Concurrent Session: Housing Finance Potpourri

Thursday, March 31st
9:45am – 11am
Marriott Marquis, Washington DC

Moderator:
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Panelists:
Christopher Brown, Staff to Representative Blaine Luetkemeyer, U.S. House of Representatives
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NAREIT's Law, Accounting & Finance Conference

March 30 - April 1

2016

Housing Finance Potpourri

March 30-April 1, 2016

Laurie Goodman
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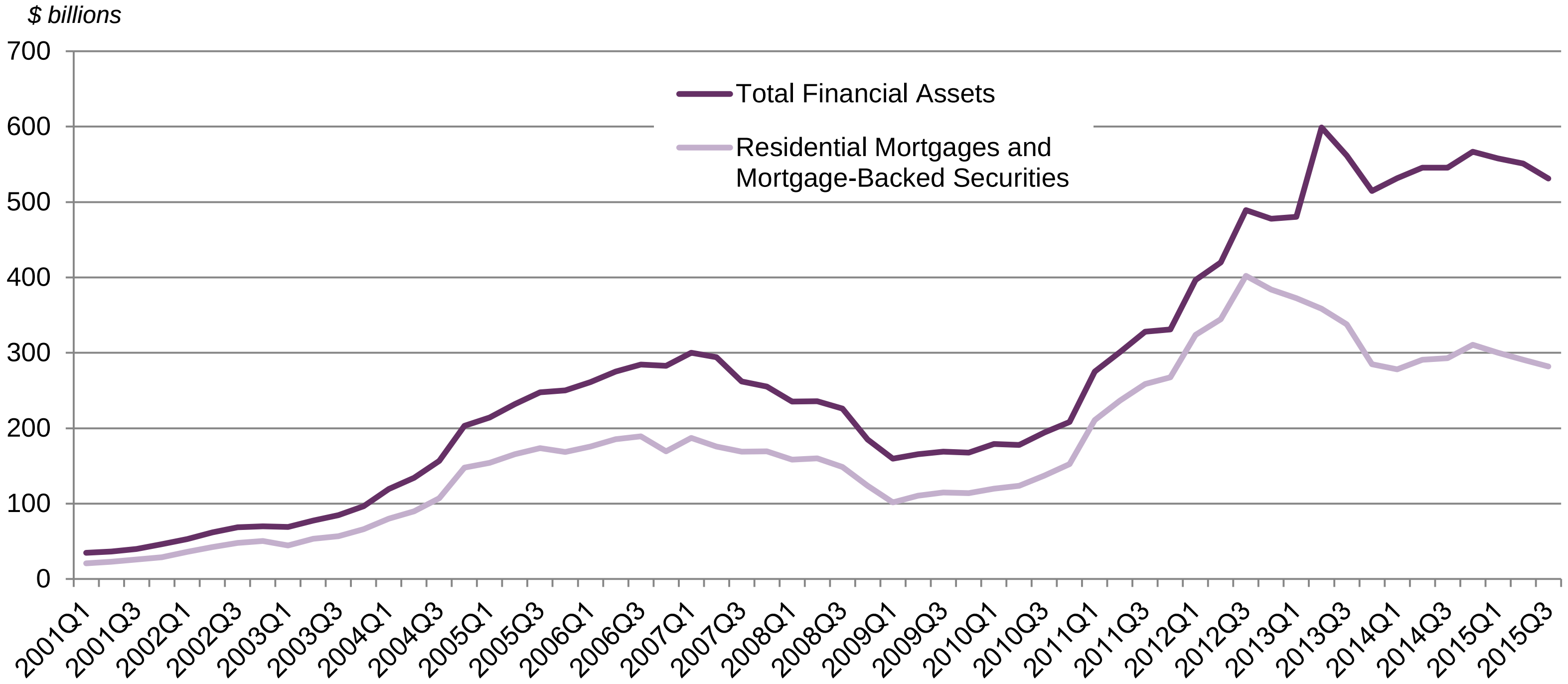
Urban Institute

FHLB Membership

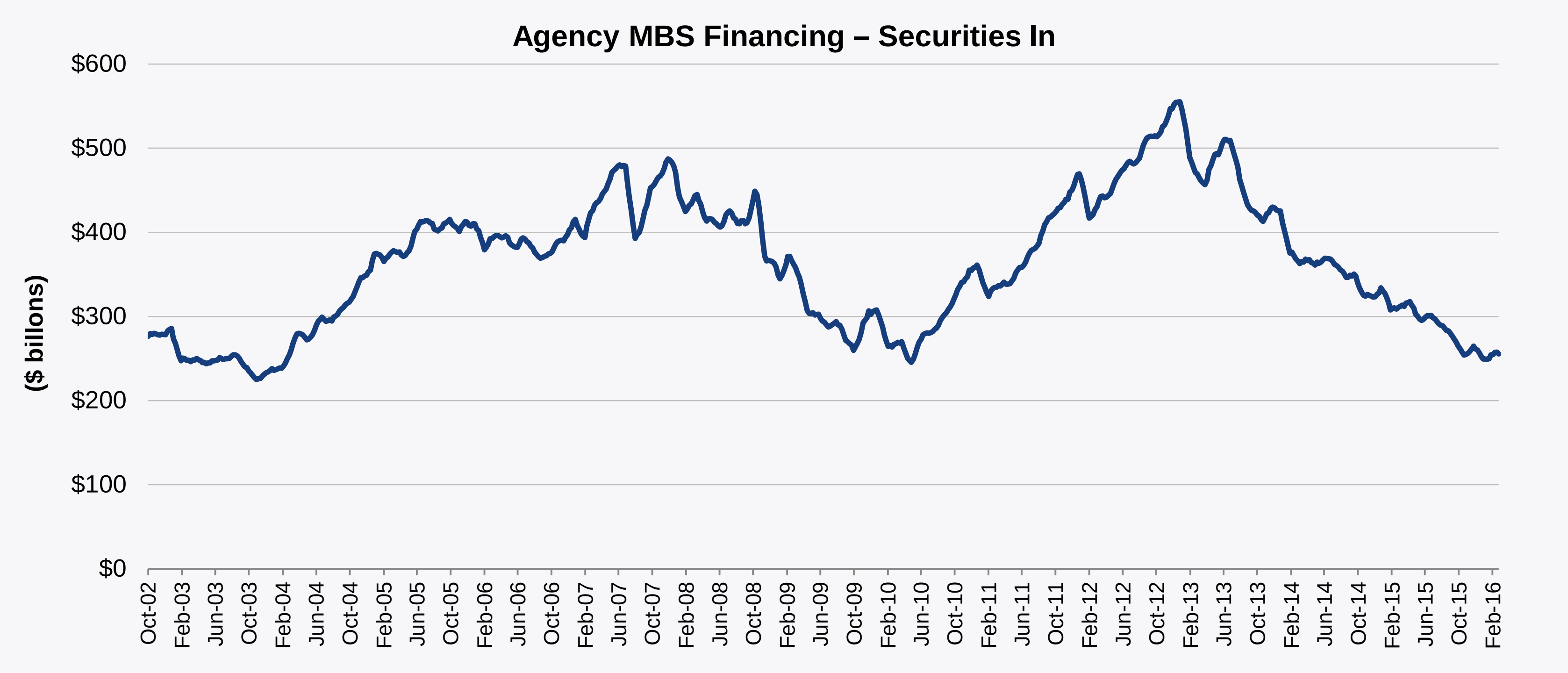
- REITS support the mission of the FHLBs and benefit the larger mortgage market.
  - Deep mortgage focus, provides liquidity and funding to the mortgage market
  - Could help build the non-QM market
  - Diversifies REIT funding sources and provides valuable long term financing
- Risks posed by captives are low, and can be managed without a ban.
  - Overall exposure is small
  - Can manage current and future risks using existing tools (overcollateralization, credit limit)
  - Strengthening the membership approval process for insurers can address safety concerns
- Why did the FHFA say no?
  - They felt congress should decide which institutions should be in or out.
  - They did not believe they had a good way to draw the line (REITs, Public hedge funds, private hedge funds, not mortgage related entities).

Mortgage REITs, Assets



Source: Federal Reserve Flow of Funds

Access to Repo is contracting



Source: Federal Reserve Bank of New York

Tax Code as applied to REITS and the Securities Act of 1940 needs to be amended to accommodate CRT Securities

REIT Tax Legislation (enacted in 1960)

- Intended to permit retail investors to invest in real estate through a tax-efficient vehicle (REITS generally don't pay corporate taxes).
- REITS must pass:
  - 75% asset test: 75% of the value of their total assets are represented by real property, mortgages on real property, other real estate assets, cash and cash equivalents, and government securities.
  - 75% income test: 75% of their gross income needs to be from interest on mortgages, rents from real property, gains from real property or mortgage sales, and other real estate income.
- GSE Risk Sharing Securities (CAS and STACR) are debt obligations of the GSEs.
- They do not represent interest in mortgages or other interests in real estate: the principal repayment on the securities contains an embedded derivative which references the performance of a group of mortgage loans.
- CAS and STACR are good REIT assets (as they are government securities), but are not good REIT income.
- Other securities can be problematic as well.
- Securities backed by non-performing loans (NPLs) or re-performing loans (RPLs) are generally not REMICS and are not good REIT assets or income. REMICs require that there be no active management of the assets. This makes them unsuitable for NPL/RPL deals.
- NPL/RPL deals have been the largest single category of non-agency issuance in 2014, 2015 and thus far in 2016.

Tax Code as applied to REITS and the Securities Act of 1940 needs to be amended to accommodate CRT Securities (Cont.)

Securities Act of 1940

- Mortgage REITS are investment companies because they are engaged primarily in the business of investing, reinvesting, or trading in securities.
- However, there is an exemption to SEC registration 5(c)3(c) for entities who are engaged in “purchasing or otherwise acquiring mortgages and other liens on and interest in real estate.”
- To meet the exemption criteria, the entity must hold:
  - At least 55% of the assets in “qualifying mortgages,” which includes real estate, loans fully secured by real estate, assets that are the functional equivalent of the above, such as whole-pool agency MBS, and certain commercial real estate B-notes.
  - At least 80% of the assets must be “qualifying mortgages” or real estate related assets.
- Agency CMOs and non-agency private label securities do not qualify for the purpose of the 55% rule, as they are not whole pools. They do qualify under the 80% rule.
- GSE Risk Sharing Securities (CAS and STACR) do not qualify under the 55% rule because they are debt obligations of the GSEs and do not represent interest in mortgages or other interests in real estate. They may qualify under the 80% rule.
- NPL/RPL loan deals do not count toward either requirement.

A More Promising Road to GSE Reform

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A More Promising Road to GSE Reform

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We are nearly seven years into recovery from a once-in-a-lifetime financial crisis, triggered by widespread failure across virtually every aspect of our housing finance system.[1] While much work has been done to address the flaws of this critical part of the nation's economy, a major step remains: reforming Fannie Mae and Freddie Mac. These two enormously important yet flawed institutions endure in conservatorship while their regulator, the Federal Housing Finance Agency, admirably helps them tread water while pleading for direction from a paralyzed Congress.[2]

The situation is not healthy. Lenders and investors alike hold back in the face of the deep uncertainty, leading to a less liquid, less robust and less functional mortgage market. Nor is it sustainable, as the strains of an arrangement that was intended as temporary will likely eventually require the government-sponsored enterprises to turn back to the Treasury for help, making investors and Congress alike increasingly uneasy.

Over and over, efforts to advance reform have foundered, due in part to a range of concerns raised by policymakers and stakeholders.[3] Here, we offer an approach that attempts to address these concerns, easing the path for reform and, we hope, restarts the conversation about how to move forward. Like any approach, it solves some problems but leaves others that need further work.[4] But we believe that a fresh approach like this is needed to move the conversation forward, because the system can tread water only so long.

A national highway system for the mortgage market

The principal objective of our proposal is to migrate those components of today's system that work well into a system that is no longer impaired by the components that do not, with as little disruption as possible. To do this, our proposal would merge Fannie and Freddie to form a single government corporation, which would handle all of the operations that those two institutions perform today, providing an explicit federal guarantee on mortgage-backed securities while syndicating all noncatastrophic credit risk into the private market.[5] This would facilitate a deep, broad and competitive primary and secondary mortgage market; limit the taxpayer's risk to where it is absolutely necessary; ensure broad access to the system for borrowers in all communities; and ensure a level playing field for lenders of all sizes.

The government corporation, which here we will call the National Mortgage Reinsurance Corporation, or NMRC[6], would perform the same functions as do Fannie and Freddie today. The NMRC would purchase conforming single-family and multifamily mortgage loans from originating lenders or aggregators, and issue securities backed by these loans through a single issuing platform that the NMRC owns and operates. It would guarantee the timely payment of principal and interest on the securities and perform master servicing responsibilities on the underlying loans, including setting and enforcing servicing and loan modification policies and practices. It would ensure access to credit in historically underserved communities through compliance with existing affordable-housing goals and duty-to-serve requirements. And it would provide equal footing to all lenders, large and small, by maintaining a "cash window" for mortgage purchases.

The NMRC would differ from Fannie and Freddie, however, in several important respects. It would be ***required*** to transfer all noncatastrophic credit risk on the securities that it issues to a broad range of private entities. Its mortgage-backed securities would be backed by the full faith and credit of the U.S. government, for which it would charge an explicit guarantee fee, or g-fee, sufficient to cover any risk that the government takes. And while the NMRC would maintain a modest portfolio with which to manage distressed loans and aggregate single- and multifamily loans for securitization, it cannot use that portfolio for investment purposes. Most importantly, as a government corporation, the NMRC would be motivated neither by profit nor market share, but by a mandate to balance broad access to credit with the safety and soundness of the mortgage market.

A corporation, not an agency

Why a government corporation rather than a government agency or a privately owned mutual or utility? A government corporation can have considerably more flexibility than a government agency. It need not face the same constraints in rule-making or employee compensation, for instance, nor depend on Congress for funding.[7] This flexibility will allow the NMRC to function with more of the flexibility of a private entity, which will be critical in managing an infrastructure as complex and fluid as we have in the housing finance system.[8]

Yet the costs of taking the next step and making the NMRC a privately owned mutual or utility would outweigh the benefits. The pressure to increase profits and market share that drives the typical private company to be more innovative and efficient would be largely absent with the NMRC; it would be a heavily regulated monopoly whose range of business activities, rate of return, and market share would be closely prescribed by policymakers. Whatever marginal flexibility a privately owned institution would have relative to a government corporation would not be worth the significant costs of depending so completely, yet again, on a too-big-to-fail institution, or, in the case of a mutual, the enormous challenges of setting up and operating a company owned by hundreds of institutions of vastly different sizes and interests.

It is also uncertain whether a de novo privately owned institution would be able to raise the considerable capital necessary to fully support the system. Equity investors could be reluctant to commit up front to a system that is untested and deeply entangled with the government. This is not an issue when the NMRC is a government corporation, as the private capital needed will be brought into the system gradually through the credit risk transfer process that FHFA has overseen for the last several years.

FHFA retains its functions

Under the proposed system, the FHFA would retain the functions it has today, providing broad regulatory oversight over the NMRC and the Federal Home Loan Bank system and their counterparties. In addition, it would set the g-fee for the catastrophic risk and maintain a mortgage insurance fund, or MIF, funded by those g-fees sufficient to cover the costs of a catastrophic downturn. If the MIF is depleted during a crisis, the FHFA would have the authority to make up any shortfalls in the fund by increasing g-fees to a level greater than that needed to cover the prevailing credit risk when economic conditions normalize.[9] The FHFA's role in the housing finance system would thus be analogous to the FDIC's role in the banking system, similarly protecting taxpayers from any losses accrued from backstopping the system.

We propose having both a government corporation and a regulator, rather than combining them, for several reasons. First is the quite distinct functions involved—managing the core infrastructure of the conforming market and providing its oversight—which lend themselves to different skill sets and internal controls. Second, the division allows a single regulator, the FHFA, to oversee more than one channel of government-backed lending, the NMRC and the FHLB system, and to coordinate policies with the government's other mortgage credit supports like Ginnie Mae, the Federal Housing Administration, the Veterans Administration, and the USDA. Finally, separate entities would allow the FHFA to act as an ombudsman for mediating stakeholder concerns about NMRC's activities. The importance of this role was recently illustrated when mortgage lenders took up their concerns about Fannie and Freddie's representation and warranty policies with the FHFA. It took longer to resolve this dispute than most would have preferred, but the agency was ultimately successful, to the benefit of borrowers and the mortgage market.

The key function of the secondary mortgage market, namely the taking of interest rate and noncatastrophic credit risk, would be handled by the private sector. A large number and broad range of financial institutions would compete to take credit risk. Like the national highway system, in which a wider range of commerce is able to move freely across the country because of the government's stewardship of the infrastructure, here institutions of all sizes and forms will be better able to compete because they have the same access to the basic functions of the conforming mortgage market on which they rely.

The advantages of the system

Replaces too big to fail with genuine competition

Putting the infrastructure that mortgage market participants depend on into a government corporation accomplishes two key things. First, no private institutions become indispensable to a healthy, functioning secondary market simply by controlling its infrastructure or taking a significant share of the system's credit risk. *No* private institutions will be backstopped by the government, either explicitly or implicitly: None will have an incentive to take on risk that it knows it cannot and will not have to bear. Second, by putting the market's core infrastructure where lenders of all sizes will have equal access, we reduce barriers to entry and thus increase competition in the primary market. Competition among the sources of private capital in the secondary market will also be enhanced by the larger and deeper market for the NMRC's credit risk syndication.

Broad access for underserved communities and small lenders

The creation of the NMRC will also make it much easier to ensure broad access for underserved communities. Rather than rely on the effectiveness of legislative measures to incentivize private guarantors to provide secondary market access for lending in underserved communities, we simply impose the current regime for accomplishing this on the NMRC. The NMRC will be required to meet duty-to-serve and affordability goals defined by the FHFA, the same as Fannie and Freddie must do today. And like the GSEs, to help meet these obligations, the NMRC will price its g-fees in a manner that subsidizes lower wealth borrowers who are creditworthy but may not be able to afford a mortgage loan otherwise. In addition to this subsidy, the NMRC will charge an explicit 10 bps affordability fee that will be used to fund initiatives to support access and affordability for homeownership and rental housing.[10]

Community banks and small lenders will also have access to the system in the way they have it today, by using the cash window through the NMRC. Moreover, they will no longer be vulnerable to the historical practice at Fannie and Freddie of providing larger lenders with better pricing given their volume and market power, as this would run directly contrary to the NMRC's mandate to provide broad, competitive access to the secondary market. This mandate would also ensure that the NMRC uses risk syndication practices that maintain a level playing field for all lenders.[11]

Lower borrower cost

Mortgage rates in the proposed system would be no higher on average through the business cycle than those in the current system (see Box 1). While the fee for the government's explicit reinsurance is a new cost that would be passed on to the borrower, it would be offset by lower yields on the NMRC mortgage securities. Unlike Fannie and Freddie's MBS, the NMRC's MBS would be explicitly backed by the full faith and credit of the U.S. government, and would thus trade more like Ginnie Mae's explicitly guaranteed MBS, which have historically traded 20 basis points lower in yield than Fannie and Freddie MBS.

While there would be some variation in mortgage rates across borrowers with different credit profiles in the system proposed, as there was in the current system prior to conservatorship and is today, it would be moderated by the need for the NMRC to comply with its duty-to-serve and affordable-housing goals, much as it is with Fannie and Freddie today. Rates may be more cyclical than in the current system given the additional reliance on private capital. While Fannie and Freddie's current g-fee rarely changes in response to market conditions, NMRC's g-fee will vary depending on the cost of private capital, which in turn will fluctuate with the perceived risk in the market. G-fees will thus be lower in the new system than in the current system in low-risk environments, when private entities are willing to provide capital more cheaply, and higher in high-risk environments than they would be in the current system, when these entities will require higher returns. The impact on mortgage rates will depend on other factors that will also change with the business cycle, including the yields on MBS and lenders' margins. The cyclicality of g-fees and mortgage rates in the proposed system could also be meaningfully mitigated in a number of ways such as the adoption of countercyclical capital standards, which is described later.

Flexibility in a stressed secondary market

Under our proposed system, the NMRC will have the authority and flexibility needed to manage a crisis in the secondary market. In times of stress, private investors in the risk being syndicated by the NMRC would demand higher returns to justify taking on the higher risk. In a time of acute stress, these investors will either be unwilling to provide capital at all or require such a high return that it would cause guarantee fees and mortgage rates to spike, exacerbating the financial stress. To ensure that this does not happen in the new system, the NMRC would have the flexibility to scale back its risk transfers when private capital's required return rises above a predefined crisis threshold.

To illustrate how this could work, at least at a very high level, suppose the threshold for defining a crisis is when private capital requires an extraordinary return of more than 25%. This is consistent with what investors required in the recent financial crisis, and compares to the roughly 10% return required by investors currently.[12] When this crisis threshold is breached, the NMRC would have the authority to scale back the volume of credit risk it syndicates as it deems appropriate. With this threshold, there would be an effective cap on the g-fee and mortgage rates borrowers face in a crisis, thus serving to mitigate it.

Less disruptive transition

Rather than winding the current system down and starting largely from scratch[13], we merely accelerate the steps that FHFA already has under way to transfer the GSEs' risk to the private market and synchronize their activities, and then use their merged infrastructure to form the structure for the government corporation that replaces them. Fannie and Freddie would continue to build the common securitization platform; the current effort to synchronize *some* of the processes at the enterprises would be extended to *all* of them, from purchasing mortgages to securitizing them and overseeing their servicing; and their current risk-sharing efforts would be expanded so that all of the noncatastrophic risk on their new business would be sold into the market. Importantly, Fannie and Freddie, and ultimately the NMRC, will gradually shift their risk-syndication efforts to the mix of structures that prove most effective in maintaining broad access to affordable credit, a level playing field for lenders of all sizes, and resiliency against market downturns.

Once Fannie and Freddie are issuing a single security off of a single platform, operating under a single set of processes and syndicating all of their noncatastrophic credit risk, their operational assets will be put into the newly formed government corporation, the NMRC. The GSEs' legacy financial assets and liabilities would remain with them and would be steadily wound down; the infrastructure required to manage the wind down and the Treasury's current $258 billion line of credit to backstop their liabilities would also remain with them until they were extinguished.

Only as large as it needs to be

The NMRC will purchase, pool and securitize only those loans that meet the product features of the Consumer Financial Protection Bureau's definition of a "Qualified Mortgage" and have a dollar amount no greater than a limit to be determined by the FHFA.[14]

The system proposed could accommodate either a large or a small government footprint, with the size controlled by adjusting these loan limits.[15] This will allow policymakers to significantly reduce the government's share of the market when purely private lending channels are healthy enough to serve much of the country's borrowers adequately, and scale it up if and when they struggle. While it is important that policymakers do not overuse this flexibility, as that would create unhelpful uncertainty for private-label security investors and portfolio lenders, having some flexibility will give policymakers comfort to pull the government's share back in normal economic times, knowing that they can expand its share when the private channels dry up. The proposed FHFA regulatory structure also should encourage coordination with the loan limits and priorities of the FHA, VA and USDA to create a more unified federal approach to supporting homeownership and rental housing, even if these entities are not incorporated into the NMRC system as suggested below.

Potential costs

While our proposed housing finance system offers significant advantages, it does come with two potential costs worth noting.

Competition

By putting the purchasing, pooling, master servicing, securitizing and risk syndication functions into a government corporation, we give up some competition across these dimensions. How much is difficult to tell, as regulators would inevitably impose significant limitations on the discretion that they would allow private companies providing these functions, given the benefits of standardization and the importance of managing risk and consumer protection in the system. However, they would no doubt give private institutions at least some discretion, which would lead to differentiation and competition, resulting in a system that is in some respects more nimble and efficient than the one we propose, with more innovation in developing new mortgage products, servicing loans, and sharing credit risk. As we learned in the crisis, not all of that competition and innovation would be beneficial to consumers or the stability of the market, but surely much of it would.

We believe that the system proposed is nonetheless worth this trade-off. This is in part because we believe it is important to solve for the shortcomings in systems in which these functions are in the private sector, but also because the competitive advantages of the system proposed offset at least some of the competitive loss described here. By putting the key infrastructure into a government corporation, we level the playing field for lenders of all sizes to compete rather than become beholden to larger institutions that have gained an advantage in times past by taking control over access to the secondary market. Our system also promotes competition in the secondary market across a wider range of sources of private capital, including capital markets, reinsurers, private mortgage insurers, lenders, and other private entities.

Budgetary implications

It is also important to note that transitioning to this system would move the role of the federal government in backstopping the market onto the federal budget. The impact would be modest, however, since the NMRC will set its g-fee based on returns consistent with those charged by private capital. It would thus be operating consistently with how the Congressional Budget Office evaluates the risk associated with Fannie Mae and Freddie Mac's activities today.[16] The debt issued by NMRC to support its portfolio is unlikely to be added to the Treasury's debt load or count toward the U.S. Treasury's statutory debt limit, but the impact if it did would be inconsequential.[17] The legacy obligations of the GSEs would remain with them as they are wound down in conservatorship, so their accounting should remain unchanged.[18]

Additional concerns

In addition to these two potential costs, we would also expect two concerns with our proposed system to be raised, running, incidentally, in opposite directions: that we are relying too heavily on the government in this new system and that we are relying too heavily on private capital to bear the credit risk.

Too much government

As described above, the share of the market that the NMRC would support will be limited to plain vanilla, low-risk loans only up to the size the regulator deems necessary to ensure broad access to credit. In normal times, we would expect lending backed by portfolio lenders and private-label securities investors to serve the majority of the nation's mortgage needs, allowing the government-backed channel to retreat to a more conservative role. It will only take on a larger role in the market if and as the purely private lending channels dry up.

Moreover, even *within* the government-backed channel, the government corporation's role will be limited and targeted to increase private capital within that channel. By giving the NMRC the role of gatekeeper to the secondary market within this channel, the system will create more competition in both the primary lending market and the market for credit risk being absorbed in the secondary market. And in bearing the catastrophic credit risk, the NMRC will create greater demand for their mortgage-backed securities, attracting investors who are only interested in taking interest-rate risk. The government's role in the system we propose is thus not only constrained in its share of the market, but also in its presence within that share, and targeted in a way that maximizes competition and private capital.

Too much private capital

On the other hand, the significant volume of credit risk in the market will no doubt give some pause that there is sufficient private capital willing to take on the primary role allotted to it in this system. Of course, unless one proposes having the government take on a larger role in assuming credit risk in the market than we see today, this is a challenge inherent to *any* proposal to reform the current system. In the system we propose, this challenge is handled by taking on credit risk gradually, allowing the market to develop over time and providing regulators and policymakers time to adjust the course of their risk sharing as it becomes clearer which risk syndication structures are most promising. While we are confident that there is sufficient private capital to take on all of the noncatastrophic credit risk in the system, taking this gradual approach ensures the smoothest possible path to building the broad and deep market needed.

Possible additions to the base system

One of our primary objectives in offering this proposal is to chart a path for reform with as little transition cost and disruption as possible. That has led us to focus simply on migrating the parts of the current system that have worked well over the years into a new system stripped of the flaws that got the current one into trouble. To further improve upon the new system, however, several additional steps could be taken.

Countercyclical capital

To limit the expected cyclicality in mortgage rates in the NMRC system, policymakers should consider the adoption of countercyclical capital standards for both private sources of capital and the MIF. For example, they could be tied to house prices, so that as the market heats up more capital is required and as it cools off, less, thus easing bubbles and accelerating recoveries. Countercyclical capital regimes are already under consideration at the FHFA and consistent with the direction state insurance regulators are headed.[19]

Skin in the game

Policymakers should also consider requiring the NMRC to follow current risk-retention rules for private-label MBS and hold onto 5% of the credit risk that it transfers into the private market. This give the NMRC an added incentive to be careful about the risk that it allows to flow into the secondary market, but, perhaps more importantly, it would provide helpful market feedback, ensuring that the NMRC is not caught off guard when the market is sufficiently distressed as to trigger the deeper catastrophic risk coverage.

Integrating government-backed mortgage lending

Finally, the system we have proposed would allow policymakers to better integrate FHA and other mission-oriented government housing finance agencies into the mainstream system. Once the NMRC is established, it could also purchase, pool and securitize loans insured by the FHA, Veterans Administration and USDA as Ginnie Mae does today. For these loans it would be unnecessary to share the credit risk, as those agencies bear the noncatastrophic credit risk already.

Bringing all government-backed lending into a single, coherent system would make it easier for regulators and policymakers to ensure that historically underserved communities are not only being served, but being served as well as everyone else in the mainstream mortgage market.

The longer it takes, the riskier it gets

It is all too easy to take false comfort in the current status quo in the mortgage market. Home sales and house prices continue to trend upward in most of the country, and lenders have a market into which to sell their loans. But the housing finance system we have today is unhealthy and unsustainable; mortgage credit remains overly tight, taxpayers remain at risk, and the system lingers in a dysfunctional limbo. If we do not take seriously the need for reform until there is a crisis, we will be forced to undertake a remarkably complex and important effort when we are least equipped to handle it.

Our nation deserves a housing finance system that ensures broad access to lenders and borrowers alike, insulates taxpayers behind deep and competitive private capital, and is no longer compromised by the toxic incentives that come with dependence on too-big-to-fail institutions. We offer up this proposal because we believe that it does just that, but also, and perhaps more importantly, to restart the discussion. Let's not wait until the next crisis.

Box 1: Mortgage rates under different housing finance systems

Mortgage rates under our proposed housing finance system would be no higher on average than current rates, and meaningfully lower than under other proposed systems.

Current system

In the current system the mortgage rate on a Fannie or Freddie loan equals the sum of the yield required by investors in Fannie and Freddie mortgage-backed securities, the cost of servicing the loan, what lenders charge for originating the loan, and Fannie and Freddie's g-fee. Their g-fee in turn is equal to the sum of their administrative costs, their expected loan losses, the cost of capital they need to hold for unexpected losses, and what they are required to charge borrowers to pay for the 2013 payroll tax holiday.

The rate on a 30-year fixed-rate mortgage loan to a typical borrower in the current system in a well-functioning economy (characterized by full employment, low and stable inflation, and a normalized monetary policy) should be 6.1% (see Table 1).[20] This equals the sum of the 4.9% expected yield on Fannie and Freddie's MBS, the 50-basis point cost of loan origination and servicing, and the 70-basis point g-fee.

Fannie and Freddie's MBS yield is in turn equal to the 4% Treasury yield, plus the 90-basis point typical spread on Fannie and Freddie MBS over Treasuries. This yield spread compensates investors for prepayment risk, and the risk that the GSEs are unable to make good on their guarantee for credit risk. Even though Fannie and Freddie are operating under government conservatorship, investors are still unsure of the government's commitment to fully backstop their MBS and thus require a higher yield to compensate. Fannie and Freddie's 70-basis point g-fee is largely composed of the cost of capital the GSEs implicitly hold for unexpected losses.[21]

NMRC system

The private market in the NMRC system provides capital covering the first 3.5% of losses, and the after-tax return on this capital is 10%. The sources of private capital in the NMRC system are not too big to fail, and thus will not be required to hold additional capital to remain going concerns in a crisis, as would be required of a systemically important financial institution.

The NMRC will provide the going-concern capital needed in a crisis through the MIF. The MIF will be equal to 2.5% of the total insurance-in-force, and funded by a catastrophic reinsurance fee of 10 basis points.[22] When combined with the 3.5% capitalization rate for the private capital, this would bring the system's total capitalization to 6%, which is approximately double the realized losses experienced by Fannie and Freddie as a result of the crisis.

The fee charged in the NMRC system to fund the subsidy to ensure that the affordable-housing goals and duty-to-serve requirements are met is also assumed to be 10 basis points.[23] Offsetting these added costs is the lower yield expected on NMRC MBS. Given the government's full backing of the securities, they would have yields similar to Ginnie MBS, which are approximately 20 basis points lower than Fannie and Freddie MBS.

While mortgage rates in the NMRC system would be similar to the current system on average through the business cycle, they may also be more cyclical, depending on changes in g-fees, yields on MBS and lenders' margins. They would be capped, however, so that in a crisis they would not rise so high that the housing market would be undermined, further weakening the economy and exacerbating the crisis. To illustrate, consider that a crisis is defined to occur when private sources of capital require a 25% return of equity. In this case, the maximum increase in g-fees charged by NMRC and private capital together in a crisis would be an estimated 53 basis points, or about 33 basis points higher than what we have in today's market after accounting for the 20-basis point benefit of the explicit government backstop on NMRC's MBS.[24]

Other housing finance systems

Mortgage rates would be higher in the other significant housing finance proposals than in the NMRC system. This includes the system envisaged under the Senate legislation sponsored by Senators Johnson and Crapo in 2014 (Johnson-Crapo), the system that would be created through the recapitalization and privatization of Fannie and Freddie (Recap and Release), and the fully privatized system envisaged under the so-called PATH Act introduced by Republicans in the House Financial Services Committee in 2014.

This is our conclusion even under the most favorable assumptions regarding how these other proposals would ultimately be implemented. Rates would be higher under Johnson-Crapo given the likelihood that the private guarantors at the center of that system would be deemed too big to fail and thus required to hold much more capital, a cost that would be passed on to mortgage borrowers.[25] This would also be a problem under Recap and Release, as Fannie and Freddie would certainly be deemed too big to fail.[26] And rates would go up most dramatically under the PATH Act, because of the significant capital required for private institutions to bear the entirety of the credit risk in the absence of a government backstop.[27]

Table 1: Comparing Mortgage Rates Under Different Housing Finance Systems

	Current system		NMRC		Johnson-Crapo		Recap and Release		PATH Act	
Mortgage rate		6.10%		6.10%		6.26%		6.55%		7.16%
Difference with current system				*0.00%*		*0.17%*		*0.46%*		*1.06%*
Mortgage-backed securities yield		4.90%		4.70%		4.70%		4.90%		5.30%
Spread on mortgage securities		90 bps		70 bps		70 bps		90 bps		130 bps
Treasury rate (duration matched)		400 bps		400 bps		400 bps		400 bps		400 bps
Servicing and origination compensation		50 bps		50 bps		50 bps		50 bps		50 bps
Guarantee fee		70 bps		90 bps		106 bps		115 bps		136 bps
Expected credit losses		4 bps		4 bps		4 bps		4 bps		4 bps
Administrative costs		7 bps		7 bps		7 bps		7 bps		7 bps
Govt catastrophic reinsurance fee		0 bps		10 bps		10 bps		0 bps		0 bps
Affordability fee		0 bps		10 bps		10 bps		10 bps		0 bps
Payroll tax surcharge		10 bps		10 bps		10 bps		10 bps		10 bps
Dividend on Treasury capital		0 bps		0 bps		0 bps		0 bps		0 bps
	Capitalization	**Cost of capital**	**Capitalization**	**Cost of capital**	**Capitalization**	**Cost of capital**	**Capitalization**	**Cost of capital**	**Capitalization**	**Cost of capital**
Total capitalization and cost of capital	3.5%	49 bps	3.5%	49 bps	10.0%	65 bps	10.0%	84 bps	5.0%	115 bps
Common equity	3.5%	56 bps	3.5%	56 bps	3.5%	56 bps	5.0%	79 bps	5.0%	125 bps
Preferred equity	0.0%	0 bps	0.0%	0 bps	1.0%	11 bps	0.0%	0 bps	0.0%	0 bps
Subordinated debt	0.0%	0 bps	0.0%	0 bps	2.5%	8 bps	0.0%	0 bps	0.0%	0 bps
Government credit line	0.0%	0 bps	0.0%	0 bps	0.0%	0 bps	5.0%	15 bps	0.0%	0 bps
Present value of future g-fees	0.0%	0 bps	0.0%	0 bps	3.0%	0 bps	0.0%	0 bps	0.0%	0 bps
Less: Return on cash reserves to pay for losses		-7 bps		-7 bps		-9 bps		-10 bps		-10 bps
Assumptions:										
Before-tax cost of common equity		16%		16%		16%		16%		25%
After-tax cost of common equity		10%		10%		10%		10%		16%
After-tax cost of preferred equity		7%		7%		7%		7%		7%
Cost of subordinated debt (bps spread over Treasury)		300		300		300		300		300
Cost of government credit line (bps)		0		0				300		
Pre-tax return on unlevered capital		2%		2%		2%		2%		2%
Treasury draw ($ bil)		187		187		187		187		187
Tax rate		37%		37%		37%		37%		37%

Note: This analysis is for 30-year fixed-rate mortgage borrowers with loan-to-value ratios and credit scores consistent with the current distribution of Fannie Mae and Freddie Mac loans. It also assumes that the economy is in equilibrium, meaning that it is at full employment and inflation is consistent with the Federal Reserve's 2% target.

Source: Moody's Analytics

Endnotes

1 For a useful discussion of the wide range of issues that led to the collapse of the housing finance sector, see the "Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States," January 2011.

2 FHFA Director Melvin L. Watt's most explicit call on Congress to act came in a recent speech at the Bipartisan Policy Center, found here.

3 The bill passed out of the Senate Banking Committee in 2014 sponsored by Chairman Johnson (D-SD) and Ranking Member Crapo (R- ID) was the most promising legislative attempt to date to design a system to provide broad access to credit at manageable risk to the taxpayer. An analysis of the legislation is provided in Housing Finance Reform Steps Forward, Mark Zandi and Cristian deRitis, Moody's Analytics whitepaper, March 2014.

4 There are quite a few issues that we have not addressed here that would need to be in converting this general model into legislation: the details of the charter creating the NMRC, how to address Fannie and Freddie's shareholders, and details on how this model would function in the multifamily market, to name but a few.

5 We refer to catastrophic credit risk throughout the paper to mean credit losses comparable to those experienced during the recent housing crash and Great Recession.

6 The authors apologize for adding yet another indecipherable abbreviation to the GSE discussion and hope that policymakers can come up with something more memorable.

7 The applicability of statutes regarding rule-making, employee compensation and so forth would be set out in its congressional charter. For an explanation of government corporations generally see "Federal Government Corporations: An Overview," Kevin R. Kosar, Congressional Research Service, July 2011.

8 One area where this flexibility will be important is employee compensation. While there is no limitation on compensation in government corporations per se, in developing the NMRC's charter Congress will face pressure to limit the pay in the institution. While pay at taxpayer-backed institution should indeed be kept in check, it will be extremely important to give the NMRC the flexibility to attract and retain a level of talent and experience sufficient to handle the considerable responsibility here.

9 This is analogous to what the FHA has been doing in recent years by charging historically high insurance premiums in order to rebuild the Mutual Mortgage Insurance Fund.

10 We assume that the funds generated will be allocated to the Housing Trust Fund, the Capital Magnet Fund and initiatives to support innovations to expand access to credit in harder to serve populations.

11 It is worth noting that the authors take no position, ex ante, about what mix of risk sharing structures the NMRC should use. It will be up to the FHFA, the GSEs and ultimately the NMRC to determine what mix best serves borrowers, maintains a level playing field for lenders of all sizes and maintains stable liquidity through the business cycle.

12 A 25% return on equity is also consistent with the return required by unsecured consumer lenders such as credit card lenders. Note that fleshing this concept out would take some work: Policymakers would need to develop a mechanism for determining when the ROE threshold has been reached, a way to discern regional stresses from national ones, and so forth.

13 One of the most compelling concerns with the legislative proposals offered thus far has been the significant but uncertain cost of transition. For a sense of this concern, see "Millstein: Here's How to Revamp Fannie, Freddie," in the Wall Street Journal, October 22, 2012.

14 For a summary of the product features that would not be allowed to run through the NMRC (interest only loans, negatively amortizing loans, and loans with balloon payments), see "What is a Qualified Mortgage," by the Consumer Financial Protection Bureau, updated February 8, 2016.

15 While there is an argument for setting the size of the loan limits in statute to insulate the decision-making from political pressure, we believe that it is better to leave it to the discretion of the regulator, perhaps with explicit guidance regarding the conditions under which they should raise or lower it.

16 This is not an endorsement of the use of fair value accounting rules for the government's credit-related activities, but simply to say that our proposal is consistent with the way the CBO evaluates the GSEs today.

17 Whether NMRC debt is counted toward the Treasury's debt load or debt limit depends on the NMRC's charter. If the charter explicitly states that the NMRC debt securities are guaranteed by the U.S. government, then the securities would count against the debt limit. However, if the NMRC charter act is silent and the marketing of the NMRC securities instead relies on the decades-long line of Attorney General and DOJ Office of Legal Counsel published opinions that state that all obligations of all federal agencies (including government corporations) are equally backed by the full faith and credit of the United States, unless explicitly disclaimed in the respective charter act (as Congress did in the case of the TVA and USPS charter acts), then the NMRC securities would not count against the statutory debt limit.

18 Most importantly, the GSEs' current obligations would not be counted towards the Treasury's debt or debt limit.

19 The FHFA's work on countercyclical capital is described in "Countercyclical Capital Regime: A Proposed Design and Empirical Evaluation," Scott Smith and Jesse Weiher, FHFA working paper, April 2012. The National Association of Insurance Commissioners has established a working group to develop new capital standards for private mortgage insurers that will include countercyclical standards.

20 The current mortgage rate is much lower, at below 4%, since the economy has yet to achieve full employment, inflation is below target, and monetary policy remains far from normal. All of which is keeping Treasury yields and thus yields on Fannie and Freddie's MBS atypically low.

21 See "A General Theory of G-Fees," Mark Zandi and Cristian deRitis, Moody's Analytics White Paper, October 2014 for a more detailed explanation of this analysis.

22 The 10 basis point fee to fund the MIF is the same as in the Johnson-Crapo legislation. Many cost is based on a number of assumptions, including the assumption that it will be based on Fair Credit Reporting Act accounting.

23 There will be some costs associated with the operation of the NMRC, but they are assumed to be offset by the lower costs associated through the merger of Fannie and Freddie's operations.

24 This is equal to the product of the 15-percentage point increase in private capital's required rate of return (25% crisis threshold ROE minus 10% current ROE) and the system's 3.5% private capitalization.

25 An analysis of the Johnson-Crapo legislation is provided in "Housing Finance Reform Steps Forward," Mark Zandi and Cristian deRitis, Moody's Analytics white paper, May 2014.

26 For more on how re-privatizing Fannie and Freddie would increase mortgage rates, see "Privatizing Fannie and Freddie: Be Careful What You Ask For," Jim Parrott and Mark Zandi, May 2015.

27 For more on how the PATH Act would impact mortgage rates see "Evaluating PATH," Mark Zandi and Cristian deRitis, Moody's Analytics White Paper, July 2013.

About the Authors

Jim Parrott is a senior fellow at the Urban Institute and owner of Falling Creek Advisors, which provides financial institutions with strategic advice on housing finance issues. Jim spent several years in the White House as a senior advisor on the National Economic Council, where he led the team of advisors charged with counseling the cabinet and president on housing issues. He was on point for developing the administration's major housing policy positions; articulating and defending those positions with Congress, the press and public; and counseling White House leadership on related communications and legislative strategy. Prior to his time with the NEC, Jim was counsel to Secretary Shaun Donovan at the Department of Housing and Urban Development. He has a JD from Columbia University School of Law, an MA from the University of Washington, and a BA from the University of North Carolina.

Lewis S. Ranieri is Founder and Chairman of Ranieri Strategies LLC which is focused on financial services and the use of cognitive technologies. Mr. Ranieri had been Vice Chairman of Salomon Brothers, Inc. ("Salomon"). He is generally considered to be the "father" of the securitized mortgage market. Mr. Ranieri helped develop the capital markets as a source of funds for housing and commercial real estate, established Salomon's leadership position in the mortgage-backed securities area, and also led the effort to obtain federal legislation to support and build the market. Mr. Ranieri was inducted into the National Housing Hall of Fame. In November 2004, BusinessWeek magazine named him one of "the greatest innovators of the past 75 years," and in 2005, he received the Distinguished Industry Service Award from the American Securitization Forum.

Gene Sperling was National Economic Advisor and Director of the National Economic Council for President Obama (2011-2014) and President Clinton (1996-2001). He was also formerly Counselor to Secretary of Treasury Tim Geithner (2009-2010), Deputy National Economic Advisor (1993-1996) and Economic Advisor to Governor Mario Cuomo (1990-1992). He currently heads Sperling Economic Strategies, which provides advice to several companies, start-ups as well as foundations and philanthropies. The ideas expressed in this paper are purely his own. Sperling is also the Founder, former Executive Director (2002-2008) and Advisor Board Chair of the Center of Universal Education (Brookings Institution), which focuses on policies for education in low-income nations, with a special focus on girls education and children in conflict. He as also formerly Senior Fellow at Center for American Progress and Council on Foreign Relations. He is the author of two books: The Pro-Growth Progressive (2006), and What Works in Girls Education: Evidence on the World's Best Investment (2004, 2015), and was a consultant and part-time writer for the television show West Wing (Season 3-6).

Mark M. Zandi is chief economist of Moody's Analytics, where he directs economic research. Moody's Analytics, a subsidiary of Moody's Corp., is a leading provider of economic research, data and analytical tools. Dr. Zandi is a cofounder of Economy.com, which Moody's purchased in 2005. Dr. Zandi conducts regular briefings on the economy for corporate boards, trade associations and policymakers at all levels. He is on the board of directors of MGIC, the nation's largest private mortgage insurance company, and The Reinvestment Fund, a large CDFI that makes investments in disadvantaged neighborhoods. He is often quoted in national and global publications and interviewed by major news media outlets, and is a frequent guest on CNBC, NPR, Meet the Press, CNN, and various other national networks and news programs. Dr. Zandi is the author of Paying the Price: Ending the Great Recession and Beginning a New American Century, which provides an assessment of the monetary and fiscal policy response to the Great Recession. His other book, Financial Shock: A 360º Look at the Subprime Mortgage Implosion, and How to Avoid the Next Financial Crisis, is described by the New York Times as the "clearest guide" to the financial crisis. Dr. Zandi earned his BS from the Wharton School at the University of Pennsylvania and his PhD at the University of Pennsylvania. He lives with his wife and three children in the suburbs of Philadelphia.

Barry Zigas is Director of Housing Policy at Consumer Federation of America. He also advises nonprofits on strategy and policy through his firm Zigas and Associates LLC. He was President of the National Low Income Housing Coalition from 1984-1993 where he led the efforts to create the Low Income Housing Tax Credit and HOME programs, as well as community lending goals for Fannie Mae and Freddie Mac. He joined Fannie Mae in 1993 and served as Senior Vice President for Community Lending from 1995-2006. He serves as board chair for Mercy Housing, Inc. and as board Vice Chair of the Low Income Investment Fund, as well as consumer advisory councils for Bank of America, Ocwen, JP Morgan Chase and Freddie Mac. He was a member of the Bipartisan Policy Center's housing commission 2011-13, and served on the Rouse Maxwell Housing Task Force in 1988-89. He is a Phi Beta Kappa graduate of Grinnell College, from which he also received an alumni award in 2012, and a 1997 graduate of the Advanced Management Program at the Wharton School, University of Pennsylvania.

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I

114TH CONGRESS
1ST SESSION

H. R. 3808

To require the withdrawal and study of the Federal Housing Finance Agency's proposed rule on Federal Home Loan Bank membership, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 2015

Mr. LUETKEMEYER (for himself, Mr. MCHENRY, Mr. HECK of Washington, and Mr. CARNEY) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To require the withdrawal and study of the Federal Housing Finance Agency's proposed rule on Federal Home Loan Bank membership, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FHLB MEMBERSHIP PROPOSED RULE.

(a) DEFINITIONS.—In this section:

(1) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term "community development financial institution" has the meaning given that term in section 103 of the Community Development

Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702).

(2) COVERED PROPOSED RULE.—The term "covered proposed rule" means the proposed rule of the Federal Housing Finance Agency entitled "Members of Federal Home Loan Banks" (79 Fed. Reg. 54848 (September 12, 2014)).

(3) OTHER TERMS FROM THE FEDERAL HOME LOAN BANK ACT.—The terms "community financial institution", "Federal Home Loan Bank", and "Federal Home Loan Bank System" have the meanings given those terms in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422).

(b) WITHDRAWAL OF PROPOSED RULE.—Not later than 30 days after the date of enactment of this Act, the Federal Housing Finance Agency shall withdraw the covered proposed rule.

(c) GAO STUDY AND REPORT ON PROPOSED RULE.—

(1) STUDY.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the impact that the covered proposed rule would have, if adopted as proposed, on—

(i) the ability of the Federal Home Loan Banks to fulfill the mandate to provide liquidity to support housing finance and economic and community development;

(ii) the safety and soundness of the Federal Home Loan Bank System;

(iii) the liquidity needs of financial intermediaries;

(iv) the stability of the Federal Home Loan Bank System;

(v) the benefits of a diverse membership base for Federal Home Loan Banks; and

(vi) the ability of member institutions to rely on access to Federal Home Loan Bank advances.

(B) CONSIDERATIONS.—In conducting the study under subparagraph (A), the Comptroller General of the United States shall consider—

(i) the comment letters submitted in response to the notice of proposed rulemaking for the covered proposed rule;

(ii) the legislative and administrative history of the Federal Home Loan Bank membership rules;

(iii) the burden placed on community financial institutions and community development financial institutions; and

(iv) the legal authority of the Federal Housing Finance Agency to exclude from membership any class or category of insurance companies.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit 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 on the findings of the study conducted under paragraph (1)(A).

○

FINAL RULE
FEDERAL HOME LOAN BANK MEMBERSHIP

FREQUENTLY ASKED QUESTIONS

1. WHAT IS FHFA'S REGULATION ON FEDERAL HOME LOAN BANK MEMBERSHIP?

FHFA's regulation on Federal Home Loan Bank (FHLBank) membership implements provisions of the Federal Home Loan Bank Act (Bank Act) that establish the requirements an institution must meet to become and remain a member of a FHLBank. The regulation specifies how and when an institution must demonstrate compliance with the statutory membership eligibility requirements and otherwise implements those requirements. The regulation also establishes requirements relating to the membership application process and determination of the appropriate FHLBank district for membership, members' purchase and redemption of FHLBank capital stock, and voluntary or involuntary termination and reacquisition of membership.

