other agreement between the Secretary or the TARP (or any TARP vehicle, officer, director, employee, independent public accountant, financial advisor, or other TARP agent or representative) and an entity (other than a governmental unit) participating in a program established under this chapter shall provide for access by the Comptroller General in accordance with this section.

(E) Restriction on public disclosure

(i) In general

The Comptroller General may not publicly disclose proprietary or trade secret information obtained under this section.

(ii) Exception for congressional committees

This subparagraph does not limit disclosures to congressional committees or members thereof having jurisdiction over a private or public entity referred to under subparagraph (C).

(iii) Rule of construction

Nothing in this section shall be construed to alter or amend the prohibitions against the disclosure of trade secrets or other information prohibited by section 1905 of title 18, section 714(c) of title 31, or other applicable provisions of law.

(F) Reimbursement of costs

The Treasury shall reimburse the Government Accountability Office for the full cost of any such oversight activities as billed therefor by the Comptroller General of the United States. Such reimbursements shall be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received and remain available until expended.

(3) Reporting

The Comptroller General shall submit reports of findings under this section annually to the appropriate committees of Congress, and the Special Inspector General for the Troubled Asset Relief Program established under this chapter on the activities and performance of the TARP. The Comptroller may also submit special reports under this subsection as warranted by the findings of its oversight activities.

(b) Comptroller General audits

(1) Annual audit

The TARP shall annually prepare and issue to the appropriate committees of Congress and the public audited financial statements prepared in accordance with generally accepted accounting principles, and the Comptroller General shall annually audit such statements in accordance with generally accepted auditing standards. The Treasury shall reimburse the Government Accountability Office for the full cost of any such audit as billed therefor by the Comptroller General. Such reimbursements shall be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received and remain available until expended. The financial statements prepared under this paragraph shall be on the fiscal year basis prescribed under section 1102 of title 31.

(2) Authority

The Comptroller General may audit the programs, activities, receipts, expenditures, and financial transactions of the TARP and any agents and representatives of the TARP (as related to the agent or representative's activities on behalf of or under the authority of the TARP), including vehicles established by the Secretary under this chapter.

(3) Corrective responses to audit problems

The TARP shall—

(A) take action to address deficiencies identified by the Comptroller General or other auditor engaged by the TARP; or

(B) certify to appropriate committees of Congress that no action is necessary or appropriate.

(c) Internal control

(1) Establishment

The TARP shall establish and maintain an effective system of internal control, consistent with the standards prescribed under section 3512(c) of title 31, that provides reasonable assurance of—

(A) the effectiveness and efficiency of operations, including the use of the resources of the TARP;

(B) the reliability of financial reporting, including financial statements and other reports for internal and external use; and

(C) compliance with applicable laws and regulations.

(2) Reporting

In conjunction with each annual financial statement issued under this section, the TARP shall—

(A) state the responsibility of management for establishing and maintaining adequate internal control over financial reporting; and

(B) state its assessment, as of the end of the most recent year covered by such financial statement of the TARP, of the effectiveness of the internal control over financial reporting.

(d) Sharing of information

Any report or audit required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(e) Termination

Any oversight, reporting, or audit requirement under this section shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title.

(Pub. L. 110–343, div. A, title I, §116, Oct. 3, 2008, 122 Stat. 3783; Pub. L. 111–22, div. A, title VI, §601, May 20, 2009, 123 Stat. 1659; Pub. L. 114–301, §3(a), Dec. 16, 2016, 130 Stat. 1514.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(2), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Section 1204 of the Financial Institutions Reform, Recovery, and Enhancement Act of 1989, referred to in subsec. (a)(1)(H), probably means section 1204 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, which is set out as a note under section 1811 of this title.

Section 1441a of this title, referred to in subsec. (a)(1)(H), was repealed by Pub. L. 111–203, title III, §364(b), July 21, 2010, 124 Stat. 1555.

Section 5230 of this title, referred to in subsec. (a)(2)(B), was so in the original, but probably should have been a reference to section 120 of title I of div. A of Pub. L. 110–343, which is classified to section 5230 of this title.

AMENDMENTS

2016—Subsec. (a)(3). Pub. L. 114–301 substituted "annually" for "regularly and no less frequently than once every 60 days,".

2009—Subsec. (a)(1)(A)(v). Pub. L. 111–22, §601(1), added cl. (v).

Subsec. (a)(2). Pub. L. 111–22, §601(2), added subpars. (A) to (E), redesignated former subpar. (C) as (F), and struck out former subpars. (A) and (B) which related to GAO presence and access to records, respectively.

¹ *So in original. Probably should be "Troubled Asset Relief Program".*

² *So in original. Probably should be preceded by "section".*

³ *See References in Text note below.*

§5227. Study and report on margin authority

(a) Study

The Comptroller General shall undertake a study to determine the extent to which leverage and sudden deleveraging of financial institutions was a factor behind the current financial crisis.

(b) Content

The study required by this section shall include—

- (1) an analysis of the roles and responsibilities of the Board, the Securities and Exchange Commission, the Secretary, and other Federal banking agencies with respect to monitoring leverage and acting to curtail excessive leveraging;
- (2) an analysis of the authority of the Board to regulate leverage, including by setting margin requirements, and what process the Board used to decide whether or not to use its authority;
- (3) an analysis of any usage of the margin authority by the Board; and
- (4) recommendations for the Board and appropriate committees of Congress with respect to the existing authority of the Board.

(c) Report

Not later than June 1, 2009, the Comptroller General shall complete and submit a report on the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(d) Sharing of information

Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(Pub. L. 110–343, div. A, title I, §117, Oct. 3, 2008, 122 Stat. 3786.)

§5228. Funding

For the purpose of the authorities granted in this chapter, and for the costs of administering those authorities, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include actions authorized by this chapter, including the payment of administrative expenses. Any funds expended or obligated by the Secretary for actions authorized by this chapter, including the payment of administrative expenses, shall be deemed appropriated at the time of such expenditure or obligation.

(Pub. L. 110–343, div. A, title I, §118, Oct. 3, 2008, 122 Stat. 3786.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5229. Judicial review and related matters

(a) Judicial review

(1) Standard

Actions by the Secretary pursuant to the authority of this chapter shall be subject to chapter 7 of title 5, including that such final actions shall be held unlawful and set aside if found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

(2) Limitations on equitable relief

(A) Injunction

No injunction or other form of equitable relief shall be issued against the Secretary for

actions pursuant to section ¹ 5211, 5212, 5216, and 5219 of this title, other than to remedy a violation of the Constitution.

(B) Temporary restraining order

Any request for a temporary restraining order against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court within 3 days of the date of the request.

(C) Preliminary injunction

Any request for a preliminary injunction against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court on an expedited basis consistent with the provisions of rule 65(b)(3) of the Federal Rules of Civil Procedure, or any successor thereto.

(D) Permanent injunction

Any request for a permanent injunction against the Secretary for actions pursuant to this chapter shall be considered and granted or denied by the court on an expedited basis. Whenever possible, the court shall consolidate trial on the merits with any hearing on a request for a preliminary injunction, consistent with the provisions of rule 65(a)(2) of the Federal Rules of Civil Procedure, or any successor thereto.