2. WHY IS FHFA PUBLISHING THIS FINAL RULE?

As regulator of the FHLBanks, FHFA is responsible for ensuring the effective implementation of the provisions and purposes of the Bank Act, including those provisions relating to FHLBank membership. In recent years, changes in the financial services industry have raised a number of issues that the existing membership regulation did not sufficiently address. In 2010, FHFA began an extensive review of its membership regulation to determine whether and how the regulation should be revised to address any of those issues. This final rule, as well as the Advance Notice of Proposed Rulemaking, published in December 2010, and the proposed rule published in September 2014, are the result of that review.

3. HOW IS THE FINAL RULE DIFFERENT FROM THE PROPOSED RULE?

The final rule does not include two provisions from the proposed rule that would have required FHLBank members to maintain ongoing minimum levels of investment in specified residential mortgage assets as a condition of remaining eligible for membership. Also, while the proposed rule would have required FHLBanks to immediately terminate the membership of any captive insurance company that became a member on or after the date the proposed rule was published, the final rule provides for a one-year transition period before the required termination.

4. WHY DID FHFA DECIDE NOT TO INCLUDE THE ONGOING INVESTMENT REQUIREMENTS IN THE FINAL RULE?

Based on comments received in response to the proposed rule and on research indicating that over 98 percent of current members already comply with both proposed requirements, FHFA determined that the benefit of forcing the remaining two percent of current members to comply with these proposals would be outweighed by the burden the proposed rule would have imposed. While members' ongoing commitment to housing finance is important to ensuring fidelity to the Bank Act, FHFA believes that the statutory requirement for members to continue their commitment to housing finance can be addressed, for the time being, by monitoring the levels of residential mortgage assets they hold.

5. WHY DID FHFA DEFINE "INSURANCE COMPANY" TO EFFECTIVELY EXCLUDE CAPTIVE INSURERS FROM MEMBERSHIP?

The final rule's definition of "insurance company" is designed to prevent circumvention of the Bank Act. The primary business of a captive insurer is underwriting insurance for its parent company or for other affiliates, rather than for the public at large, and captives are generally easier and less expensive to charter, capitalize and operate. The number of entities that are otherwise ineligible for membership in a FHLBank establishing captive insurance subsidiaries as conduits to get low-cost FHLBank funding for the ineligible entity has increased considerably in recent years. Since mid-2012, 27 new captive insurers have been admitted as members, 25 of which are owned by entities that are not themselves eligible for membership. FHFA is concerned that this practice will continue to grow and there is no reason to believe it will not grow to include entities other than REITs, such as hedge funds, investment banks and finance companies, some of which have already inquired about establishing captives to gain access to the FHLBank System.

6. WHAT WILL HAPPEN TO ALL THE CAPTIVE INSURERS THAT ARE ALREADY MEMBERS OF AN FHLBANK?

Consistent with the proposed rule, under the final rule captive insurers that became members prior to publication of FHFA's proposed rule in 2014 will be allowed to remain members for up to 5 years after the effective date of the final rule. For these institutions, the final rule limits outstanding advances during the five-year transition period to 40 percent of the assets of the captive and prohibits new advances or renewals that mature beyond the five-year transition period. Existing advances that mature beyond this transition period will be permitted to remain in place.

Captive insurers that became members after publication of the proposed rule must terminate their memberships within one year following the effective date of the final rule. The final rule allows such captives until the end of that one-year period (or until the date of termination, if earlier) to repay their existing advances, but prohibits them from taking new advances or renewing existing advances that expire during that transition period.

7. HOW MANY CAPTIVE INSURERS WILL BE IMPACTED BY THIS RULE? WHAT IS THEIR CURRENT VOLUME OF ADVANCES?

As of September 30, 2015 there were 40 captive insurers in the FHLBank System.[1] As of November 13, 2015 the total dollar volume of outstanding advances to captive insurers was just over $35 billion.

8. WHAT IS FHFA'S LEGAL AUTHORITY FOR EXCLUDING CAPTIVES?

Through the Bank Act and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), Congress gave FHFA regulatory authority over the FHLBanks and gave the Director of FHFA the duty to ensure that each FHLBank complies with the regulations issued under each statute. FHFA has the authority to adopt regulations the Director deems necessary to implement the specific membership provisions of the Bank Act, as well as those the Director deems necessary to ensure that the intent of the statutory membership provisions is accomplished. The authority to ensure that the provisions and purposes of the Bank Act are carried out includes the authority to adopt regulations necessary to ensure that the FHLBanks, their members, or any other parties do not frustrate or subvert the provisions or purposes of the Bank Act.

[1] Since September 30, 2015, one captive insurer was dissolved and acquired by a non-member, thus terminating its membership.

9. WHY DOES FHFA EXCLUDE CAPTIVE INSURERS FROM MEMBERSHIP EVEN THOUGH REITs THAT SERVE AS PARENT COMPANIES TO MANY CAPTIVES ACTUALLY SUPPORT HOUSING FINANCE?

FHFA agrees that mortgage real estate investment trusts (REITs) play an important role in the residential mortgage market. However, concluding that channeling of low-cost FHLBank funding to REITs and other ineligible entities through captive members is not authorized by or consistent with the Bank Act, FHFA is compelled to put an end to that practice until such time as Congress authorizes that access.

10. WILL FHFA'S FINAL RULE PROHIBIT INSURANCE COMPANIES THAT WRITE POLICIES FOR THE PUBLIC FROM OBTAINING MEMBERSHIP?

FHFA has taken special care to define "insurance company" so that captives having the characteristics that give rise to the Agency's concerns will be excluded, while those institutions that do not give rise to such concerns and that would be regarded as carrying out the business of insurance as traditionally understood will continue to be considered insurance companies for purposes of determining eligibility for FHLBank membership.

11. WHY DOES THE FINAL RULE REQUIRE INSURANCE COMPANIES TO SUBMIT AUDITED FINANCIALS TO THEIR FHLBANK?

The Bank Act requires an institution to be in a "financial condition" such that advances can be safely made to it in order to be eligible for membership and the existing regulation already requires the FHLBanks to review the audited financial statements of depository institution applicants. The final rule revises the regulation to require the FHLBanks to obtain and review the audited financial statements of insurance company applicants when assessing the financial condition of the applicant. There are significant benefits to relying on financial statements that have been audited by a third party, particularly when assessing an institution's financial condition prior to admitting it to membership, the only time at which this requirement will apply.

12. WHY DOES THE PLACE OF BUSINESS MATTER FOR AN INSURANCE COMPANY?

The Bank Act provides generally that an eligible institution may become a member only of the FHLBank in the district in which the institution's "principal place of business" is located, but does not define that term. FHFA's existing membership regulation deemed an institution's "principal place of business" in most cases to be the state in which it maintains its "home office," but allowed for limited exceptions. Recently, some insurance companies and non-depository community development financial institutions have attempted to apply for membership in the FHLBank whose district included the state under whose laws those entities had been domiciled or incorporated, even though they conducted all of their business activities elsewhere. The final rule therefore retains the "home office" approach and adds a provision requiring the FHLBank to confirm that the institution also conducts business operations from that location. The "principal place of business" provisions will be applied only prospectively and will therefore not affect current FHLBank members.

13. WHEN IS THE NEW RULE EFFECTIVE?

The final rule will be effective 30 days after publication in the Federal Register.

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FEDERAL REGISTER

Vol. 81 Wednesday,
No. 12 January 20, 2016

Part II

Federal Housing Finance Agency

12 CFR Part 1263
Members of Federal Home Loan Banks; Final Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1263

RIN 2590–AA39

Members of Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) has adopted a final rule revising its regulations governing Federal Home Loan Bank (Bank) membership. The final rule adopts several key revisions included in the Notice of Proposed Rulemaking. These revisions will prevent the circumvention of the statute's membership restrictions by ineligible entities using captive insurers as conduits for Bank membership by defining the term "insurance company" to exclude captive insurers, thereby making them ineligible for Bank membership; permit any Bank that has admitted captives to membership a transition period within which to wind down its affairs with those entities; require a Bank to obtain and review an insurance company's audited financial statements when considering its application for membership; clarify the standards by which a Bank is to determine the "principal place of business" for its members, including specific standards for insurance companies and community development financial institutions; and remove obsolete provisions and make numerous non-substantive textual revisions so as to provide greater clarity. The final rule does not implement the proposed rule's provisions with respect to continuing eligibility requirements, in order, as explained below, to avoid compliance burdens that may outweigh the benefits. The specific revisions made, and the rationale for making them, are set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: *Effective Date:* February 19, 2016.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Assistant General Counsel, Office of General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084; or Julie Paller, Senior Financial Analyst, Supervisory and Regulatory Policy, Division of Bank Regulation, *Julie.Paller@fhfa.gov,* (202) 649–3201 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Existing Bank Membership Requirements

1. Statutory Requirements

The Federal Home Loan Bank System (Bank System) consists of eleven district Banks and the Office of Finance. The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a very limited extent, through certain eligible nonmembers.[1] Each Bank is structured as a regional cooperative in that it is owned and controlled by member institutions located within its district, which are its primary customers.[2]

The Banks carry out their public policy function primarily by providing low cost loans, known as advances, to their members. These must be fully secured by one or more specific types of collateral, including residential mortgage loans and residential mortgage-backed securities, but also government securities, cash, other real estate related collateral, and, in some cases, secured small business, agriculture, or community development loans, or securities backed by such loans.[3] In most cases, Bank members must use the proceeds of long-term advances (that is, advances with an original term to maturity of more than five years) to fund residential housing finance, although, since 1999, smaller bank and thrift members have also been permitted to obtain long-term advances to fund small business and community development activities.[4] Bank members may use the proceeds of shorter-term advances for any business purpose. The Banks also may provide members with a limited range of other products and services, such as they provide through the "acquired member asset" (AMA) programs, under which they may purchase qualifying residential mortgage loans from their members or facilitate the sale of such loans to third-party investors.[5]

The Banks fund their operations principally through the issuance of consolidated obligations (COs), which are debt instruments issued on their behalf by the Office of Finance (a joint office of the Banks) and on which all of the Banks are jointly and severally liable.[6] Congress has vested in the Banks market advantages designed to enable them to raise funds in the capital markets at interest rates only slightly higher than those on comparable Treasury instruments. These government-sponsored entities have various advantages, which include, among other things: The exemption of the Banks' corporate earnings and the earnings on their COs from state and federal income taxes;[7] the classification of the Banks' COs as "exempted securities" under the Securities Act of 1933 and as "government securities" under the Securities Exchange Act of 1934;[8] and the authority of the U.S. Department of the Treasury (Treasury Department) to purchase up to $4 billion in COs under certain circumstances and the fact that Congress has occasionally granted it authority to purchase higher amounts during periods of financial crisis.[9] These market advantages were designed to enable the Banks to provide low-cost wholesale funding to their member institutions so that, in turn, those members could provide long-term home mortgage loans to consumers at a reasonable cost. These advantages accrue not only to consumers, but also to the members themselves, which benefit from a lower cost of funds that makes those institutions more competitive in their markets as compared with non-members who do not have access to such low-cost wholesale funding.

In line with the public policy goals underlying the creation of the Banks

[1] *See* 12 U.S.C. 1423, 1431(e), 1432(a). *See also* *Fahey* v. *O'Melveny & Myers,* 200 F.2d 420, 446 (9th Cir. 1952) (stating that a Bank is "a federal instrumentality organized to carry out public policy"); *ADAPSO* v. *FHLBB,* 568 F.2d 478, 480 (6th Cir. 1977) (stating that the Banks remain federal instrumentalities although their stock is now held entirely by private entities). In addition to advances to members, the Bank Act also authorizes the Banks to make advances to nonmember mortgagees, including state housing finance agencies, that have been approved under title II of the National Housing Act, 12 U.S.C. 1707, *et seq.,* and that meet certain additional requirements. *See* 12 U.S.C. 1430b. These entities are referred to as "housing associates" in FHFA's regulations. *See* 12 CFR 1201.1, 1264.1–.6, 1266.16–.17.

[2] Specifically, only members may own the capital stock of a Bank, 12 U.S.C. 1426(a)(4)(B), all members are required to maintain a minimum investment in Bank stock, 12 U.S.C. 1426(c)(1), each Bank is managed by a board of directors that is elected by its members, *see* 12 U.S.C. 1427(a), (b), (c), and (with limited exceptions noted in footnote 1 above) only members may obtain advances and access other products and services provided by a Bank, *see* 12 U.S.C. 1429, 1430(a)(1), 1430b.

[3] 12 U.S.C. 1430(a)(3).

[4] *See* 12 U.S.C. 1430(a)(2).

[5] *See* 12 CFR part 955.

[6] *See* 12 U.S.C. 1431; 12 CFR part 1270.

[7] *See* 12 U.S.C. 1433.

[8] *See* 12 U.S.C. 1426a(c)(2).

[9] *See* 12 U.S.C. 1431(i), (*l*).

and in conjunction with its decision to provide the Banks, and consequently their members, with the market advantages described above, Congress made a decision to limit eligibility for Bank membership to the types of financial institutions listed in section 4(a) of the Bank Act. When the statute was originally enacted in 1932, these included thrift institutions of various types that existed at the time (*i.e.,* building and loan associations, savings and loan associations, cooperative banks, homestead associations, and savings banks), as well as insurance companies. Since 1932, Congress has amended section 4(a) to expand the list of institutions that may be eligible for Bank membership only three times, adding federally insured depository institutions in 1989,[10] non-depository Community Development Financial Institutions (CDFIs) in 2008,[11] and non-federally insured credit unions in 2015.[12] Today, because most depository institutions (including the types of thrifts listed in section 4(a)) are now federally insured, essentially four types of institutions may be eligible for membership: (1) Federally insured depository institutions (including banks and thrifts whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) and credit unions whose deposits are insured by the National Credit Union Administration (NCUA)); (2) insurance companies; (3) CDFIs that are certified by the Community Development Financial Institutions Fund of the Treasury Department; and (4) non-federally insured credit unions meeting certain statutory criteria. Entities that do not fall within one of those categories are ineligible for Bank membership.

While qualifying as one of those enumerated types of institutions is one prerequisite for membership eligibility, an institution must meet several other requirements set forth in section 4 of the Bank Act in order to obtain membership. Section 4(a)(1) of the Bank Act requires that an institution, regardless of type: (A) Be duly organized under the laws of any state or the United States; (B) be subject to inspection and regulation under banking, or similar, laws of a state or the United States; and (C) "makes such home mortgage loans as, in the judgment of the Director [of FHFA], are long-term loans." [13] An institution that fails to satisfy any of those requirements is not eligible for Bank membership. (Hereinafter, those requirements are referred to as the "duly organized," "subject to inspection and regulation," and "makes long-term home mortgage loans" requirements, respectively).

Section 4(a)(2) of the Bank Act imposes additional eligibility requirements on insured depository institutions that were not members of a Bank as of January 1, 1989. These require that any such institution: (A) Have at least 10 percent of its total assets in "residential mortgage loans"; (B) be in a financial condition such that advances may be safely made to it; and (C) show that the character of its management and its home-financing policy are consistent with sound and economical home financing.[14] (Hereinafter, those requirements are referred to as the "10 percent," "financial condition," "character of management," and "home financing policy" requirements, respectively). However, section 4(a)(4) exempts from the "10 percent" requirement any "community financial institution" (CFI),[15] which the statute defines as an FDIC-insured depository institution with less than $1 billion in average total assets (adjusted annually for inflation) over the preceding three years.[16]

2. FHFA's Existing Bank Membership Regulation

FHFA's regulation on Bank membership, located at 12 CFR part 1263, specifies how and when an institution must demonstrate compliance with each of the statutory membership eligibility requirements and otherwise implements those requirements. The regulation also establishes requirements relating to the membership application process, determination of the appropriate Bank district for membership, members' purchase and redemption of Bank capital stock, and voluntary or involuntary termination and reacquisition of membership.

The regulation requires all insured depository institutions, insurance companies, and CDFIs to meet six requirements in order to be considered eligible for membership: The "duly organized," "subject to inspection and regulation," [17] and "makes long-term home mortgage loans" requirements, which by statute apply to all types of institutions; and the "financial condition," "character of management," and "home financing policy" requirements, which FHFA and its predecessor agency, the Federal Housing Finance Board (Finance Board), have applied by regulation to all institutions as a matter of safety and soundness.[18] Paralleling the statute, the membership regulation requires that non-CFI depository institutions also meet the "10 percent" requirement in order to be eligible for membership, but does not extend that requirement to CFIs, CDFIs or insurance companies.[19] However, the regulation does require institutions that are not insured depository institutions (*i.e.,* insurance companies and CDFIs) to have "mortgage-related assets" that "reflect a commitment to housing finance" in order to be considered eligible.[20]

For each of the six general eligibility requirements and for the "10 percent" requirement, part 1263 includes at least one separate section specifying in more detail how a Bank that is considering an institution's application for membership is to determine whether the applicant satisfies the requirement.[21] An applicant that meets the criteria of any of those more detailed provisions is deemed to be in compliance with the corresponding statutory eligibility requirement, although that presumption

[10] *See Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),* Public Law 101–73, § 704, 103 Stat. 183, 415 (1989).

[11] *See Housing and Economic Recovery Act of 2008,* Public Law 110–289, § 1206, 122 Stat. 2654, 2787 (2008). CDFI credit unions were eligible for Bank membership prior to 2008 due to their status as insured depository institutions.

[12] On December 4, 2015, the President signed into law an amendment to section 4(a) of the Bank Act that allows any non-federally insured credit union meeting certain specified criteria to be treated as an "insured depository institution" for purposes of determining its eligibility for Bank membership. *See Fixing America's Surface Transportation Act,* Public Law 114–94, § 82001 (2015). This final rule does not implement or otherwise address that recent statutory amendment. To the extent that regulatory revisions are necessary or appropriate to implement the amendment, they must be the subject of a separate rulemaking.

[13] 12 U.S.C. 1424(a)(1). In lieu of being subject to inspection and regulation by a state or federal regulator, a CDFI applicant must be certified as a CDFI by the Treasury Department. *See* 12 U.S.C. 1424(a)(1)(B).

[14] 12 U.S.C. 1424(a)(2).

[15] 12 U.S.C. 1424(a)(4).

[16] 12 U.S.C. 1422(10)(A). By statute, FHFA must annually adjust the $1 billion CFI asset limit for inflation. 12 U.S.C. 1422(10)(B). The inflation-adjusted CFI limit for 2015 was $1.123 billion. *See* 80 FR 6712 (Feb. 6, 2015).

[17] As provided in the statute, an institution certified as a CDFI by the Treasury Department's CDFI Fund is deemed to have met the "subject to inspection and regulation" requirement by virtue of that certification. *See* 12 CFR 1263.6(a)(2), 1263.8.

[18] 12 CFR 1263.6(a).

[19] 12 CFR 1263.6(b).

[20] 12 CFR 1263.6(c). The regulation does not define the term "mortgage-related assets."

[21] *See* 12 CFR 1263.7–1263.18. In the case of the "financial condition" requirement, there are two such sections—one (§ 1263.11) setting forth the specific criteria for insured depository institutions and another (§ 1263.16) setting forth the specific criteria for insurance companies and CDFIs. There are also separate sections setting forth specific criteria for determining all of the eligibility requirements for recently chartered insured depository institutions (§ 1263.14) and for determining some of the eligibility requirements for recently consolidated institutions of any type (§ 1263.15).

may be rebutted if the Bank obtains substantial evidence to the contrary.[22] Conversely, an applicant that does not meet the criteria of the more detailed provisions is presumed to be out of compliance with the corresponding statutory eligibility requirements. With respect to several of the requirements, the presumption of non-compliance can be rebutted if certain additional criteria are met.[23] However, the presumption of non-compliance arising from failure to meet the criteria for the "makes long-term home mortgage loans," and "10 percent" requirements (as well as the "duly organized" requirement) is conclusive and may not be rebutted.

In the case of the "10 percent" requirement, the regulation deems any insured depository institution to which that statutory requirement applies to have satisfied that requirement if, at the time of its application for Bank membership, its most recently filed regulatory financial report indicates that it has at least 10 percent of its total assets in "residential mortgage loans." [24] In contrast to the "10 percent" requirement, neither the Bank Act nor the regulation establishes a quantitative standard for determining compliance with the "makes long-term home mortgage loans" requirement. The regulation deems an institution to have satisfied that statutory requirement if, at the time of its application for Bank membership, its most recently filed regulatory financial report demonstrates that it originates or purchases long-term home mortgage loans.[25] The regulation does not specify the level of activity that is needed to meet the requirement. The membership regulation does not require a Bank to determine an institution's compliance with either the "10 percent" or "makes long-term home mortgage loans" requirement once that institution has become a Bank member.

B. FHFA's Review of the Membership Regulation

This final rule is one of the results of a continuing review of FHFA's Bank membership regulation that the Agency began in 2010. Most of the fundamental aspects of the existing membership regulation were adopted as part of two rulemakings undertaken by the Finance Board in the mid-1990s.[26] Although the membership regulation was subsequently amended several times (in some cases to make important substantive changes [27]), until 2010 there had been no comprehensive review of the regulation as a whole since it was amended to grant the Banks the authority to approve or deny membership applications in 1996. FHFA's decision to undertake such a review was prompted in part by the evolution of the financial services industry in the intervening years, which had given rise to a number of issues that the existing regulation either did not address or addressed inadequately. The goal of this review, which is ongoing, has been to determine whether the existing regulatory provisions continue to effectively implement the requirements of the Bank Act and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) and to fulfill the purposes underlying those requirements. FHFA has also sought to determine whether certain provisions that do not need substantive revision should nonetheless be revised to address questions that have arisen about their application, or simply to read more clearly or conform more closely to the style, structure and nomenclature FHFA now uses in its other regulations.

In December 2010, after FHFA had completed an initial review of the membership regulation, the Agency published an Advance Notice of Proposed Rulemaking (ANPR) in which it requested comments on a number of issues.[28] Primary among those issues was whether the existing regulation was effectively implementing the statutory "10 percent," "makes long-term home mortgage loans," and "home financing policy" eligibility requirements. The ANPR asked whether it would be appropriate to establish more objective and quantifiable standards for either of the latter two requirements and whether any or all of those requirements should be revised to explicitly apply on a continuing basis, rather than only at the time of admission to membership. The ANPR also requested comment on other issues, including whether, in light of FHFA's supervisory concerns about the acceptance of so-called "captive" insurers as members by several Banks, the Agency should amend the regulation to exclude such entities from Bank membership. FHFA received 137 comment letters in response to the ANPR, almost all of which opposed revising the membership regulation in any of the ways discussed in the notice. However, because very few of those letters provided detailed responses to the questions FHFA asked, the Agency continued to study the issues and ultimately decided to proceed with a Notice of Proposed Rulemaking (proposed rule).

C. The Proposed Rule

FHFA published a proposed rule in the **Federal Register** on September 12, 2014.[29] It proposed to make two fundamental changes to the Bank membership regulation, as well as several other substantive, but less fundamental, changes, and numerous non-substantive revisions to clarify various existing regulatory provisions.

First, the proposed rule would have revised the regulation to require that an institution hold at least one percent of its assets in home mortgage loans in order to be deemed to satisfy the statutory "makes long-term home mortgage loans" requirement and to require that each Bank member comply

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[22] 12 CFR 1263.17(a).

[23] *See* 12 CFR 1263.17(b) through (f).

[24] The regulation defines the term "residential mortgage loan," which the statute does not define, to include generally all assets that qualify as home mortgage loans (*see* definition in footnote 25 below), regardless of whether the underlying loans are "long-term" or not, plus loans secured by junior liens on one-to-four family property or multifamily property, loans secured by manufactured housing, funded residential construction loans, and mortgage pass-through securities representing an ownership interest in, or mortgage debt securities secured by, any of those types of assets. 12 CFR 1263.1.

[25] 12 CFR 1263.9. The Bank Act defines the term "home mortgage loan" to mean "a loan made by a member upon the security of a home mortgage." 12 U.S.C. 1422(4). In turn, the statute defines the term "home mortgage" to mean a first mortgage, or its equivalent, upon real estate on which one or more homes or dwelling units are located. 12 U.S.C. 1422(5). The existing regulation supplements the statutory definition of "home mortgage loan" by defining the term generally to include any loan or interest in a loan that is secured by a first lien mortgage or any mortgage pass-through security that represents an undivided ownership interest in such loans or in another security that represents an undivided ownership interest in such loans. 12 CFR 1263.1. The regulation also defines the term "long-term," which the statute does not define, to mean "a term to maturity of five years or greater." *See id.*

[26] In 1993, the Finance Board adopted a new membership regulation in order to implement the revisions to the statutory membership requirements made by FIRREA in 1989. *See* 58 FR 43522 (Aug. 17, 1993). Most of the existing material addressing the general eligibility requirements (now located in § 1263.6), the stock requirements (§§ 1263.19–1263.23), and membership withdrawal, termination, and readmission requirements (§§ 1263.24–1263.30) was adopted at that time. A 1996 rulemaking made significant revisions and additions to the regulation in order to authorize the Banks to approve or deny all membership applications. *See* 61 FR 42531 (Aug. 16, 1996). Prior to that time, the Finance Board had the ultimate authority to approve or deny membership applications, although it had delegated some of that decision-making authority to the Banks in the case of institutions meeting certain "safe harbor" criteria. Most of the existing material regarding the application process (§§ 1263.2–1263.5) and the rebuttable presumptions that apply to the various eligibility requirements (§§ 1263.7–1263.18) were adopted as part of the 1996 rulemaking.

[27] For example, the regulation was amended in 2000 to implement the new statutory exemption of CFIs from the "10 percent" requirement, *see* 65 FR 13866 (Mar. 15, 2000), and in 2010 to implement the statutory amendments making non-depository CDFIs eligible for membership, *see* 75 FR 678 (Jan. 5, 2010).

[28] *See* 75 FR 81145 (Dec. 27, 2010).

[29] *See* 79 FR 54848 (Sept. 12, 2014).

with that "one percent" requirement and, where applicable, with the "10 percent" requirement on an ongoing basis as a condition of remaining a member. The proposed rule would have required each Bank to determine member compliance with those ongoing requirements annually, using data from members' regulatory financial reports where possible, to calculate the relevant ratios based on a three-year rolling average. Members found to be out of compliance with either requirement would have been given one year to return to compliance. As proposed, the rule would have required a Bank to terminate the membership of any institution that remained out of compliance for two consecutive years.

Second, the proposed rule sought to address the growing use of captive insurers as vehicles through which parent companies not meeting the membership eligibility requirements of the Bank Act could circumvent those requirements and gain access to low-cost Bank advances to fund their own operations and investments.[30] Several real estate investment trusts (REITs), which are not eligible for Bank membership, had established captive subsidiaries that became Bank members and then obtained advances that were disproportionately large in comparison with the investments and operations of the captives themselves, and additional REITs and other ineligible entities were seeking to do the same. This, combined with the facts that many of the parents were guaranteeing repayment of the advances made to their captive subsidiaries and providing the collateral for those advances, led FHFA to the conclusion that the real purpose of those arrangements was to provide the non-member REITs with access to Bank funding to which they were not legally entitled.

The proposed rule would have addressed this supervisory concern by defining the term "insurance company"—which is not defined in either the Bank Act or the existing regulation—to exclude captives, thereby rendering those types of entities ineligible for Bank membership. Specifically, the proposed rule would have defined "insurance company" to mean "a company whose primary business is the underwriting of insurance for nonaffiliated persons or entities." A typical captive, whose primary business is the underwriting of insurance for its parent company or for other affiliates, would not be included within the scope of the proposed definition of "insurance company." Because, as discussed above, the Bank Act and the membership regulation limit eligibility for Bank membership to institutions that qualify as an insured depository institution, a CDFI, or an insurance company, defining "insurance company" to exclude captives effectively removes such entities from among the types of institutions that may be eligible for membership.

Although the proposed rule would have made all captives ineligible for membership, it would have permitted any captive that had been admitted to membership prior to the publication date of the proposed rule to remain a member of its current Bank for five years following the effective date of the final rule. However, the rule would have capped the amount of advances that a Bank could have outstanding to such a member at 40 percent of the member's total assets and prohibited a Bank from making a new advance, or renewing an existing advance, with a maturity date beyond the five-year grace period. As proposed, the regulatory text would not have explicitly addressed the treatment of any captives that a Bank may have admitted to membership on or after the date on which the proposed rule was published. FHFA stated in the **SUPPLEMENTARY INFORMATION** to the proposed rule, however, that it would interpret the regulation to require the immediate termination of such captives' membership and the prompt liquidation of any outstanding advances.

The proposed rule also would have made several other substantive, but less fundamental, changes: (1) To expand the list of assets that qualify as "home mortgage loans" to include all types of mortgage-backed securities (MBS) (as opposed to only mortgage pass-through securities) that are fully backed by qualifying whole loans; (2) to require that a Bank examine an insurance company applicant's most recent audited financial statements in determining whether it meets the "financial condition" eligibility requirement; and (3) to revise the existing regulation and add a new provision addressing how a Bank should determine the "principal place of business" (and, therefore, the appropriate Bank district for membership) for insurance companies or CDFIs. In addition to those primary revisions, FHFA also proposed to make a number of conforming changes necessary to integrate the new requirements into the regulation and to make numerous non-substantive revisions to clarify various regulatory provisions.

D. Overview of Comments on the Proposed Rule

The proposed rule initially provided for a comment period of 60 days, but, in response to numerous requests, FHFA extended the comment period to 120 days.[31] The extended comment period closed on January 12, 2015, and FHFA received over 1,300 comment letters in response to the proposed rule. Nearly 60 percent of the comment letters came from bank and thrift institutions and related trade associations; about 12 percent came from credit unions and related trade associations. The remainder of the letters were from the Banks (all of which sent more than one letter), insurance companies, CDFIs, affordable housing agencies and organizations, various types of community support organizations, home builders, REITs, public officials, and others. About two-thirds of all letters were versions of one form letter template or another.

Few of the comment letters expressed support for any aspect of the proposed rule, and the vast majority expressed opposition to, or requested that FHFA withdraw, the entire rule. The most commonly expressed concerns arose from a belief that the rule, if implemented, would result in the Banks having fewer members on average and that this, in turn, would result in a reduction in their income. This, commenters contended, would compromise the Banks' ability to act as reliable sources of liquidity, inhibit their ability to carry out their housing

[30] A captive is a special-purpose insurer formed primarily to underwrite the risks of its parent company or affiliated companies. A typical captive resembles a traditional commercial insurance company in that it is licensed under state law, sets premiums and writes policies for the risks it underwrites, collects premiums, and pays out claims. The biggest difference between a captive insurer and a commercial insurance company is that a captive does not sell insurance to the general public. In 1972, Colorado became the first state in the U.S. to enact legislation recognizing and governing captives as a class of entity distinct from commercial insurance companies. To date, over 30 states and the District of Columbia have enacted such captives-specific statutes. Primarily because captives do not sell insurance to the general public, these state statutes establish standards for the formation, licensing, operation, and supervision of captives that are generally less onerous than either the state statutory regimes that apply to commercial insurance companies or the state and federal laws under which depository institutions are chartered, operated, and supervised. *See* Frank Seneco, Wesley Sierk & Evan Jehle, *Do-It-Yourself Insurance,* Private Wealth Magazine, July/Aug. 2014, at 21–22, *http://www.fa-mag.com/news/do-it-yourself-insurance-18548.html?issue=230* (last visited Dec. 8, 2015); *see also* National Association of Insurance Commissioners, Captive and Special Purpose Vehicle Use Subgroup of the Financial Condition Committee, *Captives and Special Purpose Vehicles—An NAIC White Paper* (June 6, 2013), *http://www.naic.org/store/free/SPV-OP-13-ELS.pdf* (last visited Dec. 8, 2015).

[31] *See* 79 FR 60384 (Oct. 7, 2014).

finance and community development mission, and reduce the amount of funds available for their Affordable Housing Programs and Community Investment Cash Advance programs. However, few of the commenters expressing these views provided factual support for their opinions or attempted to quantify the effects they believed the rule would have on the Banks' operations.

FHFA reviewed every comment letter and considered all of the comments in developing the final rule. The primary comments regarding each of the substantive aspects of the proposed rule, as well as FHFA's responses to some of those comments, are discussed immediately below. Comments addressing specific rule provisions are discussed in part III of this **SUPPLEMENTARY INFORMATION**, which describes the final rule in detail and the ways in which it differs from the proposed rule.

1. Comments on the Proposed Ongoing Asset Ratio Requirements

Over 800 of the comment letters addressed FHFA's proposal to measure compliance with the "makes long-term home mortgage loans" requirement based on a quantitative standard and to apply that quantitative requirement to members on an ongoing basis. Over 600 of the letters addressed the proposal to apply the "10 percent" requirement to members on an ongoing basis. Almost all of the commenters addressing those proposals were opposed to the proposed revisions. Approximately 66 percent of those opposed to the ongoing quantitative "makes long-term home mortgage loans" requirement and approximately 51 percent of those opposed to the ongoing "10 percent" requirement stated that managing their balance sheets for compliance would hinder members' business by putting them in the position of choosing between optimal balance sheet management and continued access to their Banks as a source of liquidity. About half of the commenters opposed to the proposed revisions stated that members would be harmed by losing membership in the Bank System and about half also cited concerns regarding the additional regulatory burden on members.

As further objections to the proposal, commenters also stated, among other things, that the proposal would create a significant operational burden on the Banks because the member financial information required to determine compliance with the ongoing requirements is not perfectly aligned with specific call report line items; the proposal would provide little or no benefit to the Bank System; members could never be certain that FHFA would not increase the quantitative requirements in the future; the proposed ongoing requirements would reduce membership levels at the Banks; the current regulations and collateral requirements already ensure that members maintain a nexus to the Banks' housing finance mission; the proposed ongoing requirements have no foundation in the Bank Act or its legislative history; and the requirements do not take into account that financial services organizations are often structured such that they hold mortgages and mortgage securities in various entities within their corporate organization for a range of business reasons.

Commenters also expressed concerns specific to the proposal to make the "10 percent" requirement ongoing, including that CFIs with total assets approaching the CFI threshold amount might forego acquiring another institution or reduce other activities that could grow their business solely because doing so would push their asset size above the CFI threshold and thus make them immediately subject to the "10 percent" requirement. In addition, some commenters expressed concern that, because the Bank Act does not exempt smaller credit unions from the "10 percent" requirement as it does for small banks and thrifts, the proposed changes would impose a disproportionately greater compliance burden on small credit unions than they would on small banks and thrifts.

Having reviewed all of the comment letters addressing the proposed ongoing asset ratio requirements, FHFA has decided not to include those revised requirements in the final rule. The Agency's research indicates that over 98 percent of current members likely would be in compliance with both proposed requirements (as applicable). This suggests that, for the time being, FHFA can address its supervisory concerns about members abandoning their commitment to housing finance by continuing to monitor the levels of residential mortgage assets held by members.

FHFA also recognizes that establishing a system to monitor members' compliance with the proposed ongoing asset ratio requirements could pose an additional incremental burden on the Banks and their members, particularly on members whose asset ratios are close to the required minimums. FHFA also carefully considered the comments received from the credit union industry, which contended that the proposed ongoing "10 percent" requirement would impose a disproportionate burden on small credit unions because they cannot qualify as CFIs. That view is consistent with the Agency's recent research, which indicates that, of the current members that would not meet an ongoing "10 percent" requirement, about 68 percent of them would be small credit unions.

Although FHFA has determined not to adopt the ongoing asset ratio requirements as part of the final rule, the Agency believes that members' ongoing commitment to housing finance is important to ensuring fidelity to the Bank Act and the purposes for which the Bank System was established and that the issue warrants continued monitoring going forward. FHFA therefore will continue to monitor this issue carefully and may revisit the issue in the future should its monitoring reveal a need for further action. Any such action would be undertaken through a separate rulemaking, with prior notice to, and an opportunity for comments from, all interested parties.

2. Comments on the Proposed Exclusion of Captives From Membership

About 400 of the comment letters addressed FHFA's proposal to exclude captives from Bank membership to some degree, with about 60 of those letters treating the issue in some depth. Almost all of the letters expressed opposition to all aspects of the captives proposal and none expressed support for the overall proposal. Almost all of the commenters' specific arguments in opposition to the captives proposal fell into two general categories: (1) That FHFA does not have the legal authority to implement the proposal; and (2) that the proposal is flawed from a policy perspective. Many commenters included arguments falling into both categories in their letters.

A few of the comment letters expressed no opposition to the proposal, but suggested some clarifying textual revisions. One commenter explicitly supported the idea of excluding REIT-controlled captives from membership, stating that, because REITs are uninsured, they pose "unnecessary risks" to the Bank system and, because REITs already benefit from tax preferences, it is questionable public policy to allow them access to the lower cost funding the Banks provide. However, that commenter was opposed to the exclusion of captives controlled by other types of entities.

a. Comments on FHFA's Legal Authority To Implement the Captives Proposal

Commenters who expressed legally based objections to the captives proposal made three types of arguments in support of those objections: (1) FHFA lacks the legal authority to define the term "insurance company" to exclude captives; (2) irrespective of its general authority, FHFA cannot legally exclude all captives from membership as proposed because the proposal lacks a factual basis, arbitrarily singles out captives, or is overly broad; and (3) in any event, FHFA lacks the legal authority to terminate or require termination of a captive member. These three general categories, including most of the specific legal arguments offered within those categories, are addressed in turn below.

The general legal argument expressed most frequently in the comment letters was that FHFA lacks the legal authority to define the term "insurance company" to exclude captives. Many commenters stated that, because "insurance company" is not defined in the statute, the term must be given what they believe to be its plain meaning—*i.e.,* that a captive must be considered to be an "insurance company" under the Bank Act, apparently because it is chartered or licensed under state insurance laws. Because a captive is considered to be an "insurance company" under the laws of the states that have captive insurance statutes, these commenters argued, FHFA has no authority to interpret the term any differently for purposes of the Bank Act, and thus cannot exclude captives from the category of "insurance company" as used in the Bank Act. In support of this argument, several commenters specifically cited the federal McCarran-Ferguson Act,[32] which reserves to the states the authority to regulate and tax the business of insurance, except in cases where Congress has adopted a statutory provision that explicitly provides otherwise.

Numerous commenters argued that FHFA's proposal to define "insurance company" to exclude captives from membership is outside the Agency's authority because it runs contrary to Congress's clear intent regarding the meaning of the term and the scope of Bank membership. In this vein, many cited the fact that the Bank Act provides that "any" insurance company may be eligible for membership as evidence of Congress's unambiguous intent to prohibit the Bank System regulator from narrowing the scope of the term to exclude any entity chartered as any type of insurance company. Others disputed FHFA's assertion in the proposed rule that in 1932 Congress could not have contemplated that the term "insurance company" would include captives because they did not exist at that time. These commenters contended that the concept of "self-insurance" has existed for hundreds of years and that other types of self-insurance vehicles did exist in 1932, although they were not at that time referred to as "captives." Several commenters also noted that Congress has never acted to exclude captives from membership, despite the fact that an increasing number of states have adopted captive insurance statutes since the first such statutes were enacted domestically in the 1970s. Finally, many commenters cited Congress's decision to extend eligibility for Bank membership to commercial banks and credit unions in 1989 and to CDFIs in 2008 as evidence of its intent to effect "an inclusive and expansive approach" to membership and characterized FHFA's attempt to exclude captives from membership as running counter to that intent.

In addition to the broader assertions that FHFA lacks any authority to interpret the scope of the term "insurance company" as not including captives, numerous commenters argued, more narrowly, that the Agency cannot legally implement the specific approach set forth in the proposed rule because it lacks any factual basis to justify that approach. Many of the commenters advancing such arguments mischaracterized the Agency's proposal to exclude captives as being based primarily on either safety and soundness concerns or a view that captives (or their parents) do not support housing finance. Those making such mischaracterizations asserted, and in some cases cited specific evidence, that the assumptions underlying those purported bases are erroneous. Others, who correctly characterized FHFA's primary goal as being to prevent the circumvention of the statute by ineligible entities, such as REITs, that have formed captives for the express purpose of gaining access to Bank funding to which they are not legally entitled, argued that the proposed rule provided no evidence to show a factual basis for those concerns.

Some commenters argued that, even if FHFA has a legitimate factual basis for its concerns regarding the ability of ineligible entities to obtain indirect access to Bank funding through eligible subsidiaries, the Agency's decision to focus only on the exclusion of captives in the proposed rule is arbitrary because it disregards the possibility that other types of members could be utilized for a similar purpose.

While commenters advancing the foregoing argument asserted that the proposed prohibition would be too narrow, others asserted that it would be overly broad. Commenters taking the latter view contended that, if FHFA wishes to prevent entities that are not eligible for Bank membership from using captives to access Bank funding, then it should exclude from membership only captives that are owned by ineligible entities or, even more narrowly, only captives that FHFA has determined are actually being used as a funding conduit for an ineligible parent.

Finally, a number of commenters, while not conceding that FHFA has the authority to prevent the Banks from accepting captives as new members going forward, argued specifically that the Agency may not terminate, or require the Banks to terminate, captives that have already been approved for membership under the existing regulations. In support of this contention, several commenters noted that, while the Bank Act at one time explicitly authorized the Bank System regulator to require a Bank to terminate a member in certain circumstances, Congress removed this explicit authorization in 1999.

Another commenter who focused on FHFA's comments in the proposed rule **SUPPLEMENTARY INFORMATION** regarding the possibility that captive membership may pose unique safety and soundness issues asserted that those concerns could not serve as a basis for requiring the termination of captive members until the Agency had taken the steps required by section 8 of the Bank Act.[33] Specifically, the commenter asserted that section 8 of the Bank Act requires FHFA, if it believes that any of the state laws under which captives are regulated give rise to safety and soundness concerns, to undertake a study of those laws and that only after concluding that a state's laws fail to provide adequate protection to the Banks may FHFA restrict the membership of otherwise eligible members in that state.

One commenter asserted that termination of existing captive members would give rise to a "takings" claim against the United States in that it would deprive former captive members of their right to a pro rata share of the retained earnings of their former Banks and of access to Bank advances and other products and services without adequate compensation. The commenter

[32] 15 U.S.C. 1011–1015.

[33] 12 U.S.C. 1428.

argued that, therefore, such termination is prohibited under a ruling by the U.S. Court of Appeals for the D.C. Circuit that no federal agency may adopt a rule that would give rise to a "takings" claim against the United States unless it is expressly authorized it to do so by statute.[34]

b. Comments Asserting That the Proposal Is Flawed From a Policy Perspective

While many of the commenters did not address FHFA's legal authority to implement the proposed exclusion of captives from membership, almost all of the commenters asserted that doing so would represent a poor policy choice. The arguments made in support of commenters' policy-based objections focused primarily on issues of (1) safety and soundness, (2) mission achievement, and (3) the financial health of the Banks, their members, and the overall residential mortgage market.

Again focusing on FHFA's comments regarding the possibility that captive membership may pose unique safety and soundness issues, numerous commenters argued that captives do not pose safety and soundness risks that are materially greater than or different from those posed by other types of members. These commenters offered a number of contentions in support of this argument, including that captives are subject to regulatory regimes that are generally the same as those that apply to traditional insurers and are supervised in a similar fashion; captives have a lower rate of insolvency and default than traditional insurers because they tend to be over-capitalized and operated conservatively so as to ensure that they will be able to pay the claims of their owners; and Banks have been admitting captives as members for over 20 years and have experienced no losses on advances to captive members. Other commenters asserted that to the extent that captives may present unique safety and soundness concerns, those concerns can be addressed with more targeted requirements, such as requiring captive members to meet special seasoning requirements, minimum capital levels, or maximum leverage ratios. Still others contended that the Banks already have sufficient processes and procedures to manage any additional risk that captives may pose.

Many commenters urged FHFA to continue to allow captives—particularly those controlled by REIT parents—to be admitted to Bank membership, stressing that mortgage REITs' substantial commitment to the residential mortgage market in the U.S. is consistent with the mission of the Banks. Going further, many argued that, contrary to the approach taken in the proposed rule, FHFA should actually encourage membership approval for REIT-controlled captives as a means of increasing the level of private capital in the residential mortgage market. Several of these commenters asserted that the collateral requirements applying to Bank advances would tend to dissuade entities whose business practices are not consistent with the housing finance mission of the Banks from forming captives in order to gain access to Bank advances.

A number of commenters argued that FHFA offered no analysis of the financial impact the proposed exclusion of captives would have on the Banks and their members. Many commenters noted that the Bank System benefits from a diverse and robust membership and asserted that eliminating one class of existing and potential members would result in lost income for the Banks now and in the future. At least one commenter asserted that, for certain Banks, the financial impact of the proposal could be so significant as to jeopardize their independent status, thereby forcing them to consolidate with other Banks. Many commenters pointed out that any action that might reduce the income of any Bank to any extent would necessarily reduce the amount of funds available for those Banks' Affordable Housing Programs (AHP) because the statute requires 10 percent of a Bank's earnings to be dedicated to its AHP.

In addition to the predictions of negative consequences for the Banks and their members, a number of commenters asserted that preventing mortgage REITs and similar companies from accessing Bank funding through captive subsidiaries would have negative consequences for the overall residential mortgage market. Noting that the long-term and reliable nature of Bank funding assists in reducing the likelihood that mortgage market crises will occur and in mitigating such crises when they do occur, several of these commenters argued that preventing captive parents from accessing that funding could increase instability in the residential mortgage market by reducing liquidity and curtailing the availability of long-term funding.

c. Comment Letters Suggesting Alternative Approaches

A number of commenters suggested alternative approaches to address what they perceived to be FHFA's concerns regarding captives that would be less severe than the outright exclusion of all captives from Bank membership.

Several commenters that believed FHFA's concerns to be primarily related to safety-and-soundness or mission achievement issues suggested that the Agency could address these concerns by adopting borrowing, financial condition, or mission standards to apply specifically to captives (or, in some cases, to insurance companies generally). For example, one commenter suggested that FHFA could require ongoing periodic reporting to the Bank of information that would allow it to adequately assess the financial health and investment strategies of, and other risk metrics pertaining to, both the captive and its parent; apply a more stringent mission test to potential captive members and their parents using asset or income tests; or require that all collateral pledged by captives or their parents to secure advances be real estate related.

Commenters that more appropriately focused on FHFA's primary concern—the misuse of the captive vehicle by non-eligible entities—stated that FHFA should prevent those practices specifically, without excluding all captives from membership. For example, some suggested that the final rule allow captives with a parent or affiliate that is itself eligible for Bank membership to remain eligible. One such commenter favored the use of captives to allow parent companies that are themselves eligible for membership ("particularly . . . institutions that now have substantially higher liquidity requirements than in the past") essentially to become members of more than one Bank, which the commenter asserted "would not only help to serve the industry's liquidity needs, but would reduce the concentration risk posed by large institutions belonging to only one or two [Banks]."

Other commenters suggested that the final rule exclude from membership only captives that FHFA or the Banks have determined are owned by non-eligible entities that are using or have used those captives as conduits to receive Bank funding for their own use. Those commenters did not provide much detail as to how that would be accomplished, although one suggested that FHFA itself should review captives' applications for Bank membership in order to determine the purpose behind each application. Finally, one commenter, who asserted that FHFA "is not well informed about captives," suggested that the Agency should "increase its knowledge in this area and find ways to address issues raised in the

[34] *See Bell Atlantic Tel. Cos.* v. *FCC*, 24 F.3d 1441, 1445–46 (D.C. Cir. 1994).

[proposed rule] by participating in a task force with insurance regulators and others in the captive insurance industry.''

d. Results of FHFA's Review of Comments on the Captives Proposal

FHFA has reviewed all of the comments regarding its proposal to exclude captives from Bank membership and has studied especially closely the considered opinions of those commenters that addressed the issue in depth. After giving careful consideration to all of the viewpoints expressed, the Agency has decided to finalize the captives provisions essentially as proposed, albeit with some minor modifications to the transition provisions. The final provisions, the reasons FHFA has decided to adopt them, the bases for FHFA's conclusion that it possesses the authority to adopt those provisions, and the Agency's responses to the points raised in the comment letters are all discussed in detail in parts II and III of this **SUPPLEMENTARY INFORMATION**.

3. Comments on the Other Substantive Proposed Revisions

About 80 commenters addressed the proposal to require a Bank to obtain and review an insurance company applicant's most recent audited financial statements in determining whether it meets the "financial condition" eligibility requirement. Nearly all of the commenters opposed the inclusion of that requirement in the final rule. Most of those commenters based their objections on the assertion that the requirement would be burdensome for insurance companies—especially those that are not required by law to have their financial statements reviewed by an outside auditor. FHFA has considered these concerns, but has decided to include the requirement, as proposed, in the final rule.

The Agency recognizes that there are costs associated with obtaining audited financial statements. It also believes, however, that there are significant benefits to the Banks from being able to rely on financial statements that have been audited by a third party, particularly when assessing an insurance company's financial condition prior to admitting it to membership, which is the only time at which this requirement will apply. Even with this additional requirement, the financial information that insurance company applicants will be required to provide to the Banks will be far less than the financial information that insured depository institution applicants must provide.

About 80 of the comment letters addressed the parts of the proposed rule that would have amended the regulations governing how an institution's principal place of business is to be determined which, in turn, dictates the Bank it may join. The proposal included one provision specific to insurance companies and CDFIs, which would have required a Bank to use objective factors to identify the geographic location from which an insurance company or CDFI conducts the predominant portion of its business operations. The proposal also would have revised the general provision, which presumes the location of an institution's "home office" to be its principal place of business, by adding a requirement that the institution actually conduct business from its home office in order to benefit from that presumption. The effect of that revision would have been to prevent a Bank from relying solely on an institution's state of domicile or incorporation as the principal place of business for Bank membership purposes.

Most of the comments focused specifically on the effect the proposed revisions would have on insurance companies.[35] Almost all of those commenters (with the exception of a few of the Banks, as discussed below) opposed the proposed revisions and stated their preference that the final rule should instead provide that an insurance company's principal place of business shall in all cases be its state of domicile (*i.e.*, the state in which it is chartered). The commenters preferred the latter approach to the standard set forth in the proposed rule because they believed that it would be simpler to apply and would ultimately impose less burden on both the Banks and state insurance regulators. In other words, under a state of domicile standard each Bank would then need to deal only with the insurance regulators and insurance laws of the states within its district, and each insurance regulator would then need to establish a working relationship only with its local Bank.[36]

[35] One comment letter addressed the issue specifically as it relates to CDFIs and expressed support for the approach taken in the proposed rule.

[36] FHFA expects each Bank to communicate regularly with the regulator for each of its insurance company members and to be thoroughly familiar with the state insurance laws that apply to each of those members. *See* FHFA Advisory Bulletin AB 2013–09, *Collateralization of Advances and Other Credit Products to Insurance Company Members* (Dec. 23, 2013). Regardless of where an insurance company may be licensed to do business or where it carries out its back office operations, it is regulated and supervised by the insurance regulator of its state of domicile under the laws of that state.

Although there may be some practical benefits to using the state of domicile as a proxy for an institution's principal place of business, the core question is whether such an approach would be consistent with the requirements of the Bank Act. FHFA has previously determined that the term "principal place of business" contemplates a physical location at which a company conducts the predominant portion of its business activities, and that a "presence" that is legal only, without any actual business activity, falls short of what the Bank Act requires. While the state laws under which insurance companies and CDFIs are chartered typically require companies to provide an in-state address for service of legal notices or for other purposes, those laws do not necessarily require a company to maintain any kind of business presence in the state. It is possible, then, that an insurance company or a CDFI may not conduct *any* of its business in its state of domicile. To amend the regulation, as the commenters suggest, to provide that the principal place of business of an insurance company or CDFI is in all cases to be its state of domicile would allow for the possibility that a Bank member's principal place of business could be a location at which it actually has *no* place of business. Such a result would not comport with FHFA's view of the term "principal place of business" and thus would not be consistent with the requirements of the Bank Act.

II. Treatment of Captive Insurers Under the Final Rule

FHFA has carefully considered the thoughts and opinions expressed in the comment letters and thoroughly analyzed possible alternative means of addressing its concerns about the use of captive insurers by entities not eligible for Bank membership to gain access to Bank advances. Having done so, the Agency has decided to include in the final rule, with some modifications, the provisions excluding captives from Bank membership and requiring the Banks, after a transition period, to terminate the membership of all captives that were admitted under the existing regulations. As proposed, the final rule defines "insurance company" to exclude captives, thereby making them ineligible for Bank membership.

These provisions of the final rule address FHFA's supervisory concerns about the ability of entities ineligible for Bank membership (including mortgage REITs and other entities) to circumvent the Bank Act and obtain *de facto* Bank membership through captive subsidiaries that become members and then act as conduits to low-cost Bank funding for the ineligible entity. The use of captives for this purpose under the existing regulation has grown dramatically in recent years, and has continued since the publication of the proposed rule. FHFA has well-founded concerns that this use of captive subsidiaries is open to multiple types of ineligible entities such as equity REITs, hedge funds, investment banks, and finance companies and that the practice may spread to those and other types of ineligible entities once they become aware of the advantages of gaining *de facto* Bank membership through such arrangements. As regulator of the Bank System, FHFA is responsible for ensuring the effective implementation of the provisions and purposes of the Bank Act. That responsibility includes ensuring that only entities eligible for Bank membership obtain the benefits of membership. FHFA is fulfilling that responsibility by including in this final rule provisions intended to prevent further use of captives to circumvent the membership eligibility requirements of the Bank Act.

Like the proposed rule, the final rule also sets forth a transition provision permitting captives that became members prior to the publication date of the proposed rule to remain members for five years after the effective date of the final rule, but limiting their outstanding advances to 40 percent of their assets and, while permitting new advances below the 40 percent threshold, prohibiting new advances or renewals that mature beyond the five-year transition period. The final rule also contains an additional transition provision, not included in the proposed rule, to address the treatment of captives admitted to membership on or after the date of publication of the proposed rule. This provision permits any Bank that has admitted such captives one year following the effective date of the final rule within which to terminate the membership of those captives. The rule allows such captives until the end of that one-year period (or until the date of termination, if earlier) to repay their existing advances, but prohibits them from taking new advances or renewing existing advances that expire during that grace period.

In reaching its decision to include these provisions in the final rule, FHFA gave due consideration to the fact that the vast majority of commenters addressing the proposed exclusion of captives from membership objected to that aspect of the proposed rule. Ultimately, however, the volume of adverse comments does not drive FHFA's policy determinations, particularly in this case, where FHFA has found significant evidence that REITs and other entities have been forming captives solely for the purpose of providing ineligible institutions access to Bank advances.

FHFA carefully considered the merits of the opinions expressed and assertions made by commenters, including from those commenters that provided verifiable information that the Agency could assess as part of the rulemaking process. The arguments taken as a whole did not persuade the Agency that the existing statute should be applied to allow admission of captives to membership. The policy reasons behind FHFA's decision to include the captives provisions in the final rule, the legal bases for including those provisions, and the Agency's responses to a number of specific comments are set forth in detail below.

A. Policy Reasons for Excluding Captives From Bank Membership

1. Until Recently, Only a Few Captives Had Become Bank Members, and Most of Those Had Parents or Other Affiliated Entities That Were Eligible To Be Bank Members Themselves

As mentioned above, the Bank Act provides that, in addition to insured depository institutions and CDFIs, "any . . . insurance company" shall be eligible to become a member of a Bank if it meets the applicable requirements. The Bank Act does not define "insurance company," and neither FHFA nor its predecessor agencies had previously adopted a regulatory definition of that term. Consequently, as a practical matter, any entity chartered or licensed as an "insurance company" under state law and that has met the other applicable requirements historically has been permitted to become a Bank member. Because captive insurers are chartered or licensed as insurance companies under the laws of states that have enacted captive insurance statutes, a number of those types of entities have been permitted to become Bank members under the existing membership regulation.

Although a Bank first admitted a captive to membership over twenty years ago, until recently Banks had accepted very few captives. The first captive to be admitted became a member in 1994. In the ensuing years, up until mid-2012, no more than eleven additional captives joined the Bank System. Most of the captive members that were admitted during that time period have parent companies that either are themselves eligible to be Bank members or are holding companies that own another eligible entity.

2. Recently, There Has Been a Dramatic Increase in Captive Members and Applicants, Almost All of Which Are Controlled by Ineligible Entities Seeking Access to Bank Funding

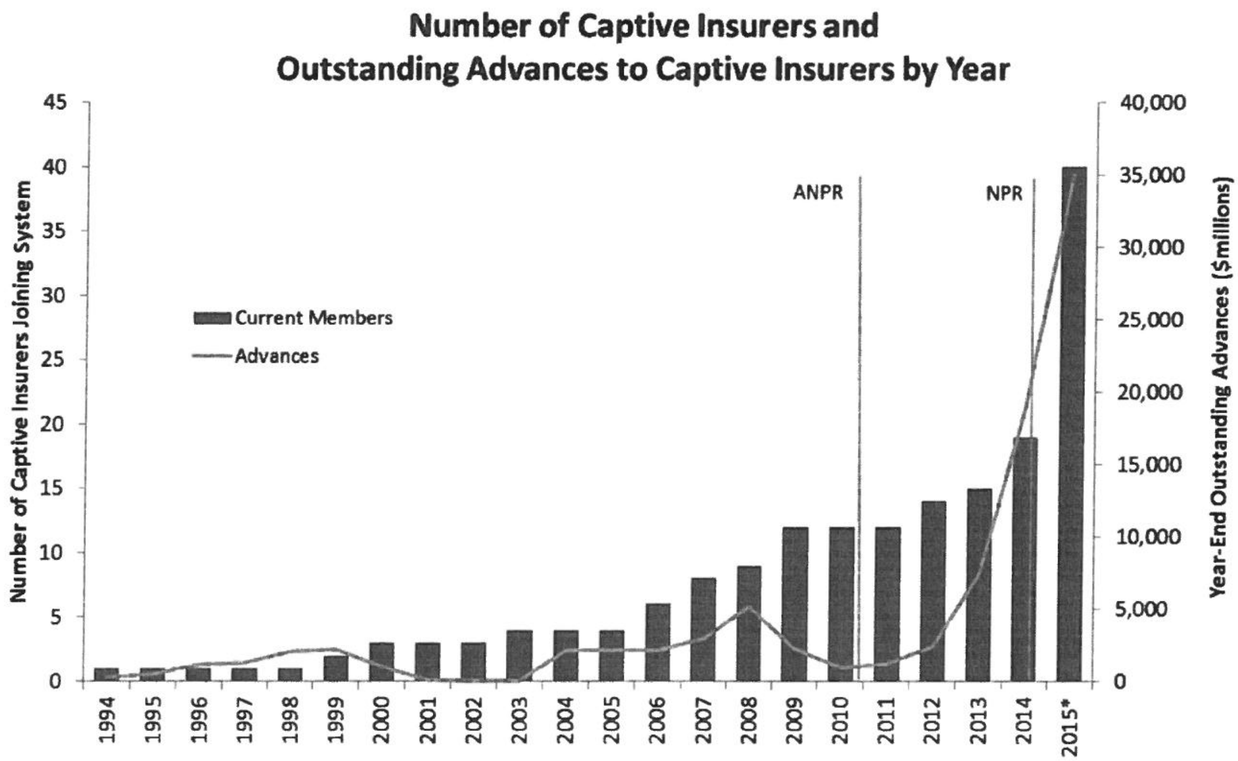
Over the last several years, however, new captive members and membership applications by captives have shown a significant and accelerating increase. Since mid-2012, the Banks have admitted 27 new captive members, 25 of which are owned by mortgage REITs, finance companies, and other types of entities that are not themselves eligible for membership. Twenty of those 25 have become members since the publication of the proposed rule in September of 2014. This trend has become a matter of growing concern to FHFA, as it has become increasingly clear that captives are being promoted and used as vehicles to provide access to Bank funding and to other benefits of membership for institutions that are legally ineligible for membership. The Banks that have accepted these captive members have based their approvals on the financial strength of the parent and not the captive itself and have projected a level of advances activity that is disproportionately large in relation to the captives own business operations and related investment needs. In many cases (although, to date, not all), captive members have fulfilled the projections reflected in the membership digests by maintaining disproportionately large levels of outstanding advances, almost all of which have been secured by collateral provided by the parent. As a result of these developments, FHFA sees a current need to define "insurance company" in a manner that will prevent the creation of such *de facto* membership arrangements.

The information contained in the membership application digests prepared by the Banks in connection with the admission of most of those captive subsidiaries supports a conclusion that they applied for membership—and, in fact, were established—for the primary purpose of accessing Bank funding for their parents' business needs; they did not seek membership to obtain support for their own operations or investments.[37]

[37] The regulations require that a Bank "prepare a written digest for each applicant stating whether or not the applicant meets each of the [applicable membership eligibility requirements], the Bank's findings, and the reasons therefor." *See* 12 CFR 1263.2(b). Since September 2012, FHFA has had a special data request in place pursuant to which it has received from the Banks the membership digests for each new insurance company and CDFI

As an initial matter, those digests indicate that all but one of the 25 captive members owned by a REIT or similar ineligible entity were *de novo* entities at the time they applied for membership; at least 20 of the 25 had been chartered within the preceding six months and all but one of the remaining five had been chartered within the preceding 12 months. The digests also show that the dollar amounts of anticipated advances to be made to most of those captives are grossly disproportionate to the amount of insurance business underwritten by the captive, contemplate that the parents will provide both the collateral and a guaranty for the captives' debt, and, in some cases, acknowledge that the captives will use the advance proceeds to make loans to their parents. The Banks themselves recognized the conduit nature of these captives by basing their assessment of the financial condition of their new captive members, and the amount of advances they may obtain, on the financial resources of their parents, rather than on the captives themselves.

The chart below illustrates the recent dramatic increases in the number of captive members and in the amount of advances outstanding to captive members.



* For 2015, number of captive insurers is as of September 30, and amount of outstanding advances to captive members is as of November 13.

member approved during that time period. *See* FHFA Special Data Request SDR 2012–02, "Membership Decision Documentation for New Insurance Company and CDFI Members" (Sept. 17, 2012).

3. There Are Currently Ongoing Efforts To Encourage Ineligible Entities To Use Captive Subsidiaries as a Means of Accessing Low-Cost Bank Funding

Numerous public statements made by captive management companies and consultants, insurance regulators, and the parent companies themselves tend to confirm that almost all of the captives in the recent wave of new members and applicants were established and applied for membership for the purpose of providing their ineligible parents with access to Bank funding and other benefits of membership. For example, Marsh & McLennan (Marsh), a firm that characterizes itself as "the world's leading captive manager," published an article in its quarterly newsletter in early 2014 stating that it had been working with REIT clients since the summer of 2013 "to create captives for the purpose of accessing funding with the Federal Home Loan Bank system" and advertising that "low-cost funding" obtained from a Bank through a captive subsidiary can allow a REIT parent to "increase leverage and improve liquidity at attractive rates." [38] After noting that captives were being formed in two particular states to permit access to the two Banks in whose respective districts those states lie, Marsh concluded by stating that its captive advisory team "is likely to begin forming captives in other domiciles to access additional branches of the [Bank System]." It is clear from that article, as well as from a contemporaneous Marsh report containing similar statements,[39] that the firm is not encouraging existing captives to become Bank members to obtain funding for their own investments and operations, but is instead encouraging REITs and possibly other ineligible entities to create new captives to use as conduits to low-cost Bank funding for their own operations.

At around the same time that Marsh published those materials, another firm, Willis Group Holdings PLC (which describes itself as "a leading global risk advisor, insurance and reinsurance broker") published a brochure on its Web site entitled "Joining the Federal Home Loan Bank Offers Significant Advantages for Captive Owners, Including Low Interest Loans and Letters of Credits [sic]." [40] After describing how the firm had "experienced a significant increase in existing and prospective captive owners looking to join [a Bank] via a captive subsidiary" and summarizing the benefits of Bank membership, the brochure concludes by encouraging "[p]rospective members [to] contact Willis or the regional [Bank] to discuss the prospect of their captive joining the [Bank]."

Even state insurance regulators have been publicly extolling the advantages a company can enjoy by having a captive subsidiary become a Bank member. For example, a recent article that focused on the formation of so-called "831(b) captives" quoted one state's regulator as remarking that such captive entities can be "a portal for membership" in the Bank System.[41] In the same vein, several of the mortgage REITs that commented on the proposed rule revealed their intentions regarding their captive subsidiaries by advocating "access by mortgage REITs" to the Bank System, describing the proposed rule as "[d]enying access to [Bank] funding for a mortgage REIT," or making similar statements.

4. Captives Are Uniquely Suited To Act as Conduits for Accessing the Bank System

Among the types of institutions that, to date, have been considered eligible for Bank membership, captive insurers are uniquely suited to act as conduit vehicles for business entities that wish to gain access to the Bank System, but that are ineligible to become members in their own right. Because captives are self-insurance mechanisms and typically do not sell insurance policies to the public at large, it is generally far easier and less expensive to charter, capitalize, and operate a captive than to establish and operate a traditional life or casualty company that sells policies to the public.[42] This was cogently explained by the captive regulator of one of the leading domestic captive domiciles in a response to a "Frequently Asked Question" (FAQ) appearing on its official Web site. There, the regulator noted that, while "[c]ommercial insurance companies sell insurance to the general public and are licensed in all states in which they do business," captives by contrast "directly insure only their owners," are "licensed in only one state, and operate[] under the captive insurance law of that domicile." Because of those differences, the regulator explained, "the degree of regulatory oversight required for captives is less than that which is required for commercial insurers."

Despite the fact that captives are already easier to establish and more lightly regulated than commercial insurance companies, the competition among states to attract businesses to organize captive subsidiaries in their respective borders is leading some states to amend, or modify the manner in which they apply, their captive laws to further reduce the regulatory burdens in relation to those imposed by other states. In a recent report prepared by a state insurance regulator that was required by statute to study the advisability of establishing a captive insurer industry in that state, that regulator recommended that the state's legislature "forgo captive legislation at this time" in part because "the industry has developed in ways that have caused considerable regulatory concern at the federal and state levels." The report explained, "To become a thriving captive domicile today, a state must be willing to relax important regulatory

[38] *See* Marsh & McLennan Companies, *Using Captives to Access Federal Home Loan Banking System Funding*, Marsh Insights: Captives (Mar. 2014) at 5, *http://usa.marsh.com/Portals/9/Documents/6454MA14-12785CAPNewsletter03-2014.pdf* (last visited Dec. 8, 2015).

[39] *See* Marsh & McLennan Companies, *The Evolution of Captives: 50 Years Later (Annual Captive Benchmarking Report)* (May 2014) at 2, 5.

[40] Willis Group Holdings, *Joining the Federal Home Loan Bank Offers Significant Advantages for Captive Owners, Including Low Interest Loans and Letters of Credits*, Willis Global Captive Management Alert (Apr. 2014), *http://www.willis.com/documents/publications/services/captives/20140426_50294_PUBLICATION_Global_Captive_Management_Alert_FINAL.pdf* (last visited Dec. 8, 2015).

[41] *See* Caroline McDonald, *Steady As She Goes: 2014 Domicile Captive Review*, Risk Management (Aug. 1, 2014), *http://www.rmmagazine.com/2014/08/01/steady-as-she-goes-2014-captive-domicile-review/* (last visited Dec. 8, 2015). An "831(b) captive," sometimes referred to as a "microcaptive," is a captive that does not underwrite life insurance and that generates annual premiums of $1.2 million or less. Under section 831(b) of the Internal Revenue Code, such an entity can elect to pay federal income tax based only on its investment income instead of on its taxable income as a corporation. 26 U.S.C. 831(b). The use of 831(b) captives by individuals and businesses has drawn close scrutiny from the Internal Revenue Service in recent years.

[42] *See* Daniel Schwarcz, *A Critical Take on Group Regulation of Insurers in the United States*, 5 U.C. Irvine L. Rev. 537, 555 (Aug. 2015) (stating that captives have typically been viewed "as presenting limited regulatory concerns" due to their status as self-insurance mechanisms and that "[a]s a result, captives are subject to very limited regulatory restrictions: Their financial statements are not publicly available, they do not have to comply with statutory accounting rules and the associated reserve requirements, and they generally are not subject to standard risk-based capital requirements"). One state insurance regulator, in reporting to the state legislature on the desirability of enacting insurance legislation specific to captives, stated that a captive "is not regulated like an admitted insurance carrier, but operates under relaxed rules governing the captive's formation, capitalization, and solvency." In noting in this Supplementary Information the differences between the regulation of captives and the other types of institutions that have, to date, been considered eligible for Bank membership, FHFA is not expressing any judgment as to the adequacy of captive regulation generally or in any particular state with a captive statute, for purposes of the limited businesses for which captives are organized.

safeguards. Attractive new domiciles are those that have a high risk appetite, demand few hurdles to formation, have low premium taxes and fees, have minimal solvency and capital requirements, and require little in the way of reporting." [43]

The competition between states is further evidenced by a proliferation of press releases from state insurance regulators touting their selection as, or nomination for, a "U.S. captive domicile of the year" award that is bestowed annually by a major captive industry magazine. For example, one state regulator noted in a press release regarding its selection as a finalist for the 2015 award that, after having twice amended its captive laws in recent years, the state had "positioned itself to become a preferred domicile to companies seeking a sophisticated regulatory infrastructure." An article in the sponsoring magazine announcing the winner of the 2015 award (which, ultimately, was not the state regulator that issued the above-quoted press release) stated that its judges selected the announced winner in part because, "despite being an established jurisdiction, [the victorious domicile] continues to review its statute on an annual basis to ensure it continues delivering efficiency and value." [44]

The same characteristics that make captives far more viable than traditional insurance companies to use as vehicles for achieving *de facto* Bank membership also set them apart from insured depository institutions in that respect. Given the many obstacles to obtaining a commercial bank, savings and loan, or credit union charter,[45] as well as the comprehensive systems of prudential regulation and supervision to which those types of institutions are subject, FHFA must regard as highly improbable the prospect of an ineligible entity chartering a depository institution for the primary purpose of providing itself with *de facto* Bank membership. FHFA is unaware of a single instance of such an occurrence in the history of the Bank System. The additional layer of supervision and examination to which a company would become subject under either the Bank Holding Company Act [46] or the Savings and Loan Holding Company Act [47] if it were to acquire control of a commercial bank or savings and loan association makes those types of institutions even more unlikely to be used as mere conduits to Bank funding. In contrast, the lack of any such requirements applying to the parent of a captive makes captives an especially attractive membership channel for REITs and other ineligible entities that are not subject to the type of inspection and regulation that applies to institutions that are eligible for Bank membership. The requirements for certification of CDFIs similarly make them unsuitable vehicles to serve as conduits for Bank funding to ineligible parents.[48]

5. FHFA Has a Well-Founded Concern That the Use of Captives as Conduits to Bank Funding Will Grow Beyond Mortgage REITs To Include Additional Entities That Have Little or No Connection to Housing Finance

As is evidenced by the recent surge in captive applications and membership approvals, an increasing number of mortgage REITs and similar ineligible entities have decided that the amount of effort and expense associated with forming and operating a captive is low enough to make it feasible to use this method to gain access to the Bank System. In light of the example set by those that appear to have successfully circumvented the statutory membership requirements through the use of captive subsidiaries, as well as the previously described efforts by some in the captives industry to promote this practice, FHFA expects that the prevalence of this practice will continue to grow unabated if the Agency does not take action now to end it. Having seen increasing numbers of mortgage REITs use the captive vehicle to gain access to the Bank System, the Agency is concerned that other types of entities, which may have no connection to housing finance, will begin to form captives for the same purpose.

Indeed, some connected with the insurance industry have advocated the use of captives to provide access to the Bank System regardless of whether the parent company has any connection with residential mortgage lending. For example, an article re-published on the Web site of one state's department of insurance in 2011 reported that a "budding concept is for captive owners, nonbank companies included, to use their captive insurers as portals to cheap bank credit under a federal banking law [*i.e.,* the Bank Act] enacted decades before the first captive appeared." The article revealed that the concept is one that the state's captive regulator wants "companies like manufacturers that have nothing to do with home financing" to consider and that he is "promoting the concept with captive managers," in part as "an engine of captive growth" in his state. The same article also quoted a number of risk management consultants as stating that the use of captives as conduits to access Bank funding "could grow" and "sounds like a wonderful arbitrage opportunity," that "[r]esidential builders could benefit, as well as healthcare institutions" from the strategy, and that it would be a "prudent thing" for a captive owner to take advantage of the opportunity to access such low-cost capital even if the owner

[43] In addition, a 2011 New York Times article entitled "Seeking Business, States Loosen Insurance Rules," came to conclusions that were similar to those reached by the state insurance regulator quoted above. The article, which appeared on the newspaper's front page, cited numerous examples of states competing among themselves to relax their regulatory requirements in order to attract captives to their respective domiciles. It reported that one state, after observing the success of another in attracting captives, responded by amending its laws governing the tax rates captives must pay on premium revenues to make its rates lower than those of the other state; this prompted the other state to reconsider its own rates. The article also noted that the number of captives domiciled in a particular state had doubled in the preceding calendar year, after its insurance commissioner was given the power to exempt captives from various provisions of the state's captive insurer laws. The bulk of the article was devoted to investigating the growing trend of commercial insurance companies forming captives to reinsure blocks of outstanding policies in order to take advantage of the lower reserve requirements that apply to captives under the laws of some states. *See* Mary Williams Walsh and Louise Story, *Seeking Business, States Loosen Insurance Rules,* New York Times (New York ed.) (May 8, 2011) at A1, *http://www.nytimes.com/2011/05/09/business/economy/09insure.html?pagewanted=all&_r=0* (last visited on Dec. 8, 2015).

[44] *See* Richard Cutcher, *2015 US Captive Services Awards: Winners Announced,* Captive Review (Aug. 11, 2015), *http://captivereview.com/news/2015-us-captive-services-awards-winners-announced/* (last visited on Dec. 8, 2015).

[45] *See, e.g.,* Patricia A. McCoy, *Banking Law Manual: Federal Regulation of Financial Holding Companies, Banks and Thrifts* § 3.02[2] (Matthew Bender, 2nd ed. 2015) (explaining that, because depository institution charters "can be (and often are) denied for a variety of reasons, including unacceptable management, poor prospects for financial success, no perceived need for the institution's services or a competitive threat to existing institutions in the same market," they serve as "powerful if erratic controls on entry into commercial banking and the thrift industry").

[46] *See* 12 U.S.C. 1844; *see also* 12 CFR part 225 (implementing regulations).

[47] *See* 12 U.S.C. 1467a; *see also* 12 CFR parts 238, 239 (implementing regulations).

[48] To be eligible for CDFI certification, an organization must have a primary mission of promoting community development; provide both financial and educational services; serve and maintain accountability to one or more defined target markets; maintain accountability to a defined market; and be a legal, non-governmental entity at the time of application (with the exception of Tribal governmental entities). 12 CFR 1805.201. An entity must meet quantitative mission requirements in order to obtain and maintain certification as a CDFI.

is "building cars or running hotels." [49] As noted above, Bank advances need not be collateralized with residential mortgage assets and need not be used for residential housing finance if they are of less than five years maturity.

The Agency's concerns about the prospect of wider use of the captive vehicle also arise from a number of other factors. Recently, for example, the first captive member owned by an equity REIT (as opposed to a mortgage REIT) joined the Bank System and, for the first time, a captive owned by an investment bank (in this case through a number of intermediating subsidiaries) was approved for Bank membership. In addition, at least one mortgage bank recently inquired about the possibility of a Bank admitting to membership a captive subsidiary that it proposed to establish for that purpose. While the use of captive subsidiaries to access the Bank System by entities that are not involved with housing finance is nascent, recent history with traditional insurance companies and, more recently, with REITs has shown that once one portion of an industry realizes the benefits of obtaining access to Bank advances, others in that industry will follow.[50]

6. The Bank Act Specifies the Types of Institutions That May Be Eligible To Be Bank Members, and FHFA Must Act To Prevent the Continued Circumvention of Those Eligibility Requirements by Entities That Are Not Eligible

Abundant evidence exists of a prevalent and growing practice by entities that are themselves ineligible for Bank membership using captive subsidiaries to achieve a *de facto* membership status that effectively provides them with the same access to advances that is available to the types of institutions that are eligible to become members under the Bank Act. In light of the evidence, FHFA has concluded that it must take action to prohibit that practice in order to ensure the fulfillment of one of the key elements of the statutory scheme established by Congress—limiting Bank membership to the types of institutions specified in the Bank Act.

As discussed above, section 4(a) of the Bank Act specifically enumerates the types of institutions that may be eligible for membership. By necessary implication, the statute must be read as a clear statement by Congress that entities of a type not included on that list of eligible institutions are not authorized to become members or otherwise to obtain the benefits of Bank membership, regardless of the extent to which those entities may be engaged in some part of the residential mortgage market. FHFA believes that in order to give effect to this congressional intent it must look to the substance of these transactions, and cannot ignore that the economic reality behind the growing trend of captive memberships is that the captives are being used to create a *de facto* membership for entities that are not among the types of entities that may become Bank members directly.

Many commenters asserted that Congress's failure thus far to exclude captives from membership despite their increasing prevalence in the U.S. since the 1970s must necessarily lead to the conclusion that it has no concerns about the manner in which they are currently being used. Therefore, those commenters argue, FHFA must continue to consider captives to be a type of insurance company that is eligible for Bank membership. Congress's intent concerning the meaning of the term "insurance company," as used in the Bank Act, as well as FHFA's authority to interpret that term in the current context, are discussed in detail below. However, on the specific point raised by commenters, the phenomenon of ineligible companies using captives as a conduit to obtain access the Bank System is a very recent development. FHFA does not regard the lack of congressional action on the issue of Bank membership for captive insurers to be indicative of any particular congressional intent. FHFA will not attempt to interpret the views of a current Congress that has not acted to amend a statute enacted by a prior Congress decades earlier.

Other commenters cited Congress's decision to extend eligibility for Bank membership to commercial banks and credit unions in 1989 and to CDFIs in 2008 as evidence of its intent to effect "an inclusive and expansive approach" to membership and characterized FHFA's attempt to exclude captives from membership as running counter to that intent. To the contrary, FHFA views those actions as an indication that when Congress determines that it is appropriate to permit a particular type of institution to have access to the Bank System, it will amend the Bank Act to expressly authorize that access. For example, at the time Congress enacted the Bank Act in 1932, the primary institutional holders of non-farm residential mortgage debt were savings and loan associations,[51] which held 21.4 percent, followed by savings banks at 17.1 percent, life insurance companies at 11.1 percent, and commercial banks at 10.4 percent.[52] Despite the fact that commercial banks were significant participants in originating and investing in residential mortgage loans at that time, Congress declined to include them in the list of entities eligible for Bank membership. That remained the case until 1989, when Congress made federally insured commercial banks and credit unions eligible for membership. Moreover, although representatives of the mortgage banking industry have lobbied Congress to amend the Bank Act to allow mortgage bankers to become Bank members based on their active role in supporting residential housing finance, Congress has not done so.[53]

[49] *See* Dave Lenckus, *Cashing In On Captives*, Risk & Insurance Newsletter (Mar. 1, 2011).

[50] Although insurance companies have been eligible for membership since 1932, until recently only a very few insurance companies actually have become members. While only 31 insurance companies and captives were Bank members in 1996, 304 were members at the end of 2014.

[51] These were then also referred to by various other names, such as those used in section 4(a) of the Bank Act—building and loan associations, cooperative banks, and homestead associations. *See* Leo Grebler, David M. Blank & Louis Winnick, *Capital Formation in Residential Real Estate: Trends and Prospects* 203, n.14 (1956).

[52] *See* Grebler, *supra* at 473. The percentages shown are as of December 31, 1931. In 1932, as well as for decades before and up through the early 1970s, many life insurance companies were heavily involved in the origination of home mortgage loans through extensive mortgage lending networks. *See* Kenneth A. Snowden, *The Anatomy of a Residential Mortgage Crisis: A Look Back to the 1930s* 5–8 (Nat'l Bureau of Econ. Research, Working Paper No. 16244, 2010). At some points during those years, life insurance companies held more than 20 percent of all domestic non-farm residential mortgage debt. *See* Grebler, *supra* at 472–74; Snowden, *supra* at 5. *See also* Raymond J. Saulnier, *Urban Mortgage Lending by Life Insurance Companies* 1–9 (1950).

[53] For example, at a November 2013 hearing of the Senate Committee on Banking, Housing, and Urban Affairs on a bill to reform the secondary mortgage markets, the Chairman-elect of the Mortgage Bankers Association testified that "Congress should give serious consideration to expanding Federal Home Loan Bank membership eligibility to include access for non-depository mortgage lenders" and to "community lenders of a variety of business models, including independent mortgage bankers." *Housing Finance Reform: Protecting Small Lender Access to the Secondary Mortgage Market: Hearing on S. 1217 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. 65–66 (Nov. 5, 2013) (statement of Bill Cosgrove, Chief Executive Officer, Union Home Mortgage Corp., and Chairman-Elect, Mortgage Bankers Association). Earlier, the Housing and Community Development Act of 1992 required that the Finance Board and the Department of Housing and Urban Development, among other agencies, each study a multitude of issues related to the Bank System, including possible measures to increase membership in the System, and report to Congress on their recommendations with respect to those issues. *See* Public Law 102–550, § 1393, 106 Stat. 3672, 4009–11 (1992). For reasons relating to mission, safety and soundness, and competitive balance, the reports produced by both agencies recommended against expanding the list of institutions that may be eligible for Bank membership to include mortgage banks. *See* Federal Housing Finance Board, *Report on the Structure and Role of the Federal Home Loan Bank System* 119 (Apr. 1993);

Similarly, Congress has not authorized REITs to become members. If Congress believed that REITs' involvement in the residential mortgage markets warranted them having access to Bank advances, it could have authorized them to become members, just as it did for certain CDFIs in 2008 [54] and for certain non-federally insured credit unions in 2015,[55] when it amended the Bank Act to make those types of entities eligible for membership. The fact that it has not done so for REITs, or for other types of entities that are not enumerated in section 4(a) of the Bank Act, leads FHFA to conclude that Congress has not intended to permit those entities access to Bank funding.

Whether entities that are currently ineligible for membership should be permitted to have access to Bank advances is the type of public policy issue that is for Congress to address. By precluding ineligible institutions from gaining *de facto* membership through captive insurers, the final rule has the effect of preserving the decision of whether to allow REITs access to the Bank System for Congress to address, should it choose to do so. The transition periods, both the five-year transition for pre-NPR captives and the one-year transition for the post-NPR captives, will provide Congress sufficient time to consider whether Bank membership should be extended to additional categories of members before the Banks are required to begin terminating the membership of existing captive members. If Congress determines that permitting REITs, or any other entities that are not currently eligible, to have such access is the appropriate policy, then it will amend the Bank Act to make them explicitly eligible for membership as it has done in the past for commercial banks, credit unions, and CDFIs. If it decides to do so, it may also wish to consider whether special statutory provisions should be enacted with respect to REITs or other entities not subject to inspection and regulation to address their unregulated status, which would set them apart from other types of entities that are currently eligible, and whether and how to except them from the current statutory requirement that members be "subject to inspection and regulation." [56]

B. Legal Authority of FHFA To Exclude Captives From Membership and To Require the Banks To Terminate the Membership of Captives Previously Admitted

FHFA possesses ample legal authority to adopt a regulation defining the term "insurance company" to exclude captives, thereby rendering them ineligible for membership, and to require the Banks to terminate the membership of all captives that they had admitted to membership before FHFA adopted this final rule making captives ineligible.

1. Congress Granted FHFA Broad Regulatory Authority To Ensure That the Purposes of the Bank Act Are Carried Out

Congress has given FHFA, through its Director, broad authority to administer the Bank Act. Specifically, Congress granted the Director of FHFA general regulatory authority over the Banks and specified that he is to exercise that authority to ensure that the purposes of the Bank Act and the Safety and Soundness Act (under which the Agency is established) are carried out.[57] Congress also enumerated a number of principal duties for the Director of FHFA, which include the duty to ensure that each Bank complies with the regulations issued under the Bank Act and Safety and Soundness Act, and granted the Director the authority to exercise such incidental powers as he deems necessary to fulfill his duties and responsibilities in the supervision and regulation of the Banks.[58] Congress also provided the Director of FHFA with specific authority to issue any regulations and take other regulatory actions that he deems necessary not only to implement and enforce the specific requirements of the Bank Act, but also to ensure that the Banks operate in a safe and sound manner and that the purposes of the statutes are accomplished.[59] Thus, FHFA has the authority to adopt regulations that the Director deems necessary to implement the specific membership provisions of the Bank Act, as well as those that the Director deems necessary to ensure that the purposes behind the statutory membership provisions are accomplished. By necessary implication, the grant of authority to ensure that the provisions and purposes of the Bank Act are carried out includes with it the authority to adopt regulations necessary to ensure that neither the Banks, their members, nor any other parties take any actions to circumvent, frustrate, or subvert the provisions or purposes of the Bank Act.

2. Congress Clearly Delineated the Types of Institutions That May Be Eligible for Bank Membership

It is clear from the language of section 4(a)(1) of the Bank Act that Congress intended to permit only the types of institutions listed in that section to become Bank members and that it did not intend to permit any institutions not listed therein to become members. It also is reasonable to infer from the statutory language that Congress intended that entities not explicitly deemed eligible for membership should not be able to obtain indirectly any of the principal benefits of Bank membership—including the access to low-cost advances that the Banks are able to provide because of their statutory market advantages—that they are not permitted to obtain directly.[60] Although Congress did include insurance companies among the types of institutions that may be eligible to become members, it manifestly did not include REITs, hedge funds, investment banks, finance companies, or other types of general business entities.[61]

3. Captives are Being Used To Circumvent the Membership Eligibility Provisions of the Bank Act and Are Uniquely Suited To Be Used for That Purpose

As described in detail above, FHFA has determined that ineligible entities have been circumventing the statutory provisions limiting the types of entities that may become Bank members by

U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Report to Congress on the Federal Home Loan Bank System, Vol. II* 6–12 (Apr. 1994). In addition, at a 1994 hearing, Under Secretary of the Treasury for Domestic Finance Frank N. Newman testified that, as recommended in the reports, the Treasury Department did not believe that membership eligibility should be expanded beyond then-currently eligible group of depository institutions and insurance companies. *See The Future of the Federal Home Loan Bank System: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs on the Need for a Comprehensive Legislative Package to Update and to Strengthen the Federal Home Loan Bank System's Mission, Structure, Capital Requirements, and Regulatory Oversight*, 103rd Cong., 4, 25 (June 15, 1994).

[54] *See Housing and Economic Recovery Act of 2008*, Public Law 110–289, § 1206, 122 Stat. 2654, 2787 (2008).

[55] *See Fixing America's Surface Transportation Act*, Public Law 114–94, § 82001 (2015).

[56] For example, when Congress added CDFIs to the list of eligible member types, Congress exempted them from the requirement that they be subject to inspection and regulation (because they are not) and instead provided that they must be certified as CDFIs by the Treasury Department. *See* 12 U.S.C. 1424(a)(1)(B).

[57] 12 U.S.C. 4511.

[58] 12 U.S.C. 4513(a)(1), (2).

[59] 12 U.S.C. 4526(a).

[60] To enable the Banks to better fulfill their public policy mission, Congress vested in them market advantages that some might view as depriving government treasuries of revenue and exposing taxpayers to risk. This supports the conclusion that Congress intended to strictly limit access to the Bank System.

[61] *See* 12 U.S.C. 1424(a)(1).

using captive subsidiaries as vehicles to access the benefits of membership to which they are not legally entitled. As also detailed above, captives as a class are uniquely suited to being used for that purpose due to the limited scope of their business activities, which makes them easier and less expensive to establish and operate, and because they are more lightly regulated than commercial insurance companies or insured depository institutions. There is also a relative absence of restrictions on the activities and investments of a captive's parent, as compared to those that apply to an entity that establishes a federally insured bank or savings association subsidiary. These unique characteristics, as among the types of institutions that are permitted to become Bank members under the existing membership regulation, have led captive promoters, insurance regulators, and others with vested interests in expanding the ubiquity of captives to promote them as vehicles through which REITs and other ineligible entities—including those having no connection to housing finance—may obtain access to low-cost Bank advances. This, along with the examples set by those whose attempts to use captives to obtain access to the Bank System have so far met with apparent success, makes it likely that the practice of using of captives for that purpose will continue to grow in the absence of any action by FHFA to halt the practice.

4. FHFA Has the Authority To Take Action To Prevent the Circumvention of the Provisions and Purposes of the Bank Act

The authorities conferred upon FHFA by the Bank Act and the Safety and Soundness Act, described above, empower the Agency to adopt a regulation to prevent this circumvention of the provisions and purposes of the Bank Act. Given that the vast majority of captive members are being used by ineligible entities to circumvent the statutory membership eligibility requirements and, aside from this illegitimate use, have little or no reason to be Bank members, FHFA is not required to treat those types of captives as "insurance companies" for membership purposes simply because they are chartered or licensed under state insurance statutes. The Agency has sufficient legal authority, through its mandate to ensure that the purposes of the statute are carried out, to consider the economic realities of these arrangements—*i.e.,* that the parent companies are the true parties in interest, while the captives act merely as conduits—and to take appropriate regulatory action.

FHFA has determined that the most effective and appropriate way to prevent the use of captives as vehicles to provide *de facto* membership for ineligible entities is to adopt a regulation defining the heretofore undefined term "insurance company" to exclude from membership all captives that may feasibly be used for that purpose. As discussed in part III of this **SUPPLEMENTARY INFORMATION**, FHFA has taken special care to define "insurance company" so that captives having the characteristics that give rise to the Agency's concerns will be excluded, while those institutions that do not engender such concerns and that would be regarded as carrying out the business of insurance as traditionally understood (even if they are denominated as "captives" under their states' insurance laws) will continue to be considered as insurance companies for purposes of determining eligibility for Bank membership.

5. Viewed in the Context of Today's Marketplace, in Contrast to That of 1932, the Meaning of "Insurance Company" Is Ambiguous and, Therefore, FHFA May Adopt a Reasonable Interpretation of That Term To Effect the Purposes of the Bank Act

An administrative agency has authority to interpret and define the terms of the statutes that it administers, especially terms that are undefined.[62] Among the specific types of entities that are eligible for Bank membership, Congress has defined only "insured depository institution." [63] Congress did not define the term "insurance company" or provide any other guidance about its meaning. This leaves the term open to FHFA to define, provided that the definition is reasonable given the provisions and purposes of the Bank Act.

Many commenters expressed the opinion that defining "insurance company" to exclude captives would be in contradiction to the unambiguously expressed intent of Congress as embodied in the plain language of the Bank Act, which provides that "any . . . insurance company" may be eligible for membership. By basing their assertions as to the plain meaning of section 4(a)(1) on the fact that the term "insurance company" is preceded by the word "any" in that paragraph (as are all the other terms used to describe the types of institutions that may be eligible for membership), many commenters begged the essential question of what constitutes an "insurance company" for purposes of the Bank Act in the first place. A few commenters asserted or implied that the statutory membership provisions must be read as including captives because captives are "organized, licensed and regulated" under state insurance statutes or "meet[] the definition of an insurance company under state law." [64] FHFA does not believe that such a reading is required, particularly where, as here, it would result in an interpretation that allows circumvention of specific provisions of the Bank Act and subverts the scheme of the statute as a whole. In other contexts, the Supreme Court has held that a federal regulator may reasonably define an activity or a transaction as not insurance under federal law even if state law would treat it as such.[65]

Sometimes a statutory term that appears on its face to have a commonly understood meaning may be shown to

[62] *See Astrue* v. *Capato,* 132 S.Ct. 2021, 2026 (2012); *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837, 843–44 (1984); *Securities Industry Association* v. *Clarke,* 885 F.2d 1034 (2d Cir. 1989), *cert. denied,* 493 U.S. 1070 (1990).

[63] *See* 12 U.S.C. 1422(9) (defining "insured depository institution" to include banks and savings associations the deposits of which are insured by the FDIC and credit unions the share accounts of which are insured by the NCUA). In addition, although Congress did not define the term "community development financial institution," it did provide that only those CDFIs that have been certified by the Treasury Department are eligible for membership. *See* 12 U.S.C. 1424(a)(1)(B).

[64] In support of this argument, several commenters specifically cited the federal McCarran-Ferguson Act, which provides, in pertinent part, that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." *See* 15 U.S.C. 1012(b). However, nothing in this final rule relates in any way to the regulation of the business of insurance or to the taxation or imposition of fees on any captive or commercial insurance company.

[65] In *Nationsbank* v. *Variable Annuity Life Ins. Co.,* 513 U.S. 251 (1995) ("VALIC"), the U.S. Supreme Court declined to apply a state law-based definition of "insurance" to a federal banking statute. There, the Court upheld the Comptroller of the Currency's classification of annuities as investments, rather than as insurance, under the National Bank Act (NBA), despite respondent's assertions that Congress intended to define "insurance" under the NBA by reference to state law, under which annuities are typically regulated as insurance. In upholding the Comptroller's classification, the Court stated, among other things, "the federal banking law does not plainly require automatic reference to state law here. The Comptroller has concluded that the federal regime is best served by classifying annuities according to their functional characteristics. Congress has not ruled out that course . . .; courts, therefore, have no cause to dictate to the Comptroller the state-law constraint VALIC espouses." 513 U.S. at 261–262. *See also Helvering* v. *LeGierse,* 312 U.S. 531 (1941) (holding that a transaction was not an insurance transaction for federal tax purposes despite its comprising a set of insurance policies under state law).

be ambiguous when it is considered in light of the statute's overall structure, purpose, and history.[66] Construing the term "insurance company" to include any type of entity organized under a state's insurance statutes would allow companies that are not eligible for Bank membership to continue to use captives—or any entities having similar characteristics that might be developed under a different moniker—as a means of providing them with *de facto* membership. In this case, an ambiguity arises because an unconstrained reading of "insurance company" would result in a situation that is contrary to Congress's clear intent to limit the benefits of Bank membership to the several types of institutions listed in section 4(a)(1) of the Bank Act. In contrast, a reading of the term that encompasses insurance companies as they were understood when the Bank Act was enacted, not including captives, would be fully consistent with that provision and with the statutory scheme as a whole.

The ambiguity also arises because it is highly unlikely that Congress considered in 1932 whether captives, which did not then exist, or any class of entity having similar characteristics that would allow the entities to be readily used to circumvent the statutory requirements, should be deemed to be included within the term "insurance company." It is most likely that the term "insurance company" would have been understood by Congress and others in 1932 to refer to a company that was in the business of insurance as it was then understood—that is, the shifting of risk by the insured to a larger class of policyholders through the intermediation of the insurance company—and not to a mechanism for the administration of self-insurance.[67] The current phenomenon of captives as a legal vehicle for managing the parent company's self-insurance did not exist in 1932 and cannot have been within the contemplation of Congress. Captives in the modern sense began to appear only in the late 1950s and early 1960s. Even for many years after U.S. companies first began to form captive subsidiaries, those captives had to be domiciled off-shore, because the state insurance laws that existed at the time made it prohibitively expensive to form and operate a captive in the United States.[68] Colorado became the first U.S. jurisdiction to adopt legislation authorizing the chartering and licensing of captives in 1972,[69] and the captive trend did not begin to gain any real momentum until the mid-1980s.

Although some commenters asserted that early forms of captives existed in 1932 and that Congress must therefore have intended to include them as eligible for membership, those commenters did not identify any example of a captive as it is defined in FHFA's final regulation,[70] nor did they cite anything in the legislative history of the Bank Act that addresses self-insurance by any name. There is scant mention of insurance companies in the legislative history of the Bank Act, although it is logical to infer that Congress specifically included insurance companies among the types of institutions eligible for membership because life insurance companies were actively involved in originating and investing in residential mortgage loans at that time. Life insurance companies, among other classes of insurance companies, would have fit within the traditional view of an insurance company as being an institution that underwrites insurance for entities that are not its affiliates.

Because the types of captives that are now, and recently have been, seeking Bank membership did not come into existence until well after Congress enacted the Bank Act, FHFA does not believe that it is possible to conclude, as some commenters have asserted, that Congress would have intended to include such entities among those eligible for Bank membership. Reasonably assuming that Congress viewed the term "insurance company" in its traditional sense, it would not have had any reason to consider the possibility that another type of business entity could have organized an insurance company and then used it as a vehicle for obtaining advances from a Bank to fund its own investments or business operations.

Thus, changing factual circumstances have generated an ambiguity in the term "insurance company." The definition of that term contained in the final rule is consistent with its historical use in the statute and with the purposes of the statute, but necessarily results in a definition that would exclude some modern entities licensed or chartered under a state's insurance statutes. Because Congress has not defined the term and because it is ambiguous for the reasons discussed, FHFA has the legal authority to define "insurance company" in a manner that is reasonable in light of the provisions and purposes of the Bank Act.

6. It Is Reasonable To Define "Insurance Company" To Exclude Captives

Defining "insurance company" to exclude captives is reasonable for three fundamental reasons, all of which have been thoroughly addressed above. First, doing so is consistent with section 4(a)(1) of the Bank Act, which is reflective of a congressionally created statutory scheme to limit the benefits of Bank membership to the types of institutions specifically listed therein. Second, captives are uniquely suited to serve as vehicles for the circumvention of that statutory provision and its underlying purposes and are being actively promoted for that use, and there is no countervailing public policy reason for them to be Bank members on the basis of their own functions, separate from their parents'. Third, defining "insurance company" in this manner is consistent with the likely intent of Congress, which would have viewed an insurance company as being a company in the business of "risk-shifting and risk-distributing," as the Supreme Court described insurance less than a decade after the enactment of the Bank Act.[71] In addition, it is highly unlikely that Congress contemplated the existence of any class of eligible

[66] *See King* v. *Burwell*, 135 S. Ct. 2480 (2015); *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–133 (2000).

[67] *See Helvering* v. *LeGierse*, 312 U.S. 531, 539–40 (1941) (stating that "[h]istorically and commonly insurance involves risk-shifting and risk-distributing" and finding that the transaction at issue did not involve those features and therefore was not insurance under the federal income tax laws); *Spring Canyon Coal Co.* v. *Commissioner of Internal Revenue*, 43 F.2d 78, 80 (10th Cir. 1930) (holding that a company's contribution to a self-insurance reserve was not deductible as an insurance premium under the federal income tax laws because there was no shifting of risk). In 1932, life insurance companies originated and invested in large numbers of residential mortgage loans; these longer-term assets were well matched in duration to their life insurance liabilities. Captives do not share that business model.

[68] *See* Shanique Hall, *Recent Developments in the Captive Insurance Industry*, NAIC Center for Insurance Policy and Research Newsletter (Jan. 2012), *http://www.naic.org/cipr_newsletter_archive/vol2_captive.htm* (last visited Dec. 8, 2015).

[69] Maureen A. Sanders, *Risk Retention Groups: Who's Sorry Now?*, 17 S. Ill. U.L.J. 531, 542, n. 76 (1993).

[70] Some commenters referred to the Church Properties Fire Insurance Corporation, which was formed by lay leaders of the Episcopal Church in 1929 in order to "reduce costs by selling direct to churches and their affiliated organizations." *See Episcopalians Form Fire Insurance Concern To Reduce the Cost of Policies on Churches*, New York Times (May 23, 1929) at 1. To the extent that this entity could be characterized as an equivalent of a modern captive, it appears to have been most similar to either an association captive or a group captive, most of which would likely qualify as an "insurance company" under the final rule definition. Although the terms used vary from state to state, an "association captive" is generally understood to be a captive that it is sponsored or owned by a group of entities within a particular trade, industry, or service organization and that insures only the risks of its owners or their affiliates. *See* Hall, *supra*.

[71] *Helvering* v. *LeGierse*, 312 U.S. at 539.

financial institution having the characteristics of modern captives (which, as discussed, did not then exist) that make captives feasible to use as funding conduits for entities Congress did not deem eligible for Bank membership, and even less likely that Congress would have approved of such use, which effectively circumvents the very membership restrictions it imposed.

Several commenters asserted that the Agency's proposal to address that concern by focusing only on captives was "arbitrary" (and therefore not within the Agency's authority to adopt) because it disregarded the possibility that other types of members had passed advance proceeds on to non-members through intercompany transfers and could continue to do so in the future. The majority of members that are not captives are owned by holding companies that are not themselves eligible for membership and there is little question that advance proceeds may flow through to the parent companies in many cases. Given the fungibility of money and the typically complex structures of modern financial institutions, it would be extremely difficult for FHFA, or any agency, to develop a workable means of preventing all such transfers. However, even assuming that a small number of non-captive members could be acting effectively as conduits for their parent companies, no evidence suggests that any type of member institution other than captives is, as a class, being used to any material degree for such purposes. In contrast, there is abundant evidence, detailed above, that almost all members that are captives as defined in the final rule were established and sought to become Bank members for the primary purpose of acting as conduits for their ineligible parents. Given this, as well as their unique suitability for such purposes and the general absence of any other compelling rationale for them to be members, FHFA's exclusion of captives in this final rule is reasonable.