(3) Limitation on actions by participating companies

No action or claims may be brought against the Secretary by any person that divests its assets with respect to its participation in a program under this chapter, except as provided in paragraph (1), other than as expressly provided in a written contract with the Secretary.

(4) Stays

Any injunction or other form of equitable relief issued against the Secretary for actions pursuant to section ¹ 5211, 5212, 5216, and 5219 of this title, shall be automatically stayed. The stay shall be lifted unless the Secretary seeks a stay from a higher court within 3 calendar days after the date on which the relief is issued.

(b) Related matters

(1) Treatment of homeowners' rights

The terms of any residential mortgage loan that is part of any purchase by the Secretary under this chapter shall remain subject to all claims and defenses that would otherwise apply, notwithstanding the exercise of authority by the Secretary under this chapter.

(2) Savings clause

Any exercise of the authority of the Secretary pursuant to this chapter shall not impair the claims or defenses that would otherwise apply with respect to persons other than the Secretary. Except as established in any contract, a servicer of pooled residential mortgages owes any ² duty to determine whether the net present value of the payments on the loan, as modified, is likely to be greater than the anticipated net recovery that would result from foreclosure to all investors and holders of beneficial interests in such investment, but not to any individual or groups of investors or beneficial interest holders, and shall be deemed to act in the best interests of all such investors or holders of beneficial interests if the servicer agrees to or implements a modification or workout plan when the servicer takes reasonable loss mitigation actions, including partial payments.

(Pub. L. 110–343, div. A, title I, §119, Oct. 3, 2008, 122 Stat. 3787.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic

Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

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

¹ *So in original. Probably should be "sections".*

² *So in original. Probably should be "a".*

§5230. Termination of authority

(a) Termination

The authorities provided under sections 5211(a), excluding section 5211(a)(3), and 5212 of this title shall terminate on December 31, 2009.

(b) Extension upon certification

The Secretary, upon submission of a written certification to Congress, may extend the authority provided under this chapter to expire not later than 2 years from October 3, 2008. Such certification shall include a justification of why the extension is necessary to assist American families and stabilize financial markets, as well as the expected cost to the taxpayers for such an extension. Notwithstanding the foregoing, the Secretary may further extend the authority provided under this chapter to expire on December 31, 2017, provided that (1) any such extension shall apply only with respect to current program participants in the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, and (2) funds obligated following such extension shall not exceed \$2,000,000,000.

(Pub. L. 110–343, div. A, title I, §120, Oct. 3, 2008, 122 Stat. 3788; Pub. L. 114–113, div. O, title VII, §709(a), Dec. 18, 2015, 129 Stat. 3030.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

AMENDMENTS

2015—Subsec. (b). Pub. L. 114–113 inserted at end "Notwithstanding the foregoing, the Secretary may further extend the authority provided under this chapter to expire on December 31, 2017, provided that (1) any such extension shall apply only with respect to current program participants in the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets, and (2) funds obligated following such extension shall not exceed \$2,000,000,000."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF THE MAKING HOME AFFORDABLE INITIATIVE

Pub. L. 114–113, div. O, title VII, §709(b), Dec. 18, 2015, 129 Stat. 3030, provided that:

"(1) **IN GENERAL.**—The Making Home Affordable initiative of the Secretary of the Treasury, as authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), shall terminate on December 31, 2016.

"(2) **APPLICABILITY.**—Paragraph (1) shall not apply to any loan modification application made under the Home Affordable Modification Program under the Making Home Affordable initiative of the Secretary of the Treasury, as authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), before December 31, 2016."

§5231. Special Inspector General for the Troubled Asset Relief Program

(a) Office of Inspector General

There is hereby established the Office of the Special Inspector General for the Troubled Asset Relief Program.

(b) Appointment of Inspector General; removal

(1) The head of the Office of the Special Inspector General for the Troubled Asset Relief Program is the Special Inspector General for the Troubled Asset Relief Program (in this section referred to as the "Special Inspector General"), who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The appointment of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) The nomination of an individual as Special Inspector General shall be made as soon as practicable after the establishment of any program under sections 5211 and 5212 of this title.

(4) The Special Inspector General shall be removable from office in accordance with the provisions of section 403(b) of title 5.

(5) For purposes of section 7324 of title 5, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 403(e) of title 5.

(c) Duties

(1) It shall be the duty of the Special Inspector General to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by the Secretary of the Treasury under any program established by the Secretary under section 5211 of this title, and the management by the Secretary of any program established under section 5212 of this title, including by collecting and summarizing the following information:

(A) A description of the categories of troubled assets purchased or otherwise procured by the Secretary.

(B) A listing of the troubled assets purchased in each such category described under subparagraph (A).

(C) An explanation of the reasons the Secretary deemed it necessary to purchase each such troubled asset.

(D) A listing of each financial institution that such troubled assets were purchased from.

(E) A listing of and detailed biographical information on each person or entity hired to manage such troubled assets.

(F) A current estimate of the total amount of troubled assets purchased pursuant to any program established under section 5211 of this title, the amount of troubled assets on the books of the Treasury, the amount of troubled assets sold, and the profit and loss incurred on each sale or disposition of each such troubled asset.

(G) A listing of the insurance contracts issued under section 5212 of this title.

(2) The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duty under paragraph (1).

(3) In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall also have the duties and responsibilities of inspectors general under chapter 4 of title 5.

(4)(A) Except as provided under subparagraph (B) and in addition to the duties specified in paragraphs (1), (2), and (3), the Special Inspector General shall have the authority to conduct,

supervise, and coordinate an audit or investigation of any action taken under this subchapter as the Special Inspector General determines appropriate.

(B) Subparagraph (A) shall not apply to any action taken under section 5225, 5226, 5227, or 5233 of this title.

(d) Powers and authorities

(1) In carrying out the duties specified in subsection (c), the Special Inspector General shall have the authorities provided in section 406 of title 5.

(2) The Special Inspector General shall carry out the duties specified in subsection (c)(1) and (4) in accordance with section 404(b)(1) of title 5.

(3) The Office of the Special Inspector General for the Troubled Asset Relief Program shall be treated as an office included under section 406(f)(3) of title 5 relating to the exemption from the initial determination of eligibility by the Attorney General.

(e) Personnel, facilities, and other resources

(1)(A) The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(B)(i) Subject to clause (ii), the Special Inspector General may exercise the authorities of subsections (b) through (i) of section 3161 of title 5 (without regard to subsection (a) of that section).

(ii) In exercising the employment authorities under subsection (b) of section 3161 of title 5, as provided under clause (i) of this subparagraph—

(I) the Special Inspector General may not make any appointment on and after the date occurring 6 months after April 24, 2009;

(II) paragraph (2) of that subsection (relating to periods of appointments) shall not apply; and

(III) no period of appointment may exceed the date on which the Office of the Special Inspector General terminates under subsection (k).

(2) The Special Inspector General may obtain services as authorized by section 3109 of title 5 at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of such title.

(3) The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4)(A) Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Special Inspector General, or an authorized designee.

(B) Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.