7. FHFA Has the Authority To Require the Termination of Captives That Were Previously Admitted to Bank Membership

Section 6(d)(2)(A) of the Bank Act provides that the board of directors of a Bank "may terminate" the membership of any member institution if, "subject to the regulations of the Director" of FHFA, it determines that any of the statutory grounds for termination exist. Those grounds include a failure to comply with any provision of the Bank Act or FHFA regulations.[72] A number of commenters asserted that this provision vests discretionary termination authority in each Bank and that, consequently, FHFA does not have the authority to require a Bank to terminate the membership of captives that were admitted under the regulations in force at the time of admission. In support of that assertion, several of those commenters also noted that the Bank Act had previously contained a provision explicitly authorizing the Bank System regulator to remove a member for cause (including failure to comply with statutory or regulatory provision) after a hearing, but that Congress removed that explicit authorization in 1999 when it adopted the current termination provision.[73]

Although the 1999 amendments did transfer the mechanism of termination from the Bank System regulator to the Banks themselves, it is not plausible to suggest, as do the commenters, that Congress thereby stripped the regulator of its authority to require the removal of a member when doing so is necessary to halt a violation of the statute or regulations. The use of the words "may terminate" indicates that Congress intended to permit a Bank's board of directors some degree of discretion in deciding whether and when to terminate an institution's membership, but that discretion is limited by the statutory language subjecting the exercise of that termination authority to the regulations of the Director.[74] In this case, the Director has adopted regulatory amendments implementing a provision of the Bank Act in a way that makes captives—including those that were previously admitted—ineligible for membership. When effective, the amended regulation will be binding on the Banks, which will be obliged to comply with its provisions to the same extent that they are obliged to comply with any other statutory or regulatory requirement.

Section 6(d)(2)(A) may permit a Bank to exercise its discretion, for example, in deciding whether and when to terminate the membership of an institution that has committed a statutory or regulatory violation for which no particular sanction is specified. The express caveat in section 6(d)(2)(A) making a Bank's termination authority subject to FHFA regulations, as well as FHFA's broad powers as supervisor and regulator of the Banks and its statutory duty to administer the Bank Act in a manner that promotes the Act's purposes and protects the public interest, provide the Agency with sufficient authority to adopt a regulation that, as the final rule does, specifies the circumstances in which a violation of the law requires a Bank to exercise its termination authority. The exercise of this regulatory authority is appropriate where, as here, the violation is not one of technical noncompliance with a minor requirement, but of the fundamental principles defining eligibility for membership and access to the Bank System, the purposes of which would be undermined if membership were allowed to continue. For these reasons, when a member is in violation of a lawfully adopted regulation for which the required sanction is termination of membership, a Bank does not have the discretion to refuse to terminate the member when and as required by the regulation.

Apart from questioning FHFA's power to regulate the Banks' termination authority under section 6(d)(2)(A), a few commenters offered other reasons that they believed the Agency cannot require a Bank to terminate the membership of its existing captive members. One asserted that requiring the termination of existing captive members would give rise to a "takings" claim against the United States in that it would deprive former captive members of their right to a pro rata share of the retained earnings of their former Banks and of access to Bank advances and other products and services, without adequate compensation. Citing a ruling by the U.S. Court of Appeals for the D.C. Circuit that no federal agency may adopt a regulation that would give rise to a "takings" claim unless it is expressly authorized it to do so by statute,[75] the commenter further argued that FHFA may not adopt a regulation requiring termination because such an express statutory authorization does not exist.

Bank members—even those that are in compliance with all statutory and regulatory eligibility requirements—have no constitutionally protected property interest in continuing Bank membership. Although the Bank Act specifies that the holders of a Bank's the

[72] 12 U.S.C. 1426(d)(2)(A).

[73] *See Financial Services Modernization Act of 1999*, Pub. L. 106–102, sec. 608, 113 Stat. 1338, 1461 (1999).

[74] In addition, as the Court of Appeals for the D.C. Circuit has explained, " 'May' ordinarily connotes discretion, but neither in lay nor legal understanding is the result inexorable. Rather, the conclusion to be reached 'depends on the context of the statute, and on whether it is fairly to be presumed that it was the intention of the legislature to confer a discretionary power or to impose an imperative duty.' " *Thompson* v. *Clifford*, 408 F.2d 154, 158 (D.C. Cir. 1968) (*citations omitted*); *see also Halverson* v. *Slater*, 129 F.3d 180, 188–189 (D.C. Cir. 1997).

[75] *See Bell Atlantic Tel. Cos.* v. *FCC*, 24 F.3d 1441, 1445–46 (D.C. Cir 1994).

Class B stock "shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the [Bank]," it also makes clear that, "[e]xcept as specifically provided in [section 6 of the Bank Act] or through the declaration of a dividend or a capital distribution by a [Bank], or in the event of liquidation of the [Bank], a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the [Bank]." [76] But even if members did have a constitutionally protected property interest in Bank membership, FHFA's regulation effects neither a *per se* taking nor a regulatory taking as courts have developed those concepts.

A *per se* taking occurs when the government physically appropriates real or personal property for its own use without just compensation.[77] A captive terminated as required under the final rule will be fully compensated when the Bank redeems its Bank stock for par value (the same amount paid by the captive when it acquired the stock) in the manner provided under the Bank's capital plan. Regardless of compensation, the captive's Bank stock will not have been physically appropriated by the government for its own use. Thus, there will have been no *per se* taking.

Neither will there be a regulatory taking, which occurs when the government imposes a restriction on the use of property that results a severe and unwarranted diminution in the property's value.[78] The terminated member will not only receive the par value of its Bank stock when the stock is redeemed, but will also continue to receive any dividends declared up to the time its stock is redeemed. Thus, there can be no claim that the economic value of the stock will have been destroyed. In addition, because the Banks have independent power to terminate membership, members have a reasonable expectation that their membership may be terminated at some point. Because dividend payments are at all times subject to the approval of the Bank's board of directors, there is no reasonable investment expectation that dividends will continue to be paid. Finally, because the captives became Bank members with full knowledge that all Bank activities are heavily regulated, they cannot claim to have had a reasonable investment-backed expectation that the regulatory regime would remain forever static. This is especially true in the case of entities that became members for the purpose of circumventing the statutory membership requirements.

Another commenter, who focused on FHFA's comments in the proposed rule **SUPPLEMENTARY INFORMATION** regarding the possibility that captive membership may pose unique safety and soundness issues, asserted that those concerns could not serve as a basis for requiring the termination of captive members until the Agency had taken the steps required by section 8 of the Bank Act. Section 8 requires that FHFA keep abreast of the state laws under which Bank members are chartered and regulated, and states that if FHFA concludes that the laws of any state provide inadequate protection to a Bank in making or collecting advances, the Agency may "withhold or limit the operation" of any Bank in that state until satisfactory conditions are established.[79] The commenter asserted that this statutory provision prohibits FHFA from taking any action with respect to captive members until it has first undertaken a study of all of the state laws under which they operate, and only after concluding that a particular state's laws fail to provide adequate protection to a Bank.

FHFA rejects the assertion that section 8 may be read to limit in any way the steps the Agency may take in fulfilling its statutory duty to ensure the safe and sound operation of the Banks. Even if section 8 could be so construed, it would not limit the Agency's ability to require the termination of captive members. Although the proposed rule discussed some safety and soundness concerns to which captive membership gives rise, the Agency's proposal and its ultimate decision to exclude captives from Bank membership and to require the termination of existing captives stems from its conclusion that they are being used to circumvent the statutory requirements governing the types of institutions that may become Bank members, and not primarily from safety and soundness concerns regarding captive insurers.[80] FHFA re-emphasizes that point in this final rule.

C. Discussion of Other Arguments Raised by Commenters

Most of the arguments made by commenters in opposition to the proposed captives provisions have been addressed in the discussion above regarding the legal and policy bases for FHFA's adoption of the final captives provisions. However, some commenters made other arguments that are not addressed above and that warrant discussion.

Many commenters stressed that mortgage REITs' substantial commitment to the residential mortgage market in the U.S. is consistent with the mission of the Banks, and argued that allowing them to access the low-cost funding that the Banks are able to provide will increase the level of private capital in the residential mortgage market, benefiting existing and potential homeowners and the public. Others similarly argued that preventing REITs from accessing Bank funding through their captive subsidiaries could increase instability in the residential mortgage market by reducing liquidity and curtailing the availability of long-term funding. FHFA acknowledges that mortgage REITs play a large role in the residential mortgage market and does not question the legitimacy of their activities. However, while FHFA has the duty to ensure that the operations and activities of the Banks "foster liquid, efficient, competitive, and resilient national housing finance markets," it also has a duty to ensure that the Banks carry out that mission "only through activities that are authorized under and consistent with" the Bank Act and the Safety and Soundness Act.[81] Having concluded that the channeling of low-cost Bank funding to REITs and other ineligible entities through captive members is not authorized by or consistent with the Bank Act, the Agency is compelled to take action to put an end to that practice until such time, and on such terms, as Congress authorizes that access. Similarly, it is not appropriate for FHFA to expand Bank membership beyond the framework established by Congress in order to provide greater macroeconomic stability in times of financial stress, as urged by some commenters.

A number of other commenters argued that FHFA offered no analysis of the financial impact the proposed exclusion of captives would have on the Banks and their members, and asserted that excluding captives from membership would result in reduced

[76] 12 U.S.C. 1426(h). *See also Fahey* v. *O'Melveny & Myers*, 200 F.2d 420, 467 (9th Cir. 1952) (holding that the "purchase of [Bank] stock is a condition of [Bank] membership and does not confer proprietary interest or a property right of any kind in any [Bank] itself").

[77] *See Horne* v. *Dep't of Agriculture*, 135 S. Ct. 2419, 2426–27 (2015).

[78] *See Horne*, 135 S. Ct. at 2427.

[79] *See* 12 U.S.C. 1428.

[80] After describing the proposed captives provisions in the **SUPPLEMENTARY INFORMATION** to the proposed rule, FHFA stated that it was proposing to take those actions "to address supervisory concerns about certain institutions that are ineligible for Bank membership, but that are using captives as vehicles through which they can obtain Bank advances to fund their business operations." *See* 79 FR 54848, 54853 (Sept. 12, 2014).

[81] 12 U.S.C. 4513(a)(1)(B).

income for the Banks in the short run and lost opportunities for income growth in the future. Any projection the Agency might attempt to make regarding the exclusion of captives would be speculative. Despite the fact that the number of captive members has increased dramatically since 2012, they still constitute a very small percentage of the Banks' membership base, and the number that would have been approved for membership in future years cannot be estimated. Similarly, while the amount of advances currently outstanding to captives is known, it is not possible to project what future levels would have been because of the difficulty of estimating not only the number of potential captive members forgone, but also what their level of demand for advances would have been.

Regardless of the financial impact, which is unknown, FHFA cannot allow the Banks to continue to engage in activities that it has concluded are not authorized under the law. Congress mandated the establishment of the Banks in order to advance public policy goals and, in order to ensure that they could fulfill those goals, provided them with initial funding from the Treasury Department and granted them tax and other advantages not generally enjoyed by ordinary for-profit corporations. Accordingly, unlike ordinary corporations, the Banks are not free to undertake any and all activities that they judge to be profitable from a business perspective without regard to the limitations imposed by their authorizing statute. Against the uncertain financial impact on the Banks of this regulation must be counterbalanced the equally uncertain financial effects of expanded government exposure and possible economic distortions from supporting expanded categories of businesses.

Many commenters pointed out that any action that might reduce the income of any Bank to any extent would necessarily reduce the amount of funds available for those Banks' Affordable Housing Programs (AHP), because the statute requires 10 percent of a Bank's earnings to be dedicated to its AHP. But increasing AHP contributions is not a legitimate reason to enhance Banks' earnings by allowing access to Bank advances by ineligible entities. In any event, expanding Banks' income through the admission of members who should be regarded as ineligible under the Bank Act is a very low-leverage way of increasing the availability of AHP funds, because the statute requires only 10 percent of Bank earnings to be dedicated to the AHP.

Finally, some commenters questioned why FHFA cannot address its concerns regarding the use of captives as funding conduits by adopting more narrowly tailored restrictions, such as by excluding from membership only captives that are owned by ineligible entities or, even more narrowly, only those that FHFA has determined are actually being used as a funding conduit for an ineligible parent. In developing the final rule, FHFA fully considered a number of narrower options, but ultimately concluded that each those options either raised legal concerns, would not adequately address the Agency's policy concerns, or were not workable from a practical perspective.

For example, the Agency considered whether it would be possible to adopt a final rule allowing captives to be members, but including provisions restricting the extent to which the captive could pass advance proceeds on to an ineligible parent such as by establishing a specified percentage of a captive's assets that may be funded by advances or by requiring that all collateral be kept on the books of the captive. FHFA concluded that, while either of these options could be justified from a legal perspective, neither would be likely to be effective, given the fungibility of advance proceeds and the legal and other expert resources available to the captive's parent companies that would enable them to develop methods of effectively circumventing any such restrictions.[82]

FHFA also considered adopting a final rule that would have continued to allow membership for captives owned by entities eligible to become members. This option raises a legal question whether the statutory membership framework contemplates conditioning eligibility for membership on the activities or investments of a particular institution's parent company. Apart from that, however, this option would still allow institutions that are themselves eligible for membership to use captive subsidiaries to enable inexpensive access to multiple Banks. Like the use of captives by ineligible parents, this potential use by eligible parents raises substantial questions of policy and legitimacy under the Bank Act, in light of the statute's provision that a member may join only the Bank in the district in which its principal place of business is located.[83]

III. Section-by-Section Analysis of the Final Rule

A. Definitions—§ 1263.1

The final rule adds several new definitions to § 1263.1, as well as revises or deletes the definitions of a number of terms that appear in the existing regulation. Although most of these changes are non-substantive, newly added definitions for the terms "insurance company" and "captive" are intended to implement the main policy goal of the final rule—preventing circumvention of the Bank Act's membership categories by excluding captive insurers from Bank membership. The final rule defines "insurance company" as "an entity that holds an insurance license or charter under the laws of a State and whose primary business is the underwriting of insurance for persons or entities that are not its affiliates." The rule defines "captive" as "an entity that holds an insurance license or charter under the laws of a State, but that does not meet the definition of 'insurance company' set forth in this section or fall within any other category of institution that may be eligible for membership." The purpose of defining those terms is to distinguish, as among entities that are deemed to be an insurance company under state law, between those that may be eligible for Bank membership as an "insurance company" and those that are not eligible. An entity that is chartered or licensed under a state's insurance statutes but that neither meets the definition of "insurance company" nor falls within any of the other categories of institutions that may be eligible for membership under the statute or regulations, is ineligible for membership.

Both the terms "insurance company" and "captive" were defined in the proposed rule and the final definitions are similar to those that were proposed. The proposed rule would have defined "insurance company" to mean "a company whose primary business is the underwriting of insurance for nonaffiliated persons or entities." It

[82] Some representatives of captive members represented to FHFA that their captive subsidiaries directly support residential housing finance and do not act as conduits to ineligible parents. However, as stated above, FHFA has been unable to develop an administratively feasible way to assure that this is the case or remains so, and in the great majority of instances that FHFA has reviewed, it is not. Also, in these cases, the captive is not engaged primarily in the business of insurance, meaning the business of shifting and spreading risk to unaffiliated parties, and, therefore, would not be an insurance company as Congress would have understood that concept in 1932.

[83] *See* 12 U.S.C. 1424(b). If a depository institution were to establish a captive insurer in a state in another Bank district, structured so that its books, records, and personnel were located there, the regulation, as revised by the final rule, would recognize that other state as the principal place of business of the captive for Bank membership purposes.

would have defined "captive" to mean "a company that is authorized under state law to conduct an insurance business, but that does not meet the definition of 'insurance company' . . . or fall within any other category of institution eligible for membership." In the final rule, the latter part of the definition of "captive" remains as proposed, while the initial phrase has been revised to refer more precisely to "an entity that holds an insurance license or charter under the laws of a State." The final rule adds that same initial phrase to the definition of "insurance company," substituting it for the generic term "a company" that was used in the proposed definition. This was done to make clearer that these two definitions are meant to be read in conjunction with each other. In addition, in the final rule, the definition of "insurance company" now refers to an entity "whose primary business is the underwriting of insurance for persons or entities that are not its affiliates," instead of one "whose primary business is the underwriting of insurance for nonaffiliated persons or entities." The sole reason for this change in nomenclature is because, in response to the requests of a number of commenters, FHFA has added a definition of the word "affiliate" to the final rule.

Several commenters asserted that the term "nonaffiliated persons or entities" was too vague and could be read in a way that would exclude from the definition of "insurance company" (and therefore from eligibility for Bank membership) entities that, because of diffuse ownership or other factors, cannot be easily used as financing conduits. The types of entities identified were: Mutual insurance companies, which are owned by their policyholders; "association captives," which may be incorporated as a mutual insurer under state captive statutes to insure a group of policyholders engaged in a related trade; and risk retention groups (RRGs), which are liability insurance companies that may be chartered as either captives or as traditional insurers under state law and that are authorized as RRGs under federal law.[84] FHFA has concluded that these types of insurance companies would in almost all cases be within the definition of "insurance company" adopted in the final rule and therefore would remain eligible for membership.

Two commenters provided specific recommendations as to how the term "nonaffiliated persons or entities" could be clarified so as to preclude the possibility that the definition of "insurance company" could be read to exclude entities that are not the intended targets of the proposal. One commenter, a Bank, suggested that FHFA define the term "nonaffiliated persons or entities" in the final rule to mean "one or more persons or entities holding less than 50% equity ownership or voting control of the insurance company."

Another commenter suggested that FHFA take an approach similar to that reflected in the Bank Holding Company Act ("BHCA"), which defines "affiliate" to mean "any company that controls, is controlled by, or is under common control with another company."[85] In turn, the BHCA states that one company is considered to have "control" over another thereunder if it: (A) "directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company"; (B) "controls in any manner the election of a majority of the directors or trustees of the bank or company"; or (C) the Board of Governors of the Federal Reserve System (FRB) "determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company."[86] The commenter suggested that FHFA also adopt a "safe harbor" provision similar to one that applies to determinations made by the FRB under clause (C) of the foregoing which establishes a presumption that "any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given . . . company does not have control over that . . . company."[87]

FHFA has decided to follow that commenter's basic suggestion by adopting the concepts of "affiliate" and "control" that are reflected in the BHCA because those terms have well established meanings, as illustrated by their being used also in the Safety and Soundness Act with respect to affiliates of Fannie Mae and Freddie Mac.[88] While the final definition of "affiliate" is taken from the BHCA, the text defining the scope of the word "control" (which in the final rule appears within the definition of "affiliate") is based not on the language of the BHCA itself, but on the somewhat more specific definition of that word that the FRB used in its implementing regulations.[89]

The final rule defines "affiliate" to mean "any entity that controls, is controlled by, or is under common control with another entity." The new definition of "affiliate" also specifies that, for purposes of that definition, one entity "controls" another if it: (1) Owns or controls 25 percent or more of the outstanding voting stock, limited partnership shares, or similar interests of the other entity; (2) controls in any manner the election of a majority of the directors, trustees, or general partners of the other entity; or (3) has the power to exercise a controlling influence over the management or policies of the other entity through a management agreement, common directors or management officials, or by any other means.

The final rule definition of "control" does not include an equivalent of clause (C) in the BHCA definition of that term, which contemplates the possibility that the FRB may be required to hold hearings to determine whether one company exercises a controlling influence over another company. In other words, the rule does not contemplate that FHFA will under any circumstances hold a hearing to determine whether one entity "controls" another or to determine whether an entity falls within the definition of "insurance company." Instead, a Bank may need to inquire into the facts of a particular case and apply its reasoned judgment in some circumstances. In applying the definition of "control," a Bank should first make the relatively straightforward determination as to whether one entity exerts a controlling influence over another in the manner described in paragraphs (1) or (2) of the definition. If the answer to that question is "yes," then the inquiry need go no further— one entity "controls" the other, and they are thus considered to be affiliates under the rule. If the answer to that question is "no," then the Bank must consider, under paragraph (3), whether one entity has the power to exercise a controlling influence over the management or policies of the other entity by any other means, such as through a management agreement, common directors, or common management officials.

FHFA has also declined to include in the definition of "control" an equivalent to the BHCA provision establishing a presumption of non-control in cases where one company controls less than 5 percent of the voting stock of another.

[84] *See Federal Liability Risk Retention Act*, 15 U.S.C. 3901, *et seq.*

[85] 12 U.S.C. 1841(k).

[86] 12 U.S.C. 1841(a)(2).

[87] 12 U.S.C. 1841(a)(3).

[88] *See* 12 U.S.C. 4502(1).

[89] *See* 12 CFR 225.2(e).

FHFA believes that including such a provision will only further complicate the definition by appearing to require extensive inquiry into arrangements where one entity may control more than 5 percent, but less than 25 percent of the voting stock of another entity. To be clear, if a Bank determines that control does not exist in the manner described in paragraphs (1) or (2) and determines after reasonable inquiry that no alternative means of control exist as provided in paragraph (3), then it may presume that one entity does not control the other and, therefore, that they need not be considered affiliates under the rule.

Several commenters argued that the proposed rule also left unclear how a Bank would determine whether the "underwriting of insurance for nonaffiliated persons or entities" constitutes a company's "primary business," in determining whether a particular entity fell within the definition of "insurance company." One Bank suggested that FHFA define "primary business" to mean "a business line (such as selling policies, including reinsurance policies or contracts of reinsurance) that constitutes more than half of the insurance company's business." However, the concept of half of a company's business invokes measurement questions more complex and protean than are easily susceptible of being addressed in regulation language of general applicability. FHFA believes that close interpretive questions are unlikely to arise with any frequency, but is prepared to provide interpretive guidance as needed in any appropriate cases.

Determinations regarding whether an institution meets the definition of "insurance company," including determinations about what constitutes an "affiliate" and "control," as well as the manner in which Banks should memorialize their conclusions with respect to those determinations in an applicant's membership application file, are addressed further in the discussion of final § 1263.2(b) below.

The one other substantive definitional change is to finalize the proposed expansion of the definition of "home mortgage loan" to include all types of MBS backed by qualifying loans and securities. Existing § 1263.1 generally defines "home mortgage loan" to include a loan that is secured by a first lien mortgage on one-to-four- or multi-family property, as well as a mortgage pass-through security that represents an undivided ownership interest in the underlying pool of mortgage loans. As proposed, the final rule replaces the existing reference to a pass-through security with a more general reference to a security representing either: (i) A right to receive a portion of the cash flows from a pool of qualifying loans; or (ii) an interest in other securities representing such a right. The reference to a right to receive a portion of the cash flows is intended to encompass both the rights of a holder of a mortgage pass-through security to an undivided ownership interest in the underlying loans and their principal and interest payments, as well as the rights of a holder "debt-type" instruments that grant the holder the right to a specified portion of the cash flows from the pooled mortgage loans. Thus, the revision is intended to bring within the definition of "home mortgage loan" all types of MBS—including pass-through securities, CMOs, REMICs, and principal-only and interest-only strips—that are fully backed by whole loans that meet the definition of "home mortgage loan" or by other MBS that are fully backed by such loans. The revised definition is not intended to include a bond or other debt security that is a general obligation of the issuer, even if it is collateralized by qualifying mortgage loans.

FHFA is making this revision in recognition of the fact that the capital markets do not distinguish between MBS structured as pass-through vehicles and those structured as debt instruments. In adopting the existing definition in 1993, the Finance Board codified the approach of its predecessor agency, the Federal Home Loan Bank Board (FHLBB), which had held that a mortgage-backed security must provide its holder with a *pro rata* ownership interest in each of the loans in the underlying pool of mortgage loans in order for the purchase of that MBS to constitute the equivalent of making or purchasing those underlying loans. Thus, while the Finance Board permitted mortgage pass-through securities, which are structured to give the holder a theoretical undivided ownership interest in each of the underlying loans, to be counted toward satisfaction of the "makes long-term home mortgage loans" requirement, it did not permit other types of MBS to be used for that purpose.

However, as explained in the **SUPPLEMENTARY INFORMATION** to the proposed rule, investors in today's financial markets recognize that the economic interest in the loans underlying such instruments is essentially the same for all types of MBS, regardless of their legal structure. Indeed, the availability of the many types of MBS with different characteristics that have evolved to meet investors' needs over the past several decades has made the secondary mortgage market much more liquid. In recognition of this, FHFA believes that it is appropriate to expand the definition of "home mortgage loan" to include all types of MBS backed by qualifying whole loans and eliminate the distinction that the regulations have historically drawn between pass-through securities and other types of MBS.

This revision was originally proposed in connection with FHFA's proposal to require an institution to hold at least one percent of its total assets in home mortgage loans in order to be deemed to comply with the "makes long-term home mortgage loans" eligibility requirement. The change was intended in part to ease the burden on members that would have been imposed by that new quantitative requirement by allowing them to satisfy the requirement with a wider range of first lien mortgage-related assets than would have been the case if the existing definition were retained. It was also intended in part to make it easier for the Banks to obtain the information necessary to confirm members' compliance with the one percent requirement from their regulatory financial reports. Notwithstanding that FHFA will not be finalizing the one percent requirement at this time, the Agency has decided to include the revised definition in the final rule for the reasons stated above.

In conjunction with the revision of the definition of "home mortgage loan," the final rule also revises the definition of "residential mortgage loan" by replacing paragraph (5) (referring to "mortgage pass-through securities") and paragraph (6) (referring to "mortgage debt securities") with a new paragraph (5), which is intended to include both types of securities. The new provision is similar to paragraph (2) of the definition of "home mortgage loan," referring generally to a security representing either: (i) A right to receive a portion of the cash flows from a pool of whole "residential mortgage loans"; or (ii) an interest in other securities representing such a right. This revision is not intended to effect any substantive change, but merely to streamline the definition in light of the fact that the revisions to the definition of "home mortgage loan" make it unnecessary to distinguish between pass-through securities and other types of MBS in the definition of "residential mortgage loan."

Each of the remaining revisions to the definitions within § 1263.1 is intended either to remove a duplicative definition or to shorten or otherwise clarify the definition itself or the regulatory text in which the defined term appears. Each of these revisions appeared in the proposed rule and each is being finalized essentially as proposed. None of the revisions is intended to alter the meaning of any defined term or substantive provision.

B. Membership Application Process—§§ 1263.2–1263.5

The final rule makes several revisions to subpart B of part 1263, which governs the membership application process.

As proposed, the final rule relocates to § 1263.2(a) from § 1263.6(a) language prohibiting any institution from becoming a member of a Bank unless it has submitted to that Bank a membership application that satisfies the requirements of part 1263, except as otherwise specified in part 1263 (such as in the case of transfers or certain consolidations). While existing § 1263.2(a) requires that an applicant submit an application that complies with the requirements of part 1263, it does not state explicitly that an institution may not become a member unless it has done so. FHFA believes that this statement is more appropriately situated in its new location, which addresses the membership application process, rather than its current location, which addresses the substantive membership eligibility requirements.

Existing § 1263.2(b) requires a Bank to prepare a written digest for each applicant stating whether or not the applicant meets each of the applicable membership eligibility requirements and providing support for its conclusions with respect to each requirement. The final rule revises this subsection to add a specific requirement that, in any digest prepared for an applicant whose eligibility for membership is contingent upon its meeting the new definition of "insurance company," the Bank must state whether the applicant meets that definition and summarize the facts and identify the sources on which it relied in reaching that conclusion. In such cases, the digest should support the Bank's determination that an applicant qualifies as an "insurance company" by summarizing the bases for the Bank's conclusion that the applicant's primary business is the underwriting of insurance for persons or entities that are not its affiliates. In the case of a traditional life or casualty insurance company, for example, it may be sufficient to indicate that a majority of the company's premium income is derived from policies sold to unaffiliated parties. In the case of a mutual insurance company, for example, it may be sufficient to indicate that the company is organized in mutual form and that none of its policyholders has the power to control the election of persons to its board of directors. For a risk retention group, a Bank may be required to obtain additional information establishing that none of the owners control more than 25 percent of its voting shares. In a very few cases, a Bank may be required to conduct a more detailed analysis about whether any one or more policy holders can be said to have "control" over the applicant or related companies that may cause it to be considered an "affiliate," as defined in § 1263.1.

Section 1263.2(c) of the existing regulation requires that a Bank create and maintain a membership file for each applicant. Paragraph (2) of that subsection requires that the Bank include in that file, as an attachment to the application digest, all materials required to document the applicant's eligibility for membership. Paragraph (2) further provides that the Bank "may retain in the file only the relevant portions of the regulatory financial reports required by [part 1263]." This provision is intended merely to allow a Bank the option of omitting from an applicant's file the portions of the applicant's regulatory financial report that are not relevant to its eligibility for membership. However, as currently phrased, the provision could be read as *prohibiting* the Bank from including the non-relevant portions. To eliminate the possibility of such a misreading, the final rule revises this provision to state, instead, that the Bank "is not required to retain in the file" portions of the reports "that are not relevant to its decision on the membership application."

Section 1263.3(c) of the existing regulation also addresses the timing and notice requirements applicable to a Bank's decision on an institution's application for membership. As proposed, the final rule makes a number of non-substantive revisions to that provision to state the requirements as to the timing of the Bank's decision more precisely. No change in meaning is intended.

Section 1263.4 of the existing regulation addresses the circumstances under which an institution may be admitted to membership in a Bank "automatically"—that is, without the need to apply for membership. As proposed, the rule makes two minor wording changes to § 1263.4(a), which governs automatic membership for certain charter conversions, to make the provision read more clearly. No change in meaning is intended.

Existing § 1263.4(b) provides that any member whose membership is transferred pursuant to § 1263.18(d) shall automatically become a member of the Bank to which it transfers. However, while the cross-referenced provision—existing § 1263.18(d)—requires that the Banks involved agree on a "method of orderly transfer" before a "transfer of membership" takes effect, neither that provision nor § 1263.4(b) specifies the types of events that constitute a "transfer" of membership. As a result, FHFA has occasionally received questions about how § 1263.4(b) is to be applied.

FHFA proposed to revise § 1263.4(b) to remove the reference to a "transfer" and, instead, specify that a new membership application is not required when a member either physically relocates its principal place of business to another Bank district (such as through a consolidation) or redesignates its principal place of business to another Bank district as provided under § 1263.18(c). FHFA believes that both of these situations should be treated in the same manner because they are simply different means of bringing about the same result—*i.e.*, a change in the location of a member's principal place of business from one Bank district to another. No commenters objected to the proposed revisions, and FHFA is adopting them as proposed. FHFA has also added language to clarify that the automatic membership at the new Bank commences upon the purchase of the minimum amount of stock needed under the new Bank's capital structure plan.

Section 1263.5 of the existing regulation gives an institution whose membership application has been denied by a Bank the right to appeal the denial to FHFA. FHFA did not propose any substantive revisions to this section, but requested comments on whether the regulations needed to continue to afford applicants this right of appeal, given that no applicants have ever requested an appeal. The Agency received relatively few comments in response to this request, but those that did respond—mostly CDFIs and credit unions, but also a few of the Banks—were uniformly opposed to removal of the appeal provision. One representative letter from a CDFI cited the right of a CDFI applicant under existing § 1263.16(b)(1)(iii) to present to a Bank as part of its application any information it believes demonstrates that is satisfies the "financial condition" eligibility requirement. The commenter stated that the adoption of that provision, as well as FHFA's discussion of the provision in the **SUPPLEMENTARY**

INFORMATION to the final rule in which it was included, demonstrates that the Agency understands that Banks "make judgments in their assessment of CDFI eligibility that could require additional review." The commenter concluded that, in light of "the inconsistent experience with CDFI membership across the System . . . the option for an appeal process should be maintained." Because of the concerns expressed by commenters, FHFA has decided to retain the appeal provision in the regulation.

C. Membership Eligibility Requirements—§§ 1263.6–1263.18

Subpart C of the existing regulation, which includes §§ 1263.6 through 1263.18, addresses the requirements that an institution must meet in order to be eligible for Bank membership. Section 1263.6 sets forth all of the eligibility requirements, while the remaining sections of subpart C address more specifically the manner in which a Bank is to determine compliance with those requirements for the different types of institutions that may be eligible for membership.

The proposed rule would have revised §§ 1263.6, 1263.9 and 1263.10, and would have added a new § 1263.11 (thereby requiring the re-numbering of existing §§ 1263.11–1263.18), to require that an institution hold at least one percent of its assets in "home mortgage loans" to be deemed to satisfy the statutory eligibility requirement that it make long-term home mortgage loans, and that each member comply on an ongoing basis with that one percent requirement and, where applicable, with the statutory eligibility requirement that it have at least 10 percent of its total assets in "residential mortgage loans" as a condition of remaining a Bank member. Because, as discussed above, FHFA has decided not to implement those proposed ongoing asset ratio requirements at this time, the proposed revisions to subpart C that were meant to implement the new requirements are not included in the final rule. Nonetheless, the final rule makes some fairly extensive changes to subpart C in that it: Adds to § 1263.6 a provision addressing the treatment of captive insurers that were admitted to Bank membership prior to the effective date of the rule; finalizes a proposed new provision in § 1263.16 requiring insurance companies to provide audited financial statements as part of the membership application process; finalizes a proposed new provision in § 1263.18 addressing the manner in which a Bank is to determine the "principal place of business" for insurance companies and CDFIs; and makes non-substantive clarifying revisions to the texts of §§ 1263.14, 1263.15, 1263.17 and 1263.18.

1. General Eligibility Requirements—§ 1263.6

Section 1263.6 sets forth the general eligibility requirements for Bank membership and provides that entities that do not meet the requirements of part 1263 shall be ineligible for Bank membership. With respect to the manner in which this section is to be applied, the most significant change the final rule makes is in defining "insurance company," as discussed in detail above. The introductory paragraph to § 1263.6(a) enumerates the types of institutions that are eligible under the Bank Act for membership. Entities of a type not listed in § 1263.6(a) and those, regardless of type, that do not meet the applicable requirements of part 1263, are not eligible for Bank membership. By defining the term "insurance company" in § 1263.1 to include only those entities "whose primary business is the underwriting of insurance for persons or entities that are not its affiliates," the final rule makes clear that a captive, as defined in the regulation, is not an "insurance company" for purposes of section 4(a) of the Bank Act and § 1263.6(a) of the membership regulation. Thus, captives are not eligible for Bank membership, and those that the Bank had previously admitted to membership must wind down their relationships with the Banks in accordance with this final rule.

With respect to the text of § 1263.6(a) itself, the rule finalizes one proposed revision to the introductory paragraph. As discussed above, the final rule removes from this section and relocates to § 1263.2(a) language requiring all applicants to submit an application meeting all of the requirements of the Bank Act and FHFA regulations before it may become a member. FHFA believes that it is more appropriate for that requirement to be included with other material addressing the membership application process than in § 1263.6, which addresses the substantive membership eligibility requirements.

In conjunction with the implementation of the ongoing asset ratio requirements, the proposed rule also would have revised the introductory paragraph, which currently states that an institution meeting the requirements of paragraphs (a)(1) through (a)(6) of that subsection shall be "eligible to *become* a member" of a Bank, to provide that an institution shall be "eligible to *be* a member" if it meets those requirements. The final rule makes a slightly different change, by revising that paragraph to provide that an institution shall be "eligible for Bank membership" if it meets the listed requirements. Despite the fact that the final rule does not require the Banks to determine members' compliance with the "makes long-term home mortgage loans" and "10 percent" requirements on an ongoing periodic basis as would have been required under the proposed rule, FHFA is nonetheless making this revision to dispel any notion that the eligibility requirements of § 1263.6(a) are no longer of any relevance to a member once it has been approved for membership.[90]

The final rule makes one additional change to § 1263.6(a) that was not reflected in the proposed rule by adding a new paragraph (7) providing that, in addition to meeting the requirements listed in paragraphs (1) through (6), an institution must have complied with any applicable requirement of § 1263.6(b) or § 1263.6(c) to be eligible for membership. This revision is not meant to effect any substantive change, but is intended merely to provide clarity by ensuring that § 1263.6(a) contains a comprehensive list of all of the requirements an institution is, or may be, required to meet to be eligible for membership. Section 1263.6(b) refers to the "10 percent" requirement that applies to insured depository institutions that are not CFIs, while § 1263.6(c) refers to the requirement that an applicant that is not an insured depository institution have a level of mortgage-related assets that reflect a commitment to housing finance. The

[90] As explained in the proposed rule, the existing regulations already reflect the necessarily ongoing nature of several of the eligibility requirements, although they employ various enforcement mechanisms short of the ultimate sanction of termination to ensure continuing compliance with those requirements. For example, under the existing membership regulation, an applicant for Bank membership must in most cases satisfy the "home financing policy" requirement by demonstrating that it has achieved a rating of "Satisfactory" or better on its most recent CRA evaluation. While the regulations do not require a member to maintain a "Satisfactory" or better CRA rating in order to retain its Bank membership, they do mandate restrictions on access to advances for failure to maintain such a rating. *See* 12 CFR 1290.5(b). FHFA's advances regulation effectively enforces the "financial condition" requirement by permitting a Bank to limit a member's access to advances if its credit underwriting indicates that it is advisable to do so and requires a Bank to limit or restrict access to advances in the case of a member that lacks positive tangible capital, but that has not yet reached the point of insolvency. *See* 12 CFR 1266.4. The "duly organized" and "subject to inspection and regulation" eligibility requirements are essentially self-enforcing in that any member that fell out of compliance with either of those requirements could not continue to operate as a financial institution.

final rule makes no changes to subsections (b) or (c), which both refer to what an "applicant" must do to "become" a member. To make clear that compliance with those requirements will continue to be assessed only at the time of application, new § 1263.6(a)(7) states that an institution to which either of those requirements apply shall be eligible for Bank membership if it "has complied" with the applicable requirement.

Existing § 1263.6(d) states that "[e]xcept as otherwise provided in this part, if an applicant does not satisfy the requirements of this part, the applicant is ineligible for membership." The proposed rule would have redesignated this provision as § 1263.6(c)(1) and revised it to read, "Except as provided in paragraph (c)(2) of this section, an institution that does not satisfy the requirements of this part shall be ineligible to be a member of a Bank." In the final rule, the provision remains as § 1263.6(d), but is revised to read, "Except as provided in paragraph (e) of this section, an institution that does not satisfy the requirements of this part shall be ineligible for membership." This revised language is similar to that which was proposed. As proposed, the final rule removes the initial qualifier "[e]xcept as otherwise provided in this part," which is redundant in that the reference to satisfying the "requirements of this part" is most logically read to take into account any exceptions to the general requirements. At the same time, the final rule adds a new qualifier—"[e]xcept as provided in paragraph (e)"—which is a new provision, described immediately below, that specifies the manner in which the Banks are to wind down their business with existing captive members before terminating the membership of those captives.

Because FHFA has amended the regulation to make captives ineligible for membership, the final rule adds a new provision, § 1263.6(e), to govern the treatment of captives that were admitted to membership prior to the effective date of the final rule. Like the proposed rule, the final rule treats captives that had been admitted to membership before the date of publication of the proposed rule (September 12, 2014) (hereinafter referred to as "pre-NPR captives") differently from those that were admitted to membership on or after that date (hereinafter referred to as "post-NPR captives").

The final rule treats pre-NPR captives in essentially the same manner as would have been the case under the proposed rule. Section 1263.6(e)(1)(i) of the final rule permits a Bank five years from the effective date of the final rule to wind down its relationship with a pre-NPR captive. As proposed, the final rule also permits a Bank to continue to make or renew advances to such captives during that five year transition period, but only if: (A) After making or renewing an advance, the Bank's total outstanding advances to that captive would not exceed 40 percent of the captive's total assets; and (B) the maturity date of any new or renewed advance does not extend beyond the end of the five-year transition period. In the case of a captive that already has advances that exceed 40 percent of its assets, the final rule does not require a Bank to call those advances prior to their maturity date, but it does prevent the Bank from making or renewing any further advances to that captive until total outstanding advances have been reduced to below 40 percent of the captive's assets. Similarly, a Bank that already has made advances to captives that mature beyond five years from the effective date of the final rule may allow those to roll off in accordance with their terms, but may not renew them.

Section 1263.6(e)(1)(ii) of the final rule requires a Bank to terminate the membership of any pre-NPR captive no later than five years after the effective date of the rule. The Bank is to carry out the terminations as provided under § 1263.27, which is not amended by this final rule and which provides each Bank's board with the necessary authority to terminate the membership of any captive for failing to comply with a requirement of the Bank Act, as implemented by a regulation adopted by FHFA. The requirements of § 1263.27(b), regarding stock redemption periods, and § 1263.27(c), regarding post-termination membership rights, shall apply without exception to any terminated captive.

Final § 1263.6(e)(1)(ii) further requires a Bank, after terminating the membership of a pre-NPR captive, to liquidate outstanding advances to, settle other business transactions with, and repurchase or redeem Bank stock held by that captive in accordance with § 1263.29, which also is not revised by the final rule. This provision also makes clear that in terminating a pre-NPR captive's membership a Bank may nonetheless allow the captive to repay any existing advances in accordance with their contractual terms, regardless of whether their maturity dates occur after the date of the termination of membership, so long as the advances had been made in conformity with the regulations in effect at the time the advance was made. In such cases, the Bank would also delay the repurchase of Bank stock held by the captive in support of any such advance until after the advance has been repaid, in accordance with the Bank's capital plan. The five-year transition period for these pre-NPR captives is intended to mitigate to a reasonable extent the burden that the termination of membership might otherwise have on any such captive that became a Bank member in reliance on the previous membership regulations. The limitations on advances that may be made during this period are intended to permit a pre-NPR captive to continue to borrow at its existing levels for a reasonable period of time, while also limiting its ability to provide increased financing to affiliates that are ineligible for Bank membership.

The text of the proposed rule did not explicitly address the treatment of post-NPR captives, but, in the **SUPPLEMENTARY INFORMATION**, FHFA stated that it would interpret the rule to require the immediate termination of such captives' membership and the prompt liquidation of any outstanding advances, and that it would consider making those requirements explicit in the final rule if any Bank were to admit a captive to membership subsequent to the date of publication of the proposed rule. Notwithstanding that notice of the proposed consequences to captives admitted to membership after the date of the proposed rule, several Banks have continued to admit captives to membership, although at least some have obtained from such captives written acknowledgements of the possible immediate termination of their memberships. Because of those developments, FHFA has decided that it should address the treatment of those post-NPR captives explicitly in the final rule. In order to avoid the disruption to the Banks and those captives that could result from an immediate termination of membership and repayment of all advances, FHFA has reconsidered the position it took in the proposed rule and has decided to provide the Banks with a one-year transition period within which to wind down their affairs with any post-NPR captives they have admitted.

Accordingly, § 1263.6(e)(2)(i) of the final rule provides the Banks with a one-year transition period from the effective date of the final rule within which to wind down its relationships with any captives that had been admitted to membership on or after September 12, 2014. The final rule prohibits a Bank from making or renewing an advance to a post-NPR captive during that transition period, but does not require the immediate liquidation of any advances that may already be outstanding on the effective date of the rule.

Section 1263.6(e)(2)(ii) of the final rule requires a Bank to terminate the membership of any post-NPR captive as provided under § 1263.27 no later than one year from the effective date of the final rule. It also requires generally that upon the termination of membership the Bank must liquidate all outstanding advances to the post-NPR captives, settle all other business transactions, and repurchase or redeem all Bank stock held by the terminated captive in accordance with § 1263.29. Thus, in contrast to pre-NPR captives, post-NPR captives must completely wind down all business relationships with the Banks, including the full repayment of all outstanding advances, prior to or simultaneously with the termination of membership.

2. Treatment of De Novo Insured Depository Institution Applicants—§ 1263.14

Section 1263.14 of the existing membership regulation sets forth special standards by which a Bank is to assess the compliance of a "de novo applicant"—*i.e.*, an insured depository institution chartered less than three years prior to the date it applies for Bank membership—with the membership eligibility requirements. It deems each de novo applicant to be in compliance with the "duly organized," "subject to inspection and regulation," "financial condition," and "character of management" eligibility requirements and provides an alternative means for such an applicant to meet the "makes long-term home mortgage loans requirement" if it cannot meet the general standard set forth in § 1263.9. With respect to both the "10 percent" and "home financing policy" requirements, it provides standards pursuant to which an applicant may be "conditionally approved" for membership at the time of application and then achieve full membership if additional criteria are met within a certain timeframe.

Although the proposed rule would have made no substantive changes to the existing standards, it would have significantly revised the text of this section (which would have been redesignated at § 1263.15) to provide greater clarity, primarily with respect to the standards for conditional approval and subsequent full membership. The proposed rule would, however, have added two new paragraphs to provide alternative standards by which a member that had been admitted as a de novo applicant could be deemed to comply with the proposed ongoing asset ratio requirements for a period of time before being required to meet the standards that would have applied to all other members.

Like the proposed rule, the final rule significantly revises the text of this section (which remains as § 1263.14 in the final rule), but organizes the material differently than was proposed. Again, these changes are intended primarily to state the requirements regarding conditional approval and subsequent full membership more clearly and are not meant to implement any substantive change. Because FHFA is not implementing the proposed ongoing asset ratio requirements at this time, the proposed provisions relating to those requirements are not included in final § 1263.14.

In the existing regulation, the term "de novo applicant" is defined in § 1263.14(a) and is used throughout the remainder of § 1263.14 to refer to an insured depository institution that was chartered less than three years prior to the date it applies for Bank membership. As proposed, the final rule substitutes "de novo insured depository institution" for "de novo applicant" to make clear that the time-limited exceptions for entities formed within the preceding three years apply only to insured depository institutions and not to insurance companies or non-depository CDFIs. In addition, the rule moves that definition from § 1263.14(a) to § 1263.1, where the definitions of other terms that are used in part 1263 are located. As is the case with the existing membership regulation, the final rule does not provide any special standards for measuring the compliance of recently formed insurance company or non-depository CDFI applicants with the membership eligibility requirements.

While the final rule also revises the text of § 1263.14(a) to reflect the new nomenclature, it retains the substance of the existing subsection by deeming each de novo insured depository institution applicant to be in compliance with the "duly organized," "subject to inspection and regulation," "financial condition," and "character of management" eligibility requirements. This reflects the fact that the chartering entity and the federal deposit insurer would have evaluated those areas in connection with granting the charter and approving the institution for deposit insurance.[91]

Existing § 1263.14(b) allows a de novo insured depository institution to satisfy the "makes long-term home mortgage loans" requirement by providing a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans. The final rule makes minor revisions to the text of this subsection, but retains the substance of the existing provision.

Existing § 1263.14(c) deems a de novo insured depository institution to which the "10 percent" requirement applies and that has been in operation for less than one year to be "conditionally . . . in compliance" with that requirement at the time of application, and grants the institution "conditional membership approval" until the institution reaches the one-year anniversary of its commencement of operations. At that point, if the institution provides evidence acceptable to the Bank that it holds at least 10 percent of its assets in residential mortgage loans, it is deemed to be "in compliance" with the "10 percent" requirement. If the institution is unable to provide such evidence within that time frame, it is deemed to be "in noncompliance" with the "10 percent" requirement, its "conditional membership approval is deemed null and void," is terminated, and its membership stock must be redeemed in accordance with § 1263.29.

The final rule revises the structure of § 1263.14(c) (condensing it from five paragraphs to three) and to its nomenclature, but makes only one minor change to the substance of that subsection. That substantive change is reflected in final § 1263.14(c)(1). As currently written, that paragraph appears to deem any de novo insured depository institution applicant to which it applies to be in mere conditional compliance with the "10 percent" requirement, without allowing for the possibility (perhaps slight) that the applicant may be able to demonstrate that it is already in full compliance with that requirement as provided in § 1263.10. The final rule remedies this oversight by specifying, in § 1263.14(c)(1), that the subsection applies to "a de novo insured depository institution applicant that commenced its initial business operations less than one year before applying for Bank membership [that] is subject to, but cannot yet meet, the 10 percent requirement . . . as provided in § 1263.10." If an institution already complies with § 1263.10 at the time it applies for membership, it is not subject to the procedures set forth in § 1263.14(c) under the final rule. With respect to applicants to which § 1263.14(c) does apply, final

[91] *See* 61 FR 42531, 42538 (Aug. 16, 1996) (discussing reasoning behind adoption of streamlined requirements for de novo insured depository institutions).

§ 1263.14(c)(1) provides that a Bank shall conditionally approve such an applicant for membership if it meets all other applicable requirements (which include the other membership eligibility requirements as modified for de novo insured depository institutions under this section).

Final § 1263.14(c)(2) provides that if an institution that was conditionally approved for membership demonstrates to the satisfaction of its Bank that it satisfies the "10 percent" requirement as provided under § 1263.10 within one year after it begins its business operations, its membership approval shall become final—*i.e.*, it shall be considered to be fully approved for membership (unless it also remains subject to conditional approval under § 1263.14(d)). Conversely, final § 1263.14(c)(3) provides that if such an institution fails to demonstrate its full compliance with the "10 percent" requirement within one year after it begins its business operations, its conditional membership approval shall become void.

Existing § 1263.14(d) deems any de novo insured depository institution that has not yet received its first CRA performance evaluation to be in conditional compliance with the "home financing policy" requirement if it provides a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. The existing regulation allows a Bank to conditionally approve an applicant for membership on this basis until it receives its first CRA evaluation. If the institution receives a "Satisfactory" or better rating on its first CRA evaluation, it is deemed to be in full compliance with the "home financing policy" requirement and its membership approval shall become final (unless it also remains subject to conditional approval under § 1263.14(c)). If it fails to achieve a "Satisfactory" rating on that evaluation, it is considered to be out of compliance (unless that presumption is rebutted as specified in the regulation) and its conditional membership approval becomes void. The final rule revises the structure and nomenclature of § 1263.14(d) that parallel the revisions made to § 1263.14(c), but makes no substantive changes to that subsection.

The final rule adds a new subsection (e) to § 1263.14 to consolidate existing requirements that apply to conditional membership approvals under subsections (c) and (d). Final § 1263.14(e) provides that a de novo insured depository institution that has been conditionally approved for membership under § 1263.14(c)(1) or § 1263.14(d)(1) is subject to all regulations applicable to members generally, including those relating to stock purchase requirements and advances or collateral, notwithstanding that its membership may be merely conditional for some period of time. Final § 1263.14(e) also provides that if an institution's conditional membership approval becomes void as provided in § 1263.14(c)(3) or § 1263.14(d)(3), then the Bank must liquidate any outstanding indebtedness and redeem or repurchase its capital stock as it would for any other terminated member under § 1263.29.

3. Recently Consolidated Applicants—§ 1263.15

Section 1263.15 provides guidance to the Banks about how to assess a membership application submitted by an institution that recently has undergone a merger or other business combination with another institution. The existing provision specifies the manner in which the Banks must apply the "financial condition," "home financing policy," "makes long-term home mortgage loans," and "10 percent" requirements to such applicants. The final rule makes numerous non-substantive revisions to that section so as to provide greater clarity, but makes no substantive changes.

With respect to the "financial condition" requirement, final § 1263.15(a) requires a recently consolidated applicant that has not filed consolidated financial reports with its regulator for at least six quarters or three calendar years to provide the Bank with whatever regulatory reports it has filed as a consolidated institution, plus *pro forma* financial statements for any quarters for which actual combined financial reports are not available. With respect to the "home financing policy" requirement, final § 1263.15(b) requires a recently consolidated applicant that has not yet received its first CRA performance evaluation as a consolidated entity to provide a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. With respect to the "makes long-term home mortgage loans" and "10 percent" requirements, final § 1263.15(c) allows a recently consolidated applicant that has not yet filed a regulatory financial report as a consolidated entity to provide the Bank instead with the *pro forma* financial statements that it had provided to the regulator that approved the consolidation.

4. Financial Condition of CDFIs and Insurance Companies—§ 1263.16

Existing § 1263.16 governs the application of the "financial condition" requirement to insurance company and certain CDFI applicants. By regulation, in order for such an institution to be eligible for membership its financial condition must be "such that advances may be safely made to it." [92] The Bank Act applies this "financial condition" requirement only to certain insured depository institutions,[93] but both FHFA and the Finance Board have applied this requirement by regulation to all institutions, including insurance companies, as a matter of safety and soundness.[94] The final rule does not alter this approach.

Under existing § 1263.16(a), an insurance company applicant is deemed to meet the "financial condition" requirement if the Bank determines, based on the information contained in the applicant's most recent regulatory financial report, that it meets all of its minimum statutory and regulatory capital requirements and, in addition, meets all applicable capital standards established by the NAIC, regardless of whether those NAIC standards have been adopted by the state in which the company is subject to regulation. As proposed, the final rule carries forward those requirements, but also adds a new provision that requires a Bank to review an insurance company applicant's most recent audited financial statements and to determine that its financial condition is such that the Bank can safely make advances to it before that applicant may be deemed to meet the "financial condition" requirement. The final rule requires that the Bank make the latter determination based upon audited financial statements prepared in accordance with generally accepted accounting principles (GAAP), if they are available, but allows the use of financial statements prepared in accordance with statutory accounting principles if GAAP statements are not available.

[92] 12 CFR 1263.6(a)(4).

[93] *See* 12 U.S.C. 1424(a)(2)(B).

[94] *See* 58 FR 43522, 43531–34 (1993) (discussion in **SUPPLEMENTARY INFORMATION** to Finance Board's first post-FIRREA final rule on Bank Membership of the agency's decision to apply the requirements of section 4(a)(2)(B) of the Bank Act to insurance companies, as well as insured depository institutions).

5. Determination of Appropriate District for Bank Membership—§ 1263.18

The Bank Act provides that an eligible institution may become a member only of the Bank of the district in which the institution's "principal place of business" (PPOB) is located, but does not define that term.[95] The existing membership regulation includes both a general provision for determining the location of an institution's PPOB, as well as an alternative provision that allows an institution to request that the Bank designate a different state for the PPOB if certain requirements are met. Under the general provision, the PPOB is deemed to be the state in which an institution "maintains its home office established as such in conformity with the laws under which the institution is organized." [96] The alternative provision allows an institution to designate a different state as its PPOB if it meets a three-part test for establishing that it has a sufficient connection to that other state.[97]

a. Proposed PPOB Provisions

The proposed rule would have redesignated § 1263.18 as § 1263.19, but retained the basic structure of that section (while adding additional paragraphs, as noted below). That section remains as § 1263.18 under the final rule. In the discussion of the substantive revisions to that section below, the existing, proposed, and final provisions are all referred to as being located in § 1263.18 in order to avoid confusion.

The proposed rule would have made three substantive revisions to § 1263.18 that were intended to address how the Banks designate the PPOB for certain insurance company and community development financial institution (CDFI) members. As more insurance companies and CDFIs have become Bank members, they have revealed shortcomings in the current regulation's application to some situations that these institutions can present that do not arise with depository institutions, such as being domiciled in one state but conducting all business operations from a different state. As noted in the **SUPPLEMENTARY INFORMATION** to the proposed rule, FHFA had previously declined a request to allow the Banks to look solely to the state of domicile for an insurance company or the state of incorporation for a CDFI to identify the PPOB, because that approach would allow for the possibility of an institution having its "principal" place of business for membership purposes at a location from which it actually conducts no business activities. Such an arrangement is not consistent with the statute.

To address these issues, FHFA first proposed to amend the general PPOB provision by adding a requirement that an institution also must actually conduct business activities from its home office location in order for the home office to be designated as the PPOB. The intent was to make clear that a mere legal presence, such as a statutory home office or a registered agent's office at which no business is conducted, is not sufficient by itself to constitute a company's PPOB. FHFA was prompted to make this revision by learning of instances in which insurance companies and CDFIs had sought to become members of the Bank whose district included the state under whose laws those entities had been domiciled or incorporated, even though they conducted all of their business activities elsewhere.

FHFA also proposed to add a new section that would be specific to insurance companies and CDFIs, which would apply only in those cases in which an institution could not satisfy the general requirements for determining its PPOB. Thus, the new provision would apply only to an institution that did not have an actual "home office" established under the laws of its chartering statute, or that had such a "home office" but did not conduct business operations from that location, and that could not satisfy the existing three-part test for designating an alternative location for its PPOB. Under the proposed provision, a Bank would be required to designate as the institution's PPOB "the geographic location from which the institution actually conducts the predominant portion of its business activities." The proposed rule further required that a Bank make these PPOB determinations based on the totality of the circumstances related to a particular institution and using "objective factors" for making the decision. The proposal included three examples of such objective factors, which were the location of the institution's senior executives, the locations of the offices from which it conducts business, and the locations from which its non-executive officers and employees carry out the institution's business activities.

Lastly, the proposed rule included a separate provision for designating the PPOB for those insurance companies that maintain no physical business presence in any state. As more insurance companies have become Bank members, FHFA has learned that certain insurance companies, such as those that are part of a holding company, may not maintain any physical office premises of their own that might be designated as their PPOB. Moreover, such companies may not have their own dedicated officers or employees, but instead may have joint employees or officers who are primarily employed by a separate affiliated insurance company. Those persons also may be situated at different geographic locations, *i.e.*, the locations of the business offices of the affiliated companies, rather than at one central location. Such companies also may contract with unaffiliated service providers to perform the services that ordinarily would be performed by a company's employees. For such companies, where it is not possible to identify a single physical location from which the insurance company can be said to actually conduct the predominant portion of its business activities, the proposed rule would have allowed the Banks to designate the insurance company's state of domicile as its PPOB.

b. Comment Letters on Proposed PPOB Provisions

Approximately 80 comment letters addressed some aspect of these proposed PPOB amendments. Many of the comment letters were substantively identical and contended that using the state of domicile or incorporation would be the most logical way to determine the PPOB for CDFI and insurance company members. They also noted that the existing three-part test for redesignating a member's PPOB already provided an adequate alternative means for members to designate a place other than the state of domicile or incorporation. These commenters also criticized creating a separate PPOB provision for insurance company and CDFI members, saying that it would promote district shopping by such members and would create an unfair advantage for insurance companies over depository institution members.

Many other comment letters also urged FHFA to look solely to the state of domicile as the PPOB for insurance companies. Their principal reasons

[95] 12 U.S.C. 1424(b). An institution may, in the alternative, become a member of the Bank of an adjoining district, if that is demanded by convenience and the Director of FHFA approves that arrangement. There is no record of this statutory alternative ever having been used.

[96] *See* 12 CFR 1263.18(b).

[97] The regulation allows an institution to have a state other than the one in which it maintains its home office designated as its PPOB, provided that: (i) at least 80 percent of the institution's accounting books, records, and ledgers are maintained in that state; (ii) a majority of the institution's board of director and board committee meetings are held in that state; and (iii) a majority of the institution's five highest paid officers have their places of employment located in that state. *See* 12 CFR 1263.18(c).

included: the simplicity of the approach; it would allow Banks to focus only on the insurance laws of the states in their districts; it would defer to state regulators on what constitutes a "home office"; it would avoid the inconsistent results that would likely occur if each Bank made its own decisions about what constituted the "predominant portion" of an institution's business; and it would recognize the realities of the marketplace, in which the concept of large institutions having a single physical location from which they conduct their business is no longer the norm.

Nine Banks submitted separate letters that were nearly identical in substance and generally opposed the revisions to the PPOB regulation. These letters also suggested certain revisions, one of which FHFA has decided to incorporate into the final rule, as described below. The Banks also favored using the state of domicile as the PPOB for insurance companies, urging FHFA to recognize the central importance of the domicile to the operation and regulation of any insurance company, and to defer to state insurance regulators' determination of what constitutes an insurance company's "home office." The Banks further contended that principles of safety and soundness favor using the state of domicile, as that would avoid requiring each Bank to become familiar with the insurance regulators and laws for states outside of its district. A number of commenters other than the Banks also raised these same points in favor of using the state of domicile as the PPOB.

The Banks recommended substantive revisions to the proposed rule. For the general PPOB provision—which would allow the home office to be designated as the PPOB only if the institution also conducted some "business operations" from that office—the Banks recommended that FHFA specify what activities would constitute "business operations." Specifically, the Banks asked that FHFA define the term "business operations" to include an institution having any business, operations, or sales office in the domiciliary state, having any officer's place of employment located in the domiciliary state, or conducting any business in the domiciliary state, including the sale of insurance policies. The Banks contended that the addition of such requirements would ensure that an institution had more than a "mere legal presence" in its domiciliary state.

The Banks recommended similar revisions to the provision that would have applied solely to certain insurance companies and CDFI members, and which would have required a Bank to identify "the geographic location from which the institution actually conducts the predominant portion of its business activities." The Banks recommended that FHFA add specific metrics to that provision that would provide clear guidance about what factors would constitute "the predominant portion" of a company's business activities. Specifically, the Banks recommended that the final rule allow the PPOB to be determined based on any two of the following factors: (1) The location of a plurality of the institution's employees; (2) the location of the places of employment of a plurality of certain specified senior executives; or (3) the location of the company's largest office (as measured by number of employees). Each of the Banks' proposed metrics is similar to the more generally phrased "objective factors" that FHFA had included as examples in the proposed rule, *i.e.*, "the location from which the institution's senior officers direct, control, and coordinate" an institution's activities, the "locations of the offices from which the institution conducts its business," and "the location from which its other officers and employees carry out the business activities." As discussed below, FHFA is persuaded that the final rule would be improved by the addition of the specific metrics suggested by the Banks and has incorporated them into the final rule.

All of the Banks that submitted similar comment letters also supported the third substantive revision in the proposed rule, which would have allowed the Banks to designate the state of domicile as the PPOB for any insurance company that maintains no physical offices of its own and has no employees of its own (*i.e.*, they are shared with other affiliates or the employee functions are performed by contractors), or whose executives may be situated at multiple locations. In addition to the matters discussed above, all of the Banks submitted supplemental comment letters in July 2015 that expressed their views on how to determine the PPOB for a captive insurance company. Certain Banks favored using the state of domicile for captives, while others favored other approaches, such as the location of the parent company or the location of any affiliated company that is already a member of a Bank. Several of the Banks expressed concerns that allowing captives to use the state of domicile as their PPOB would encourage "district shopping" among the Banks by the parent companies of prospective captive members, which could undermine the cooperative nature of the Bank System. Because FHFA has defined the term "insurance company" to exclude captives and has required the termination of membership for existing captives members, FHFA has not addressed this issue in the final rule.

c. Overview of Final PPOB Provisions

In the final rule, FHFA has decided to adopt certain of the substantive amendments largely as they were proposed, and to modify the other provisions by incorporating the revisions recommended by the Banks. All of these provisions are to be applied prospectively, and thus will not affect current members. In addition, FHFA is adopting as proposed clarifying amendments to the "transfer of membership" provisions of § 1263.18(d)(1), which deals with transfers of membership from one Bank to another. The proposed rule would have revised this provision to make clear that it applies to instances where a member of one Bank either redesignates or relocates its PPOB to a state located in another Bank district. A "redesignation" of a PPOB can occur if a member satisfies the three-part test set out in § 1263.18(c), which remains unchanged in the final rule. A "relocation" of a member's PPOB would occur if it were to physically relocate its home office, as identified in its charter, to another state, such as in connection with a corporate reorganization, merger, or acquisition, and continued to conduct business from that new location. This revision is intended to reflect the two methods by which transfers of membership can occur—which had previously not been described by the regulation—and is related to revisions made to § 1263.4(b), regarding "automatic membership" that can occur as a result of such changes in a member's principal place of business. No commenters opposed these revisions to § 1263.18(d)(1).

d. General PPOB/Home Office Test

The final rule adopts the amendment to the general PPOB provision, § 1263.18(b), as it was proposed. Thus, the general approach for designating the PPOB for any member is to identify the state within which the institution maintains its home office, as the home office is established in accordance with the laws under which the institution is organized, and to confirm that the institution also conducts business operations from that office. As noted previously, as increasing numbers of insurance companies and CDFIs have become members, FHFA has learned that it is possible for them to conduct all of their business activities in states other than those under whose laws they are domiciled or incorporated. Moreover, although the law of most states may require an insurance company to maintain a "home office" within the domicile state, FHFA is also aware of instances in which the statutory "home office" claimed to be the PPOB for membership purposes has been nothing more than the address of an in-state registered agent, such as a law firm, whose sole function may be to accept service of process on behalf of the insurance company. FHFA has received inquiries from the Banks about how to determine the PPOB for such institutions, and is aware of instances in which Banks have agreed between themselves that in such cases the appropriate Bank for membership purposes is the Bank from whose district the insurance company or CDFI actually conducts its business operations, not the state of domicile.

As noted in the proposed rule, FHFA believes that the term "principal place of business" must be read to require that some material amount of business activities be conducted at that location, and that a mere legal presence—such as being domiciled or incorporated under the laws of a particular state, without more—is not sufficient to establish an institution's PPOB. Accordingly, in order to be consistent with Section 4(b) of the Bank Act, FHFA believes that it must amend the existing "home office" provision to address the above-described situations by requiring that the institution also conduct some business operations from its home office in order for that home office to be designated as its PPOB. The final rule retains the requirement of the existing rule, which requires that the "home office" be established as such under state law. FHFA has not accepted the Banks' suggested revisions to this paragraph—which would specify certain activities that could constitute conducting business operations from the home office—principally because the examples provided were too attenuated to be consistent with FHFA's concept of a "principal" place of business. The amendment made by the final rule should have no effect on depository institution applicants. The charters for depository institutions typically designate a location within a state as the institution's "home office," which location also will be a branch office at which the institution conducts some portion of its lending and deposit taking business, which is sufficient to meet the new standard. The amendment also should not adversely affect insurance company applicants because, as was pointed out by some commenters, most insurance companies in fact conduct some or all of their business operations from offices located within their state of domicile, and because the final rule includes a new provision, § 1263.18(f), that specifically addresses insurance companies and CDFIs that cannot satisfy the general PPOB provision.

A significant number of commenters urged FHFA not to amend § 1263.18(b) and to "retain" what they believed to be its current regulatory approach, which they characterized as a "state of domicile" test for insurance companies. Neither FHFA nor any of its predecessor agencies has ever adopted a regulation that established a state of domicile approach for insurance companies or that otherwise specifically addressed insurance companies. The most likely reason is that the Bank System regulators had not previously seen any need to address those issues because insurance companies have, until relatively recently, been a very small portion of the membership base. Although the Bank Act has authorized insurance companies to become members since 1932, only in recent years has the number of insurance companies grown significantly. For example, as recently as 1996, the Bank System had no more than 31 insurance company members, out of a total membership base of 6,146.[98] By the end of 2014, the number of insurance company members had grown to 304, out of 7,367 total members.[99] Also, FHFA has become aware of the need to provide more specific guidance for identifying the PPOB for insurance companies and to first consider whether the state of domicile, by itself, is sufficient under the statute to constitute an insurance company's PPOB.

Moreover, although the language of the current regulation, which refers to the "home office established as such in conformity with the laws under which the institution is organized," could arguably be read as tantamount to a "state of domicile" test, neither FHFA nor its predecessors has ever adopted that interpretation. Indeed, the history of this regulation indicates that it is unlikely that the predecessor agencies ever considered the concept of an insurance company's domicile when they adopted this language. The current language appears to date to 1958, when the FHLBB adopted a definition of "principal office" as part of its regulations that applied to savings associations that were insured by the Federal Savings and Loan Insurance Corporation (FSLIC). The 1981 regulations of the FSLIC defined "principal office" in much the same way as FHFA currently defines "principal place of business,"[100] but the context makes clear that the term could not have applied to insurance companies because it appeared within the regulations of the FSLIC, which applied only to federally insured savings and loan associations.[101] Through the more recent revisions to the membership regulations, neither FHFA nor the Finance Board has ever addressed whether it intended the term to be synonymous with an insurance company's state of domicile or a CDFI's state of incorporation. Moreover, although certain commenters contended that the Agency has used a "state of domicile" test for insurance companies, the fact is that some Banks currently have as members insurance companies that are domiciled outside of the Bank's district. That suggests that even the Banks have not viewed FHFA's regulations as mandating the use of the state of domicile for making PPOB determinations.

[98] *See* Federal Home Loan Bank System, *1996 Financial Report* at 10–11.

[99] *See* Federal Home Loan Banks, *2014 Combined Financial Report* at 32. The same was true in the early years of the Bank System, as the annual reports for the Federal Home Loan Bank Board indicate that: as of June 30, 1935, there were three insurance companies among 3,324 total members; as of June 30, 1937, there were twelve insurance companies among 3,886 total members; and as of December 31, 1952 there were five insurance companies among 4,056 total members.

[100] *See* 12 CFR 561.7 (1981). That provision defined "principal office" to mean "the home office of an institution established as such in conformity with the laws under which the insured institution is organized." The term "insured institution" was defined to mean a savings and loan association the deposits of which were insured by the FSLIC. 12 CFR 561.1 (1981). The 1981 Code of Federal Regulation citation indicates that that definition of "principal office" was adopted as part of the FSLIC regulations in 1958 and had not subsequently been amended.

[101] The definition of "principal office" at 12 CFR 561.7 (1981) was located within definitional sections of the regulations of the FSLIC, which applied only to federally insured savings and loan associations. Thus, there would have been no reason for the FSLIC to have considered anything having to do with insurance companies because they were not eligible for FSLIC insurance. The FHLBB did have separate regulations in 1981 governing the Bank System, but those regulations did not define "principal office" or "principal place of business." It was not until 1987 that the FHLBB incorporated this long-standing FSLIC definition of "principal office" into its membership regulations, which it did by cross-referencing the FSLIC definition. *See* 12 CFR 523.3–2 (1988) (PPOB for membership purposes is the state in which an institution maintains its "principal office" as defined in 12 CFR 561.7). In 1993, the Finance Board eliminated the cross-reference and provided that for membership purposes an institution's PPOB is the state in which it maintains its home office, established as such under the laws under which the institution is organized. *See* 12 CFR 933.5(b) (1994).

The comment letters also raised other reasons for using a state of domicile approach, which include: (1) The belief that a separate PPOB provision for insurance companies would be unfair to depository institution members; (2) the need to recognize the primacy of state law with regard to matters of insurance company regulation; and (3) the belief that Banks should not be required to become familiar with the insurance laws for states outside of their districts. FHFA does not believe that any of those arguments are sufficient to overcome the Bank Act's requirement of more than a mere legal presence to constitute an institution's "principal" place of business. As to the unfairness issue, FHFA reiterates that it has adopted the amendments to address a specific concern—*i.e.*, the possibility that insurance companies and CDFIs can conduct business entirely outside of the state in which they are domiciled or incorporated, that is not presented by depository institutions. Adopting a regulation that addresses specific situations that are unique to insurance companies and CDFIs is a proper exercise of FHFA's regulatory authority and does not confer any advantage on insurance company or CDFI members.

As to the concern about not recognizing the primacy of state law on matters relating to the regulation of insurance companies, FHFA notes that the final rule does not purport to regulate in any way the operation of insurance companies. Rather, it implements a provision of the Bank Act, the interpretation of which Congress has vested solely in FHFA. The fact that a state insurance regulator may deem a simple legal presence to be sufficient to constitute an institution's "home office" for purposes of the state insurance code does not mean that FHFA must construe the Bank Act in the same manner or that FHFA must defer to the interpretations of fifty different state insurance commissioners on that point. At its core, the final rule simply indicates the Bank to which an insurance company may apply for membership; it does not in any way interfere with the ability of a state insurance regulator to oversee the operations of the insurance companies domiciled in its state.

A number of the comment letters noted that FHFA has issued guidance stressing the importance of the Banks understanding the laws under which their insurance company members are chartered and developing relationships with the state insurance regulators. These commenters also have reasoned that it would be most consistent with that guidance for FHFA to adopt a state of domicile PPOB standard because doing so would allow the Banks to concentrate their resources on the insurance laws and insurance regulators for the states in their own districts. They have also contended that requiring them to develop such knowledge and relationships with the insurance regulators of other states would impose a significant burden. While FHFA acknowledges that developing a level of expertise about the insurance laws of any state and developing a relationship with the state insurance commissioners does require a commitment of time and resources, it does not believe that doing so would constitute an undue burden for any Bank. As noted previously, some Banks already have insurance company members that are domiciled in states outside of their districts. FHFA is not aware of any difficulties arising at those Banks from the fact that the state of domicile is outside of the Banks' districts. Indeed, FHFA has been told in at least one instance that Bank staff was fully committed to developing the same level of expertise and communication regarding insurance company members domiciled outside of their district as they had done for those domiciled within the district.

e. PPOB for Certain Insurance Companies and CDFIs

As proposed, § 1263.18(f) included two separate components—one dealing with certain CDFIs and insurance companies, and one dealing with insurance companies lacking any distinct physical presence. The first provision would have established a separate PPOB standard for insurance companies and CDFIs for which the Banks could not determine the PPOB under either the general provision of § 1263.18(b) (either because they lack a home office designated as such under state law or did not conduct business from their home office) or the alternative three-part test provision of § 1263.18(c). For those institutions, the proposed rule would have required the Banks to determine the geographic location from which the institutions actually conduct the predominant portion of their business activities, using "objective factors" to make that determination. The proposal included three examples of such objective factors. The second provision would have required the Banks to designate the state of domicile as the PPOB for an insurance company that did not have a physical presence in any state.

The Banks and others criticized the first provision, contending that the term "predominant portion of its business activities" was too vague and would result in different Banks reaching different conclusions as to what facts constitute the predominant portion of a company's business activities. As noted previously, the Banks recommended adding specific metrics to this provision, which FHFA agrees would make the final rule clearer and easier to administer. Accordingly, FHFA has incorporated the Banks' suggested revisions into the final rule.

In the final rule, FHFA has modified proposed § 1263.18(f) in two respects, by adding language based on the comment letters from the Banks, and by replacing the proposed language that had dealt with insurance companies that maintain no physical offices of their own. Subsection (f) addresses only those insurance companies and CDFIs for which a Bank cannot designate the PPOB under the general provision of § 1263.18(b) or the existing three-part test of § 1263.18(c). The final rule retains the core concept of the proposed rule, which requires the Banks to designate as the PPOB for these institutions the geographic location from which the institutions actually conduct the predominant portion of their business activities.

To address the concerns of the commenters, FHFA has deleted the language of the proposal that would have required the Banks to make these determinations based on the totality of the circumstances and objective factors. In place of that language FHFA has added new language that closely follows the language recommended by the Banks. FHFA agrees that the three factors recommended by the Banks will provide a reasonable proxy for ascertaining the location from which an institution can be said to conduct the predominant portion of its business. Thus, the final rule will allow the Banks to deem an institution to conduct the predominant portion of its business in the state in which any two of three specified factors are present. The three factors are: (i) The state in which the institution's largest office (as measured by the number of employees) is located; (ii) the state in which a plurality of the institution's employees are located; and (iii) the state in which a plurality of the institution's senior executives are located. In the event that there is an institution for which this test does not work because each of the three factors would identify a different state, then the Bank would be required to analyze the matter under the general standard of paragraph (f)(1), meaning that it should look to these and other factors of the Bank's choosing to determine from which of those three possible states the institution actually conducts the predominant portion of its business activities.

FHFA expects that there will be very few instances in which an institution would be unable to use this test, but because it is possible that each of these factors may point to a different state FHFA has decided to retain the general "predominant portion of its business activities" standard in the final rule to address such possibilities. The final rule adds new language, located in paragraph (f)(3) providing that if a Bank determines that it is unable to determine from which of those geographic locations the institution actually conducts the predominant portion of its business, then it shall designate the state of domicile as the PPOB. In considering the number of employees and senior executives for a particular insurance company or CDFI subject to this paragraph, the Banks should consider all such persons, regardless of whether those persons may also serve as joint employees or senior executives for affiliated companies. For purposes of this provision, the term "senior executives" is defined to include all officers at or above the level of senior vice president, and the final rule includes a non-exclusive list of examples of titles of the positions that would qualify as senior executives for this purpose.

f. PPOB for Insurance Companies With No Physical Offices

The proposed rule included one provision that dealt with insurance companies that have no physical offices of their own—*i.e.,* they neither own nor rent any office space. That provision would have permitted a Bank to designate the state of domicile as the PPOB for such insurance companies, provided that the insurance company also had no employees of its own or whose senior officers are situated at multiple locations. The intent of this provision was to address situations that some Banks have brought to FHFA's attention in the case of insurance company applicants that are part of a holding company structure and that use employees and executives of their affiliated insurance companies as joint employees, or that use third party service providers to perform the services that otherwise would be performed by an institution's own employees. Most of the Banks supported this amendment and no commenters affirmatively opposed it, except to the extent that it was thought that it could be used by captives to "district shop" among the Banks.

In the final rule, however, FHFA has removed this provision because the situation that it was designed to address is now adequately covered under the revised provisions of the final rule, as described immediately above, which allow for the state of domicile to be designated as the PPOB if the Bank cannot use the two-factor test or otherwise identify a particular geographic location from which the predominant portion of the business is conducted. Thus, under this provision an insurance company that neither owns nor rents office space in its own name can use its state of domicile as its PPOB so long as a plurality of its employees and a plurality of its senior executives are not located in the same state.

The final rule also has relocated into a new § 1263.18(g) language from the proposed rule pertaining to the Banks' recordkeeping obligations with respect to their designation of their members' PPOBs. The substance of this provision is unchanged from the proposed rule. The final rule also carries over without substantive change the amendments to § 1263.18(d), pertaining to transfers of Bank membership resulting from the relocation or redesignation of an institution's PPOB.

D. Bank Stock Requirements—§§ 1263.20–1263.23

Subpart D of part 1263 currently sets forth certain requirements regarding the purchase and disposition of Bank stock. As proposed, the final rule repeals several provisions within this subpart that relate to the purchase and disposition of Bank stock in accordance with the law in effect prior to the enactment of the Financial Services Modernization Act of 1999 [102] (hereinafter, the "GLB Act"). Among other things, the GLB Act amended the Bank Act to require each Bank to establish and operate under its own capital structure plan.[103] The provisions being repealed no longer have any effect because all of the Banks are now operating under GLB Act capital plans. The provisions being repealed are: (1) § 1263.19, which generally requires Bank capital stock to be sold at par (because this requirement is now addressed in FHFA's regulations governing Bank capital); (2) portions of § 1263.20 that relate to the pre-GLB Act subscription capital requirements; (3) § 1263.21, pertaining to the issuance and form of Bank stock, primarily under the pre-GLB Act regime; and (4) portions of § 1261.22 relating to the redemption of excess shares of pre-GLB Act capital stock. The final rule retains the substance of the remaining provisions of existing subpart D, although those provisions have been reorganized to reflect the GLB Act capital provisions more explicitly.

As proposed, § 1263.20(a) of the final rule provides that an institution becomes a member only upon the purchase of the amount of membership stock required under the Bank's capital plan. This further requires an approved applicant to purchase the required stock within 60 days, or else its membership approval becomes void. This carries over much of the substance of existing provisions that now appear, respectively, in paragraphs (a)(2) and (d) of existing § 1263.20.

Final § 1263.20(b) requires a Bank to issue its capital stock to a new member only after it has approved the institution for membership and received payment in full for the par value of the Bank stock. This replaces a similar provision, which had appeared in § 1263.21(a) of the existing regulation. Section 1263.20(c) of the final rule carries over the substance of existing § 1263.20(e), and requires that each Bank report to FHFA information regarding each new member's minimum investment in Bank capital stock, in accordance with the instructions provided in FHFA's Data Reporting Manual.

The final rule also retains the substance of existing § 1263.22(b)(1), which requires each Bank to calculate annually each member's required minimum stock holdings for purposes of determining the number of votes that the member may cast in that year's election of directors, and sets forth the procedures and timing that each Bank must follow with regard to that calculation. That material is carried over with some minor textual edits to provide greater clarity, as the sole provision of proposed § 1263.22. Existing § 1263.23, which governs excess Bank stock, is retained without change.

E. Withdrawal, Termination, and Readmission—§§ 1263.24–1263.30

As proposed, the final rule implements a non-substantive structural change to part 1263 by consolidating sections that are currently dispersed among subparts E through H into subpart E.

Existing § 1263.24 governs the effects that a merger or other consolidation of members has on their membership status. The final rule would retain nearly all of the existing text of that section without change, but would revise § 1263.24(b)(5) to remove references to Banks that have not yet

[102] Pub. L. 106–102, sec. 608, 113 Stat. 1338, 1458–61 (Nov. 12, 1999).

[103] *See* 12 U.S.C. 1426.

converted to a GLB Act capital structure. The final rule also deletes existing § 1263.24(d), which addresses FHFA approval for transfers of Bank stock that occur in a merger of members, because it too implements a provision of the Bank Act that was repealed by the GLB Act.

Section 1263.26 of the existing regulation governs voluntary withdrawal from Bank membership. Paragraph (d) of that section conditioned the ability of a member to withdraw on FHFA having certified that the withdrawal will not cause the Bank system to fail to contribute the amounts required to fund the interest payments owed on obligations issued by the Resolution Funding Corporation (REFCorp).[104] Because the Banks satisfied their obligation to contribute to the debt service on the REFCorp bonds as of July 2011, this provision has become moot. The final rule deletes that provision but leaves the remainder of § 1263.26 unchanged.

Section 1263.27 of the existing regulation establishes the grounds and procedures for the involuntary termination of an institution's Bank membership, as well as the rights of an institution whose membership is terminated. The final rule retains that section without change.

F. Other Membership Provisions—§§ 1263.31–1263.32

As proposed, the final rule consolidates sections of part 1263 that are currently contained in subparts I and J—§§ 1263.31 and 1263.32—into subpart F. The final rule retains these remaining provisions of the existing membership regulation without change, except that the cross-reference to § 1263.22(b)(1) found in § 1263.31(d) (which requires each member to provide its Bank annually with the data necessary to calculate its minimum required holdings of Bank stock) would be revised to reflect its redesignation as § 1263.22.

IV. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the Director of FHFA, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to: The Banks' cooperative ownership structure; the mission of providing liquidity to members; the affordable housing and community development mission; their capital structure; and their joint and several liability on consolidated obligations.[105] The Director also may consider any other differences that are deemed appropriate. In preparing this final rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.[106] Under the PRA and the implementing regulations of the Office of Management and Budget (OMB), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid control number assigned by OMB.[107] FHFA's regulation "Members of the Federal Home Loan Banks," located at 12 CFR part 1263, contains several collections of information that OMB has approved under control number 2590–0003, which is due to expire on December 31, 2016.

The proposed rule would have added a new collection of information to part 1263 related to the proposal to require an institution to hold at least one percent of its assets in "home mortgage loans" in order to satisfy the statutory "makes long-term home mortgage loans" and to require members to meet both that one percent requirement and the statutory "10 percent" requirement (where applicable) on an ongoing basis as a condition of remaining a Bank member. Because these changes are not being implemented in the final rule, there will be no new collection of information under part 1263; in addition, the existing collections under part 1263 will remain the same as those that have been approved by OMB under the existing clearance. Therefore, FHFA has withdrawn its request to OMB to approve a revision to control number 2590–0003.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act[108] (RFA) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.[109] FHFA has considered the impact of the final rule under the RFA. The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies only to the Banks, which are not small entities for purposes of the RFA.

List of Subjects in 12 CFR Part 1263

Federal home loan banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the SUPPLEMENTARY INFORMATION, FHFA revises 12 CFR part 1263 to read as follows:

PART 1263—MEMBERS OF THE BANKS

Subpart A—Definitions

Subpart B—Membership Application Process

Subpart C—Eligibility Requirements

Subpart D—Stock Requirements

[104] *See* 12 U.S.C. 1441b(f)(2)(C).

[105] 12 U.S.C. 4513(f).

[106] *See* 44 U.S.C. 3507(a) and (d).

[107] *See* 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).

[108] 5 U.S.C. 601, *et seq.*

[109] *See* 5 U.S.C. 605(b).

Subpart E—Withdrawal, Termination, and Readmission

Subpart F—Other Membership Provisions

Authority: 12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

Subpart A—Definitions

§ 1263.1 Definitions.

For purposes of this part:

Adjusted net income means net income, excluding extraordinary items such as income received from, or expense incurred in, sales of securities or fixed assets, reported on a regulatory financial report.

Affiliate means any entity that controls, is controlled by, or is under common control with another entity. For purposes of this definition, one entity controls another if it:

(1) Directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote twenty-five (25) percent or more of the outstanding shares of any class of voting securities of the other entity, including shares of common or preferred stock, general or limited partnership shares or interests, or similar interests that entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or individuals exercising similar functions) of that entity; or

(ii) To vote on or to direct the conduct of the operations or other significant policies of that entity;

(2) Controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other entity; or

(3) Otherwise has the power to exercise, directly or indirectly, a controlling influence over the management or policies of the other entity through a management agreement, common directors or management officials, or by any other means.

Aggregate unpaid loan principal means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts and similar obligations.

Allowance for loan and lease losses means a specified balance-sheet account held to fund potential losses on loans or leases, which is reported on a regulatory financial report.

Appropriate regulator means:

(1) In the case of an insured depository institution or a CDFI credit union, an appropriate Federal banking agency or appropriate State regulator, as applicable; or

(2) In the case of an insurance company, an appropriate State regulator accredited by the NAIC.

Captive means an entity that holds an insurance license or charter under the laws of a State, but that does not meet the definition of "insurance company" set forth in this section or fall within any other category of institution that may be eligible for membership.

CDFI credit union means a State-chartered credit union that has been certified as a CDFI by the CDFI Fund and that does not have federal share insurance.

CDFI Fund means the Community Development Financial Institutions Fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(a)).

CFI asset cap means $1 billion, as adjusted annually by FHFA, beginning in 2009, to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(i) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(i)) and applicable FHFA regulations.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(ii) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(ii)) and applicable FHFA regulations.

Combination business or farm property means real property for which the total appraised value is attributable to residential, and business or farm uses.

Community development financial institution or CDFI means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*), other than a bank or savings association insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), a holding company for such a bank or savings association, or a credit union insured under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*).

Community financial institution or CFI means an institution:

(1) The deposits of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(2) The total assets of which, as of the date of a particular transaction, are less than the CFI asset cap, with total assets being calculated as an average of total assets over three years, with such average being based on the institution's regulatory financial reports filed with its appropriate regulator for the most recent calendar quarter and the immediately preceding 11 calendar quarters.

Composite regulatory examination rating means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (issued by the Federal Financial Institutions Examination Council), including a CAMELS rating or other similar rating, contained in a written regulatory examination report.

Consolidation means a combination of two or more business entities, and includes a consolidation of two or more entities into a new entity, a merger of one or more entities into another entity, or a purchase of substantially all of the assets and assumption of substantially all of the liabilities of an entity by another entity.

CRA means the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*).

CRA performance evaluation means, unless otherwise specified, a formal performance evaluation of an institution prepared by its appropriate regulator as required by the CRA or, if such a formal evaluation is unavailable for a particular institution, an informal or preliminary evaluation.

De novo insured depository institution means an insured depository institution with a charter approved by its appropriate regulator within the three years prior to the date the institution applies for Bank membership.

Dwelling unit means a single room or a unified combination of rooms designed for residential use.

Enforcement action means any written notice, directive, order, or agreement initiated by an applicant for Bank membership or by its appropriate regulator to address any operational, financial, managerial, or other deficiencies of the applicant identified by such regulator. An "enforcement action" does not include a board of directors' resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

Funded residential construction loan means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

Gross revenues means, in the case of a CDFI applicant, total revenues received from all sources, including grants and other donor contributions and earnings from operations.

Home mortgage loan means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least fifty (50) percent of the total appraised value of the combined property is attributable to the residential portion of the property, or in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property; or

(2) A security representing:

(i) A right to receive a portion of the cash flows from a pool of long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition; or

(ii) An interest in other securities, all of which meet the requirements of paragraph (2)(i) of this definition.

Insurance company means an entity that holds an insurance license or charter under the laws of a State and whose primary business is the underwriting of insurance for persons or entities that are not its affiliates.

Insured depository institution means an insured depository institution as defined in section 2(9) of the Bank Act, as amended (12 U.S.C. 1422(9)).

Long-term means a term to maturity of five years or greater at the time of origination.

Manufactured housing means a manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Multifamily property means:

(1) Real property that is solely residential and includes five or more dwelling units;

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

NAIC means the National Association of Insurance Commissioners.

Nonperforming loans and leases means the sum of the following, reported on a regulatory financial report:

(1) Loans and leases that have been past due for 90 days (60 days, in the case of credit union applicants) or longer but are still accruing;

(2) Loans and leases on a nonaccrual basis; and

(3) Restructured loans and leases (not already reported as nonperforming).

Nonresidential real property means real property that is not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

One-to-four family property means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses, or similar types of property;

(2) Manufactured housing if applicable State law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

Operating expenses means, in the case of a CDFI applicant, expenses for business operations, including, but not limited to, staff salaries and benefits, professional fees, interest, loan loss provision, and depreciation, contained in the applicant's audited financial statements.

Other real estate owned means all other real estate owned (*i.e.,* foreclosed and repossessed real estate), reported on a regulatory financial report, and does not include direct and indirect investments in real estate ventures.

Regulatory examination report means a written report of examination prepared by the applicant's appropriate regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMELS rating or other similar rating.

Regulatory financial report means a financial report that an applicant is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks and savings associations, quarterly or semi-annual call report for credit unions, NAIC's annual or quarterly statement for insurance companies, or other similar report, including such report maintained by the appropriate regulator in an electronic database.

Residential mortgage loan means any one of the following types of loans, whether or not fully amortizing:

(1) A home mortgage loan;

(2) A funded residential construction loan;

(3) A loan secured by manufactured housing whether or not defined by State law as secured by an interest in real property;

(4) A loan secured by a junior lien on one-to-four family property or multifamily property;

(5) A security representing:

(i) A right to receive a portion of the cash flows from a pool of loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of one of paragraphs (1) through (4) of this definition; or

(ii) An interest in other securities that meet the requirements of paragraph (5)(i) of this definition;

(6) A home mortgage loan secured by a leasehold interest, as defined in paragraph (1)(ii) of the definition of "home mortgage loan," except that the period of the lease term may be for any duration; or

(7) A loan that finances one or more properties or activities that, if made by a member, would satisfy the statutory requirements for the Community Investment Program established under section 10(i) of the Bank Act (12 U.S.C. 1430(i)), or the regulatory requirements established for any Community Investment Cash Advance program.

Restricted assets means both permanently restricted assets and temporarily restricted assets, as those terms are used in Financial Accounting Standard No. 117, or any successor publication.

Total assets means the total assets reported on a regulatory financial report or, in the case of a CDFI applicant, the total assets contained in the applicant's audited financial statements.

Unrestricted cash and cash equivalents means, in the case of a CDFI applicant, cash and highly liquid assets that can be easily converted into cash that are not restricted in a manner that prevents their use in paying expenses, as contained in the applicant's audited financial statements.

Subpart B—Membership Application Process

§ 1263.2 Membership application requirements.

(a) *Application.* Except as otherwise specified in this part, no institution may become a member of a Bank unless it has submitted to that Bank an application that satisfies the requirements of this part. The application shall include a written resolution or certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, of the following:

(1) *Applicant review.* The applicant has reviewed the requirements of this part and, as required by this part, has provided to the best of its knowledge the most recent, accurate, and complete information available; and

(2) *Duty to supplement.* The applicant will promptly supplement the application with any relevant information that comes to its attention prior to the Bank's decision on whether to approve or deny the application, and if the Bank's decision is appealed pursuant to § 1263.5, prior to resolution of any appeal by FHFA.

(b) *Digest.* The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§ 1263.6 to 1263.18, the Bank's findings, and the reasons therefor. In preparing a digest for an applicant whose satisfaction of the membership eligibility requirements of § 1263.6(a) is contingent upon its meeting the definition of "insurance company" set forth in § 1263.1, the Bank shall state its conclusion as to whether the applicant meets that definition and summarize the bases for that conclusion.

(c) *File.* The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve or deny membership or, in the case of an appeal to FHFA, for three years after the resolution of the appeal. The membership file shall contain at a minimum:

(1) *Digest.* The digest required by paragraph (b) of this section.

(2) *Required documents.* All documents required by §§ 1263.6 to 1263.18, including documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. The Bank is not required to retain in the file portions of regulatory financial reports that are not relevant to its decision on the membership application. If an applicant's appropriate regulator requires return or destruction of a regulatory examination report, the date that the report is returned or destroyed shall be noted in the file.

(3) *Additional documents.* Any additional document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) *Decision resolution.* The decision resolution described in § 1263.3(b).

§ 1263.3 Decision on application.

(a) *Authority.* FHFA hereby authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The authority to approve membership applications may be exercised only by a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president, other than an officer with responsibility for business development.

(b) *Decision resolution.* For each applicant, the Bank shall prepare a written resolution duly adopted by the Bank's board of directors, by a committee of the board of directors, or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the statements in the digest are accurate to the best of the Bank's knowledge, and are based on a diligent and comprehensive review of all available information identified in the digest; and

(2) The Bank's decision and the reasons therefor. Decisions to approve an application should state specifically that:

(i) The applicant is authorized under the laws of the United States and the laws of the appropriate State to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied; and

(ii) The applicant meets all of the membership eligibility criteria of the Bank Act and this part.

(c) *Action on applications.* The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. An application is "complete" when a Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application. If an application that was deemed complete subsequently is deemed incomplete because the Bank determines during the review process that additional information is necessary to process the application, the Bank may suspend the 60-day processing period until the Bank again deems the application to be complete, at which time the processing period shall resume. The Bank shall notify an applicant in writing when it deems the applicant's application to be complete, and shall maintain a copy of the notice in the applicant's membership file. The Bank shall notify an applicant whenever it suspends or resumes the 60-day processing period, and shall maintain a written record of those notifications in the applicant's membership file. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and FHFA with a copy of the Bank's decision resolution.

§ 1263.4 Automatic membership.

(a) *Automatic membership for certain charter conversions.* An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of the conversion, provided that the converted institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are not materially different. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(b) *Automatic membership for transfers.* Any member that relocates its principal place of business to another Bank district or that redesignates its principal place of business to another Bank district pursuant to § 1263.18(c) automatically shall become a member of the Bank of that district upon the purchase of the minimum amount of Bank stock required for membership in that Bank, as required by § 1263.20.

(c) *Automatic membership, in the Bank's discretion, for certain consolidations.* (1) If a member institution (or institutions) and a nonmember institution are consolidated, and the consolidated institution has its principal place of business in a State in the same Bank district as the disappearing institution (or institutions), and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution may, in the discretion of the Bank of which the disappearing institution (or institutions) was a member immediately prior to the effective date of the consolidation, automatically become a member of such Bank upon the purchase of the minimum amount of Bank stock required for membership in that Bank, as required by § 1263.20, provided that:

(i) 90 percent or more of the consolidated institution's total assets are derived from the total assets of the disappearing member institution (or institutions); and

(ii) The consolidated institution provides written notice to such Bank, within 60 calendar days after the effective date of the consolidation, that it desires to be a member of the Bank.

(2) The provisions of § 1263.24(b)(4)(i) shall apply, and upon approval of automatic membership by the Bank, the provisions of § 1263.24(c) shall apply.

§ 1263.5 Appeals.

(a) *Appeals by applicants.*—(1) *Filing procedure.* Within 90 calendar days of the date of a Bank's decision to deny an application for membership, the applicant may file a written appeal of the decision with FHFA.

(2) *Documents.* The applicant's appeal shall be addressed to the Deputy Director for Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219, with a copy to the Bank, and shall include the following documents:

(i) *Bank's decision resolution.* A copy of the Bank's decision resolution; and

(ii) *Basis for appeal.* An applicant must provide a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to rebut any applicable presumptions, or otherwise to support the applicant's position.

(b) *Record for appeal.*—(1) *Copy of membership file.* Upon receiving a copy of an appeal, the Bank whose action has been appealed (appellee Bank) shall provide FHFA with a copy of the applicant's complete membership file. Until FHFA resolves the appeal, the appellee Bank shall supplement the materials provided to FHFA as any new materials are received.

(2) *Additional information.* FHFA may request additional information or further supporting arguments from the appellant, the appellee Bank, or any other party that FHFA deems appropriate.

(c) *Deciding appeals.* FHFA shall consider the record for appeal described in paragraph (b) of this section and shall resolve the appeal based on the requirements of the Bank Act and this part within 90 calendar days of the date the appeal is filed with FHFA. In deciding the appeal, FHFA shall apply the presumptions in this part, unless the appellant or appellee Bank presents evidence to rebut a presumption as provided in § 1263.17.

Subpart C—Eligibility Requirements

§ 1263.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community development financial institution (including a CDFI credit union), or insured depository institution shall be eligible for Bank membership if:

(1) It is duly organized under tribal law, or under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States or, in the case of a CDFI, is certified by the CDFI Fund;

(3) It makes long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it;

(5) The character of its management is consistent with sound and economical home financing;

(6) Its home financing policy is consistent with sound and economical home financing; and

(7) It has complied with any applicable requirement of paragraphs (b) and (c) of this section.

(b) *Additional eligibility requirement for insured depository institutions other than community financial institutions.* In order to be eligible to become a member of a Bank, an insured depository institution applicant other than a community financial institution also must have at least 10 percent of its total assets in residential mortgage loans.

(c) *Additional eligibility requirement for applicants that are not insured depository institutions.* In order to be eligible to become a member of a Bank, an applicant that is not an insured depository institution also must have mortgage-related assets that reflect a commitment to housing finance, as determined by the Bank in its discretion.

(d) *Ineligibility.* Except as provided in paragraph (e) of this section, an institution that does not satisfy the requirements of this part shall be ineligible for membership.

(e) *Treatment of captives previously admitted to membership.* A Bank that admitted one or more captives to membership prior to February 19, 2016 shall wind down its relationship with, and terminate the membership of, each of those captives as provided in this paragraph (e).

(1) *Captives admitted prior to September 12, 2014.*—(i) A Bank shall have until February 19, 2021 to wind down its business transactions with any captive that it had admitted to membership prior to September 12, 2014, notwithstanding the captive's ineligibility for Bank membership. The Bank may make or renew an advance to such a captive only if:

(A) After making or renewing the advance, its total outstanding advances to that captive would not exceed 40 percent of the captive's total assets; and

(B) The new or renewed advance has a maturity date no later than February 19, 2021.

(ii) A Bank shall terminate the membership of any captive described in paragraph (e)(1)(i) of this section no later than February 19, 2021, as provided under § 1263.27. After termination, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, such terminated captive, and shall redeem or repurchase the Bank stock owned by the captive in accordance with § 1263.29; provided that the Bank may allow the captive to repay any outstanding advance made or last renewed in accordance with the applicable requirements then in effect and having a maturity date later than its date of termination in accordance with its terms and delay the repurchase of any Bank stock held in support of that advance until after the advance has been repaid, in accordance with the Bank's capital plan.

(2) *Captives admitted on or after September 12, 2014.*—(i) A Bank shall have until February 19, 2017 to wind down its business transactions with any captive that it had admitted to membership on or after September 12, 2014, notwithstanding the captive's ineligibility for Bank membership. The

Bank shall not make or renew any advance to such a captive.

(ii) A Bank shall terminate the membership of any captive described in paragraph (e)(2)(i) of this section no later than February 19, 2017, as provided under § 1263.27. Upon termination, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, such terminated captive, and shall redeem or repurchase the Bank stock owned by the captive in accordance with § 1263.29; provided that all advances outstanding to that member must be repaid in full by the termination date.

§ 1263.7 Duly organized requirement.

An applicant shall be deemed to be duly organized, as required by section 4(a)(1)(A) of the Bank Act (12 U.S.C. 1424(a)(1)(A)) and § 1263.6(a)(1), if it is chartered by a State or federal agency as a building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution or, in the case of a CDFI applicant, is incorporated under State or tribal law.

§ 1263.8 Subject to inspection and regulation requirement.

An applicant shall be deemed to be subject to inspection and regulation, as required by section 4(a)(1)(B) of the Bank Act (12 U.S.C. 1424 (a)(1)(B)) and § 1263.6(a)(2) if, in the case of an insured depository institution or insurance company applicant, it is subject to inspection and regulation by its appropriate regulator. A CDFI applicant that is certified by the CDFI Fund is not subject to this requirement.