(5)(A) Except as provided under subparagraph (B), if an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Office of the Special Inspector General for the Troubled Asset Relief Program, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of chapter 83 or 84.¹

(B) Subparagraph (A) shall apply to—

(i) not more than 25 employees at any time as designated by the Special Inspector General; and

(ii) pay periods beginning after April 24, 2009.

(f) Corrective responses to audit problems

The Secretary shall—

- (1) take action to address deficiencies identified by a report or investigation of the Special Inspector General or other auditor engaged by the TARP; or
- (2) certify to appropriate committees of Congress that no action is necessary or appropriate.

(g) Cooperation and coordination with other entities

In carrying out the duties, responsibilities, and authorities of the Special Inspector General under this section, the Special Inspector General shall work with each of the following entities, with a view toward avoiding duplication of effort and ensuring comprehensive oversight of the Troubled Asset Relief Program through effective cooperation and coordination:

- (1) The Inspector General of the Department of Treasury.
- (2) The Inspector General of the Federal Deposit Insurance Corporation.
- (3) The Inspector General of the Securities and Exchange Commission.
- (4) The Inspector General of the Federal Reserve Board.
- (5) The Inspector General of the Federal Housing Finance Board.
- (6) The Inspector General of any other entity as appropriate.

(h) Council of the Inspectors General on Integrity and Efficiency

The Special Inspector General shall be a member of the Council of the Inspectors General on Integrity and Efficiency established under section 424 of title 5 until the date of termination of the Office of the Special Inspector General for the Troubled Asset Relief Program.

(i) Reports

(1) Not later than 60 days after the confirmation of the Special Inspector General, and not later than 30 days following the end of each fiscal quarter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during that fiscal quarter. Each report shall include, for the period covered by such report, a detailed statement of all purchases, obligations, expenditures, and revenues associated with any program established by the Secretary of the Treasury under sections 5211 and 5212 of this title, as well as the information collected under subsection (c)(1).

(2) Not later than September 1, 2009, the Special Inspector General shall submit a report to Congress assessing use of any funds, to the extent practical, received by a financial institution under the TARP and make the report available to the public, including posting the report on the home page of the website of the Special Inspector General within 24 hours after the submission of the report.

(3) Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

- (A) specifically prohibited from disclosure by any other provision of law;
- (B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or
- (C) a part of an ongoing criminal investigation.

(4) Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(5) Except as provided under paragraph (3), all reports submitted under this subsection shall be available to the public.

(j) Funding

(1) Of the amounts made available to the Secretary of the Treasury under section 5228 of this title, \$50,000,000 shall be available to the Special Inspector General to carry out this section, not later than 7 days after April 24, 2009.

(2) The amount available under paragraph (1) shall remain available until expended.

(k) Termination

The Office of the Special Inspector General shall terminate on the later of—

- (1) the date that the last troubled asset acquired by the Secretary under section 5211 of this title has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 5212 of this title. (Pub. L. 110–343, div. A, title I, §121, Oct. 3, 2008, 122 Stat. 3788; Pub. L. 111–15, §§2–6, Apr. 24, 2009, 123 Stat. 1603–1605; Pub. L. 117–286, §4(b)(35), Dec. 27, 2022, 136 Stat. 4347.)

EDITORIAL NOTES

REFERENCES IN TEXT

Chapter 83 or 84, referred to in subsec. (e)(5)(A), probably means chapter 83 or 84 of Title 5, Government Organization and Employees.

AMENDMENTS

2022—Subsec. (b)(4). Pub. L. 117–286, §4(b)(35)(A), substituted "section 403(b) of title 5." for "section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.)."

Subsec. (b)(6). Pub. L. 117–286, §4(b)(35)(B), substituted "section 403(e) of title 5." for "section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.)."

Subsec. (c)(3). Pub. L. 117–286, §4(b)(35)(C), substituted "chapter 4 of title 5." for "the Inspector General Act of 1978."

Subsec. (d)(1). Pub. L. 117–286, §4(b)(35)(D), substituted "section 406 of title 5." for "section 6 of the Inspector General Act of 1978."

Subsec. (d)(2). Pub. L. 117–286, §4(b)(35)(E), substituted "section 404(b)(1) of title 5." for "section 4(b)(1) of the Inspector General Act of 1978."

Subsec. (d)(3). Pub. L. 117–286, §4(b)(35)(F), substituted "section 406(f)(3) of title 5" for "section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App.)."

Subsec. (h). Pub. L. 117–286, §4(b)(35)(G), substituted "section 424 of title 5" for "section 11 of the Inspector General Act of 1978 (5 U.S.C. App.)."

2009—Subsec. (c)(4). Pub. L. 111–15, §2(1), added par. (4).

Subsec. (d)(2). Pub. L. 111–15, §2(2)(A), substituted "subsection (c)(1) and (4)" for "subsection (c)(1)".

Subsec. (d)(3). Pub. L. 111–15, §2(2)(B), added par. (3).

Subsec. (e)(1). Pub. L. 111–15, §3(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(5). Pub. L. 111–15, §3(2), added par. (5).

Subsecs. (f) to (h). Pub. L. 111–15, §4(2), added subsecs. (f) to (h). Former subsecs. (f) to (h) redesignated (i) to (k), respectively.

Subsec. (i). Pub. L. 111–15, §4(1), redesignated subsec. (f) as (i).

Subsec. (i)(1). Pub. L. 111–15, §5(1), substituted "Not later than 60 days after the confirmation of the Special Inspector General, and not later than 30 days following the end of each fiscal quarter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during that fiscal quarter." for "Not later than 60 days after the confirmation of the Special Inspector General, and every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 120-day period ending on the date of such report."

Subsec. (i)(2) to (4). Pub. L. 111–15, §5(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (i)(5). Pub. L. 111–15, §5(4), added par. (5).

Subsec. (j). Pub. L. 111–15, §4(1), redesignated subsec. (g) as (j).

Subsec. (j)(1). Pub. L. 111–15, §6, inserted ", not later than 7 days after April 24, 2009" before period at end.

Subsec. (k). Pub. L. 111–15, §4(1), redesignated subsec. (h) as (k).

¹ [*See References in Text note below.*](#)

§5231a. Public-Private Investment Program; additional appropriations for the Special Inspector General for the Troubled Asset Relief Program

(a) Short title

This section may be cited as the "Public-Private Investment Program Improvement and Oversight

Act of 2009".

(b) Public-Private Investment Program

(1) In general

Any program established by the Federal Government to create a public-private investment fund shall—

(A) in consultation with the Special Inspector General of the Trouble ¹ Asset Relief Program (in this section referred to as the "Special Inspector General"), impose strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased in arms-length transactions, that fiduciary duties to public and private investors in the fund are not violated, and that there is full disclosure of relevant facts and financial interests (which conflict of interest rules shall be implemented by the manager of a public-private investment fund prior to such fund receiving Federal Government financing);

(B) require each public-private investment fund to make a quarterly report to the Secretary of the Treasury (in this section referred to as the "Secretary") that discloses the 10 largest positions of such fund (which reports shall be publicly disclosed at such time as the Secretary of the Treasury determines that such disclosure will not harm the ongoing business operations of the fund);

(C) allow the Special Inspector General access to all books and records of a public-private investment fund, including all records of financial transactions in machine readable form, and the confidentiality of all such information shall be maintained by the Special Inspector General;

(D) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(E) require each manager of a public-private investment fund to acknowledge, in writing, a fiduciary duty to both the public and private investors in such fund;

(F) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(G) require strict investor screening procedures for public-private investment funds; and

(H) require each manager of a public-private fund to identify for the Secretary, on a periodic basis, each investor that, individually or together with affiliates, directly or indirectly, holds equity interests equal to at least 10 percent of the equity interest of the fund including if such interests are held in a vehicle formed for the purpose of directly or indirectly investing in the fund.