§ 1263.9 Makes long-term home mortgage loans requirement.

An applicant shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and § 1263.6(a)(3), if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, or other documentation provided to the Bank, in the case of a CDFI applicant that does not file such reports, the applicant originates or purchases long-term home mortgage loans.

§ 1263.10 Ten percent requirement for certain insured depository institution applicants.

An insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) shall be deemed to comply with that requirement if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage-backed securities as described in paragraph (5) of the definition of "residential mortgage loan" set forth in § 1263.1 shall not be used to meet this requirement.

§ 1263.11 Financial condition requirement for depository institutions and CDFI credit unions.

(a) *Review requirement.* In determining whether a building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, or CDFI credit union has complied with the financial condition requirements of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4), the Bank shall obtain as a part of the membership application and review each of the following documents:

(1) *Regulatory financial reports.* The regulatory financial reports filed by the applicant with its appropriate regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application;

(2) *Financial statement.* In order of preference—

(i) The most recent independent audit of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the applicant;

(ii) The most recent independent audit of the applicant's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company but not on the applicant separately;

(iii) The most recent directors' examination of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm;

(iv) The most recent directors' examination of the applicant performed by other external auditors;

(v) The most recent review of the applicant's financial statements by external auditors;

(vi) The most recent compilation of the applicant's financial statements by external auditors; or

(vii) The most recent audit of other procedures of the applicant.

(3) *Regulatory examination report.* The applicant's most recent available regulatory examination report prepared by its appropriate regulator, a summary prepared by the Bank of the applicant's strengths and weaknesses as cited in the regulatory examination report, and a summary prepared by the Bank or applicant of actions taken by the applicant to respond to examination weaknesses;

(4) *Enforcement actions.* A description prepared by the Bank or applicant of any outstanding enforcement actions against the applicant, responses by the applicant, reports as required by the enforcement action, and verbal or written indications, if available, from the appropriate regulator of how the applicant is complying with the terms of the enforcement action; and

(5) *Additional information.* Any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition.

(b) *Standards.* An applicant of the type described in paragraph (a) of this section shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4), if:

(1) *Recent composite regulatory examination rating.* The applicant has received a composite regulatory examination rating from its appropriate regulator within two years preceding the date the Bank receives the application;

(2) *Capital requirement.* The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report filed with its appropriate regulator; and

(3) *Minimum performance standard*—

(i) Except as provided in paragraph (b)(3)(iii) of this section, the applicant's most recent composite regulatory examination rating from its appropriate regulator within the past two years was "1", or the most recent rating was "2" or "3" and, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant satisfied all of the following performance trend criteria—

(A) *Earnings.* The applicant's adjusted net income was positive in four of the six most recent calendar quarters;

(B) *Nonperforming assets.* The applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during four of the six most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their appropriate regulator on a quarterly basis, the information required in paragraph (b)(3)(i) of this section may be reported on a semi-annual basis.

(iii) A CDFI credit union applicant must meet the performance trend criteria in paragraph (b)(3)(i) of this section irrespective of its composite regulatory examination rating.

(c) *Eligible collateral not considered.* The availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4).

§ 1263.12 Character of management requirement.

(a) *General.* A building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, insurance company, and CDFI credit union shall be deemed to be in compliance with the character of management requirements of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(5) if the applicant provides to the Bank an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(1) *Enforcement actions.* Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator;

(2) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report; and

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations.

(b) *CDFIs other than CDFI credit unions.* A CDFI applicant, other than a CDFI credit union, shall be deemed to be in compliance with the character of management requirement of § 1263.6(a)(5), if the applicant provides an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(1) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude in the past three years; and

(2) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers arising within the past three years that are significant to the applicant's operations.

§ 1263.13 Home financing policy requirement.

(a) *Standard.* An applicant shall be deemed to be in compliance with the home financing policy requirements of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6), if the applicant has received a CRA rating of "Satisfactory" or better on its most recent CRA performance evaluation.

(b) *Written justification required.* An applicant that is not subject to the CRA shall file, as part of its application for membership, a written justification acceptable to the Bank of how and why the applicant's home financing policy is consistent with the Bank System's housing finance mission.

§ 1263.14 De novo insured depository institution applicants.

(a) *Presumptive compliance.* A de novo insured depository institution applicant shall be deemed to meet the duly organized, subject to inspection and regulation, financial condition, and character of management requirements of §§ 1263.7, 1263.8, 1263.11 and 1263.12, respectively.

(b) *Makes long-term home mortgage loans requirement.* A de novo insured depository institution applicant shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and § 1263.6(a)(3), if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(c) *10 percent requirement.*—(1) *Conditional approval.* If a de novo insured depository institution applicant that commenced its initial business operations less than one year before applying for Bank membership is subject to, but cannot yet meet, the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) as provided in § 1263.10, a Bank may conditionally approve that applicant for membership if it meets all other applicable requirements.

(2) *Approval may become final.* If, within one year after commencement of its initial business operations, an institution that was conditionally approved for membership under paragraph (c)(1) of this section supplies evidence acceptable to the Bank that it satisfies the 10 percent requirement as provided under § 1263.10, its membership approval shall become final.

(3) *Approval may become void.* If an institution that was conditionally approved for membership under paragraph (c)(1) does not satisfy the requirements of paragraph (c)(2) of this section, it shall be deemed to be out of compliance with the 10 percent requirement, and its conditional membership approval shall become void.

(d) *Home financing policy requirement.*—(1) *Conditional approval.* If a de novo insured depository institution applicant cannot meet the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6) as provided under § 1263.13 because it has not received its first CRA performance evaluation, a Bank may conditionally approve that applicant for membership if it meets all other applicable requirements and has included in its application a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community.

(2) *Approval may become final.* If an institution that was conditionally approved for membership under paragraph (d)(1) of this section supplies evidence acceptable to the Bank that it has satisfied the home financing policy requirement as provided under § 1263.13 by receiving a CRA rating of "Satisfactory" or better on its first CRA

performance evaluation, its membership approval shall cease to be conditional.

(3) *Approval may become void.* If an institution that was conditionally approved for membership under paragraph (d)(1) of this section receives a rating of "Needs to Improve" or "Substantial Non-Compliance" on its first CRA performance evaluation, and fails to rebut the presumption of non-compliance with the home financing policy requirement as provided under § 1263.17(f), it shall be deemed to be out of compliance with that requirement and its conditional membership approval shall become void.

(e) *Other rules.* An institution that has been conditionally approved for membership under paragraph (c)(1) or (d)(1) of this section shall be subject to all regulations applicable to members generally, including those relating to stock purchase requirements and or collateral, notwithstanding that its membership may be conditional for some period of time. If an institution's conditional membership approval becomes void as provided in paragraphs (c)(3) or (d)(3) of this section, then the Bank shall liquidate any outstanding indebtedness owed by the institution to the Bank and redeem or repurchase its capital stock in accordance with § 1263.29.

§ 1263.15 Recently consolidated applicants.

An applicant that has recently consolidated with another institution is subject to the requirements of §§ 1263.7 to 1263.13 except as provided in this section.

(a) *Financial condition requirement.* For purposes of § 1263.11(a)(1) and 1263.11(b)(3)(i)(A), a recently consolidated applicant that has not yet filed regulatory financial reports as a consolidated entity for six quarters or three calendar year-ends shall provide to the Bank:

(1) All regulatory financial reports that the applicant has filed as a consolidated entity; and

(2) *Pro forma* combined financial statements for those quarters for which actual combined regulatory financial reports are unavailable.

(b) *Home financing policy requirement.* For purposes of § 1263.13, a recently consolidated applicant that has not yet received its first CRA performance evaluation as a consolidated entity shall file as part of its application a written justification acceptable to the Bank of how and why the applicant's home financing credit policy and lending practices will meet the credit needs of its community.

(c) *Makes long-term home mortgage loans requirement; 10 percent requirement.* For purposes of determining compliance with §§ 1263.9 and 1263.10, a Bank may, in its discretion, permit a recently consolidated applicant that has not yet filed a regulatory financial report as a consolidated entity to provide the *pro forma* financial statement for the consolidated entity that the consolidating entities filed with the regulator that approved the consolidation.

§ 1263.16 Financial condition requirement for insurance company and certain CDFI applicants.

(a) *Insurance companies.*—(1) An insurance company applicant shall be deemed to meet the financial condition requirement of § 1263.6(a)(4) if the Bank determines:

(i) Based on the information contained in the applicant's most recent regulatory financial report filed with its appropriate regulator, that the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the NAIC; and

(ii) Based on the applicant's most recent audited financial statements, that the applicant's financial condition is such that the Bank can safely make advances to it.

(2) In making the determination required under paragraph (a)(1)(ii) of this section, the Bank shall use audited financial statements that have been prepared in accordance with generally accepted accounting principles, if they are available. If they are not available, the Bank may use audited financial statements prepared in accordance with statutory accounting principles.

(b) *CDFIs other than CDFI credit unions.*—(1) *Review requirement.* In order for a Bank to determine whether a CDFI applicant, other than a CDFI credit union, has complied with the financial condition requirement of § 1263.6(a)(4), the applicant shall submit, as a part of its membership application, each of the following documents, and the Bank shall consider all such information prior to acting on the application for membership:

(i) *Financial statements.* An independent audit conducted within the prior year in accordance with generally accepted auditing standards by a certified public accounting firm, plus more recent quarterly statements, if available, and financial statements for the two years prior to the most recent audited financial statement. At a minimum, all such financial statements must include income and expense statements, statements of activities, statements of financial position, and statements of cash flows. The financial statement for the most recent year must include separate schedules or disclosures of the financial position of each of the applicant's affiliates, descriptions of their lines of business, detailed financial disclosures of the relationship between the applicant and its affiliates (such as indebtedness or subordinate debt obligations), disclosures of interlocking directorships with each affiliate, and identification of temporary and permanently restricted funds and the requirements of these restrictions;

(ii) *CDFI Fund certification.* The certification that the applicant has received from the CDFI Fund. If the certification is more than three years old, the applicant must also submit a written statement attesting that there have been no material events or occurrences since the date of certification that would adversely affect its strategic direction, mission, or business operations; and

(iii) *Additional information.* Any other relevant document or information a Bank requests concerning the applicant's financial condition that is not contained in the applicant's financial statements, as well as any other information that the applicant believes demonstrates that it satisfies the financial condition requirement of § 1263.6(a)(4), notwithstanding its failure to meet any of the financial condition standards of paragraph (b)(2) of this section.

(2) *Standards.* A CDFI applicant, other than a CDFI credit union, shall be deemed to be in compliance with the financial condition requirement of § 1263.6(a)(4) if it meets all of the following minimum financial standards—

(i) *Net asset ratio.* The applicant's ratio of net assets to total assets is at least 20 percent, with net and total assets including restricted assets, where net assets is calculated as the residual value of assets over liabilities and is based on information derived from the applicant's most recent financial statements;

(ii) *Earnings.* The applicant has shown positive net income, where net income is calculated as gross revenues less total expenses, is based on information derived from the applicant's most recent financial statements, and is measured as a rolling three-year average;

(iii) *Loan loss reserves.* The applicant's 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, where loan loss reserves are a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible and are based on information derived from the applicant's most recent financial statements;

(iv) *Liquidity.* The applicant has an operating liquidity ratio of at least 1.0 for the four most recent quarters, and for one or both of the two preceding years, where the numerator of the ratio includes unrestricted cash and cash equivalents and the denominator of the ratio is the average quarterly operating expense.

§ 1263.17 Rebuttable presumptions.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§ 1263.7 to 1263.16 is in compliance with the corresponding eligibility requirements of section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a) and (b), may be rebutted, and the Bank may deny membership to an applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) *Rebutting presumptive noncompliance.* The presumption that an applicant not meeting a particular requirement of §§ 1263.8, 1263.11, 1263.12, 1263.13, or 1263.16, is not in compliance with the corresponding eligibility requirement of section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a) may be rebutted and the applicant shall be deemed to be in compliance with an eligibility requirement, if it satisfies the applicable requirements in this section.

(c) *Presumptive noncompliance by insurance company applicant with "subject to inspection and regulation" requirement of § 1263.8.* If an insurance company applicant is not subject to inspection and regulation by an appropriate State regulator accredited by the NAIC, as required by § 1263.8, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the applicant is subject to inspection and regulation as required by § 1263.6(a)(2), notwithstanding the regulator's lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 1263.11 and 1263.16*—(1) *Applicants subject to § 1263.11.* For applicants subject to § 1263.11, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 1263.11(b)(1), a variance from the rating required by § 1263.11(b)(3)(i), or a variance from a performance trend criterion required by § 1263.11(b)(3)(i), the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 1263.6(a)(4), notwithstanding the lack of rating or variance.

(2) *Applicants subject to § 1263.16.* For applicants subject to § 1263.16, in the case of an insurance company applicant's variance from a capital requirement or standard of § 1263.16(a) or, in the case of a CDFI applicant's variance from the standards of § 1263.16(b), the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 1263.6(a)(4), notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 1263.12*—(1) *Enforcement actions.* If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) *Criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report or, in the case of a CDFI applicant, during the past three years, the applicant shall provide or the Bank shall obtain—

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the proceedings will not likely result in an enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the proceedings will not likely result in an enforcement action or, in the case of a CDFI applicant, that the proceedings will not likely have a significantly deleterious effect on the applicant's operations. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report or, in the case of a CDFI applicant, occurring within the past three years, that are significant to the applicant's operations, the applicant shall provide or the Bank shall obtain—

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 1263.11(b)(2) and 1263.16(a); or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in § 1263.11(b)(2) or § 1263.16(a), or the net asset ratio set forth in § 1263.16(b)(2)(i). The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) *Presumptive noncompliance with home financing policy requirements of §§ 1263.13 and 1263.14(d).* If an applicant received a "Substantial Non-Compliance" rating on its most recent CRA performance evaluation, or a "Needs to Improve" CRA rating on its most recent CRA performance evaluation and a CRA rating of "Needs to Improve" or better on any immediately preceding formal CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator of the applicant's recent satisfactory CRA performance,

including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) *Written analysis.* A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant's home financing credit policy and lending practices meet the credit needs of its community.

§ 1263.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to be a member of a Bank under the Bank Act and this part may be a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section. A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another State and the Bank shall inform FHFA in writing of any such relocation.

(2) An institution eligible to become a member of a Bank under the Bank Act and this part may be a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of FHFA.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the State in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized and from which the institution conducts business operations.

(c) *Designation of principal place of business*—(1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a State other than the State in which it maintains its home office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a State other than the State where the institution maintains its home office as the institution's principal place of business, provided that, all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records, and ledgers are maintained, located or held in such designated State;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated State; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated State.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated State, FHFA, and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the State designated as the principal place of business and the Bank of which the subject institution is eligible to be a member.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that FHFA make the designation.

(d) *Transfer of membership.* (1) In the case of a member whose principal place of business has been designated as a State located in another Bank district in accordance with paragraph (c) of this section, or in the case of a member that has relocated its principal place of business to a State in another Bank district, the transfer of membership from one Bank to another Bank shall not take effect until the Banks involved reach an agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, FHFA shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Bank Act (12 U.S.C. 1426) or §§ 1263.26 and 1263.27, nor the restriction on reacquiring Bank membership set forth in § 1263.30.

(f) *Insurance companies and CDFIs.* (1) For an insurance company or CDFI that cannot satisfy the requirements of paragraphs (b) or (c) of this section for designating its principal place of business, a Bank shall designate as the principal place of business the geographic location from which the institution actually conducts the predominant portion of its business activities.

(2) A Bank may deem an institution to conduct the predominant portion of its business activities in a particular State if any two of the following three factors are present:

(i) The institution's largest office, as measured by the number of employees, is located in that State;

(ii) A plurality of the institution's employees are located in that State; or

(iii) The places of employment for a plurality of the institution's senior executives are located in that State.

(3) If a Bank cannot designate a State as the principal place of business under paragraph (f)(1) of this section, and cannot otherwise identify a geographic location from which the institution actually conducts the predominant portion of its business activities, it shall designate the State of domicile or incorporation as the principal place of business for that institution.

(4) For purposes of paragraph (f)(2) of this section, the term "senior executive" means all officers at or above the level of "senior vice president" and includes the positions of president, executive vice president, chief executive officer, chief financial officer, chief operating officer, general counsel, as well as any individuals who perform functions similar to those positions whether or not the individual has an official title.

(g) *Records.* A Bank designating the principal place of business for a member under this section shall document the bases for its determination in writing and shall include that documentation in the membership digest and application file for the institution that are required under § 1263.2.

Subpart D—Stock Requirements

§ 1263.19 [Reserved]

§ 1263.20 Stock purchase.

(a) *Minimum purchase requirement.* An institution that has been approved for membership in a Bank as provided in this part shall become a member of that Bank upon purchasing the amount of stock required under the membership stock purchase provisions of that Bank's capital structure plan. If an institution fails to purchase the minimum amount of stock required for membership within 60 calendar days after the date on which it is approved for membership, the membership approval shall become void and that institution may not become a member of that Bank until after it has filed a new application and the Bank has approved that application pursuant to the requirements of this part.

(b) *Issuance of stock.* After approving an institution for membership, and in return for payment in full of the par value, a Bank shall issue to that institution the amount of capital stock required to be purchased under the Bank's capital structure plan.

(c) *Reports.* Each Bank shall report to FHFA information regarding the minimum investment in Bank capital stock made by each new member referred to in paragraph (a) of this section, in accordance with the instructions provided in the Data Reporting Manual.

§ 1263.21 [Reserved]

§ 1263.22 Annual calculation of stock holdings.

A Bank shall calculate annually each member's required minimum holdings of Bank stock using calendar year-end financial data provided by the member to the Bank, pursuant to § 1263.31(d), and shall notify each member of the result. The notice shall clearly state that the Bank's calculation of each member's minimum stock holdings is to be used to determine the number of votes that the member may cast in that year's election of directors and shall identify the State within the district in which the member will vote. A member that does not agree with the Bank's calculation of the minimum stock purchase requirement or with the identification of its voting State may request FHFA to review the Bank's determination. FHFA shall promptly determine the member's minimum required holdings and its proper voting State, which determination shall be final.

§ 1263.23 Excess stock.

(a) *Sale of excess stock.* Subject to the restriction in paragraph (b) of this section, a member may purchase excess stock as long as the purchase is approved by the member's Bank and is permitted by the laws under which the member operates.

(b) *Restriction.* Any Bank with excess stock greater than one percent of its total assets shall not declare or pay any dividends in the form of additional shares of Bank stock or otherwise issue any excess stock. A Bank shall not issue excess stock, as a dividend or otherwise, if after the issuance, the outstanding excess stock at the Bank would be greater than one percent of its total assets.

Subpart E—Withdrawal, Termination and Readmission

§ 1263.24 Consolidations involving members.

(a) *Consolidation of members.* Upon the consolidation of two or more institutions that are members of the same Bank into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate on the cancellation of its charter. Upon the consolidation of two or more institutions, at least two of which are members of different Banks, into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate upon cancellation of its charter, provided, however, that if more than 80 percent of the assets of the consolidated institution are derived from the assets of a disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which that disappearing institution was a member prior to the consolidation, and the membership of the other institutions shall terminate upon the effective date of the consolidation.

(b) *Consolidation into nonmember*—(1) *In general.* Upon the consolidation of a member into an institution that is not a member of a Bank, where the consolidated institution operates under the charter of the nonmember institution, the membership of the disappearing institution shall terminate upon the cancellation of its charter.

(2) *Notification.* If a member has consolidated into a nonmember that has its principal place of business in a State in the same Bank district as the former member, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the former member within which to notify the Bank of the former member that the consolidated institution intends to apply for membership in such Bank. If the consolidated institution does not so notify the Bank by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(3) *Application.* If such a consolidated institution has notified the appropriate Bank of its intent to apply for membership, the consolidated institution shall submit an application for membership within 60 calendar days of so notifying the Bank. If the consolidated institution does not submit an application for membership by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(4) *Outstanding indebtedness.* If a member has consolidated into a nonmember institution, the Bank need not require the former member or its successor to liquidate any outstanding indebtedness owed to the Bank or to redeem its Bank stock, as otherwise may be required under § 1263.29, during:

(i) The initial 60 calendar-day notification period;

(ii) The 60 calendar-day period following receipt of a notification that the consolidated institution intends to apply for membership; and

(iii) The period of time during which the Bank processes the application for membership.

(5) *Approval of membership.* If the application of such a consolidated institution is approved, the consolidated institution shall become a member of that Bank upon the purchase of the amount of Bank stock necessary, when combined with any Bank stock acquired from the disappearing member, to satisfy the minimum stock purchase requirements established by the Bank's capital structure plan.

(6) *Disapproval of membership.* If the Bank disapproves the application for membership of the consolidated institution, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(c) *Dividends on acquired Bank stock.* A consolidated institution shall be entitled to receive dividends on the Bank stock that it acquires as a result of a consolidation with a member in accordance with applicable FHFA regulations.

§ 1263.25 [Reserved]

§ 1263.26 Voluntary withdrawal from membership.

(a) *In general*—(1) Any institution may withdraw from membership by providing to the Bank written notice of its intent to withdraw from membership. A member that has so notified its Bank shall be entitled to have continued access to the benefits of membership until the effective date of its withdrawal. The Bank need not commit to providing any further services, including advances, to a withdrawing member that would mature or otherwise terminate subsequent to the effective date of the withdrawal. A member may cancel its notice of withdrawal at any time prior to its effective date by providing a written cancellation notice to the Bank. A Bank may impose a fee on a member that cancels a notice of withdrawal, provided that the fee or the manner of its calculation is specified in the Bank's capital plan.

(2) A Bank shall notify FHFA within 10 calendar days of receipt of any notice of withdrawal or notice of cancellation of withdrawal from membership.

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold, as of the date that the notice of withdrawal is submitted, under the terms of a Bank's capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to the effective date of the termination of its membership.

(c) *Stock redemption periods.* The receipt by a Bank of a notice of withdrawal shall commence the applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock held by that member that is not already subject to a pending request for redemption. In the case of an institution, the membership of which has been terminated as a result of a merger or other consolidation into a nonmember or into a member of another Bank, the applicable stock redemption periods for any stock that is not subject to a pending notice of redemption shall be deemed to commence on the date on which the charter of the former member is cancelled.

§ 1263.27 Involuntary termination of membership.

(a) *Grounds.* The board of directors of a Bank may terminate the membership of any institution that:

(1) Fails to comply with any requirement of the Bank Act, any regulation adopted by FHFA, or any requirement of the Bank's capital plan;

(2) Becomes insolvent or otherwise subject to the appointment of a conservator, receiver, or other legal custodian under federal or State law; or

(3) Would jeopardize the safety or soundness of the Bank if it were to remain a member.

(b) *Stock redemption periods.* The applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock owned by a member and not already subject to a pending request for redemption, shall commence on the date that the Bank terminates the institution's membership.

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

§ 1263.28 [Reserved]

§ 1263.29 Disposition of claims.

(a) *In general.* If an institution withdraws from membership or its membership is otherwise terminated, the Bank shall determine an orderly manner for liquidating all outstanding indebtedness owed by that member to the Bank and for settling all other claims against the member. After all such obligations and claims have been extinguished or settled, the Bank shall return to the member all collateral pledged by the member to the Bank to secure its obligations to the Bank.

(b) *Bank stock.* If an institution that has withdrawn from membership or that otherwise has had its membership terminated remains indebted to the Bank or has outstanding any business transactions with the Bank after the effective date of its termination of membership, the Bank shall not redeem or repurchase any Bank stock that is required to support the indebtedness or the business transactions until after all such indebtedness and business transactions have been extinguished or settled.

§ 1263.30 Readmission to membership.

(a) *In general.* An institution that has withdrawn from membership or otherwise has had its membership terminated and which has divested all of its shares of Bank stock, may not be readmitted to membership in any Bank, or acquire any capital stock of any Bank, for a period of five years from the date on which its membership terminated and it divested all of its shares of Bank stock.

(b) *Exceptions.* An institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership or had its membership terminated.

Subpart F—Other Membership Provisions

§ 1263.31 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or FHFA may require for purposes of the Bank Act;

(b) Agrees that reports of examination by local, State or federal agencies or institutions may be furnished by such authorities to the Bank or FHFA upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of making the calculation described in § 1263.22; and

(e) Agrees to provide the Bank with copies of reports of condition and operations required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operations required to be filed.

§ 1263.32 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words "Member Federal Home Loan Bank System."

Dated: January 11, 2016.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2016–00761 Filed 1–19–16; 8:45 am]

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Thank you, Secretary Cisneros, for your opening remarks and introduction. I also want to thank the Bipartisan Policy Center for extending the invitation for me to speak today on our work at the Federal Housing Finance Agency (FHFA). I think all of you will agree that the things I am going to talk about deserve bipartisan attention and collaboration like we have seldom seen in recent years.

This speech has two parts, an easy part and a difficult part. Both parts reflect a philosophy that I hope all of you agree we have tried to encourage since I became the Director of FHFA – a philosophy of open, honest, and transparent discussion and decision making that helps demystify what FHFA, Fannie Mae, and Freddie Mac do and how those things relate to housing finance stakeholders.

The first part of my speech is easy because it looks retrospectively at some of the things we have accomplished and how we have managed Fannie Mae and Freddie Mac (the Enterprises) in conservatorship to accomplish them. By saying that this part of the speech is easy, however, I want to be careful not to suggest that all the decisions I will highlight were easy or noncontroversial when they were being considered. It has been my experience that when decisions produce positive results down the road, we tend to forget how controversial or complicated these decisions might have been at the time they were made.

The second part of the speech is difficult, both because it looks forward – something I have shown much less inclination to do up to this point in my time as Director of FHFA – and because looking forward is inherently more difficult and almost always tends to generate more controversy. After two full years as Director of FHFA, however, I think it's timely for me to talk not only about our accomplishments, but also about some of the challenges and risks we face, some of which will surely become more difficult for us to control the longer the conservatorships continue. While my primary responsibility as conservator may be to manage the Enterprises in the present as I have said on a number of occasions, I believe that I have an obligation, both in my role as conservator and in my role as regulator, to be frank and transparent about our challenges and risks. By doing so, I hope these remarks will ignite some dialogue that could well be difficult, but I believe is also critically needed.

The Unprecedented Conservatorships of Fannie Mae and Freddie Mac

Some background is necessary to frame both parts of the speech. Congress established FHFA in 2008 during the height of the financial crisis, and one of the Agency's first acts was to place the Enterprises into conservatorship. Under the Senior Preferred Stock Purchase Agreements (PSPAs), the U.S. Department of the Treasury (Treasury Department) has provided essential financial commitments of taxpayer funding to support the Enterprises' compromised financial status. During the first four years of conservatorship, the Enterprises drew a total of $187.5 billion from Treasury, but neither Enterprise has made a further draw since 2012. Fannie Mae has approximately $118 billion of its PSPA commitment remaining, and Freddie Mac has approximately $141 billion remaining. Since the beginning of conservatorship through the end of 2015, the Enterprises paid approximately $241 billion in dividends to the Treasury Department. Under the provisions of the PSPAs the Enterprises' dividend payments do not offset the amounts drawn from the Treasury Department.

Virtually everyone would agree that today we have a much safer and more stable housing finance system than when FHFA placed the Enterprises in conservatorship. I also think that most people would attribute a significant part of these improvements to decisions made in conservatorship. Guarantee fees have increased by two and a half times since 2009, and our review last year concluded that overall guarantee fee levels are now appropriate. Stronger credit standards have removed unsound risk layering and, in a manner consistent with safety and soundness, we have increasingly focused on how to support sustainable access to credit for homeowners, one of the Enterprises' statutory obligations.

Delinquencies and foreclosures have gone down on the Enterprises' legacy books of business, and the number of REO properties held by the Enterprises has decreased significantly. The number of HARP refinances has surpassed 3.3 million and the Enterprises have taken more than 3.6 million other actions to prevent foreclosures. The Enterprises' retained portfolios have decreased by over half since March 2009, and their portfolios are now more focused on supporting their core business operations. The Enterprises' multifamily programs had strong performance through the crisis, and they continue to share risk with private investors. Their multifamily purchases provide needed liquidity for the general multifamily market, with an increasing focus on affordable rental housing.

We have completed efforts to revamp and improve the Representation and Warranty Framework, and we have strengthened counterparty standards for mortgage insurers and non-bank Seller/Servicers. We have started and significantly ramped up credit risk transfer programs at both Freddie Mac and Fannie Mae, with both Enterprises now regularly transferring substantial credit risk to private investors on over 90 percent of their typical 30-year, fixed-rate acquisitions. We have a target for Freddie Mac to start using the Common Securitization Platform (CSP) in 2016, and a target for the Single Security to go into effect with both Enterprises using the CSP to support their major securitization activities in 2018.

In all of these things, we have also placed greater attention on diversity and inclusion in the Enterprises' business operations, consistent with legal standards and with projections that the future composition of homeowners, renters, and the country as a whole will be more diverse.

FHFA's Role as Regulator and Conservator. As this list highlights, FHFA's role as conservator of Fannie Mae and Freddie Mac has been unprecedented in its scope, complexity, and duration – especially when you consider Fannie Mae and Freddie Mac's role in supporting over $5 trillion in mortgage loans and guarantees. This is an extraordinary role for a regulatory agency also because we are obligated to fulfill both the role of supervisor and the role of conservator at the same time, and because we are now approaching eight full years of having these obligations. So let me also describe briefly how FHFA has managed these dual responsibilities.

Like other federal financial regulators, FHFA conducts safety and soundness supervision with a deliberate distance between FHFA and the Enterprises. Members of our supervision staff, many of whom are located onsite at Fannie Mae and Freddie Mac, conduct examinations that focus on areas of highest risk to the Enterprises. They produce reports of examination and make findings as to whether the Enterprises need to make corrective actions in particular areas.

In contrast, our role as conservator involves a different kind of relationship with the Enterprises. Under the Housing and Economic Recovery Act of 2008, FHFA has the full authority of the Enterprises' boards of directors, management, and shareholders while the Enterprises are in conservatorship. This means that FHFA has ultimate authority and control to make business, policy, and risk decisions for the Enterprises, and the Enterprises' boards know that their job is to meet our expectations.

However, managing these Enterprises in conservatorship requires much more of a joint effort than would occur under a normal regulatory relationship. For example, while an examiner would review board or management minutes after the meetings have taken place, members of FHFA's Division of Conservatorship team attend management and board meetings as part of our conservatorship functions, and I personally attend and preside at executive sessions of Enterprise board meetings.

FHFA's Management of Fannie Mae and Freddie Mac in Conservatorship. There are four key approaches that we use to manage the unique nature of these conservatorships. Using these approaches, we have been able to fulfill our statutory obligations to ensure safety and soundness, to preserve and conserve Enterprise assets, to ensure liquidity in the housing finance market, and to satisfy the Enterprises' public purpose missions.

First, we set the overall strategic direction for the Enterprises in FHFA's Conservatorship Strategic Plan and in annual scorecards that outline our policy expectations. We set quarterly and year-end milestones for our scorecard objectives, and we conduct regular evaluations of whether the Enterprises are on track or behind in meeting our targets. Our final scorecard assessments at the end of each year factor into the compensation calculations for Fannie Mae and Freddie Mac executives.

Second, we delegate the day-to-day operations of the companies to their boards and senior management. With over 12,000 employees at the two Enterprises and considering the nationwide scope and technical nature of their businesses, we can't pull every lever and make every day-to-day operating decision. If we tried, I'm quick to acknowledge that their operations would grind to a halt. Under conservatorship, the Enterprises continue to operate as business corporations with boards of directors subject to corporate governance standards. The Enterprise boards are responsible – like boards of directors at other companies – for overseeing their business activities. They review budgets and set risk limits. They examine business plans and oversee senior management.

When FHFA first placed the Enterprises into conservatorship, FHFA selected new chief executive officers, reestablished their boards of directors, and approved new board members. FHFA has continued to approve all new CEOs and board members throughout conservatorship, and they are responsible for meeting our expectations and effectively running the companies. I meet several times a month with the CEOs of Freddie Mac and Fannie Mae. In addition to my attendance at board meetings, I have regular conversations and engagement with each Enterprise's board chair to help elevate issues that need to be resolved.

Third, we have carved out actions that are not delegated to the Enterprises that require advance approval by FHFA. Deciding which items we should delegate to the Enterprises and which should require FHFA approval is a judgment call and finding the right balance is an ongoing process. There are decisions that are obvious choices for FHFA to make, such as setting the core components of the guarantee fees charged by Fannie Mae and Freddie Mac. Others are closer calls. While we retain the authority to step in and make the call on any issue, even ones that we previously delegated, we have found that providing as much clarity as possible about roles and responsibilities serves everyone better.

The fourth prong of our conservatorship model is oversight and monitoring of Enterprise activities, and this is something that happens on an on-going basis – it's probably not an overstatement to say this takes place constantly. In addition to attending meetings of the management committees, FHFA staff members engage in regular dialogue with the management and operational teams at the Enterprises, regularly review information submitted by the Enterprises, and take action where appropriate.

Managing the Enterprises in conservatorship through this four-step approach – with regular adjustments to account for changing circumstances – has worked well. FHFA's conservatorship decisions have helped navigate the Enterprises through a financial crisis and, despite the substantial negative impact of the crisis, helped prevent it from being far worse.

The Challenges and Risks of a Protracted Conservatorship

However, an eight-year conservatorship is unprecedented, and managing the ongoing, protracted conservatorships of Fannie Mae and Freddie Mac poses a number of unique challenges and risks. This leads me to the more difficult part of these remarks.

I have consistently stated that our responsibility and role at FHFA as conservator is to manage in the present. However, as we work to appropriately manage challenges and risks in the present, we also have a responsibility to assess when these challenges and risks may escalate to the point that they negatively impact the Enterprises and the broader housing finance market in the future. By giving this speech today, I am signaling my belief that some of the challenges and risks we are managing are escalating and will continue to do so the longer the Enterprises remain in conservatorship. Consequently, I believe that I have a responsibility, both as regulator and as conservator, to identify and discuss this concern more openly.

Enterprises' declining capital buffers. The most serious risk and the one that has the most potential for escalating in the future is the Enterprises' lack of capital. FHFA suspended statutory capital classifications when the Enterprises were placed in conservatorship, and Fannie Mae and Freddie Mac are currently unable to build capital under the provisions of the PSPAs. The agreements require each Enterprise to pay out comprehensive income generated from business operations as dividends to the Treasury Department, and the amount of funds each Enterprise is allowed to retain is often referred to as the Enterprises' "capital buffer." This capital buffer is available to absorb potential losses, which reduces the need for the Enterprises to draw additional funding from the Treasury

Department. However, based on the terms of the PSPAs, this capital buffer is reducing each year. And, we are now over halfway down a five-year path toward eliminating the buffer completely.

Starting January 1, 2018, the Enterprises will have no capital buffer and no ability to weather quarterly losses – such as the non-credit related loss incurred by Freddie Mac in the third quarter of last year – without making a draw against the remaining Treasury commitments under the PSPAs. There are a number of non-credit related factors that could lead to a loss and result in a draw on those commitments: interest rate volatility; accounting treatment of derivatives, which are used to hedge risk but can also produce significant earnings volatility; reduced income from the Enterprises' declining retained portfolios; and, the increasing volume of credit risk transfer transactions, which transfer both the risk of future credit losses as well as current revenues away from the Enterprises to the private sector. A disruption in the housing market or a period of economic distress could also lead to credit-related losses and trigger a draw.

It is, of course, impossible to predict the exact ramifications of future draws of funds from the PSPA commitments. But let me offer a few observations.

First, and most importantly, future draws that chip away at the backing available by the Treasury Department under the PSPAs could undermine confidence in the housing finance market. The remaining funds available under the PSPAs provide the market with assurance that the Enterprises can meet their guarantee obligations to investors in mortgage-backed securities even while they are in conservatorship and don't have the ability to build capital. In effect, the Treasury Department's financial commitment to each Enterprise under the PSPAs is a source of capital that supports mortgage market liquidity. However, under the terms of the PSPAs, these funds can only go down and cannot be replenished. Future draws would reduce the overall backing available to the Enterprises, and a significant reduction could cause investors to view this backing as insufficient. It's unclear where investors would draw that line, but certainly before these funds were drawn down in full.

Investor confidence is critical if we are to have, as we do today, a well-functioning and highly liquid housing finance market that makes it possible for families to lock in interest rates, obtain 30-year, fixed-rate mortgages, and prepay a mortgage if they want to refinance or need to move. If investor confidence in Enterprise securities went down and liquidity declined as a result, this could have real ramifications on the availability and cost of credit for borrowers.

Second, future draws could lead to a legislative response adopted in haste or without the kind of forethought it should be given. I have been clear that conservatorship is not a desirable end state and that Congress needs to tackle the important work of housing finance reform. However, because of the intricacies of our housing finance system and the extremely high stakes for the housing finance market and for the economy as a whole if reform is not done right, I continue to hope that Congress can engage in the work of thoughtful housing finance reform before we reach a crisis of investor confidence or a crisis of any other kind. While it's not my place to meddle in political discussions, I'm also not hearing much discussion of housing finance reform in any of the presidential campaigns.

The role of market discipline in conservatorship. A less discussed, but related, challenge posed by a continuing conservatorship is Fannie Mae and Freddie Mac's insulation from normal market forces that would otherwise inform their operations and business practices. There are differing views about the Enterprises' business models leading up to the financial crisis, but in conservatorship the responsibility to create a regime of market discipline and appropriate competition falls squarely on FHFA's shoulders. The longer the Enterprises remain in conservatorship, the greater and more complicated this responsibility becomes.

This challenge presents itself in multiple decisions, including pricing. Although the Enterprises are not building capital while they are in conservatorship, FHFA expects Freddie Mac and Fannie Mae to determine their pricing as though they were holding capital and seeking an appropriate economic return on this capital. This is something that was very important to FHFA as we started to review and make adjustments to guarantee fees. We worked with the Enterprises to review the cost of capital as part of our assessment of the correct level of overall guarantee fees charged by the Enterprises. Without such an approach, it would be challenging to decide what guarantee fee levels to approve. Through our 2016 Scorecard priority to finalize a risk management framework, we are working to further our ability to evaluate these kinds of Enterprise business decisions.

Another challenge related to market discipline is the question of how the Enterprises should or should not compete against one another. As I discussed earlier, we have consciously structured the conservatorships of Freddie Mac and Fannie Mae so they continue to run as going concerns. We want them to continue to innovate and to compete on the kind of customer service they provide to lenders and on the quality of their business practices. We believe that competition in these areas is healthy for the Enterprises, good for the housing finance market, and good for borrowers.

However, we have also made a number of decisions that require the Enterprises to adopt aligned standards in certain areas, such as aligned counterparty requirements, to avoid excessive risk being placed on taxpayers. In conservatorship, we carefully determine when to allow competition and when to require alignment, requiring, of course, that all operations be executed in a safe and sound manner.

Planning amidst an uncertain future. A final challenge that being in protracted conservatorships forces us to face is how to manage and plan for the future when there is tremendous uncertainty about what the future holds. Experience demonstrates that it is difficult to manage the Enterprises in the present without establishing some kind of plans for the future. Here, I'm not talking about plans for housing finance reform, but plans for everyday operations, including strategic planning that every well-run business does and project planning that's necessary to continue key initiatives. Without looking somewhat down the road, FHFA and the Enterprises would both lose their momentum and jeopardize day-to-day success. The key dilemma when you have an uncertain future, however, is how far down the road to look and how to retain the necessary talent to implement either short- or longer-term plans.

This challenge drove my decision to authorize the increases in compensation for both Enterprise CEOs that proved to be so controversial. First, I recognized that our delegated model relies heavily on strong management teams to uphold their side of conservatorship. Second, I decided that to be responsible we needed to have the Enterprises engage in operations-focused strategic planning over a three-to-five year horizon. To do both of those things, we needed to ensure continuity by retaining senior-level staff and having reliable succession plans that minimized disruptions.

Of course, we have implemented the legislation that Congress passed to reinstate the prior CEO compensation limits, and it is not my intention here to debate the wisdom of the decision that Congress made. Having served in Congress, I understand that it was an easy political decision. However, the issue of reliable succession planning is another example of the many challenges presented by a long-term conservatorship. The fact is that the Enterprises run businesses that rely on a highly specialized and technically skilled workforce. Retaining that workforce is essential to the Enterprises' success and to FHFA's success as conservator. With continuing uncertainty about conservatorships of indefinite duration and what role the Enterprises will play in the future of housing finance, retaining skilled employees will be an increasing challenge.

Conclusion

We have made these ongoing conservatorships work thus far through the dedication of staff at FHFA and the staffs of both Enterprises and we, of course, remain committed to continuing this task. We know that the stakes are high for the housing finance market and for the broader economy. However, as I have indicated in my remarks today, there are substantial challenges and risks associated with the unprecedented size, complexity, and duration of the conservatorships of Fannie Mae and Freddie Mac. After more than two years at FHFA, I can assure you that these challenges are certainly not going away, and some of them are almost certain to escalate the longer the Enterprises remain in conservatorship.

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A Progress Report on the Private-Label Securities Market

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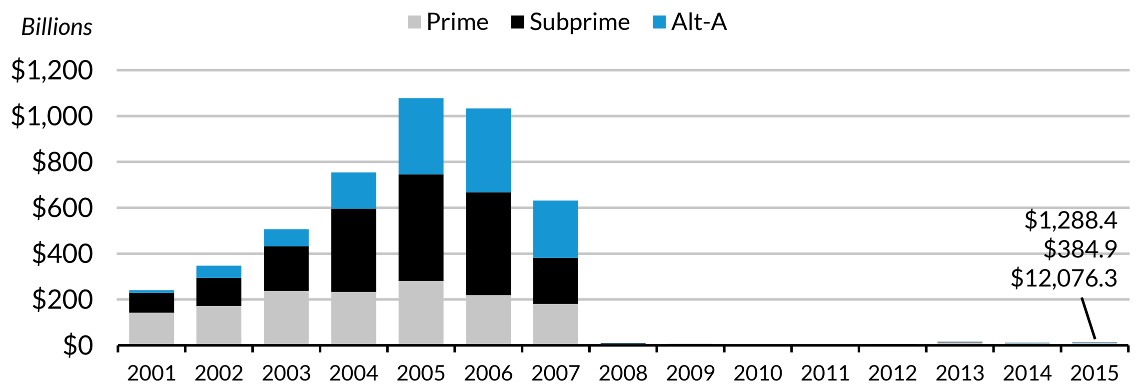
Issuance in the private-label securities (PLS) market has faded significantly since the financial crises. For the past eight years, securitization of products with no government involvement has been trifling compared with both 2005–07 and earlier periods. New prime securitization was just $12.1 billion in 2015—less than 9 percent of 2001's $142 billion total. Private-label securitization of newly prime, Alt-A, and subprime mortgages totaled $13.7 billion in 2015, versus $240.6 billion in 2001 (figure 1).

FIGURE 1

Non-agency Mortgage-Backed Securities Issuance, 2001–15



Sources: Inside Mortgage Finance and Urban Institute.

The low PLS issuance reflects two factors:

- Packages of loans are generally worth more to banks than what they would fetch in the PLS market; and
- Many investors are unwilling to engage in the PLS market because of the weak governance structures of these securities.

During the crisis, the PLS mortgage market suffered the most dislocation of any securitized product group because of severe and widespread home price depreciation, which highlighted the structural weaknesses of these securities. Some of these weaknesses have been corrected in recent deals: the cash flow waterfall is more favorable to the senior bonds, the loan underwriting process is rigorous, due diligence standards have been implemented, and loan-level information is more robust and more consistent across deals. However, many investors remain on the sidelines, in large part because they believe that the conflicts of interest between the deal sponsors/servicers and the investors have not yet been adequately addressed.

Two noteworthy efforts have tried to address these governance issues: the US Department of the Treasury's PLS initiative, announced in 2014, and the Structured Finance Industry Group's RMBS 3.0 Task Force, established in 2013. As part of the PLS initiative, the US Treasury has spent the past 18 months convening market participants—including institutional investors, issuers, servicers, ratings agencies, due diligence firms and other key stakeholders—to discuss reforms needed to restart the PLS market. As expressed by Monique Rollins, Treasury's deputy assistant secretary for capital markets, in a February speech,

> While the PLS market can provide a channel for mortgage financing that is responsible and not reliant on a taxpayer-backed guarantee, its return must happen in a reformed and sustainable way….While we do not see the PLS channel as a total panacea, it is one of a number of channels that can responsibly improve access to credit and strengthen the housing recovery. (Rollins 2016)

In a tangible sign of progress from the PLS initiative, some participants recently published key principles governing the role of deal agents, who are charged with looking out for the interests of investors. This concept is largely missing from existing deals.

The RMBS 3.0 Task Force was founded by the Structured Finance Industry Group (SFIG), an industry trade association. Task force participants include issuers, investors, rating agencies, servicers, lawyers, trustees, and diligence firms. The task force has summarized its efforts in the third edition of its green paper, released in November (SFIG 2015). More participants, but fewer large investors, are involved with the SFIG effort than with the PLS initiative. Some participants are in both groups.

In September 2015, we wrote about the state of the PLS market and what was needed to revive it (Goodman 2015). In particular, we made the case that action was needed along three dimensions: the introduction of an agent to look out for the interests of investors (the deal agent), standardization of deal documentation, and servicing improvements. We believe the Treasury and SFIG reform efforts have made considerable progress on our first two goals and some progress toward the third.

Why Is This Important?

The disappearance of the PLS market has already affected the availability and cost of mortgages for borrowers who do not have the necessary credit to qualify for government-backed loans. And this group of borrowers is larger than it might otherwise be. Many mortgage originators impose credit overlays on Federal Housing Administration (FHA) and government-sponsored enterprise (GSE) loans. These originators still fear repurchase and indemnification requests, litigation, and the high cost and reputational risk of servicing nonperforming loans. In addition, self-employed borrowers with good credit often do not qualify for government-backed loans because they pose documentation issues; households with more than two borrowers or income sources that fluctuate substantially from year to year are also likely to experience difficulties in qualifying for government backed loans. Banks are generally not interested in holding in portfolio loans made to these borrowers.

The one group unable to obtain government-backed lending not yet affected by the absence of a PLS market is wealthy borrowers with loans over the conforming loan limits (for GSE loans, $625K in high-cost areas, $417K nationwide). Banks are willing to put these loans on their balance sheet. If banks retreat from holding mortgages before the PLS market restarts, then these borrowers will also be affected.

The failure to restart the PLS market could have a much deeper and more problematic impact should policymakers ultimately decide to pull back on the government's role in the market, as many housing policy reformers have proposed. If this occurs, and banks do not step up, creditworthy borrowers with conforming loans will face both higher rates and credit availability issues.

The Introduction of a Deal Agent

In the pre-crises deals, which are now commonly referred to as Legacy RMBS or RMBS 1.0, most market participants believed that no one was charged with looking after investor interests, and there was no practical mechanism for investors to look out for themselves. As a result, a brutal combination of conflicts of interest and lack of enforcement in securitizations worked to the detriment of investors: representations and warranties were not enforced, decisions made on behalf of the trust had no transparency, investors received no communications or reports about the status of their deals beyond standard servicing reports (which contained less detail than investors felt was necessary), and servicing oversight was minimal. Many of these issues have not been corrected in RMBS 2.0, the post-crises deals done to date. But recent efforts are beginning to move the market in the right direction.

The Treasury Department's PLS initiative made its largest impact by outlining the concept of a deal agent—a concept that has the support of a wide ranging group of investors, issuers, and potential deal agents. Investors have long believed that they need a party to look out for their interests, but prior discussions typically broke down on specific roles and responsibilities and the scope of liability. Under the "Proposed Deal Agent Agreement: Key Principles," one document that arose from the Treasury group's effort, the deal agent would be selected by the deal sponsor and would have a duty of loyalty and a duty of care to the trust as a whole. That is, the deal agent would be charged with "protecting the interests of the RMBS trust, maximizing the net present value of its assets and making certain strategic decisions in the limited circumstances that doing so becomes necessary" (Pagani and Callahan 2016). The responsibilities of the deal agent would include (1) reviewing representations and warranties, (2) overseeing servicers, and (3) reporting to bondholders monthly.

Under many RMBS 2.0 deals, certain events (such as delinquency) after a certain number of days (generally 120) would trigger a third party to determine whether a breach of representations and warranties has occurred. The key principles formalized and strengthened this role under a deal agent. The deal agent is authorized to obtain all information necessary to make such a determination, including credit files, servicing files, and underwriting guidelines. If a breach has occurred, the deal agent is authorized to enforce repurchase demands. The deal agent would also have some discretion to conduct reviews not generated by trigger events, such as when there are patterns of unusual loan behavior.

On the servicing side, the deal agent would make sure servicers focus on maximizing the value of the assets and do no self-dealing. The deal agent would ensure the servicer was complying with its own articulated standards and would have the authority to review breaches of servicing obligations. The deal agent would also have the ability to pursue claims against servicers, even terminating them if necessary. The deal agent would also be responsible for ensuring that all cash flows from the transaction are reconciled monthly.

In this effort, SFIG has developed a comprehensive list of all roles and functions and who will play each role within an RMBS 3.0 transactions. This matrix contained in the green paper (SFIG 2015) included a deal agent. Because of the work being done under Treasury's PLS initiative SFIG chose to focus exclusively on functions; it did not address the deal agent's scope of liability (duties of care and loyalty). The green paper also recognized that not all securitization sponsors will opt to include a deal agent.

Yet, agreeing what the deal agent should do is not the same as agreeing on implementation. In particular, no consensus has been reached on which entities should be deal agents and how they should be compensated. If they are unregulated, will investors require minimum levels of capital? Will rating agencies give "credit" for the inclusion of a deal agent (through lower subordination levels), which would make the economics of deals with an agent more favorable? Moreover, the structures must be explicit about who has what responsibility to the investor. Where do the responsibilities of the trustee end and those of the deal agent begin? In short, while there has been huge progress, many operational issues remain to be resolved. While market participants generally agreed that this role would be very valuable on less-than-prime deals, some have doubts about whether a deal agent is cost-effective in prime transactions. This number may grow or shrink depending on the costs of the deal agent in the first few deals.

Standardization

Each security sponsor has its own documentation, and deals are not standardized across sponsors (although there are many "standard elements"). When investors purchased a tranche of an RMBS 1.0 deal, they generally satisfied themselves by reading the deal summary, if that. They did not realize that in some cases, RMBS 1.0 agreements contained ambiguous language or contradictory instructions. Since the crisis, many investors claim they are reading every page of the documentation of RMBS 2.0 deals, including the deal summary, the prospectus, and the pooling and servicing document, totaling many hundreds of pages. Sometimes investors read certain sections twice, as they are concerned something adverse to their interest is buried in the documents.

The need for this level of due diligence does not lend itself to a scalable market. There is clearly a desire for more standardization and/or transparency of documentation in a manner that reflects best practices, making it easy for investors to quickly understand how the deal they are evaluating differs from the standard.

SFIG has taken a huge step in this direction with the release of the third version of its green paper (SFIG 2015). This 272-page paper is the culmination of an effort that began in October 2013. The first 224 pages of this document suggest standardization of the clauses governing representations and warranties, repurchase governance, and other enforcement mechanisms. The paper goes through the language that a number of originators are using and proposes standardized language that accomplishes the same objective.

Even in the green paper, many representations and warranties have more than one standard form. This variation stems from several factors. First, banks that rely on retail origination and nonbank aggregators have differences in what they are willing to attest to in a securitization they sponsor. Second, issuers have different levels of risk tolerance and different internal policies and procedures. As a result, certain items require several standard variants. In other cases, investors prefer a stronger form of the representation some deal sponsors are willing to make. When there are a number of different forms, SFIG identified Category 1 reps as the most investor friendly.

Again, there is no guarantee that securitization sponsors will adopt this standard language, but it is another huge step in the direction of progress.

Servicing

The market participants convened by the Treasury discussed servicing issues at length, and they felt strongly that minimum servicing standards need strengthening by requiring servicers to provide better transparency, maximizing the value of the collateral to the trust, and better aligning interests between servicers and the trust. The formalization of the deal agent concept addresses some of these concerns. However, many servicing issues still need to be addressed.

Investors would like to see servicers provide better transparency on all loan modifications (e.g., new rate and term, extension, forgiveness or forbearance amount, and capitalization of delinquent payments). This includes modifications generated by mortgage settlements. The deal agent would be charged with seeing that servicers follow the policies the servicer has laid out, upholding investor interests in loan modification and loss mitigation. The deal agent would spot-check loan modifications, making sure the net present value test had been applied properly, and spot-check loans using foreclosure alternatives (short sales and deeds-in-lieu of foreclosure) to make sure investor interests were upheld. The deal agent would also be charged with doing (or overseeing) a loan-level cash flow reconciliation, as well as a line-item reconciliation of loan liquidation proceeds; the servicer would need to provide the information for the deal agent to complete or oversee this.

While it is clear that the servicer compensation structure may need to be reformed to better align the incentives of servicers and investors, it is less clear how to do this, and conflicts abound. Below are some of the remaining issues, along with some potential solutions.

Maximize or Optimize?

"Maximizing the value of the collateral to the trust as a whole" means different things to different investors. Some investors believe that modifications should maximize net present value—that is, optimize the result. Other market participants are comfortable as long as the modifications are NPV positive and the servicer's policies are clearly stated.

Servicer Compensation

Some market participants have suggested that the trust, rather than the primary servicer, should own the mortgage servicing rights. The primary servicer would then be compensated on a fee-for-service basis, allowing for the higher costs of servicing delinquent loans. However, the servicing rights on a performing loan are valuable, and this would significantly change the economics of the deal. Some issuers and servicers have said this suggestion is a nonstarter.

Advancing Issues

Many market participants would like to see a 120-day trigger, after which servicers would stop making advances to investors, as they believe such a trigger increases standardization and reduces subjectivity. However, such a trigger has drawbacks. Under certain circumstances, the senior tranche would not receive the contractual interest payments or the subordinate bond would be written down to pay interest to the senior tranches.

First-/Second-Lien Conflicts

A serious conflict of interest arises if a servicer services the first mortgage and owns the second. One solution is to require transfer of the servicing rights on one of the two liens if the first becomes delinquent. Another solution is to disclose the conflict, and have the deal agent monitor these loans more closely.

Vertical Integration of the Servicer

Many servicers outsource some items, including default management and real-estate-owned servicing, to affiliated entities. One solution: The deal agent could review the agreements for the use of an affiliate, and make the servicers document that the charges are consistent with current market prices. If the deal agent does not get proper documentation or is not convinced of the results, they could prohibit the use of an affiliated party.

Solicitation for Refinancing of Borrowers in PLS Transactions

Many servicers are also originators of new loans and have an incentive to aggressively solicit pristine borrowers with perfect credit histories for refinancing. Legacy PLS transactions did not allow for solicitation, but there was no enforcement vehicle. And, it may be counterproductive *not* to offer to refinance loans that are delinquent or in imminent default. This problem can be solved by requiring the servicer to provide annual certification of nonsolicitation of current borrowers who are not in imminent default. The deal agent could review refinancing activity and terminate the servicer if the certification has been violated.

Conclusion

The development of the deal agent concept and the recommendations to bring more standardization to PLS documentation are important steps forward in the revival of the PLS market. But more work needs to be done to refine and implement these principles. Perhaps the biggest unknown on the deal agent concept is the costs. If the rating agencies give "credit" for the inclusion of a deal agent, which makes the deal more economical, and/or the costs are small, deal agents will likely be adopted broadly for prime deals. If no "credit" is given, and the costs are large, it is unclear when or if the deal agent concept will be broadly adopted for prime jumbo deals. Moreover, conflicts of interest between the servicer and the investors still need addressing.

Nonetheless, the tremendous amount of work done through the Treasury's PLS initiative and the SFIG's RMBS Task Force has created a much more positive working relationship between investors and securitization sponsors. This relationship allows for an easier, or at least more collaborative, resolution of the remaining issues. The real test for the PLS market will be when the banks pull back and the economics of private-label securitizations become more compelling. When that happens, the groundwork has hopefully been set for a PLS revival.

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Before joining Urban, Goodman spent 30 years as an analyst and research department manager at a number of Wall Street firms. From 2008 to 2013, she was a senior managing director at Amherst Securities Group, LP, a boutique broker/dealer specializing in securitized products, where her strategy effort became known for its analysis of housing policy issues. From 1993 to 2008, Goodman was head of global fixed income research and manager of US securitized products research at UBS and predecessor firms, which was ranked first by *Institutional Investor* for 11 straight years. She has also held positions as a senior fixed income analyst, a mortgage portfolio manager, and a senior economist at the Federal Reserve Bank of New York.

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Delivering on the Promise of Risk-Sharing

by
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Prepared by

MOODY'S ANALYTICS

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Delivering on the Promise of Risk-Sharing

During the financial crisis, taxpayers stepped up to back the lion's share of the mortgage market. By putting Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs), into conservatorship and expanding Federal Housing Administration (FHA) lending to fill the void left by a retreating private label securities market, the government staved off the collapse of the housing finance system and with it the real possibility of an economic depression. But this also put the taxpayer on the hook for most of the credit risk being taken in the mortgage market.

Since that dark time, the FHA and the GSEs have slowly pulled back on the risk they are taking, with much of the reduction occurring through the GSEs' so-called risk-sharing transactions. These deals first began in 2013 when the GSEs were each required by their regulator, the Federal Housing Finance Agency, to share the risk on $30 billion of mortgage-backed securities. The FHFA increased the requirement in 2014 to $90 billion and then again in 2015, to $120 billion for Freddie and $150 billion for Fannie. This year, taxpayers will likely shoulder about half the credit risk in all the mortgage loans originated (see Chart 1), down from well over three-fourths of the risk at the peak of taxpayers' support in 2010.[1] More tellingly, the GSEs are now sharing risk on about 90% of the balance on newly acquired 30-year fixed-rate loans, their core business.[2]

While there is a clear consensus that the GSEs should continue sharing the vast majority of their risk, there is much less clarity over what form or forms that risk-sharing should take. To help answer this question, we attempt to clarify what we should be trying to accomplish in risk-sharing and then evaluate the available structures with those objectives in mind.

In our analysis we find no obviously superior structure, but a range of choices that each present different strengths and weaknesses that will only be fully understood when tested in the market. We conclude that it is critical for the GSEs to expand the types of risk-sharing transactions they are engaged in beyond the relatively narrow range done to date. The GSEs should also be more transparent about the terms and pricing of the transactions so that policymakers and stakeholders are in a better position to evaluate the relative merits of the design choices.

Design choices

At the highest level, the GSEs face two key design choices in structuring a risk-sharing transaction:[3] which tranches of credit risk to share; and whether they share that risk before purchasing the loan, on the "front end" of the transaction, or after they have purchased it and put it into a pool for securitization, on the "back end."[4]

Mortgage credit risk is generally clarified in three tranches: first loss risk, mezzanine risk, and catastrophic risk.[5] In taking the first loss risk, the GSEs cover the initial losses on defaulted mortgage loans in a guaranteed pool. In taking the mezzanine risk, they take those losses that are greater than the first loss, but less than the losses that occur only in the most severe economic and housing market downturns, which we call the catastrophic risk.

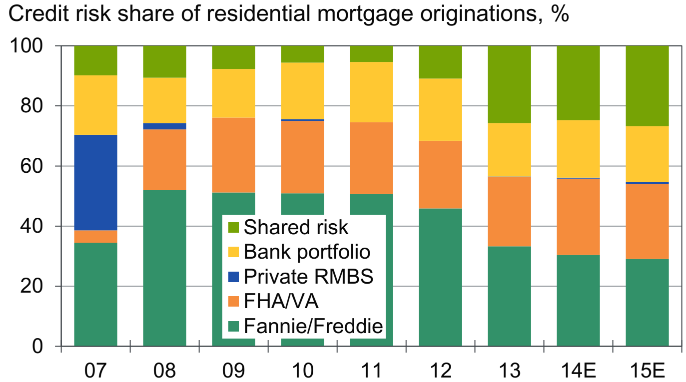
In a back-end transaction, the GSEs transfer some of the credit risk they have assumed on a pool of mortgages to a capital markets investor—typically asset managers or hedge funds—or to a reinsurance company.[6] The GSEs collect their normal guarantee fees from lenders for covering the entirety of the credit risk, but they pay investors and reinsurers for shouldering some of that risk.

To date most of the GSEs' risk-sharing transactions have been on the back end. Freddie Mac issued the first of these deals in July 2013, selling the mezzanine risk on a pool of loans to the capital markets. Since then, Freddie has issued 15 such deals, through Structured Agency Credit Risk (STACR) structures, covering $397 billion in notional collateral or 23.4% of their book of business.

Fannie issued its first back-end deal in October 2013, also selling mezzanine risk. Since then it has issued nine similar deals, through Connecticut Avenue Securities (CAS) structures, covering $485 billion of collateral or 17.3% of its total book of business. The GSEs share the risk with STACR or CAS for a period of 10 years, after which the risk reverts to the GSEs.

Chart 1: Taxpayers Take Much of Mortgage Risk

Credit risk share of residential mortgage originations, %



Sources: Fannie Mae, Moody's Analytics

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These back-end deals have changed over time, with the GSEs continuing to broaden the footprint of the program, primarily within these two original structures:

- The first STACR and CAS deals laid off risk on mortgage pools with original loan-to-value ratios (LTV) of 60% to 80%. Beginning in May 2014, they began to lay off the risk on mortgages with over 80% LTVs.
- The first STACR and CAS deals did not lay off first loss risk. Freddie began to lay off first loss risk through back-end transactions in February 2015, while Fannie has yet to lay off first loss risk through these transactions.
- The losses on the first STACR and CAS deals were dictated using a pre-set severity schedule rather than actual losses. Freddie did its first sharing of actual loss in April 2015 and Fannie in October 2015.

When Fannie and Freddie share risk through the CAS and STACR deals, they are required to hold at least 5% of the risk in each tranche.[7] In many cases, the GSEs will hold more and sell it later to a reinsurer. Freddie Mac has done this extensively, with one deal in 2013, three in 2014, and eight in 2015. Fannie has only begun to do this more recently, with the first transaction in December 2014, but has been very active in this space in 2015, with five transactions through late November.

In a front-end transaction, a private mortgage insurer (MI) or lender takes some credit risk prior to the sale of the loan to the GSEs, with the GSEs lowering their guarantee fees to reflect the commensurate reduction in credit risk they assume when purchasing the loan.

The GSEs are already required by their charters to do front-end risk sharing on loans with LTV ratios of 80% or more.[8] To date they have largely met this requirement by sharing risk with mortgage insurers, sharing more risk the higher the LTV. On loans with an 80% LTV, for instance, the MIs are responsible for 12% of the loss, while on loans with a 97% LTV, they are responsible for 35% of the loss. The GSEs could share even more risk this way, deepening the MIs' coverage or expanding the range of loans subject to MI coverage. This "deep cover MI" would be a straightforward expansion of current private mortgage insurance. To date neither Fannie nor Freddie has shared risk in this way.

The GSEs can also share risk on the front end by allowing lenders to retain some level of first loss risk in the loans they sell to the GSEs. In these "lender recourse" transactions, lenders agree to sell Fannie or Freddie a certain volume of loans within a certain range of characteristics, retaining a certain level of risk.

Lender recourse transactions to date have taken two forms: those in which the lender holds the risk and those in which the lender lays the risk off in the form of a capital markets transaction. Fannie and Freddie have done a few transactions of the first form, with Redwood absorbing the first 1% of the losses in one such deal and Penny Mac the first 3% or so in another. Fannie has also done lender recourse transactions of the second form, with lenders absorbing the first 4% to 5% of the risk and then laying off most of that risk into the capital markets. To date there have been three of these now-named "L Street Transactions": JP Morgan did the first in October 2014 and Wells Fargo and JP Morgan have each done one in 2015.

It is important to remember that under all forms of risk-sharing, the GSEs are still responsible for ensuring that investors in the mortgage securities they issue and insure receive their principal and interest in a timely way. Risk-sharing does not obviate this responsibility or compromise the security of the MBS investment. It only off-loads some of the costs of that responsibility to other private investors able to take on that risk, and hence reduces the taxpayers' exposure to mortgage credit risk.

Evaluating the risk-sharing options

First, we take it to be important that the GSEs share first loss risk, not only mezzanine risk. As with mezzanine risk, there is substantial demand for first loss risk from a wide range of strong private financial institutions, making it unnecessary for taxpayers to bear it. The taxpayer should take only the risk that the private market cannot bear effectively and safely, which is the risk of catastrophic loss.

The choice between front-end and back-end risk-sharing is more complicated. To evaluate it, it is vital to be clear about what it is we are trying to accomplish in risk-sharing and then assess how the choices help meet these objectives. We find six primary objectives of risk-sharing:

- Reducing risk to the taxpayer
- Maintaining broad borrower access to credit
- Maintaining broad lender access to the secondary market
- Maximizing transparency
- Minimizing volatility through economic cycles
- Reducing risk in the financial system

In Table 1, we summarize the results of our analysis.

It is worth noting that we do *not* take the view that it is an objective of risk-sharing that the economics of these transactions be passed on in their entirety to the borrower. While there are benefits of such a dynamic, particularly where the private sector is willing to price the credit more cheaply than the GSEs, there are also costs. It leads to more sensitive risk-based pricing, for instance, which will drive up the cost of credit for those of higher risk and indeed for everyone in times of stress. So it is important to be cognizant of how the economics flow through to borrowers in each of these structures, but it is important only to the degree that it affects how they serve the other objectives, like access to credit and minimizing volatility.

Reducing risk to the taxpayer

There are many ways for the GSEs to reduce taxpayers' risk, including reducing loan limits, raising guarantee fees and tightening underwriting standards. But unlike these alternatives, risk-sharing presents an opportunity to reduce taxpayer risk without significant disruption to the flow of credit. This is because it does not limit taxpayer risk by decreasing the credit risk taken into the system, but by allowing the private sector to take on more of that risk.

The question, then, is which forms of risk-sharing will reduce taxpayer risk most effectively. Back-end risk-sharing reduces

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Table 1: Pre-Season Rankings: How Well Do the Alternatives Appear to Meet the Goals?

	Front-End Risk Sharing		Back-End Risk Sharing	
Goals:	**Deep Cover MI**	**Lender Recourse**	**CAS/STACR**	**Reinsurance**
Reducing taxpayer risk	Poses counterparty risk and risk of GSE-like monoline model, but both can be addressed	Poses modest counterparty risk, but can be addressed	Effective in good economic times; unclear in tough times	Poses modest counterparty risk, but can be addressed
Maintaining broad borrower access to credit	Poses risk of overlays and risk-based pricing, but both can likely be addressed	Poses risk of overlays and risk-based pricing, but both can likely be addressed	Effective	Effective
Maintaining broad lender access to the secondary market	Effective	Only available to larger banks, which will put smaller banks at a disadvantage	Effective	Effective
Maximizing transparency	Effective	FHFA would need to require measures to make transparent	Effective	FHFA would need to require measures to make transparent
Minimizing volatility	Effective	Capital will be less fleeting than the capital markets, but more than MI	Ineffective	Capital will be less fleeting than the capital markets, but more than deep cover MI
Mitigating risk in the financial system	How effective will depend on how counterparty and monoline issues addressed	How effective will depend on how modest counterparty risk is addressed	Ineffective	Effective but structure likely limited in scope

taxpayer risk more cleanly than does front-end risk sharing, because the GSEs do not have counterparty risk to the asset managers, hedge funds, and other capital market institutions that participate. These investors put the capital needed to cover their risk up front when they purchase the bonds issued by the GSEs in the risk-sharing transactions.[9] And while the GSEs do have counterparty risk to the reinsurers that participate in back-end risk-sharing deals, the reinsurers are large, highly rated multiline insurers, and the mortgage credit risk they have taken on has been quite modest, at least so far.[10]

In a front-end risk-sharing deal, the GSE would have some counterparty risk with a lender or private MI unless the latter puts up a pool of capital to cover the risk. The counterparty risk posed by lenders will be mitigated by the capital requirements under Basel III international regulatory standards. The counterparty risk posed by MIs will also be mitigated by a set of recently adopted rules, but has several components, each worth addressing in turn.

First, there is the risk that a given MI will not be able to pay out a required claim. Second, there is the risk that the MIs may not be *willing* to pay a claim required of them even when they are able. And third, there is the fact that they are heavily exposed to precisely the same kind of risk to which the GSEs are exposed, making them subject to stress at exactly the time the GSEs will need them most.

Recently adopted policies will mitigate the first two of these risks. The ability to pay risk posed by the MIs will be mitigated by the Private Mortgage Insurance Eligibility Requirements' capital standards that go into effect in January 2016.[11] And the willingness to pay risk will be mitigated by the new MIs' Master Policy Agreements with the GSEs, which went into effect in 2015.

To further mitigate their counterparty risks on front-end risk-sharing transactions, the FHFA could take any number of steps: requiring counterparties to put up even more capital or other highly liquid assets against the risk being taken on; requiring them to share some of their risk with diversified reinsurers or the private capital markets; and further strengthening the PMIERS or the Master Policy Agreements. [12]

Maintaining broad borrower access to credit

Ensuring broad access to credit for creditworthy borrowers is central to the purpose of the GSEs. There are two key components of access to credit, availability and cost. Today, the GSEs determine the credit profiles they are willing to guarantee, though lenders typically place somewhat more restrictive credit overlays on the loans they are willing to sell to them.[13] And the GSEs are able to keep the cost to higher credit risk borrowers down by charging them less than their credit warrants, while charging lower credit risk borrowers more than theirs warrants.

In back-end transactions this dynamic is left largely unchanged, as the GSEs simply pool loans that have already been sold to them in the normal course of business and then sell off a portion of the credit risk into the capital markets. The purchaser of the risk has no say in which loans make it into the pool or on what pricing terms. What investors are willing to pay for pools will be affected by the credit risk of the loans included, however, which could inform the GSEs' own pricing of loans. So while the back-end

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transactions do not impact the availability and cost of credit directly, over time they could impact it indirectly.

In front-end transactions, the party taking on the first loss risk, the lender or the MI, could directly affect the availability and cost of credit. They could limit the loans they are willing to originate or insure, and price that business in a way that more closely tracks the risks involved. Giving them this kind of discretion could have a significant impact on access to credit, as the parties bearing deep first loss coverage may price higher risk loans in a way that puts them out of reach for many borrowers or not make them at all.

However, there are at least three ways to maintain broad access to credit in front-end transactions. The most straightforward would be for the GSEs to charge guarantee fees sufficient to carry out the amount of desired cross-subsidization. The guarantee fees would thus cover their operating costs, the cost associated with covering catastrophic losses, and the cost involved in cross-subsidizing lending.

A second solution, albeit more complicated, would be for the GSEs to require that lenders or MIs taking first loss risk meet the same affordability goals that the GSEs are required to meet. There could be incentives for MIs and lenders to achieve these goals and penalties for those who do not.

And a third solution, also more complicated, would be to put borrowers who fit within the GSE credit box but the MI companies or recourse lenders will not cover into a high-risk pool. The MIs or recourse lenders would pay a fee based on the loans they do insure that would cover the costs of providing insurance for these borrowers. This approach is similar to how high-risk groups are insured in other insurance markets, like the auto and workers' compensation markets.

Maintaining broad lender access to the secondary market

Maintaining access to the secondary markets for a broad range of lenders, large and small, community-focused and national, is another critical function of the GSEs. The GSEs must take care not to compromise that access for smaller lenders in the name of risk-sharing structures that give larger lenders a prohibitive competitive advantage.

This is not an issue for front-end deep MI transactions, as lenders of all sizes will simply continue to do business precisely as they do today. Nor is it an issue for back-end transactions with the capital markets, as the GSEs will still aggregate loans from lenders of all sizes before the risk is shared.

However, it could be an issue for lender recourse or L Street Transactions, as these are only practically available to larger lenders, which may use them to gain an advantage over other originators. To mitigate this risk the GSEs must take care not to underprice the guarantee fee charged in these transactions and keep the cash window to the GSEs open for lenders of all sizes.

Maximizing transparency

The terms and pricing of risk-sharing transactions should be completely transparent. This is important for several reasons. First it will open the process up to more competition, which will improve the terms of the deals for the taxpayer and lead to pricing that best captures the market's assessment of the risk involved. Second, it will attract more capital into the space as market participants better understand where the economics warrant additional investment. And finally, it will make clearer the relationship between the economics of these transactions and the fees ultimately paid by the borrower.

In short, transparency will make it easier for policymakers and regulators to ensure that the GSEs are sharing risk in a way that maximizes the interests of taxpayers and borrowers. While transparency is likely to make market estimates of the amount of the cross-subsidization more explicit, transparency is not in itself inconsistent with cross-subsidization.

Risk-sharing transactions that are bid in the open market will be inherently transparent. It will take extra steps to ensure transparency in one-off transactions that are negotiated with only a few counterparties. This means that back-end risk-sharing deals with capital markets and front-end deep cover MI deals will lend themselves most readily to the needed transparency, but the GSEs will need to take additional measures to provide it in back-end deals with reinsurers and front-end deals with lenders.

Minimizing volatility in the cost of sharing credit risk

In their sharing of risk, the GSEs should not over-rely on procyclical sources of private capital, which flood in at low cost in good times and disappear or become prohibitively costly during times of economic stress.

Back-end risk sharing is likely to be more procyclical, because asset managers, hedge funds, and other capital market investors are highly sensitive to shifts in risk tolerance in the financial system. When times are good and credit risk concerns are low, these investors are willing to allocate capital towards credit at a relatively low price. This describes well the current environment, with the Federal Reserve's easy monetary policy, the improving job market, steadily rising house prices, and tight underwriting. With these conditions, capital markets investors are eager to invest in credit risk for even a modest premium.

But perceptions about risk and other market conditions often shift quickly. An instructive example can be found in recent swings in the fixed-income market, including the market for below-investment grade corporate bonds. As investors' perceptions of the risk in these markets changed, the prices they demanded for their investments shot up dramatically. A year ago, the spread between below-investment grade corporate bonds and risk-free 10-year Treasury bonds was close to 350 basis points. Today the spread is over 600 basis points (see Chart 2). Back-end risk-sharing deals, with asset managers and hedge funds bidding on risks rated much as are these corporate bonds, are subject to precisely the same swings in prices.

When their perception of the risk and reward in these investments changes dramatically, the costs to the GSEs of off-loading credit risk will rise significantly. This will leave the GSEs and the FHFA with a difficult choice: have the GSEs absorb the spike in cost, severely cutting into the GSEs' profits

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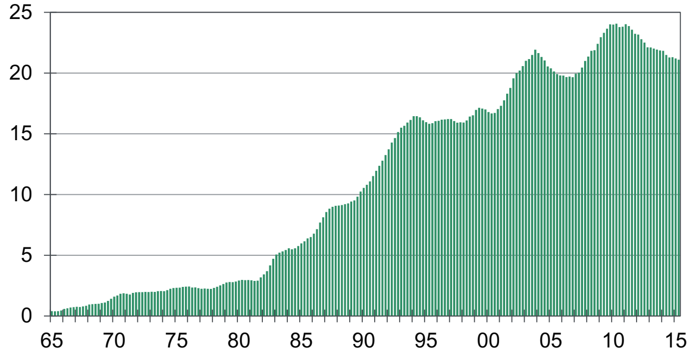
Chart 2: Wild Swings in Fixed Income Markets

Spread between high-yield corporates and 10-yr Treasuries, bps

Sources: Federal Reserve, Bloomberg, Moody's Analytics

Chart 3: GSEs Are a Large Part of Credit Markets

Fannie & Freddie share of private nonfinancial debt outstanding, %



Sources: Federal Reserve Board, Moody's Analytics

and perhaps driving them into the red; pass that cost on to the borrower in the form of higher guarantee fees, leading to higher mortgage rates or tighter underwriting standards; or suspend the sharing of risk altogether until the period of stress passes.

This risk can be mitigated somewhat by expanding the investor base for back-end transactions. If policymakers can expand the pool of investors that bid on these transactions to include institutions that rely more on equity and are focused on a long-term presence in the market, like Real Estate Investment Trusts and insurance companies, then capital will be available to take credit risk at more reasonable prices deeper into economic cycles.

Front-end transactions with MIs and lenders are least subject to these swings. MIs are in the long-term business of taking mortgage credit risk, so they will not raise their pricing as much in bad times or lower it as much in good times. And lenders are likely to manage some of their risk in times of stress by limiting their lending rather than pulling out of the market altogether.

It is worth noting here that we do not give much credence to the argument that front-end deep cover MI would result in *lower* costs on average through the economic cycle relative to the current system.[14] The MIs would charge less through a cycle only if their required return on equity or capitalization were lower than that implied by the GSEs in their guarantee fees and loan level pricing adjustments. There is no reason to believe either to be the case.

Reducing systemic risk

The GSEs remain among the world's largest financial institutions. Together, they backstop over $4 trillion in U.S. residential mortgages, almost one-fifth of the $26 trillion in U.S. nonfinancial private sector credit outstanding (see Chart 3). How they share this risk thus has enormous implications for the stability of the entire economy.

Asset managers, hedge funds, and other capital market participants in back-end transactions are more likely to use debt to finance their participation. By passing risk off through these transactions, the GSEs are increasing leverage in the system and with it the risk overall, which is further exacerbated by the lack of transparency over the sources of that leverage.

Well-capitalized reinsurance companies participating in back-end deals are likely to bring more equity capital into the financial system. But their role in these transactions is likely to be constrained by their limited capacity to take on mortgage credit risk.[15]

Institutions that do front-end risk-sharing are also more likely to use equity rather than debt to take on the new risk, suggesting that these transactions will not increase systemic risk—unless, that is, they present significant counterparty risk. While we view the PMIERs and Basel III as adequate to addressing this issue in the case of the MIs and lenders, respectively, if the GSEs view these steps as inadequate they are easily strengthened or supplemented.

What should be done?

With the private label securities market still moribund, risk-sharing by the GSEs has been the only way to meaningfully reduce taxpayer risk in the housing finance system. We believe the FHFA and GSEs should continue to move down this path aggressively, but in a manner that better serves the long-term objectives of the effort.

While it is clear that the GSEs should engage in more risk-sharing transactions for both first loss *and* mezzanine risk, it is less clear whether to share that risk through front-end or back-end transactions as there are strengths and weaknesses in both. Some front-end transactions look better at maintaining broad lender access to the secondary markets and minimizing volatility and risk in the financial system. Some back-end transactions, on the other hand, look better at limiting counterparty risk and maintaining broad access to credit, though front-end transactions could likely meet these objectives with some modest safeguards.

Given these crosscurrents, we would be well-served during this early stage of risk-sharing for the FHFA to require the GSEs to do *both* back-end and front-end risk-sharing on a significant scale. This will allow us to better judge the costs and benefits of each through different parts of the economic cycle.

To allow for this level of evaluation, though, the GSEs and the FHFA must collect and analyze critical information on each structure used, on everything from the credit risk that is being taken on, to what is paid for the risk, the market appetite for the struc-

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ture, its impact on the availability and pricing of credit, and its impact on the broader financial system. As it becomes clear how each structure performs according to the objectives above, the successes should be scaled up and the failures abandoned.

The FHFA should also require the GSEs to be much more transparent in their risk-sharing transactions (see Box: Improving transparency). This includes providing regular and detailed updates on the performance of each risk-sharing structure. This will inform market participants, increasing competition and thus resulting in lower mortgage rates and increased access for mortgage borrowers. It will also help stakeholders and policymakers understand the direction the FHFA and GSEs are headed and put legislators in a much better position when they do return to the table to discuss what system should replace the current one, if any.

It has been more than seven years since Fannie Mae and Freddie Mac were put into conservatorship and taxpayers on the hook for the bulk of the credit risk in the mortgage market. While unavoidable at first, forcing taxpayers to bear this risk is increasingly unnecessary and undesirable as private capital is willing and able to take it. Fortunately, risk-sharing is an effective means of shifting this risk away from the taxpayer and into the private market in ways that can help the market, borrowers and taxpayers over time. To fulfill that promise, however, the FHFA and GSEs need to be clearer about the long-term objectives of the effort and more resolute in approaching it with them in mind.

Improving transparency

There are several ways to improve transparency in both back-end and front-end risk-sharing deals:

1. Currently in the CAS and STACR transactions the loans are segmented into those with LTVs of 60% to 80% and those that have LTVs >80%. However, loan level pricing adjustments are based on both LTV and FICO scores. Currently, since no information is collected by FICO/LTV cuts it is very difficult to inform pricing on these loan level pricing adjustments.

   It would be relatively easy to segment tranches by FICO and LTV. For example, the 60% to 80% LTV bucket could be carved into three or four FICO buckets. A potential issue is liquidity—investors might perceive these tranches to be less liquid than earlier deals. This could be overcome if Freddie and Fannie allow the FICO buckets in either the 60% to 80% or the >80% LTV bucket to be recombined into a single security with the appropriate weights. Freddie Mac currently allows this in many collateralized mortgage obligations transactions, in which the tranches are referred to as MACRS (Modifiable and Combinable REMICs).

2. There is currently no price transparency under the front-end risk-sharing arrangements with lenders. Fannie Mae and Freddie Mac pick a lender and negotiate a structure and a price, with the market receiving little transparency into the terms and none into price. A different lender may be willing to strike the GSEs a far better deal, but no one—including the GSEs and FHFA—would know.

   The GSEs should instead specify publicly the risk that they are trying to lay off and the criteria for awarding that risk. Items in the term sheet might include the fact that the lender needs to keep the first 1% of the risk, the amount must be fully collateralized, and a breakdown of the characteristics of the loans that are expected to be delivered. Qualified lenders would bid on the front-end risk-sharing transaction, and the GSEs would provide the market information by publishing the cover bid (the second to the highest).

3. Under the back-end risk-sharing arrangements with re-insurers, there is also no price transparency. Again we suggest competitive bidding, with the GSEs publishing the cover bid.

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Endnotes

1 This includes the risk in FHA lending and in GSE lending not off-loaded to private investors via the risk-sharing deals. The risk taken in the risk-sharing deals is measured by the face value of the deals.

2 This is for 30-year fixed-rate loans with LTVs above 60%. It does not include HARP refinance loans, 15- and 20-year mortgages, adjustable rate mortgages, and loans with very low LTVs acquired by the GSEs. More detail is available in "Overview of Fannie Mae and Freddie Mac Credit Risk Transfers," FHFA Research Report, August 2015.

3 Other related design choices include risk-sharing with entities or via structured transactions and loan-level vs. pool-level credit enhancement.

4 A thorough description of the various forms of the GSE credit risk-sharing transactions is available in "Overview of Fannie Mae and Freddie Mac Credit Risk Transfers," FHFA Research Report, August 2015.

5 It is important to clarify what we mean by first loss. On virtually every deal, there will be a certain, often very minimal, level of losses that are eventually incurred. This is better understood as an actual cost than a risk and is arguably best borne by the financial entity with the lowest cost of funds. As the GSEs set their implied capital levels at roughly the level of the private sector institutions with which they would share risk, it does not really matter who bears it from an economic point of view. We are here focused instead on a deeper level of first loss, which is uncertain and thus better considered a risk than a certain cost. When discussing "first loss" in this paper, we mean this deeper tranche of risk.

6 According to the FHFA, asset managers have purchased over half of the back-end risk-sharing transactions, hedge funds more than 30%, and banks, sovereign wealth funds and REITs the remainder of the transactions.

7 On transactions in which they share first loss risk, the GSEs are retaining substantially more than 5% of the risk.

8 HARP refinances on high LTV mortgages are an exception as they do not require credit enhancement.

9 There is the caveat that back-end capital market deals done so far also rely on future income from the investment spread to help cover the risk.

10 Multiline reinsures pose counterparty risk in that various assumptions must be made regarding correlations across risks that these institutions are insuring. As demonstrated during the financial crisis, these correlations can change dramatically in stressed environments.

11 An analysis of the PMIERS is available in "Putting Mortgage Insurers on Solid Ground," Mark Zandi, Jim Parrott and Cris DeRitis, Moody's Analytics white paper, August 2014.

12 It is important to note that under PMIERS, the MIs are capitalized at a level that appears consistent with the GSEs' implicit capitalization. The MIs thus pose counterparty risk to the GSEs, but taxpayers are equally exposed whether the MIs or GSEs are taking the credit risk. Moreover, MIs have the option of adding more capital to cover losses in excess of what is originally capitalized to. Indeed, some MIs did this during the crisis.

13 For more on why see "Opening the Credit Box," Jim Parrott and Mark Zandi, Moody's Analytics and Urban Institute white paper, September 2013.

14 The costs to borrowers under deep cover MI is found to be modestly lower than in the current system in a recent study, "Analysis of Deep Cover Mortgage Insurance," Milliman Client Report for U.S. Mortgage Insurers, October 2015. The lower costs are largely the result of the cancellation of MI as the loan balance is amortized to 78% as required under HOEPA, while the GSEs continue to charge a guarantee fee.

15 The reinsurance industry's capacity to take on mortgage credit risk in the current back-end deals with the GSEs is an estimated $30 billion in risk-in-force. This estimate is based on the working assumption that one-fourth of the total reinsurance industry, based on total capital, is willing to take some mortgage risk exposure. Given that there is approximately $500 billion of reinsurance capital (this is a conservative estimate), this translates into $125 billion of reinsurance capital that is willing to take on some mortgage risk exposure. If we further assume that reinsurers leverage their mezzanine mortgage risk exposure 5 to 1 (given that they are interested in the benefits of some risk diversification), but do not want to allocate more than 5% of their capital to mortgage risk (given that it is not seen as a core line of business), this translates into just over $30 billion of exposure capacity. Another approach assumes that reinsurers would apply some maximum exposure limit to their mortgage risk exposure. A reasonable assumption is that they would not want to lose more than 10% of their capital after credit for run-rate earnings or two times earnings (based on a 10% baseline return on capital) as a result of a worst-case mortgage loss scenario. This translates into $25 billion of exposure capacity. These estimates are also consistent with the approximately $270 billion of industry property catastrophic (cat) limit, which is a core focus of the reinsurance industry. Since mortgage risk is a non-core risk for reinsurers, it is unlikely to amount to more than about 10% of the property cat limit.

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A Glimpse at the Future of Risk Sharing

Laurie Goodman and Jim Parrott

February 2016

The Federal Housing Finance Agency's annual scorecard lays out the responsibilities of Fannie Mae and Freddie Mac in implementing the FHFA's strategic plan. Perhaps because compliance with these responsibilities determines a significant amount of their executives' pay, Fannie and Freddie rarely if ever fail to meet them. So the scorecard offers a rare glimpse into where they are likely headed in the next year.

In this brief we look at the responsibilities outlined in the 2016 scorecard for credit risk transfer. We conclude that the housing market is likely to see a leveling off of Fannie Mae's Connecticut Avenue Securities (CAS) and Freddie Mac's Structured Agency Credit Risk (STACR) programs, the introduction of risk sharing on collateral with terms of 20 years, and an increase in first-loss and front-end risk sharing. We also discuss the importance of expanding the investor base for these transactions and why it will be challenging to do so.

Leveling Off of CAS and STACR

The 2016 scorecard requires that the government-sponsored enterprises (GSEs) transfer credit risk on at least 90 percent of the unpaid principal balance of newly acquired single-family, non-HARP, fixed-rate loans with terms longer than 20 years and loan-to-value ratios over 60 percent.

In prior years, the goals were based entirely on the amount of reference collateral covered in these deals. The GSEs were each required to do risk sharing on $30 billion in collateral in 2013, with that number increasing to $90 billion in 2014. In 2015, Fannie Mae was required to do $150 billion in credit risk transfer and Freddie Mac $120 billion, reflecting a divergence in the institutions' capacities. Both

GSEs have exceeded these requirements each year. In 2015, for instance, Fannie Mae transferred the risk on $187 billion of collateral and Freddie Mac on $210 billion.

The FHFA's shift from setting goals by volume of loans makes economic sense, as the strategy's success should not hinge so significantly on the total volume of loans being done in a given year. If the goal continued to be expressed in numbers of loans, the GSEs would be compelled to be overly aggressive in low-volume years and allowed to be overly passive in high-volume years. Nonetheless, the shift in measurement is unlikely to significantly expand risk sharing.

Box 1 shows our calculations, which we explain here.

- Total GSE issuance in 2015 was $846 billion. We assume that production for 2016 falls 12 percent, to $744 billion, because of the rising interest-rate environment. This assumption is in line with market forecasts provided by the Mortgage Bankers Association, Fannie Mae, and Freddie Mac.
- We estimate that 65 percent of this production, or $484 billion, will fall into one of the loan categories targeted in the scorecard. This estimate is up from 60 percent in 2015. With interest rates expected to be flat or rising and refinancing falling off in 2016, the two main categories of production that fall outside the targeted categories—HARP production and 15-year loans—will be down. Hence slightly more of the production will fall into targeted categories.
- If we assume the GSEs again exceed their scorecard goals, transferring 95 percent of the unpaid principal balance on newly acquired single-family mortgages in the targeted category, they will cover $460 billion in collateral. This total is 16 percent higher than the $397 billion in transfers the previous year.
- CAS and STACR issuance totaled $12.5 billion in 2015: $5.9 billion through CAS and $6.6 billion through STACR. A 16 percent increase in issuance, holding constant the mix between CAS, STACR, and other credit risk-transfer structures, would suggest $14.5 billion in new credit risk-transfer deals.
- The mix of deal structures will likely change, however, as spreads in the CAS and STACR deals have widened meaningfully over the past few months.[1] If the spreads on back-end credit risk transfers to reinsurers or front-end transfers to lenders widen less, these channels may represent considerably better execution for the deals, leading to a drop in the portion of total risk sharing done through CAS and STACR.

BOX 1

Anticipated Risk-Sharing Supply

Comparing the 2016 goal of 90 percent of targeted newly acquired loans with 2015's goal of a dollar reference collateral target:

Total GSE issuance 2015:	$846 billion
2016 issuance expected ($846 billion x 0.88):	$744 billion
2016 issuance in the targeted category ($744 billion x 0.65):	$484 billion
2016 GSE transfers, exceeding goals ($484 billion x 0.95):	$460 billion
Increase in GSE transfers from 2015 to 2016	$67 billion (16%)

Total CAS and STACR issuance:

Fannie Mae:	$5.9 billion
Freddie Mac:	$6.6 billion
Total:	$12.5 billion

If we assume a 16 percent increase in back-end risk-sharing deals, it would suggest $14.5 billion in new CRT deals overall. And this may be high because if CAS/STACR spreads widen, reinsurance execution may be more favorable. In addition, we would expect more front-end transactions in 2016.

Shift in Collateral

The FHFA scorecard also requires the GSEs to evaluate, and implement if economically feasible, ways to transfer credit risk on other types of newly acquired single-family mortgages excluded from the targeted loan categories. Though neither GSE has indicated what alternative forms of collateral it is considering, Freddie's recent release of data on *all* fixed-rate amortizing mortgages, regardless of term, suggests that the agency is considering fixed-rate mortgages with shorter terms.

Table 1 compares how often shorter-term mortgages originated between 1999 and 2012 experienced credit events, meaning they went more than 180 days delinquent or experienced a short sale, foreclosure sale, or deed-in-lieu before six months. (Defaults since 2012 have been negligible.) We have divided all fixed-rate single-family mortgages into three buckets by their original terms: 15 or fewer years (≤180 months), 15.1–20 years (181–240 months), and 20.1–30 years (241–360 months). The shorter mortgages perform much better. Using mortgages issued in 2007 as an example, 3.03 percent of loans in the first bucket experienced a credit event. This rate is less than half the rate of loans in the second bucket and less than a quarter the rate of loans in the third bucket. Given that transferring the risk on riskier collateral tends to be more economical, we believe that the GSEs are most likely to try to transfer the risk on mortgages with 20-year terms. The number of those mortgages available for transfer is quite small.

TABLE 1

Freddie Mac Data on Fixed-Rate Mortgages by Original Term, 1999–2012

	Loan Count				FICO			
	a.<=180M	b.181-240M	c.241-360M	All	a.<=180M	b.181-240M	c.241-360M	All
1999-2004	.	.	6,080,174	6,080,174	.	.	718.9	718.9
2005	268,507	88,122	1,327,439	1,684,068	734.8	718.6	722.8	724.5
2006	125,000	50,104	1,072,969	1,248,073	734.3	717.1	722.3	723.3
2007	101,860	43,176	1,049,260	1,194,296	738.4	722.9	722.2	723.6
2008	148,953	36,961	978,162	1,164,076	746.7	740.6	739.2	740.2
2009-2010	752,452	149,957	2,335,328	3,237,737	765.7	766.6	761.9	763.0
2011-2012	1,308,742	221,855	3,010,886	4,541,483	764.5	765.5	758.9	760.8
All	2,705,514	590,175	15,854,218	19,149,907	758.5	750.0	734.8	738.7

	LTV				% experiencing a credit event			
	a.<=180M	b.181-240M	c.241-360M	All	a.<=180M	b.181-240M	c.241-360M	All
1999-2004	.	.	73.9	73.9	.	.	3.35%	3.35%
2005	58.5	66.8	72.0	69.6	2.66%	5.37%	9.21%	7.97%
2006	57.2	65.5	72.3	70.5	3.13%	6.95%	11.63%	10.59%
2007	57.5	65.5	73.4	71.8	3.03%	7.00%	12.85%	11.80%
2008	59.3	65.7	71.7	69.9	1.94%	3.33%	7.41%	6.58%
2009-2010	58.6	65.0	67.9	65.6	0.28%	0.38%	0.96%	0.78%
2011-2012	62.0	67.9	73.8	70.1	0.06%	0.08%	0.13%	0.11%
All	60.2	66.5	72.6	70.6	0.74%	2.24%	4.32%	3.75%

Source: Freddie Mac, 2015.

Shift to More First-Loss Risk Sharing

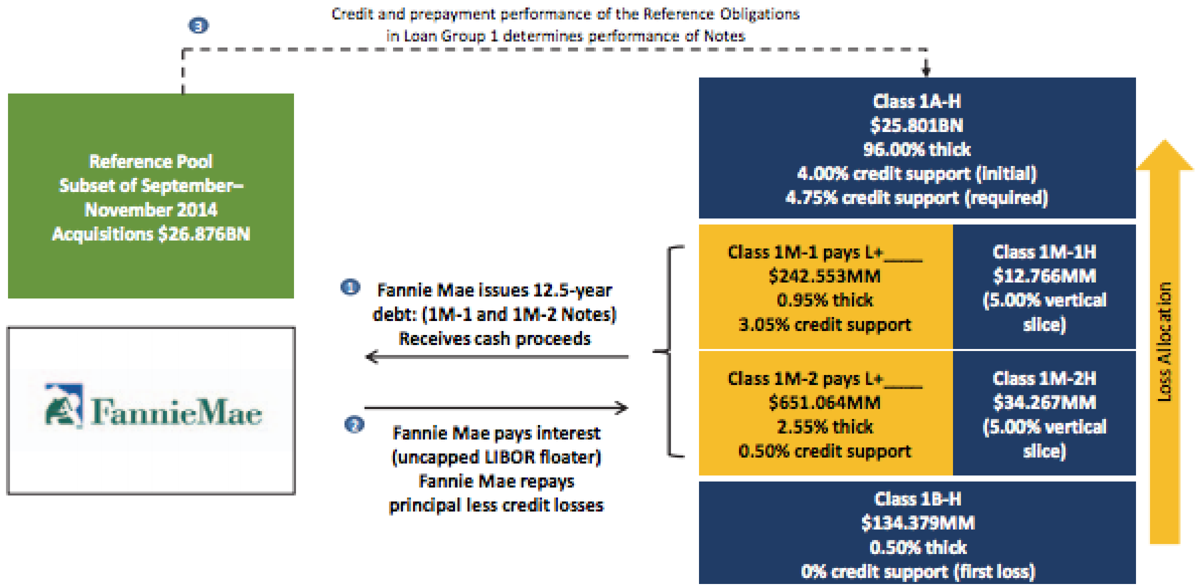
The FHFA also requires the GSEs to transfer "a substantial portion of the credit risk on the targeted loan categories covering most of the credit losses that are projected to occur during stressful economic scenarios."

This requirement represents another shift of emphasis for the FHFA, which had previously measured success by the amount of collateral covered. To understand how much credit risk the GSEs transfer in a given transaction, we need to assess it tranche by tranche. For example, in Fannie Mae's most recent transaction, the agency retained the first 50 basis points (bps), sold 95 percent of the next 350 bps in two tranches—1M-1 (2.55 percent thick) and 1M-2 (0.95 percent thick), and retained all of the risk in the bottom tranche. This structure is illustrated in figure 1.

FIGURE 1

Connecticut Avenue Securities Transaction 2015-CO4

Group 1

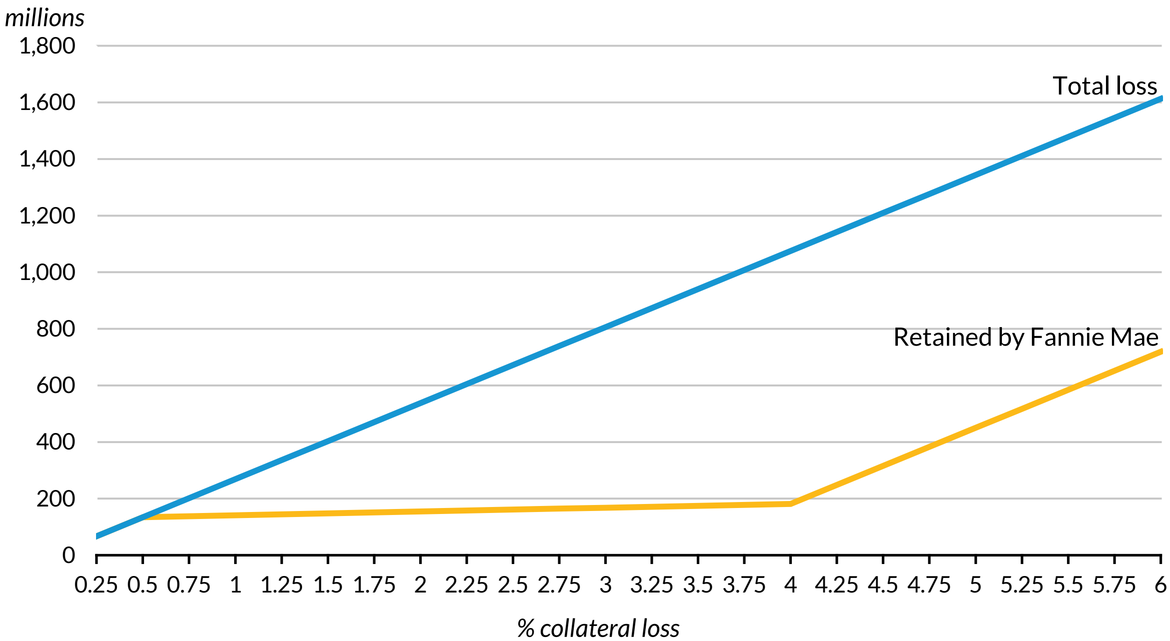


Source: Fannie Mae.
Note: Tranches with an "H" are not issued or sold; Fannie Mae retains the risk for these tranches.

Figure 2 compares the losses that Fannie could suffer on the pool of loans absent the deal to those it could suffer under the terms of the deal. Under the deal Fannie absorbs 100 percent of the first 50 bps, 5 percent of the next 350bps, and 100 percent of any losses beyond that. Expressed as the share of loss transferred, Fannie transfers 0 percent at 50 bps collateral losses, 52 percent of the risk at a 100 bps of collateral loss, 71 percent of the risk at 200 bps of collateral loss, and 83 percent of the risk at 400 bps of collateral losses. When losses exceed 400 bps, Fannie takes the remaining risk, and the value of the securities sold to investors falls to zero. Thus, the share of risk laid off declines as losses exceed 400 bps. At 500 bps of collateral losses, for instance, Fannie sells 66 percent of the risk; at 600 bps, Fannie sells 55 percent of the risk.

FIGURE 2

Credit Risk Transfer of Connecticut Avenue Securities Transaction 2015-CO4



Source: Authors' calculations based on Fannie Mae data.