(2) Interaction between public-private investment funds and the Term-Asset Backed Securities Loan Facility

The Secretary shall consult with the Special Inspector General and shall issue regulations governing the interaction of the Public-Private Investment Program, the Term-Asset Backed Securities Loan Facility, and other similar public-private investment programs. Such regulations shall address concerns regarding the potential for excessive leverage that could result from interactions between such programs.

(3) Report

Not later than 60 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General shall submit a report to Congress on the implementation of this section.

(c) Additional appropriations for the Special Inspector General

(1) In general

Of amounts made available under section 115(a) of the Emergency Economic Stabilization Act of 2008 (Public Law 110–343) [12 U.S.C. 5225(a)], \$15,000,000 shall be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) Priorities

In utilizing funds made available under this section, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under any program that is funded in whole or in part by funds appropriated under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.], to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.

(d) Rule of construction

Notwithstanding any other provision of law, nothing in this section shall be construed to apply to any activity of the Federal Deposit Insurance Corporation in connection with insured depository institutions, as described in section 1823(c)(2)(B) of this title.

(e) Definition

In this section, the term "public-private investment fund" means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury or funds appropriated under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.].

(f) Omitted

(g) Regulations

The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this section.

(Pub. L. 111–22, div. A, title IV, §402, May 20, 2009, 123 Stat. 1656.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsecs. (c)(2) and (e)(2), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Helping Families Save Their Homes Act of 2009, and not as part of the Emergency Economic Stabilization Act of 2008 which comprises this chapter.

Section is comprised of section 402 of Pub. L. 111–22. Subsec. (f) of section 402 of Pub. L. 111–22 amended section 5225 of this title.

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

§5232. Credit reform

(a) In general

Subject to subsection (b), the costs of purchases of troubled assets made under section 5211(a) of this title and guarantees of troubled assets under section 5212 of this title, and any cash flows

associated with the activities authorized in section 5212 of this title and subsections (a), (b), and (c) of section 5216 of this title shall be determined as provided under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et. ¹ seq.).

(b) Costs

For the purposes of section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))—

(1) the cost of troubled assets and guarantees of troubled assets shall be calculated by adjusting the discount rate in section 502(5)(E) (2 U.S.C. 661a(5)(E)) for market risks; and

(2) the cost of a modification of a troubled asset or guarantee of a troubled asset shall be the difference between the current estimate consistent with paragraph (1) under the terms of the troubled asset or guarantee of the troubled asset and the current estimate consistent with paragraph (1) under the terms of the troubled asset or guarantee of the troubled asset, as modified.

(Pub. L. 110–343, div. A, title I, §123, Oct. 3, 2008, 122 Stat. 3790.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (a), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

¹ *So in original.*

§5233. Congressional Oversight Panel

(a) Establishment

There is hereby established the Congressional Oversight Panel (hereafter in this section referred to as the "Oversight Panel") as an establishment in the legislative branch.

(b) Duties

The Oversight Panel shall review the current state of the financial markets and the regulatory system and submit the following reports to Congress:

(1) Regular reports

(A) In general

Regular reports of the Oversight Panel shall include the following:

(i) The use by the Secretary of authority under this chapter, including with respect to the use of contracting authority and administration of the program.

(ii) The impact of purchases made under the ¹ chapter on the financial markets and financial institutions.

(iii) The extent to which the information made available on transactions under the program has contributed to market transparency.

(iv) The effectiveness of foreclosure mitigation efforts, and the effectiveness of the program from the standpoint of minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.

(B) Timing

The reports required under this paragraph shall be submitted not later than 30 days after the first exercise by the Secretary of the authority under section 5211(a) or 5212 of this title, and every 30 days thereafter.

(2) Special report on regulatory reform

The Oversight Panel shall submit a special report on regulatory reform not later than January 20, 2009, analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers, and providing recommendations for improvement, including recommendations regarding whether any participants in the financial markets that are currently outside the regulatory system should become subject to the regulatory system, the rationale underlying such recommendation, and whether there are any gaps in existing consumer protections.

(3) Special report on farm loan restructuring

Not later than 60 days after May 20, 2009, the Oversight Panel shall submit a special report on farm loan restructuring that—

(A) analyzes the state of the commercial farm credit markets and the use of loan restructuring as an alternative to foreclosure by recipients of financial assistance under the Troubled Asset Relief Program; and

(B) includes an examination of and recommendation on the different methods for farm loan restructuring that could be used as part of a foreclosure mitigation program for farm loans made by recipients of financial assistance under the Troubled Asset Relief Program, including any programs for direct loan restructuring or modification carried out by the Farm Service Agency of the Department of Agriculture, the farm credit system, and the Making Home Affordable Program of the Department of the Treasury.

(c) Membership

(1) In general

The Oversight Panel shall consist of 5 members, as follows:

(A) 1 member appointed by the Speaker of the House of Representatives.

(B) 1 member appointed by the minority leader of the House of Representatives.

(C) 1 member appointed by the majority leader of the Senate.

(D) 1 member appointed by the minority leader of the Senate.

(E) 1 member appointed by the Speaker of the House of Representatives and the majority leader of the Senate, after consultation with the minority leader of the Senate and the minority leader of the House of Representatives.

(2) Pay

Each member of the Oversight Panel shall each ² be paid at a rate equal to the daily equivalent of the annual rate of basic pay for level I of the Executive Schedule for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Commission.

(3) Prohibition of compensation of Federal employees

Members of the Oversight Panel who are full-time officers or employees of the United States or Members of Congress may not receive additional pay, allowances, or benefits by reason of their service on the Oversight Panel.

(4) Travel expenses

Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5.

(5) Quorum

Four members of the Oversight Panel shall constitute a quorum but a lesser number may hold hearings.

(6) Vacancies

A vacancy on the Oversight Panel shall be filled in the manner in which the original appointment was made.

(7) Meetings

The Oversight Panel shall meet at the call of the Chairperson or a majority of its members.

(d) Staff

(1) In general

The Oversight Panel may appoint and fix the pay of any personnel as the Commission considers appropriate.

(2) Experts and consultants

The Oversight Panel may procure temporary and intermittent services under section 3109(b) of title 5.

(3) Staff of agencies

Upon request of the Oversight Panel, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Oversight Panel to assist it in carrying out its duties under this chapter.

(e) Powers

(1) Hearings and sessions

The Oversight Panel may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Panel considers appropriate and may administer oaths or affirmations to witnesses appearing before it.

(2) Powers of members and agents

Any member or agent of the Oversight Panel may, if authorized by the Oversight Panel, take any action which the Oversight Panel is authorized to take by this section.

(3) Obtaining official data

The Oversight Panel may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairperson of the Oversight Panel, the head of that department or agency shall furnish that information to the Oversight Panel.

(4) Reports

The Oversight Panel shall receive and consider all reports required to be submitted to the Oversight Panel under this chapter.

(f) Termination

The Oversight Panel shall terminate 6 months after the termination date specified in section 5230 of this title.

(g) Funding for expenses

(1) Authorization of appropriations

There is authorized to be appropriated to the Oversight Panel such sums as may be necessary for any fiscal year, half of which shall be derived from the applicable account of the House of Representatives, and half of which shall be derived from the contingent fund of the Senate.

(2) Reimbursement of amounts

An amount equal to the expenses of the Oversight Panel shall be promptly transferred by the Secretary, from time to time upon the presentment of a statement of such expenses by the Chairperson of the Oversight Panel, from funds made available to the Secretary under this chapter to the applicable fund of the House of Representatives and the contingent fund of the Senate, as appropriate, as reimbursement for amounts expended from such account and fund under paragraph (1).

(Pub. L. 110–343, div. A, title I, §125, Oct. 3, 2008, 122 Stat. 3791; Pub. L. 111–22, div. A, title V, §501, May 20, 2009, 123 Stat. 1658.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter and the chapter, referred to in text, were in the original "this Act" and "the Act", respectively, and were translated as reading "this division" and "the division", respectively, meaning div. A of Pub. L. 110-343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

Level I of the Executive Schedule, referred to in subsec. (c)(2), is set out in section 5312 of Title 5, Government Organization and Employees.

AMENDMENTS

2009—Subsec. (b)(3). Pub. L. 111-22 added par. (3).

¹ *So in original. Probably should be "this".*

² *So in original.*

§5234. Cooperation with the FBI

Any Federal financial regulatory agency shall cooperate with the Federal Bureau of Investigation and other law enforcement agencies investigating fraud, misrepresentation, and malfeasance with respect to development, advertising, and sale of financial products.

(Pub. L. 110-343, div. A, title I, §127, Oct. 3, 2008, 122 Stat. 3796.)

§5235. Disclosures on exercise of loan authority

(a) In general

Not later than 7 days after the date on which the Board exercises its authority under the third paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343; relating to discounts for individuals, partnerships, and corporations) the Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report which includes—

- (1) the justification for exercising the authority; and
- (2) the specific terms of the actions of the Board, including the size and duration of the lending, available information concerning the value of any collateral held with respect to such a loan, the recipient of warrants or any other potential equity in exchange for the loan, and any expected cost to the taxpayers for such exercise.

(b) Periodic updates

The Board shall provide updates to the Committees specified in subsection (a) not less frequently than once every 60 days while the subject loan is outstanding, including—

- (1) the status of the loan;
- (2) the value of the collateral held by the Federal reserve bank which initiated the loan; and
- (3) the projected cost to the taxpayers of the loan.

(c) Confidentiality

The information submitted to the Congress under this section shall be kept confidential, upon the written request of the Chairman of the Board, in which case it shall be made available only to the Chairpersons and Ranking Members of the Committees described in subsection (a).

(d) Applicability

The provisions of this section shall be in force for all uses of the authority provided under section

13 of the Federal Reserve Act occurring during the period beginning on March 1, 2008 and ending on the after ¹ October 3, 2008, and reports described in subsection (a) shall be required beginning not later than 30 days after October 3, 2008, with respect to any such exercise of authority.

(e) Sharing of information

Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 5233 of this title.

(Pub. L. 110–343, div. A, title I, §129, Oct. 3, 2008, 122 Stat. 3796.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 13 of the Federal Reserve Act, referred to in subsecs. (a) and (d), is classified to sections 92, 342 to 347, 347c, 347d, 361, 372, and 373 of this title. The third paragraph (now designated par. (3)) of section 13 of the Act is classified to section 343(3) of this title. For further details, see Codification notes under sections 342 and 343 of this title.

¹ *So in original.*

§5236. Exchange Stabilization Fund reimbursement

(a) Reimbursement

The Secretary shall reimburse the Exchange Stabilization Fund established under section 5302 of title 31 for any funds that are used for the Treasury Money Market Funds Guaranty Program for the United States money market mutual fund industry, from funds under this chapter.

(b) Limits on use of Exchange Stabilization Fund

The Secretary is prohibited from using the Exchange Stabilization Fund for the establishment of any future guaranty programs for the United States money market mutual fund industry.

(Pub. L. 110–343, div. A, title I, §131, Oct. 3, 2008, 122 Stat. 3797.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

NON-APPLICABILITY OF RESTRICTIONS ON ESF DURING NATIONAL EMERGENCY

Pub. L. 116–136, div. A, title IV, §4015, Mar. 27, 2020, 134 Stat. 481, provided that:

"(a) IN GENERAL.—Section 131 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5236) shall not apply during the period beginning on the date of enactment of this Act [Mar. 27, 2020] and ending on December 31, 2020. Any guarantee established as a result of the application of subsection (a) shall—

"(1) be limited to a guarantee of the total value of a shareholder's account in a participating fund as of the close of business on the day before the announcement of the guarantee; and

"(2) terminate not later than December 31, 2020.

"(b) DIRECT APPROPRIATION.—Upon the expiration of the period described in subsection (a), there is appropriated, out of amounts in the Treasury not otherwise appropriated, such sums as may be necessary to

reimburse the fund established under section 5302(a)(1) of title 31, United States Code, for any funds that are used for the Treasury Money Market Funds Guaranty Program for the United States money market mutual fund industry to the extent a claim payment made exceeds the balance of fees collected by the fund."

§5237. Authority to suspend mark-to-market accounting

(a) Authority

The Securities and Exchange Commission shall have the authority under the securities laws (as such term is defined in section 78c(a)(47) of title 15) to suspend, by rule, regulation, or order, the application of Statement Number 157 of the Financial Accounting Standards Board for any issuer (as such term is defined in section 78c(a)(8) of such title) or with respect to any class or category of transaction if the Commission determines that is necessary or appropriate in the public interest and is consistent with the protection of investors.

(b) Savings provision

Nothing in subsection (a) shall be construed to restrict or limit any authority of the Securities and Exchange Commission under securities laws as in effect on October 3, 2008.

(Pub. L. 110–343, div. A, title I, §132, Oct. 3, 2008, 122 Stat. 3798.)

§5238. Study on mark-to-market accounting

(a) Study

The Securities and Exchange Commission, in consultation with the Board and the Secretary, shall conduct a study on mark-to-market accounting standards as provided in Statement Number 157 of the Financial Accounting Standards Board, as such standards are applicable to financial institutions, including depository institutions. Such a study shall consider at a minimum—

- (1) the effects of such accounting standards on a financial institution's balance sheet;
- (2) the impacts of such accounting on bank failures in 2008;
- (3) the impact of such standards on the quality of financial information available to investors;
- (4) the process used by the Financial Accounting Standards Board in developing accounting standards;
- (5) the advisability and feasibility of modifications to such standards; and
- (6) alternative accounting standards to those provided in such Statement Number 157.