Fannie has essentially sold off almost all risk in the middle of the capital structure. In order to increase the amount of risk covered going forward, the agency will have to increase either its catastrophic risk or its first-loss exposure. Increasing Fannie's catastrophic risk exposure appears infeasible. If the current mix of loans in the targeted categories were to go through the same dramatic home price depreciation that we saw in the Great Recession, losses would be less than 400 bps. The GSEs are already sharing most losses below 400 bps—except, that is, the first loss. Fannie thus appears to have little choice but to share more first-loss risk in order to meet its goals.

Constraints on the Investor Base and the Resulting Shift to More Front-End Risk Sharing

The GSEs and the FHFA both want as broad and deep a base of investors in their credit risk transfer deals as possible, as it would bring greater competition and thus a better and less volatile execution for them. Yet the investor base to date has been relatively narrow and thin, so the FHFA scorecard requires the GSEs to work on ways to expand and deepen it.

Approximately 150 investors have participated in the credit risk transfers to date, with anywhere from 50 to 75 participating in a given deal. The investor base for the first tranche in the CAS and STACR structures (the M-1) has been dominated by money managers and insurance companies. In the Fannie

Mae deal described in figure 1, 72 percent of first-tranche investors were asset managers and 28 percent were insurance companies. The next tranche, the M-2, has been dominated by hedge fund investors, which made up 59 percent of the investors in this tranche of the figure 1 deal. Twenty-eight percent of M-2 investors were asset managers, and 12 percent were real estate investment trusts (REITs). In addition to the narrow range of investors, the number of investors within each category is relatively small. If any one group retreats significantly, then spreads will likely widen considerably.

Four primary factors constrain the expansion of the investor base.

- **Constrained liquidity.** Investors are unable to sell significant positions in CAS or STACR deals without widening spreads significantly because market-makers are only willing to hold modest positions given the capital requirements. US banks that use the simplified supervisory formula approach to calculate capital must hold a dollar of capital for every dollar invested in the bonds, a prohibitively high level for most.[2]

- **Limitations on REITs.** There are two limitations on REIT investments in CAS and STACR deals. First, the Internal Revenue Service requires that at least 75 percent of a REIT's income and 75 percent of its assets come from "qualified" sources. While both CAS and STACR are considered qualified assets (because they are deemed government securities), neither is considered qualified income. Credit-linked notes, which we may see GSEs using more frequently going forward, don't qualify as either assets or income. Second, the US Securities and Exchange Commission requires that "whole pools" make up 55 percent of a REIT's assets, yet neither CAS nor STACR tranches is considered a whole pool. These two restrictions make it impossible for REITs to scale up their investment in this space.

- **Uncertainty over registration requirements.** The US Commodities Futures Trading Commission requires institutions that issue or invest in derivatives to register as "commodity pool operators," which brings with it significant reporting requirements and operational costs. The commission granted the GSEs a waiver for issuing CAS and STACR deals, and investors have inferred from that decision that they are similarly exempt from registering. Uncertainty over how long the GSEs' waiver will remain in place, and whether it covers investors, has had a chilling effect on investment.

- **Prohibition of insurers' participation.** The National Association of Insurance Commissioners evaluates the risk of possible investments by insurers. State insurance regulators use these ratings to determine whether the insurance companies they regulate can make certain investments and, if so, what capital they must hold against them. To date the association has rated the CAS and STACR transactions as risky enough to require a prohibitive level of capital.

Unfortunately, all these impediments have one thing in common: they fall outside the domain of the FHFA. So while the FHFA and the GSEs may want to expand the investor base, removing the barriers to expansion will require the cooperation of other independent agencies or action by Congress.

Fortunately, the FHFA and GSEs *can* broaden the investor base somewhat by expanding their risk-sharing efforts beyond the CAS and STACR structures that face these limitations. To that end, the FHFA's strategic plan also asks the GSEs to analyze the prospects for front end risk-sharing, the results from which will be used to inform a request for input on how best to pursue this form of risk-sharing.

In a recent paper, we and Mark Zandi (2015) made the case for what objectives risk sharing should try to meet and evaluated how well positioned various structures are to meet those objectives. We found that no one structure dominates. From this we concluded that the GSEs would be wise to expand the range of structures used beyond the back-end, second-loss structures that have dominated to date, so that policymakers are in a better position to judge what structures will meet their objectives over time. The conclusion here, that such an expansion is also one of the few ways FHFA and the GSEs can expand their investor base, further bolsters that argument.

Conclusion

Policymakers agree nearly universally that the housing finance system needs to attract more private capital. Yet the private-label securities market remains moribund and the potential for additional growth of portfolio lending limited, leaving the GSEs' risk-sharing effort the most promising—perhaps the only—way to achieve the objective for the foreseeable future. Policymakers also broadly support a future housing finance system in which the taxpayer's risk is insulated behind significant private capital, yet precisely what forms that private capital should take is highly uncertain. So it is important that the FHFA not only maximize the amount of risk shared through these transactions, but that it do so in a way that increases our understanding of what kind of system we should be migrating toward. This means expanding the range of structures that appear promising and broadening and deepening the market for them so we can test their full potential. The responsibilities that the FHFA has laid out for the GSEs in the 2016 scorecard should do precisely this, pushing them to expand beyond CAS and STACR and into a broader pool of investors.

Notes

1. For example, the bottom mezzanine tranche of the January Freddie deal (STACR 2016-DNA 1) priced 85 bps wider than their November deal (STACR 2015-DNA3)—a spread of 555 bps over LIBOR versus 470 bps over LIBOR.
2. See SIFMA letter from Chris Killian and David Oxner to Congressional Members Richard Shelby, Sherrod Brown, Jeb Hensarling and Maxine Waters on CRT, December 7, 2015. http://www.sifma.org/issues/item.aspx?id=8589957919

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ROADMAP

TO GSE REFORM LEGISLATION

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ROADMAP to GSE REFORM
July 2014

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The bills are available at these links: PATH Act; the Waters discussion draft; and H.R. 5055. S. 1217 began as a Corker-Warner bill in 2013, was replaced by a Johnson-Crapo version that began as a March 2014 discussion draft that was marked up April 29, 2014, with both one amendment and a second amendment. This summary incorporates the March 2014 draft with its most recent amendments.

This Roadmap does not include provisions of the PATH Act that do not overlap with the other proposals. These include FHA reforms, covered bond provisions, and most of Titles IV and V. The stand-alone summary of the PATH Act does cover those provisions.

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
Definitions		**§ 2 Definitions** *Affiliate* means any person that controls, is controlled by, or is under common control with another person. *Affordable rental housing* means a rental housing unit that is considered affordable for extremely low-, very low-low-, and moderate-income families if the rent charged, including utilities or a utility allowance, does not exceed 30% of the respective income limit in that market area for extremely low-, very low-, low-, or moderate-income families, respectively, of the size appropriate for the number of bedrooms in the unit, as HUD establishes. *Agency transfer date* means the date that is 6 months after enactment. *Appropriate Federal banking agency* has the same meaning as in FDIA § 3(q), and the NCUA in the case of any credit union. *Approved aggregator* means an entity that is approved by the FMIC pursuant to § 312. *Approved entity* means— • An approved guarantor; • An approved multifamily guarantor; • An approved aggregator;	**§ 2 Definitions** *Administration* means the National Mortgage Finance Administration ("NMFA") established under title I. *Approved private mortgage insurer* means an insurer that is approved by the NMFA pursuant to § 221 to provide private mortgage insurance on eligible mortgages. *Approved servicer* means a servicer that is approved by the NMFA pursuant to § 222 to administer eligible mortgages. *Charter* means the Fannie Mae or Freddie Mac charter acts. *Covered security* means a mortgage-backed security— • Collateralized by eligible mortgages; • Which is issued subject to such credit risk sharing mechanism, product, structure, contract, or other securitization agreement as established by the NMFA pursuant to title II; and • Which is eligible for and receives insurance by the NMFA pursuant to title II. *Director* means the Director of the NMFA unless the context otherwise requires.	*Bank* and *savings association* have the meaning given those terms under FDIA § 3. *Certification date* means the earlier of— • The date Ginnie Mae makes the certification under § 201(h); and • The date 2 years after enactment. *Charter Act* means the Fannie Mae or Freddie Mac charter act, respectively. *Credit union* means any federal or state credit union, as defined under § 101 of the Federal Credit Union Act (12 U.S.C. 1752). *Director* means the Ginnie Mae Director, as established by § 101(c)(1). *Eligible mortgage*— • Has the same meaning as qualified mortgage under TILA § 129C(b)(2)(A), as such meaning may be adjusted by the Director; and • Includes such other minimum standards as may be established by the Platform, to ensure the quality of mortgages used to collateralize Platform MBS. *Eligible multifamily mortgage loan* means a commercial real estate loan— • Secured by a property with—

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		• An approved private mortgage insurer; and
		• An approved servicer.
		
		Approved guarantor means an entity that is approved by the FMIC pursuant to § 311.
		
		Approved multifamily guarantor means an entity that is approved by the FMIC pursuant to § 703.
		
		Approved private mortgage insurer means an entity that is approved by the FMIC pursuant to § 313.
		
		Approved servicer means an entity that is approved by the FMIC pursuant to § 314.
		
		Area means a metropolitan statistical area, a micropolitan statistical area, and a noncore area, as such areas may be established by OMB.
		
		Board and *Board of Directors* mean the FMIC Board unless the context otherwise requires.
		
		Chairperson means the Chairperson of the FMIC Board unless the context otherwise requires.
		
		Charter means the Fannie Mae or Freddie Mac charter act.
			Eligible mortgage means a mortgage—
			• That is a residential real estate loan secured by a property with 1 to 4 units that has been originated in compliance with TILA § 129C(b), commonly referred to as the Ability-to-Repay and QM Rule;
			• Has a maximum original principal obligation amount that does not exceed the conforming loan limitation for the area determined under § 504;
			• The outstanding principal balance of which at the time of purchase of insurance under title II—
			  o Less than 80% of the value of the property;
			  o Not less than 80% but not more than 85% of the value of the property, provided that not less than 12% of the unpaid principal balance, accounting for any downpayment required under subparagraph (D) [there is none; apparently means § 2(7)(A)(iv)], is insured by—
			    ▪ An approved private mortgage insurer; or
			    ▪ Lender recourse or other credit enhancement that meets standards comparable to the standards required of private mortgage insurers under § 211;
			  o Is not less than 85% but not more
				o 5 or more residential units; or
				o 2 or more residential units, if the Director waives the 5+ requirement for purposes of a demonstration or pilot program;
				• The primary source of repayment for which is expected to be derived from rental income generated by the property;
				• The term of is 5 to 40 years;
				• That satisfies any additional underwriting criteria the Director establishes to balance supporting access to capital with managing credit risk to the Fund, including—
				  o A maximum LTV ratio;
				  o A minimum debt service coverage (DSC) ratio; and
				  o Considerations for restrictive or special uses of a property, including nonresidential uses, properties for seniors, manufactured housing, and affordability restrictions, and the impact of such uses on LTV and DSC ratios; and
				• That satisfies any additional underwriting criteria that the Director may establish.
				
				Enterprise or *GSE* means Fannie Mae, Freddie Mac, or any affiliate of either.
				
				Fund means the insurance fund established under § 202(g).

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		Community Development Financial Institution ("CDFI") has the same meaning as in § 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).
		
		Community land trust means a nonprofit organization or State or local government that owns real property and leases the land through homeownership programs that—
		• Use a ground lease to—
		  ○ Make real property affordable to low- or moderate-income borrowers; and
		  ○ Stipulate a preemptive option to purchase the real property from the home owner at resale so that the affordability of the real property is preserved for successive low- and moderate-income borrowers;
		• Monitor properties to ensure affordability is preserved over resales; and
		• Support homeowners to promote successful homeownership and prevent foreclosure.
		
		Corporation means the FMIC.
		
		Covered entity means—
		• An approved guarantor;
		• An approved multifamily guarantor; and
			than 90% of the value of the property securing the mortgage, provided that not less than 25% of the unpaid principal balance of the mortgage, accounting for any downpayment required under subparagraph (D), is insured by—
			▪ An approved private mortgage insurer; or
			▪ Lender recourse or other credit enhancement that—
			  ♦ Meets standards comparable to the standards required of private mortgage insurers under § 211; and
			  ♦ Is approved by the NMFA; or
			○ Is not less than 90% but not more than 95% of the value of the property securing the mortgage, provided that not less than 30% of the unpaid principal balance of the mortgage, accounting for any downpayment required under subparagraph (D), is insured by—
			▪ An approved private mortgage insurer; or
			▪ Lender recourse or other credit enhancement that—
			  ♦ Meets standards comparable to the standards required of private mortgage insurers
				Ginnie Mae means the Government National Mortgage Association.
				
				Market participant means any insurance company, bank, saving association, credit union, or REIT insuring or reinsuring any part of a security issued by the Platform.
				
				Participating aggregator means an aggregator of eligible mortgages that collateralize Platform MBS pursuant to title II.
				
				REIT has the meaning given such term under IRC § 856(a).

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		• An approved aggregator that is neither an insured depository institution nor an affiliate of an insured depository institution.
		
		Covered guarantee transaction means a transaction, as the FMIC shall define by regulation, involving the agreement to guarantee on—
		• Any eligible mortgage loan;
		• Any pool of such eligible mortgage loans; or
		• The payment of principal and interest on covered securities collateralized by eligible mortgage loans before payments insured by the FMIC are made.
		A covered guarantee transaction—
		• Shall not be construed to be—
		    ○ A contract of sale of a commodity for future delivery or a swap under the Commodity Exchange Act; or
		    ○ A contract of insurance or reinsurance under any Federal or State law regulating the sale, underwriting, provision, or brokerage of insurance;
		• Shall not be subject to any requirement of Commodity Exchange Act; and
		• Shall not be subject to any requirement imposed under State law pertaining to the sale, underwriting, provision, or brokerage of insurance or reinsurance.
			under § 211; and
			    ♦ Is approved by the NMFA;
			• Having a downpayment which shall be equal to not less than 5% of the purchase price of the property securing the mortgage, unless the mortgage meets such other requirements as the NMFA shall specify to protect against the additional risk;
			• That is insured by an approved State licensed title insurance company;
			• That contains such terms and provisions with respect to insurance, property maintenance, repairs, alterations, payment of taxes, default, reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters, including matters that set forth terms and provisions for establishing escrow accounts, performing financial assessments, or limiting the amount of any payment made available under the mortgage as the NMFA may prescribe; and
			• That contains such other terms or characteristics as the NMFA, in consultation with the CFPB, may determine necessary or appropriate.
			
			The NMFA shall issue rules to provide that such term shall also include—	

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		Covered market-based risk-sharing transaction means any private market transaction, as the FMIC shall define by regulation, involving a covered security issued subject to a standard risk-sharing mechanism, product, contract, or other security agreement approved by the FMIC under § 302. A covered market-based risk-sharing transaction— • Shall not be construed to be a contract of insurance or reinsurance under any Federal or State law regulating the sale, underwriting, provision, or brokerage of insurance; and • Shall not be subject to any requirement imposed under State law pertaining to the sale, underwriting, provision, or brokerage of insurance or reinsurance. *Covered security* means— • A single-family covered security; and • A multifamily covered security. *Credit risk-sharing mechanism* means any mechanism, product, structure, contract, or security agreement by which a private market holder assumes the first loss position, or any part of such position, associated with the pool of eligible mortgage loans collateralizing a covered security, or by which an approved guarantor or approved multifamily guarantor	• Loans on rental properties that are not covered by the standards referred to in subparagraph (A)(i) (1 to 4 unit properties with loans that meet the ability-to-repay rule); and • Loans made to first-time homeowners having an initial downpayment of 3.5%. *Enterprise* means Fannie Mae, Freddie Mac, or an affiliate thereof. *Federal banking agency* means, individually, the Federal Reserve, OCC, FDIC, CFPB, NCUA, SEC, CFTC, FHFA, and Treasury; and Federal banking agencies means all of them collectively. *FHLB* means a bank established under the FHLB Act. *FHLB System* means the FHLBs and the Office of Finance and any authorized subsidiary of one or more FHLBs. *Insured depository institution* means an insured depository institution under FDIA § 3 or a credit union that is a depository institution under Federal Reserve Act § 19(b). *Issuer* means the Mortgage Securities Cooperative established under § 211 (page 11 lines 19 – 21). *Issuer* means the issuer	

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		manages the credit risk related to guarantees provided for covered securities. *CSP* means the securitization infrastructure FHFA announced on October 4, 2012, and developed by the GSE while under conservatorship, under the authority of FHFA pursuant to the 1992 Act, and commonly referred to as the common securitization platform. *Days* means— • With respect to any period of time less than or equal to 10 days, business days; and • With respect to any period of time greater than 10 days, calendar days. *Depository institution holding company* has the same meaning as FDIA § 3(w)(1) (12 U.S.C. 1813(w)(1)). *Eligible borrower* means a borrower who applies for an eligible mortgage loan and meets the standards required of a borrower to be approved for an eligible mortgage loan. *Eligible mortgage loan* means an eligible single-family mortgage loan and an eligible multifamily mortgage loan. *Eligible multifamily mortgage loan* means a	established under § 211 to issue covered securities and to purchase insurance offered by the NMFA pursuant to title II on a covered security subject to applicable rules concerning first loss credit enhancement (page 13 lines 1 – 6). *NMFA certification date* means the date on which the Director certifies that the NMFA is operational and able to perform the insurance functions for covered securities, which date shall be not later than 5 years after the enactment, unless extended by not more than one additional year by Treasury for cause. *Senior Preferred Stock Purchase Agreement* means: • The Amended and Restated Senior Preferred Stock Purchase Agreement, dated September 26, 2008, as such Agreement has been amended on May 6, 2009, December 24, 2009, and August 17, 2012, respectively, and as such Agreement may be further amended and restated, entered into between Treasury and each GSE, as applicable; and • Any provision of any certificate in connection with such Agreement creating or designating the terms, powers, preferences, privileges, limitations, or any other conditions of the Variable Liquidation Preference Senior Preferred	

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		commercial real estate loan—
		• Secured by a property with 5 or more residential units, or with 2 or more units if the FMIC waives the requirement for 5 for purposes of carrying out a demonstration or pilot program;
		• The primary source of repayment for which is expected to be derived from rental income generated by the property;
		• The term of which may not be less than 5 years but not more than 40 years, but may be less than 5 years subject to FMIC standards;
		• That satisfies any additional underwriting criteria established by the FMIC to balance supporting access to capital with managing credit risk to the MIF, including—
		  o A maximum LTV;
		  o A minimum debt service coverage ratio; and
		  o Considerations for restrictive or special uses of a property, including non residential uses, properties for seniors, manufactured housing, and affordability restrictions, and the impact of such uses on LTV and debt service coverage ratio; and
		• That satisfies any additional underwriting criteria that may be established by the FMIC.
			Stock of a GSE issued or sold pursuant to such Agreement
			
			Transfer date means the date that is 1 year after the date of enactment.	

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		Eligible single-family mortgage loan means a loan that—
		• Has been originated in compliance with minimum standards issued by the FMIC by regulation, provided that such standards—
		  o Are uniform and equal in kind, nature, and application regardless of—
		    ▪ The originator of the mortgage loan; or
		    ▪ The role performed by an approved entity with respect to the mortgage loan;
		  o Are, to the greatest extent possible, substantially similar to the QM regulations issued by the CFPB under TILA § 129C(b) (15 U.S.C. 1639c); and
		  o Permit—
		    ▪ Residential real estate loans secured by a property with 1 to 4 single-family units, including units that are not owner-occupied;
		    ▪ Loans secured by manufactured homes, as defined by § 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402(6));
		    ▪ Residential real estate loans secured by a property with 1 to 4		

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		single-family units that are originated by a State housing finance agency, as defined in § 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x); ▪ Loans originated by a CDFI; ▪ Loans originated by a mission-based non-profit lender; ▪ Loans secured by real property in a permanently affordable homeownership program or community land trust; and ▪ Loans to entities that provide non-owner occupied rental housing with care providers for individuals with intellectual and developmental disabilities. • Has a maximum original principal obligation amount that does not exceed the applicable loan limit under § 304; • Has an outstanding principal balance at the time of purchase of insurance available under Title II that does not exceed 80% of the property value unless— o For such period and under such circumstances as the FMIC may require, the seller agrees to repurchase or replace the loan upon FMIC demand in the event the loan is in default;		

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		○ An approved private mortgage insurer guarantees or insures— ▪ Not less than 12% of the unpaid principal balance, accounting for any down payment required under subparagraph (D) [the reference to subparagraph (D) apparently means § 2(29)(a)(iv), the bullet below that sets down payment requirements], for loans in which the unpaid principal balance exceeds 80% but not more than 85% of the property value; ▪ Not less than 25% of the unpaid principal balance, accounting for any down payment required under subparagraph (D), for loans in which the unpaid principal balance exceeds 85% but not more than 90% of the property value; ▪ Not less than 30% of the unpaid principal balance, accounting for any down payment required under subparagraph (D), for loans in which the unpaid principal balance exceeds 90% but not more than 95% of the property value; and ▪ Not less than 35% of the unpaid principal balance, accounting for any down payment required		

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		under subparagraph (D), for loans in which the unpaid principal balance exceeds 95% of the property value; or ○ That portion of the unpaid principal balance which exceeds 80% of the property value is subject to other credit enhancement that— ▪ Meets standards comparable to the standards required of private mortgage insurers under clause (ii) [apparently referencing § 2(29)(A)(iii)(II), setting the required amount of MI coverage]; and ▪ Is approved by the FMIC; • Has a down payment that is— ○ For a first-time homebuyer, as shall be defined by the FMIC by regulation, equal to not less than 3.5% of the purchase price of the property; or ○ For non first-time homebuyers, equal to— ▪ Not less than 3.5% of the purchase price, if such purchase occurs before, or less than 1 year after, the system certification date; ▪ Not less than 4% of the purchase price, if such purchase occurs between 1 year and 2 years after the system certification date;		

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		▪ Not less than 4.5% of the purchase price, if such purchase occurs between 2 and 3 years after the system certification date; or ▪ Not less than 5% of the purchase price, if such purchase occurs during any period after the period set forth in subclause (III) [unclear reference]; • Satisfies standards related to establishing title or marketability of title, as may be required by the FMIC, which standards may include the required purchase of title insurance on the property securing the loan; • Contains such terms and provisions with respect to insurance, property maintenance, repairs, alterations, payment of taxes, default, reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters, including matters that set forth terms and provisions for establishing escrow accounts, performing financial assessments, or limiting the amount of any payment made available under the loan as the FMIC may prescribe; and • Contains such other terms, characteristics, or underwriting criteria as the FMIC, in consultation with the CFPB, may		

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		determine necessary or appropriate; or It also includes a loan refinanced pursuant to § 305(i) authority. This is FMIC authority, if there is a sustained house price decline, with approval, to permit transfer of guarantees of eligible loans if the loans are refinanced. *Enterprise* (or GSE) means Fannie Mae, Freddie Mac, and any affiliate thereof. *Extremely low-income* means— • In the case of owner-occupied units, income not in excess of 30% of the median income of the area; and • In the case of rental units, income not in excess of 30% of the median income of the area, with adjustments for smaller and larger families, as determined by HUD. *FHFA* means— • Prior to the agency transfer date, the FHFA; • On and after the agency transfer date but prior to the system certification date, the Federal Housing Finance Agency established within the FMIC under title IV; and • On and after the system certification date, the FMIC. *FHFA Director* has the same meaning as the term Director in section 401(1).		

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		Federal regulatory agency means, individually, the Federal Reserve, OCC, FDIC, CFPB, NCUA, SEC, CFTC, FHFA; and *Federal regulatory agencie*s means those agencies collectively.
		
		FHLB means a bank established under the Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.).
		
		Federal Home Loan Bank System means the FHLBs and the Office of Finance and any authorized subsidiary of one or more FHLBs.
		
		First loss position, with regard to a covered security, means both—
		• Either of the following—
		  o That fully-funded position to which any credit loss on such covered security resulting from the nonperformance of underlying mortgage loans will accrue and be absorbed, to the full extent of the holder's interest in such position; or
		  o The guarantee provided by an approved guarantor or approved multifamily guarantor with respect to an eligible single-family mortgage loan, pool of eligible single-family mortgage loans, or a covered security or eligible multifamily mortgage loan, pool of eligible multifamily		

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		mortgage loans, or a multifamily covered security, as applicable; and • Such position or guarantee, as applicable, which is required to absorb any initial credit loss on a covered security prior to the FMIC becoming obligated to make any payment of insurance in accordance with this Act. *HUD-approved housing counseling agency* means an agency HUD certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)). *Insured depository institution* means such an institution, as defined under FDIA § 3 (12 U.S.C. 1813) and an insured credit union, as defined under § 101 of the FCUA (12 U.S.C. 1752). *Issuer* means, with respect to a covered security, an approved aggregator who issues such covered security through the Platform. For a noncovered security, *issuer* has the meaning in the Securities Act and SEC regulations. The Platform shall not be deemed to be an issuer of covered or noncovered securities for purposes of the Securities Act of 1933. *Low-income* means—		

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		• In the case of owner-occupied units, income not in excess of 80% of median income of the area; and
		• In the case of rental units, income not in excess of 80% of median income of the area, with adjustments for smaller and larger families, as determined by HUD.
		
		Market participant means any—
		• Approved entity;
		• Private market holder; and
		• Member of the Securitization Platform.
		
		Median income means, with respect to an area, the unadjusted median family income for the area, as determined and published annually by HUD.
		
		Mission-based non-profit lender means an organization that—
		• Is exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code;
		• Makes any of the following—
		  o Residential real estate loans for the purpose of promoting or facilitating homeownership for poor or lower- or moderate-income, disabled, or other disadvantaged persons or families; or
		  o Real estate loans for the purpose of promoting or facilitating affordable rental housing for low-income persons or families subject to any		

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		other additional criteria established by the FMIC;
		• Sets interest rates on such loans that—
		  ○ Are lower than the bank prime loan rate, as determined under the Federal Reserve's Statistical Release of selected interest rates (the H.15) for the last day of the most recent weekly release of such rates; or
		  ○ Are, after adjusting for inflation, no-interest loans or loans with interest rates at or below the interest rates for mortgage loans generally available in the market;
		• Except for making loans described above, does not engage in the business of a mortgage originator or mortgage broker;
		• Conducts its activities in a manner that serves public or charitable purposes;
		• Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;
		• Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and
		• Meets such other requirements as the FMIC determines appropriate.
		
		Moderate-income means		

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		• In the case of owner-occupied units, income not in excess of median income of the area; and • In the case of rental units, income not in excess of median income of the area, with adjustments for smaller and larger families, as determined by HUD. *Mortgage aggregator* means a person that— • Purchases or receives from a third party residential real estate loans or commercial real estate loans; and • Delivers, transfers, or sells such loans to the Securitization Platform, including for issuance of securities through the Platform. *Mortgage-backed security (MBS)* means an ABS, as defined in § 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), that is collateralized by— • A mortgage loan, including any residential real estate loan or commercial real estate loan; or • A collateralized mortgage obligation of MBS. *Mortgage originator* has the same meaning as in TILA § 103(cc)(2) (15 U.S.C. 1602(cc)(2)). *Multifamily business* means the GSE activities and processes of—		

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		• Purchasing, selling, lending on the security of, or otherwise dealing in multifamily mortgage loans; • Securitizing a pool of multifamily mortgage loans; and • Issuing multifamily securities. *Multifamily covered security*'' means a multifamily mortgage-backed security— • Collateralized by eligible multifamily mortgage loans; and • Which is FMIC-insured pursuant to § 303. *Multifamily mortgage-backed security* means an MBS collateralized by commercial real estate loans secured by properties with 5 or more residential units in accordance with the requirements of this Act. *Noncovered security* means any mortgage-backed security other than a covered security. *Noneligible mortgage loan* means any mortgage loan other than an eligible mortgage loan. *Office of Finance* means the FHLB System Office of Finance. *Permanently affordable homeownership program* includes programs administered by		

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		community land trusts, nonprofit organizations, or State or local governments that—
		• Use a ground lease, deed restriction, subordinate loan, or similar legal mechanism to—
		  ○ Make real property affordable to low- or moderate-income borrowers; and
		  ○ Stipulate a preemptive option to purchase the real property from the homeowner at resale to preserve the affordability of the real property for successive low- and moderate-income borrowers;
		• Monitor properties to ensure affordability is preserved over resales; and
		• Support homeowners to promote successful homeownership and prevent foreclosure.
		
		Person means an individual, corporation, company (including a limited liability company or joint stock company), association (incorporated or unincorporated), mutual or cooperative organization, partnership, trust, estate, society, or any other legal entity.
		
		Platform and *Securitization Platform* mean the securitization infrastructure established under part I of subtitle C of title III.		

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		Platform Directors means the board of directors of the Securitization Platform. *Platform security* means an MBS issued by an issuer through facilities of the Securitization Platform. *Private label MBS market* means the market in which noncovered securities are issued, bought, and sold. *Private market holder* means the holder or holders, other than an approved guarantor or an approved multifamily guarantor, of the first loss position with respect to eligible mortgage loans collateralizing any covered security insured in accordance with this Act. *Regulated entity* means— • Fannie Mae, Freddie Mac, and any affiliate thereof; • Any FHLB; and • The Securitization Platform. *Residential real estate loan* includes any— • Real estate mortgage loan; • Personal property loan secured solely by the home itself; • Hybrid land-home loan for a manufactured home, as defined by § 603(6) of the National Manufactured Housing Construction and Safety		

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		Standards Act of 1974 (42 U.S.C. 5402(6)), to which the requirements of paragraph (29)(A)(v) shall not apply [referring to, in the definition of Eligible single-family mortgage loan, the FMIC standards for establishing marketability of title]; and • Mortgage loan secured by real property in a community land trust or permanently affordable homeownership program. *Safety and Soundness Act* or the *1992 Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.). *Senior Preferred Stock Purchase Agreement* means— • The Amended and Restated Senior Preferred Stock Purchase Agreement, dated September 26, 2008, as such Agreement has been amended on May 6, 2009, December 24, 2009, and August 17, 2012, respectively, and as such Agreement may be further amended and restated, entered into between Treasury and each GSE, as applicable; and • Any provision of any certificate in connection with such Agreement creating or designating the terms, powers, preferences, privileges, limitations, or any other conditions of the Variable		

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		Liquidation Preference Senior Preferred Stock of a GSE issued or sold pursuant to such Agreement. *Single-family activities*'' means the FMIC activities and processes in providing insurance for single-family covered securities as provided in this Act. *Single-family covered security* means a single-family mortgage-backed security— • Collateralized by eligible single-family mortgage loans; and • Which is FMIC- insured pursuant to § 303. *Small mortgage lender* means a community bank, credit union, mid-sized bank, nondepository institution, CDFI, a mission-based non-profit lender, or housing finance agency that originates residential real estate loans or commercial real estate loans. *Standardized covered security* and *standardized security for single-family covered securities* mean a single-family covered security that is— • Issued by an issuer through the Platform; and • In a form, and includes the standardized and uniform terms for the security and transaction that have been, developed by		

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		the Platform Directors and approved by FMIC for use across various issuances. *Standardized noncovered security* and *standardized single-family noncovered security* mean a single-family noncovered security that is— • Issued by an issuer through the Platform; and • In a form, and includes the standardized and uniform terms for the security and transaction that have been, developed by the Platform Directors for use across various issuances. *State* means any State, territory, or possession of the U.S., D.C., Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands or any Federally recognized Indian tribe, as defined by the Interior Secretary under § 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1(a)). *System certification date* means the date on which the FMIC Board certifies that the requirements of § 601 have been met. *Very low-income* Means— • In the case of owner-occupied units, families having incomes not greater than		

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		50% of the median income of the area; and • In the case of rental units, families having incomes not greater than 50% of the median income of the area, with adjustments for smaller and larger families, as determined by HUD. For purposes of the Housing Trust Fund and the Capital Magnet Fund established under §§ 1338 and 1339 of the 1992 Act, and the Market Access Fund established under § 504, *very low-income* means— • In the case of owner-occupied units, income in excess of 30% but not greater than 50% of the median income of the area; • In the case of rental units, income in excess of 30% but not greater than 50% of the median income of the area, with adjustments for smaller and larger families, as determined by HUD.		
New Agency Created		**TITLE I—FANNIE MAE and FREDDIE MAC** Effective on the agency transfer date, the FMIC shall take all steps necessary to dissolve and eliminate the GSEs pursuant to this Act. Their charters shall be repealed pursuant to title VI. **TITLE II—FMIC** **§ 201 Establishment** Establishment	**§ 101 Establishment** Establishment There is hereby established the NMFA which shall have the powers hereinafter granted. Purpose NMFA's purpose shall be to— • Provide access to affordable mortgage credit, including 30-year fixed rate mortgages, by supporting a robust secondary mortgage market and the	

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		Effective on the agency transfer date, there is established the FMIC, which is charged with ensuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by the institutions and other persons subject to its jurisdiction and which shall have the powers hereinafter granted. <u>Purpose</u> The purpose of the FMIC shall be to— • Facilitate a liquid, transparent, and resilient single-family and multifamily mortgage credit market by supporting a robust secondary mortgage market, including during the transition to the new housing finance system; • Provide insurance on any mortgage-backed security that satisfies the requirements under this Act to become a covered security; • Monitor and supervise approved entities to the extent provided in this Act; • Supervise the regulated entities; and • Facilitate the broad availability of mortgage credit and secondary mortgage market financing through fluctuations in the business cycle for eligible single-family and multifamily lending across all— o Regions; o Localities;	production of RMBS; and • Protect the taxpayer from absorbing losses incurred in the secondary mortgage market during periods of economic stress. <u>Federal Status</u> The NMFA shall be an independent agency of the Federal Government. <u>Succession</u> The NMFA shall have succession until dissolved by Act of Congress. <u>Principal Office</u> The NMFA shall maintain its principal office in D.C. and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. <u>Authority to Establish Other Offices</u> The NMFA may establish such other offices in such other place or places as it may deem necessary or appropriate in the conduct of its business. <u>Prohibition</u> The NMFA shall not engage in mortgage origination.	

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		◦ Institutions; ◦ Property types, including housing serving renters; and ◦ Eligible borrowers. • Ensure continued, widespread availability of an affordable, long-term, fixed-rate, prepayable mortgage, such as a 30-year, fixed-rate mortgage; and • Preserve and maintain a liquid forward execution market for single-family eligible mortgage loans and single-family covered securities, such as the TBA market; General Supervisory and Regulatory Authority • Each approved entity shall, to the extent provided in this Act, be subject to FMIC supervision and regulation. • The FMIC shall have general regulatory authority over each regulated entity and the Office of Finance, and shall exercise such general regulatory authority to ensure that the purposes of this Act, any amendments made by this Act, and any other applicable law for which the FMIC has responsibility are carried out. Federal Status The FMIC shall be an independent agency and an instrumentality of the Federal Government.		

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		Succession The FMIC shall have succession until dissolved by an Act of Congress. Principal Office The FMIC shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. Authority to Establish Other Offices The FMIC may establish such other offices in such other place or places as it may deem necessary or appropriate in the conduct of its business. Prohibition The FMIC shall not engage in mortgage loan origination.		
New Agency Management		**§ 202 Management of FMIC** Board of Directors • The FMIC's management shall be vested in a Board consisting of 5 members who 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; and ○ Have demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working in, housing and	**§ 102 Director** Establishment of Position There is established the position of the Director of the NMFA, who shall be the head of the NMFA. Appointment; Term • 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 U.S.; and ○ Have a demonstrated understanding	

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		housing finance.
		• Not more than 3 of the members of the Board may be members of the same political party.
		• The Board shall advise the Chairperson regarding overall strategies and policies to carry out the duties and purposes of this Act.
		
		<u>Chairperson and Vice Chairperson</u>
		• One of the appointed board members shall be designated by the President to serve as Chairperson of the Board. Except as provided for the initial term, the Chairperson shall be appointed for a term of 5 years, unless removed before the end of such term by the President for cause. The President may remove the Chairperson for inefficiency, neglect of duty, or malfeasance in office.
		• The Chairperson—
		  ○ Shall—
		    ▪ Be the active executive officer of the FMIC, subject to supervision by the Board;
		    ▪ Oversee the prudential operations of each regulated entity; and
		    ▪ Ensure that each approved entity and regulated entity operates in a safe and sound manner, including—
			of financial management or oversight and have a demonstrated understanding of the capital markets, including the mortgage securities markets and housing finance.
			• The Director shall be appointed for a term of 5 years, unless removed before the end of such term for cause by the President.
			• 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 same manner, and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term. If the Senate has not confirmed a Director, the President may designate either the individual nominated but not yet confirmed for the position of Director, the FHFA Director, or other individual, to serve as the Acting Director, and such Acting Director shall have all the rights, duties, powers, and responsibilities of the Director, until such time as a Director is confirmed by the Senate.
			• An individual may serve as the Director after the expiration of the term for which appointed until a successor has been appointed or confirmed.
			• The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under 5 U.S.C.	

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		♦ Through the maintenance of adequate capital, standards, and internal controls; and ♦ By ensuring compliance with the rules, regulations, guidelines, and orders issued pursuant to this Act; and ○ May exercise such incidental powers as may be necessary or appropriate to assist the FMIC in fulfilling the duties and responsibilities of the FMIC in the supervision and regulation of each approved entity and regulated entity. • The Chairperson may delegate to officers and employees of the FMIC any of the functions, powers, or duties of the Chairperson, as the Chairperson considers appropriate. • One of the Board members shall be designated by the President to serve as Vice Chairperson of the Board. Except as provided for the initial term, the Vice Chairperson shall be appointed for a term of 5 years, unless removed before the end of such term by the President for cause. The President may remove the Vice Chairperson for inefficiency, neglect of duty, or malfeasance in office. • Except as provided in § 402 [FHFA transition], in the event of a vacancy in	§ 5313. <u>FSOC Membership</u> The Dodd-Frank Act is amended— • In § 2(12)(E) (definition of primary financial regulatory agency) by replacing FHFA with the FMIC with respect to the MIF and the FHLBs or the FHLB System. • In § 111(b)(1)(H) (FSOC voting members) by replacing the FHFA Director with the NMFA Director.	

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		the position of Chairperson of the Board or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.
		• Except as provided in § 402, in the event of vacancies in the positions of Chairperson and Vice Chairperson, or during the absence or disability of both the Chairperson and the Vice Chairperson, the President shall designate 1 of the other members as Acting Chairperson.
		• Any person confirmed to serve as Chairperson, or acting as Chairperson, whether designated to act as such by the President or acting in such capacity by operation of this paragraph or section 402, shall for the period that such person is serving as Chairperson or acting as Chairperson—
		    o Act for all purposes as the Chairperson; and
		    o Have all the rights, duties, powers, and responsibilities of the Chairperson.
		
		<u>Staggered Terms; Term Continuation</u>
		• The initial member of the Board designated as Chairperson shall serve a term of 30 months.
		• The initial member of the Board designated as Vice Chairperson shall		

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		serve a term of 30 months. • One of the other initial members of the Board appointed pursuant to subsection (a)(1) and not designated as Chairperson or Vice Chairperson under subsection (b) shall serve a term of 30 months and the other 2 initial members shall serve a term of 4 years. • After the expiration of such initial terms, all subsequent appointed members of the Board shall serve for a term of 5 years. • Each appointed member of the Board, including any member appointed as Chairperson or Vice Chairperson, may continue to serve after the expiration of the term of office to which such member was appointed until the expiration of the next session of Congress subsequent to the expiration of said fixed term of office. <u>Vacancy; Manner of Fulfillment</u> Any vacancy on the Board shall be filled in the manner in which the original appointment was made, and the person appointed to fill such vacancy shall be appointed only for the remainder of such term. <u>Compensation of Members</u> The Chairperson shall receive compensation at the rate prescribed for Level II of the Executive Schedule under 5 U.S.C. § 5313. All other members of the Board shall receive		

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		compensation at the rate prescribed for Level III of the Executive Schedule under 5 U.S.C. § 5314. <u>Ineligibility for Other Offices During Service; Postservice Restriction</u> No member of the Board may, during the time such member is serving in such capacity and for the 2-year period beginning on the date such member ceases to serve as a member of the Board be an officer, employee, or director of, or hold stock or have beneficial ownership in, any— • Insured depository institution; • Insured depository institution holding company; • Federal Reserve bank; • Regulated entity; • Approved entity; or • Non-bank financial institution or company that originates eligible mortgage loans. Upon taking office, each member of the Board shall certify under oath that such member has complied, and will comply, with this subsection and such certification shall be filed with the secretary of the Board. <u>Status of Directors, Officers, and Employees</u> • A member of the Board, officer, or employee of the FMIC has no liability under the Securities Act of 1933 (15		

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		U.S.C. 77b et seq.) with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the FMIC. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.
		• This subsection does not affect—
		  o Any other immunities and protections that may be available to such person under applicable law with respect to such transactions; or
		  o Any other right or remedy against the FMIC, against the U.S. under applicable law, or against any person other than an FMIC Director, officer, or employee participating in such transactions.
		• This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.
		
		<u>Independence</u>		

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		Each member of the Board shall be independent in performing his or her duties. To be considered independent for purposes of this subsection, a member of the Board—
		• May not, other than in his or her capacity as a member of the Board or any committee thereof—
		  ○ Accept any consulting, advisory, or other compensatory fee from the FMIC; or
		  ○ Be a person associated with the FMIC or with any of its affiliates; and
		• Shall be disqualified from any deliberation involving any transaction of the FMIC in which the member has a financial interest in the outcome of the transaction.
		
		<u>Administration</u>
		Except as may be otherwise provided in this Act, the Board shall administer the affairs of the FMIC fairly and impartially and without discrimination.
		
		<u>Voting</u>
		A majority vote of all members of the Board is necessary to resolve all voting issues of the FMIC.
		
		<u>Meetings</u>
		The Board shall meet in accordance with the		

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		FMIC bylaws at the call of the Chairperson, and not less frequently than once each quarter. <u>Quorum</u> Three members of the Board then in office shall constitute a quorum. <u>Bylaws</u> A majority of the members of the Board may amend the bylaws.		
Advisory Committee		**§ 203 Advisory Committee** <u>Establishment</u> • The FMIC shall establish an Advisory Committee to advise the Office of Consumer and Market Access and the Board of Directors on developments in the primary and secondary mortgage markets that have material effects on the ongoing mission of the FMIC. • The Advisory Committee shall provide advice and recommendations to the Office of Consumer and Market Access and the Board as to material developments in the following areas: o Housing prices and affordability. o The effectiveness of consumer protections in the housing market. o Volume and characteristics of mortgage loan originations. o The condition of the rental housing market. o Small lender participation in the	**§ 103 Advisory Board; Status of Employees** <u>Establishment of Advisory Board</u> • The NMFA shall establish an Advisory Board to advise and consult with the NMFA in the exercise of its activities with regard to covered securities and covered multifamily securities, and to provide information on practices and market conditions in the secondary mortgage market. • In appointing the members of the Advisory Board, the Director shall appoint experts who— o Have demonstrated technical, academic or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working in, the fields of mortgage lending, mortgage insurance markets, or asset management; o Have demonstrated technical,	

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		secondary mortgage market. ○ Access to credit in rural and underserved communities. ○ Competition among approved market entities. ○ Fair, equitable, and nondiscriminatory access to mortgage credit for individuals and communities. <u>Composition and Qualifications</u> • The Advisory Committee shall be composed of 14 members as follows: ○ One member who shall have a demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working with, non-depository mortgage originators having less than $10,000,000,000 in total assets. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working with, credit unions having less than $10,000,000,000 in total assets. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working with,	academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working with lenders having less than $10,000,000,000 in total assets, who shall comprise not fewer than one-third of the members of the Advisory Board; ○ Have demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working in multifamily housing development, who shall comprise not fewer than one-fourth of the members of the Advisory Board; and ○ Have demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working in the development of housing for extremely-low, very-low, and low-income individuals, which shall comprise not fewer than one-fifth of the members of the Advisory Board. • The Advisory Board shall meet from time to time, but, at a minimum, shall meet at least four times in each year. • Members of the Advisory Board who are not full-time employees of the U.S.	

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		banks having less than \$10,000,000,000 in total assets. ○ One member who shall have demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working with, banks having more than \$500 billion in total assets. ○ One member who shall have demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience working with, regional banks having between \$10 billion and \$500 billion in total assets. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience with private mortgage insurance. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience with securitization. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or	shall— ○ Be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Advisory Board, including travel time; and ○ Be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business. • The Director shall periodically submit to the Senate Banking and House Financial Services Committees a written report outlining the activities of the Advisory Board, the input provided to the NMFA from the Advisory Board, and any actions taken to act upon the recommendations of the Advisory Board. Such periodic reports may be included in the report required under § 106. <u>Status of Employees</u> • A director, Advisory Board member, officer, or NMFA employee has no liability under the Securities Act of 1933 with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the NMFA. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious	

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		regulatory experience with investor protection and institutional investors. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, or practical, disciplinary, or vocational experience with consumer protection. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, and practical, disciplinary, vocational, or regulatory experience with policies and programs to support sustainable homeownership. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, or practical, disciplinary, or vocational experience with multifamily housing development. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, or practical, disciplinary, or vocational experience with affordable rental housing. ○ One member who shall have a demonstrated technical, academic, or professional understanding of, or practical, disciplinary, or vocational experience with asset management. ○ One member who shall have a demonstrated technical, academic, or	misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment. • This subsection does not affect— ○ Any other immunities and protections that may be available to such person under applicable law with respect to such transactions; or ○ Any other right or remedy against the NMFA, against the U.S. under applicable law, or against any person other than a director, Advisory Board member, officer, or NMFA employee, participating in such transactions. • This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.	

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		professional understanding of, and vocational experience with State bank, non-bank, or insurance regulation. • Of those members of the Advisory Committee with a credit union or bank background, at least 1 shall have practical, disciplinary, or vocational experience working in rural areas and with rural borrowers. • Of those members of the Advisory Committee, at least 1 shall have demonstrated practical, academic, disciplinary, or vocational experience with fair lending practices and policies and programs that promote fair, equitable, and nondiscriminatory access to credit in underserved markets. <u>Member Selection</u> Members of the Advisory Committee shall be appointed to the Committee by the Chairperson, subject to approval by a majority of the Board. <u>Meetings</u> The Advisory Committee shall meet no less frequently than once during each calendar quarter.		
OIG		**§ 204 Office of the Inspector General** <u>Office of Inspector General</u> • On the agency transfer date, there is	**§ 104 OIG** <u>Office of Inspector General</u> • There is established the NMFA Office of	

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		established the FMIC Office of Inspector General (OIG). • The head of the OIG shall be the FMIC Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, in accordance with § 3(a) of the Inspector General Act of 1978 (5 U.S.C. App.). • During the period beginning on the agency transfer date and ending on the date on which the IG is confirmed, the person serving as the IG or the Acting IG for the OIG within the FHFA on the date that is 1 day prior to the agency transfer date shall act for all purposes as, and with the full powers of, the FMIC IG. • Beginning on the agency transfer date, the authority of the FMIC OIG shall include all rights and responsibilities of the FHFA OIG as such rights and responsibilities existed on the day before the agency transfer date. <u>Provision of Property and Facilities</u> The FMIC Chairperson shall provide the FMIC OIG with— • Appropriate and adequate office space at each FMIC central and field office location, together with such equipment, office supplies, and communications facilities and services as may be necessary for the IG to operate such	the Inspector General (OIG). The head shall be the NMFA IG, who shall be appointed by the President. • In addition to carrying out the requirements established under the Inspector General Act of 1978, the IG shall— ○ Conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the NMFA, including the adequacy of placement of credit risk and oversight of approved entities, with respect to— ▪ The oversight and supervision of the FHLBs and the FHLB System; and ▪ The contracting practices and procedures of the NMFA; and ○ Recommend policies for the purpose of addressing any deficiencies, inefficiencies, gaps, or failures in the administration of such programs and operations. • Beginning 1 year after the NMFA certification date, and annually thereafter, the IG and an independent actuary contracted for by the Director shall each conduct an examination and issue a separate report regarding— ○ The adequacy of insurance fees charged by the Director under title II;	

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		offices; and • The necessary maintenance services for any such office, and the equipment and facilities located in any such office. <u>Hiring of Employees, Experts, and Consultants</u> Notwithstanding paragraphs (7) and (8) of § 6(a) of the Inspector General Act of 1978 (5 U.S.C. App.), the FMIC IG may select, appoint, and employ such officers and employees as may be necessary— • For carrying out the functions, powers, and duties of the OIG; and • To obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the FMIC. <u>Submission of Budget</u> For each fiscal year, the FMIC IG shall transmit a budget estimate and request for funds to the FMIC Chairperson. The budget request shall— • Specify— o The aggregate amount of funds requested for such fiscal year for OIG's operations; and	o The adequacy of the MIF established under title II; and o The effectiveness of credit risk placement and capital requirements adopted by the NMFA, including the extent to which the Government is protected from loss and the increase in costs to borrowers. <u>Amendments to Inspector General Act Of 1978</u> Section 11 of the Inspector General Act of 1978 [apparently meaning § 12] is amended— • In paragraph (1) (defining head of establishment), by adding the NMFA Director; and • In paragraph (2) (defining establishment), by adding the NMFA. <u>Compensation</u> The annual rate of basic pay of the IG shall be the annual rate of basic pay provided for positions at level III of the Executive Schedule under 5 U.S.C. § 5314.	

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		○ The amount requested for all training needs, including a certification from the IG that the amount requested satisfies all training requirements for the OIG for that fiscal year; and • Specifically— ○ Identify and specify any resources necessary to support the Council of the Inspectors General on Integrity and Efficiency; and ○ Justify the need for any resources identified and specified for OIG's operations for the fiscal year. <u>Amendments to Inspector General Act of 1978</u> The Inspector General Act of 1978 is amended— • In § 6(e)(3), by inserting FMIC after FEMA; • In § 8G(a)(2), by striking FHFB; and • In § 12— ○ In paragraph (1) (defining head of establishment), by striking FHFA Director and inserting FMIC Chairperson; and ○ In paragraph (2) (defining establishment), by striking FHFA and inserting FMIC. <u>Effective Date</u> The amendments made by this section shall		

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		take effect on the agency transfer date.		

Staff, Experts, Consultants		**§ 205 Staff, Experts, and Consultants**
		<u>Compensation</u>
		• The Board may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out the FMIC's functions.
		• Rates of basic pay and the total amount of compensation and benefits for all FMIC employees may be