(b) Report

The Securities and Exchange Commission shall submit to Congress a report of such study before the end of the 90-day period beginning on October 3, 2008, containing the findings and determinations of the Commission, including such administrative and legislative recommendations as the Commission determines appropriate.

(Pub. L. 110–343, div. A, title I, §133, Oct. 3, 2008, 122 Stat. 3798.)

§5239. Recoupment

Upon the expiration of the 5-year period beginning upon October 3, 2008, the Director of the Office of Management and Budget, in consultation with the Director of the Congressional Budget Office, shall submit a report to the Congress on the net amount within the Troubled Asset Relief Program under this chapter. In any case where there is a shortfall, the President shall submit a legislative proposal that recoups from the financial industry an amount equal to the shortfall in order to ensure that the Troubled Asset Relief Program does not add to the deficit or national debt.

(Pub. L. 110–343, div. A, title I, §134, Oct. 3, 2008, 122 Stat. 3798.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5240. Preservation of authority

With the exception of section 5236 of this title, nothing in this chapter may be construed to limit the authority of the Secretary or the Board under any other provision of law.

(Pub. L. 110–343, div. A, title I, §135, Oct. 3, 2008, 122 Stat. 3799.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5241. Temporary increase in deposit and share insurance coverage

(a) Federal Deposit Insurance Act; temporary increase in deposit insurance

(1) Increased amount

Effective only during the period beginning on October 3, 2008, and ending on December 31, 2013, section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) shall apply with "\$250,000" substituted for "\$100,000".

(2) Borrowing limits temporarily lifted

During the period beginning on October 3, 2008, and ending on December 31, 2013, the Board of Directors of the Corporation may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 14(a) and 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a), 1825(c)).

(b) Federal Credit Union Act; temporary increase in share insurance

(1) Increased amount

Effective only during the period beginning on October 3, 2008, and ending on December 31, 2013, section 207(k)(5) ¹ of the Federal Credit Union Act (12 U.S.C. 1787(k)(5)) shall apply with "\$250,000" substituted for "\$100,000".

(2) Borrowing limits temporarily lifted

During the period beginning on October 3, 2008, and ending on December 31, 2013, the National Credit Union Administration Board may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 203(d)(1) of the Federal Credit Union Act (12 U.S.C. 1783(d)(1)).

(c) Not for use in inflation adjustments

The temporary increase in the standard maximum deposit insurance amount made under this section shall not be used to make any inflation adjustment under section 11(a)(1)(F) of the Federal

Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)) for purposes of that Act [12 U.S.C. 1811 et seq.] or the Federal Credit Union Act [12 U.S.C. 1751 et seq.].

(Pub. L. 110–343, div. A, title I, §136, Oct. 3, 2008, 122 Stat. 3799; Pub. L. 111–22, div. A, title II, §204(a), May 20, 2009, 123 Stat. 1648.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 207(k)(5) of the Federal Credit Union Act, referred to in subsec. (b)(1), was redesignated section 207(k)(6) of the Act by Pub. L. 113–252, §2(3), Dec. 18, 2014, 128 Stat. 2893.

That Act, referred to in subsec. (c), means the Federal Deposit Insurance Act, act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Credit Union Act, referred to in subsec. (c), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified principally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–22, §204(a)(1)(A), substituted "December 31, 2013" for "December 31, 2009".

Subsec. (a)(2), (3). Pub. L. 111–22, §204(a)(1)(B)–(D), redesignated par. (3) as (2), substituted "December 31, 2013" for "December 31, 2009", and struck out former par. (2). Prior to amendment, text read as follows: "The temporary increase in the standard maximum deposit insurance amount made under paragraph (1) shall not be taken into account by the Board of Directors of the Corporation for purposes of setting assessments under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2))."

Subsec. (b)(1). Pub. L. 111–22, §204(a)(2)(A), substituted "December 31, 2013" for "December 31, 2009".

Subsec. (b)(2), (3). Pub. L. 111–22, §204(a)(2)(B)–(D), redesignated par. (3) as (2), substituted "December 31, 2013" for "December 31, 2009", and struck out former par. (2). Prior to amendment, text read as follows: "The temporary increase in the standard maximum share insurance amount made under paragraph (1) shall not be taken into account by the National Credit Union Administration Board for purposes of setting insurance premium charges and share insurance deposit adjustments under section 202(c)(2) of the Federal Credit Union Act (12 U.S.C. 1782(c)(2))."

¹ [*See References in Text note below.*](#)

SUBCHAPTER II—BUDGET-RELATED PROVISIONS

§5251. Information for congressional support agencies

Upon request, and to the extent otherwise consistent with law, all information used by the Secretary in connection with activities authorized under this chapter (including the records to which the Comptroller General is entitled under this chapter) shall be made available to congressional support agencies (in accordance with their obligations to support the Congress as set out in their authorizing statutes) for the purposes of assisting the committees of Congress with conducting oversight, monitoring, and analysis of the activities authorized under this chapter.

(Pub. L. 110–343, div. A, title II, §201, Oct. 3, 2008, 122 Stat. 3800.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic

Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

§5252. Reports by the Office of Management and Budget and the Congressional Budget Office

(a) Reports by the Office of Management and Budget

Within 60 days of the first exercise of the authority granted in section 5211(a) of this title, but in no case later than December 31, 2008, and annually thereafter, the Office of Management and Budget shall report to the President and the Congress—

- (1) the estimate, notwithstanding section 661a(5)(F) of title 2, as of the first business day that is at least 30 days prior to the issuance of the report, of the cost of the troubled assets, and guarantees of the troubled assets, determined in accordance with section 5232 of this title;
- (2) the information used to derive the estimate, including assets purchased or guaranteed, prices paid, revenues received, the impact on the deficit and debt, and a description of any outstanding commitments to purchase troubled assets; and
- (3) a detailed analysis of how the estimate has changed from the previous report.

Beginning with the second report under subsection (a), the Office of Management and Budget shall explain the differences between the Congressional Budget Office estimates delivered in accordance with subsection (b) and prior Office of Management and Budget estimates.

(b) Reports by the Congressional Budget Office

Within 45 days of receipt by the Congress of each report from the Office of Management and Budget under subsection (a), the Congressional Budget Office shall report to the Congress the Congressional Budget Office's assessment of the report submitted by the Office of Management and Budget, including—

- (1) the cost of the troubled assets and guarantees of the troubled assets,
- (2) the information and valuation methods used to calculate such cost, and
- (3) the impact on the deficit and the debt.

(c) Financial expertise

In carrying out the duties in this subsection ¹ or performing analyses of activities under this chapter, the Director of the Congressional Budget Office may employ personnel and procure the services of experts and consultants.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to produce reports required by this section.

(e) Sunset

Notwithstanding the previous provisions of this section, the reporting and comment requirements under this section shall terminate with the annual period on the last day of which all troubled assets acquired by the Secretary under section 5211 of this title have been sold or transferred out of the ownership or control of the Federal Government.

(Pub. L. 110–343, div. A, title II, §202, Oct. 3, 2008, 122 Stat. 3800; Pub. L. 112–204, §1(b)(1), Dec. 4, 2012, 126 Stat. 1485.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of

division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112–204, §1(b)(1)(A), substituted "annually" for "semiannually".
Subsec. (e). Pub. L. 112–204, §1(b)(1)(B), added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–204, §1(b)(2), Dec. 4, 2012, 126 Stat. 1486, provided that: "The amendments made by this subsection [amending this section] shall take effect the first day after the date of enactment of this Act [Dec. 4, 2012]."

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

§5253. Emergency treatment

All provisions of this chapter are designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. ¹21 (110th Congress), the concurrent resolution on the budget for fiscal year 2008 and rescissions of any amounts provided in this chapter shall not be counted for purposes of budget enforcement.

(Pub. L. 110–343, div. A, title II, §204, Oct. 3, 2008, 122 Stat. 3801.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this division", meaning div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, known as the Emergency Economic Stabilization Act of 2008, to reflect the probable intent of Congress. For complete classification of division A to the Code, see Short Title note set out under section 5201 of this title and Tables.

S. Con. Res. 21 (110th Congress), referred to in text, is S. Con. Res. 21, May 17, 2007, 121 Stat. 2590, which is not classified to the Code.

¹ So in original. Probably should be followed by a period.

SUBCHAPTER III—TAX PROVISIONS

§5261. Gain or loss from sale or exchange of certain preferred stock

(a) In general

For purposes of title 26, gain or loss from the sale or exchange of any applicable preferred stock by any applicable financial institution shall be treated as ordinary income or loss.

(b) Applicable preferred stock

For purposes of this section, the term "applicable preferred stock" means any stock—

(1) which is preferred stock in—

(A) the Federal National Mortgage Association, established pursuant to the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.), or

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

(2) which—

(A) was held by the applicable financial institution on September 6, 2008, or

(B) was sold or exchanged by the applicable financial institution on or after January 1, 2008, and before September 7, 2008.

(c) Applicable financial institution

For purposes of this section:

(1) In general

Except as provided in paragraph (2), the term "applicable financial institution" means—

(A) a financial institution referred to in section 582(c)(2) of title 26, or

(B) a depository institution holding company (as defined in section 1813(w)(1) of this title).

(2) Special rules for certain sales

In the case of—

(A) a sale or exchange described in subsection (b)(2)(B), an entity shall be treated as an applicable financial institution only if it was an entity described in subparagraph (A) or (B) of paragraph (1) at the time of the sale or exchange, and

(B) a sale or exchange after September 6, 2008, of preferred stock described in subsection (b)(2)(A), an entity shall be treated as an applicable financial institution only if it was an entity described in subparagraph (A) or (B) of paragraph (1) at all times during the period beginning on September 6, 2008, and ending on the date of the sale or exchange of the preferred stock.

(d) Special rule for certain property not held on September 6, 2008

The Secretary of the Treasury or the Secretary's delegate may extend the application of this section to all or a portion of the gain or loss from a sale or exchange in any case where—

(1) an applicable financial institution sells or exchanges applicable preferred stock after September 6, 2008, which the applicable financial institution did not hold on such date, but the basis of which in the hands of the applicable financial institution at the time of the sale or exchange is the same as the basis in the hands of the person which held such stock on such date, or

(2) the applicable financial institution is a partner in a partnership which—

(A) held such stock on September 6, 2008, and later sold or exchanged such stock, or

(B) sold or exchanged such stock during the period described in subsection (b)(2)(B).

(e) Regulatory authority

The Secretary of the Treasury or the Secretary's delegate may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this section.

(f) Effective date

This section shall apply to sales or exchanges occurring after December 31, 2007, in taxable years ending after such date.

(Pub. L. 110-343, div. A, title III, §301, Oct. 3, 2008, 122 Stat. 3802.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal National Mortgage Association Charter Act, referred to in subsec. (b)(1)(A), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (b)(1)(B), is title III of Pub. L. 91-351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

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§5301. Definitions

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) Affiliate

The term "affiliate" has the same meaning as in section 1813 of this title.

(2) Appropriate Federal banking agency

On and after the transfer date, the term "appropriate Federal banking agency" has the same meaning as in section 1813(q) of this title, as amended by title III.¹

(3) Board of Governors

The term "Board of Governors" means the Board of Governors of the Federal Reserve System.

(4) Bureau

The term "Bureau" means the Bureau of Consumer Financial Protection established under title X.¹

(5) Commission

The term "Commission" means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

(6) Commodity futures terms

The terms "futures commission merchant", "swap", "swap dealer", "swap execution facility", "derivatives clearing organization", "board of trade", "commodity trading advisor", "commodity pool", and "commodity pool operator" have the same meanings as given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1 et seq.) [7 U.S.C. 1a].

(7) Corporation

The term "Corporation" means the Federal Deposit Insurance Corporation.

(8) Council

The term "Council" means the Financial Stability Oversight Council established under subchapter I.

(9) Credit union

The term "credit union" means a Federal credit union, State credit union, or State-chartered credit union, as those terms are defined in section 1752 of this title.

(10) Federal banking agency

The term—

(A) "Federal banking agency" means, individually, the Board of Governors, the Office of the Comptroller of the Currency, and the Corporation; and

(B) "Federal banking agencies" means all of the agencies referred to in subparagraph (A), collectively.

(11) Functionally regulated subsidiary

The term "functionally regulated subsidiary" has the same meaning as in section 1844(c)(5) of this title.

(12) Primary financial regulatory agency

The term "primary financial regulatory agency" means—

(A) the appropriate Federal banking agency, with respect to institutions described in section 1813(q) of this title, except to the extent that an institution is or the activities of an institution are otherwise described in subparagraph (B), (C), (D), or (E);

(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) any investment company that is registered with the Commission under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) the Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.);

(xii) the Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(xiii) any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(C) the Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading advisor or introducing broker to be registered under that Act;

(iv) any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vi) any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vii) any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the retail foreign exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) any registered entity under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

(D) the State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law; and

(E) the Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(13) Prudential standards

The term "prudential standards" means enhanced supervision and regulatory standards developed by the Board of Governors under section 5365 of this title.

(14) Secretary

The term "Secretary" means the Secretary of the Treasury.

(15) Securities terms

The—

(A) terms "broker", "dealer", "issuer", "nationally recognized statistical rating organization", "security", and "securities laws" have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term "investment adviser" has the same meaning as in section 202 of the Investment

Advisers Act of 1940 (15 U.S.C. 80b–2); and

(C) term "investment company" has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(16) State

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

(17) Transfer date

The term "transfer date" means the date established under section 5411 of this title.

(18) Other incorporated definitions

(A) Federal Deposit Insurance Act

The terms "bank", "bank holding company", "control", "deposit", "depository institution", "Federal depository institution", "Federal savings association", "foreign bank", "including", "insured branch", "insured depository institution", "national member bank", "national nonmember bank", "savings association", "State bank", "State depository institution", "State member bank", "State nonmember bank", "State savings association", and "subsidiary" have the same meanings as in section 1813 of this title.

(B) Holding companies

The term—

(i) "bank holding company" has the same meaning as in section 1841 of this title;

(ii) "financial holding company" has the same meaning as in section 1841(p) of this title; and

(iii) "savings and loan holding company" has the same meaning as in section 1467a(a) of this title.

(Pub. L. 111–203, §2, July 21, 2010, 124 Stat. 1386.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§8201 et seq.) and 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note below and Tables.

Title III, referred to in par. (2), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520. Section 312(c)(1) of title III of Pub. L. 111–203 amended section 1813(q) of this title.

Title X, referred to in par. (4), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted subchapter V (§5481 et seq.) of this chapter, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note below and Tables.

Subchapter I, referred to in par. (8), was in the original "title I", meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, known as the Financial Stability Act of 2010, which is classified principally to subchapter I (§5311 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note below and Tables.

The Securities Exchange Act of 1934, referred to in par. (12)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Investment Company Act of 1940, referred to in par. (12)(B)(ii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in par. (12)(B)(iii), is title II of act Aug. 22, 1940, ch.

686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Sarbanes-Oxley Act of 2002, referred to in par. (12)(B)(xi), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, which is classified principally to chapter 98 (§7201 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 7201 of Title 15 and Tables.

The Securities Investor Protection Act of 1970, referred to in par. (12)(B)(xii), is Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B–1 (§78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

The Commodity Exchange Act, referred to in par. (12)(C), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 111–203, §4, July 21, 2010, 124 Stat. 1390, provided that: "Except as otherwise specifically provided in this Act [see Short Title note below] or the amendments made by this Act, this Act and such amendments shall take effect 1 day after the date of enactment of this Act [July 21, 2010]."

SHORT TITLE OF 2017 AMENDMENT

Pub. L. 115–61, §1, Sept. 27, 2017, 131 Stat. 1158, provided that: "This Act [amending section 5321 of this title] may be cited as the 'Financial Stability Oversight Council Insurance Member Continuity Act'."

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–279, §1, Dec. 18, 2014, 128 Stat. 3017, provided that: "This Act [amending section 5371 of this title] may be cited as the 'Insurance Capital Standards Clarification Act of 2014'."

Pub. L. 113–173, §1, Sept. 26, 2014, 128 Stat. 1899, provided that: "This Act [amending section 5514 of this title] may be cited as the 'Examination and Supervisory Privilege Parity Act of 2014'."

SHORT TITLE

Pub. L. 111–203, §1(a), July 21, 2010, 124 Stat. 1376, provided that: "This Act [see Tables for classification] may be cited as the 'Dodd-Frank Wall Street Reform and Consumer Protection Act'."

Pub. L. 111–203, title I, §101, July 21, 2010, 124 Stat. 1391, provided that: "This title [enacting subchapter I of this chapter and amending sections 1818, 1820, 1833b, and 3105 of this title, sections 3132 and 5314 of Title 5, Government Organization and Employees, and section 78o of Title 15, Commerce and Trade] may be cited as the 'Financial Stability Act of 2010'."

Pub. L. 111–203, title III, §300, July 21, 2010, 124 Stat. 1520, provided that: "This title [enacting subchapter III of this chapter and sections 4b and 16 of this title, amending sections 1, 11, 248, 461, 481, 482, 1438, 1462 to 1464, 1466a to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78l, 78o–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealing section 1441a of this title, enacting provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amending provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title and section 509 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Enhancing Financial Institution Safety and Soundness Act of 2010'."

Pub. L. 111–203, title VIII, §801, July 21, 2010, 124 Stat. 1802, provided that: "This title [enacting subchapter IV of this chapter] may be cited as the 'Payment, Clearing, and Settlement Supervision Act of 2010'."

Pub. L. 111–203, title X, §1001, July 21, 2010, 124 Stat. 1955, provided that: "This title [see Tables for classification] may be cited as the 'Consumer Financial Protection Act of 2010'."

Pub. L. 111–203, title XII, §1201, July 21, 2010, 124 Stat. 2129, provided that: "This title [enacting subchapter VII of this chapter and section 4719 of this title] may be cited as the 'Improving Access to

Mainstream Financial Institutions Act of 2010'."

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 13772

Ex. Ord. No. 13772, Feb. 3, 2017, 82 F.R. 9965, which set out Core Principles for regulating the United States financial system, was revoked by Ex. Ord. No. 14018, §1, Feb. 24, 2021, 86 F.R. 11855.

¹ [See References in Text note below.](#)

§5302. Severability

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(Pub. L. 111–203, §3, July 21, 2010, 124 Stat. 1390.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§8201 et seq.) and 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§5303. Antitrust savings clause

Nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws, unless otherwise specified. For purposes of this section, the term "antitrust laws" has the same meaning as in subsection (a) of section 12 of title 15, except that such term includes section 45 of title 15, to the extent that such section 45 applies to unfair methods of competition.

(Pub. L. 111–203, §6, July 21, 2010, 124 Stat. 1390.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§8201 et seq.) and 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SUBCHAPTER I—FINANCIAL STABILITY

§5311. Definitions

(a) In general

For purposes of this subchapter, unless the context otherwise requires, the following definitions shall apply:

(1) Bank holding company

The term "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], pursuant to section 3106(a) of this title, shall be treated as a bank holding company for purposes of this subchapter.

(2) Chairperson

The term "Chairperson" means the Chairperson of the Council.

(3) Member agency

The term "member agency" means an agency represented by a voting member of the Council.

(4) Nonbank financial company definitions

(A) Foreign nonbank financial company

The term "foreign nonbank financial company" means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

- (i) incorporated or organized in a country other than the United States; and
- (ii) predominantly engaged in, including through a branch in the United States, financial activities, as defined in paragraph (6).

(B) U.S. nonbank financial company

The term "U.S. nonbank financial company" means a company (other than a bank holding company, a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), or a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission, or a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository registered with the Commodity Futures Trading Commission), that is—

- (i) incorporated or organized under the laws of the United States or any State; and
- (ii) predominantly engaged in financial activities, as defined in paragraph (6).

(C) Nonbank financial company

The term "nonbank financial company" means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) Nonbank financial company supervised by the Board of Governors

The term "nonbank financial company supervised by the Board of Governors" means a nonbank financial company that the Council has determined under section 5323 of this title shall be supervised by the Board of Governors.

(5) Office of Financial Research

The term "Office of Financial Research" means the office established under section 5342 of this title.

(6) Predominantly engaged

A company is "predominantly engaged in financial activities" if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)]) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7) Significant institutions

The terms "significant nonbank financial company" and "significant bank holding company" have the meanings given those terms by rule of the Board of Governors, but in no instance shall the term "significant nonbank financial company" include those entities that are excluded under paragraph (4)(B).

(b) Definitional criteria

The Board of Governors shall establish, by regulation, the requirements for determining if a company is predominantly engaged in financial activities, as defined in subsection (a)(6).

(c) Foreign nonbank financial companies

For purposes of the application of parts A and C (other than section 5323(b) of this title) with respect to a foreign nonbank financial company, references in this subchapter to "company" or "subsidiary" include only the United States activities and subsidiaries of such foreign company, except as otherwise provided.

(Pub. L. 111–203, title I, §102, July 21, 2010, 124 Stat. 1391.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original "this title", meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (a)(1), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(4)(B), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Part C, referred to in subsec. (c), was in the original "subtitle C", meaning subtitle C (§§161–176) of title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to part C (§5361 et seq.) of this subchapter. For complete classification of subtitle C to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE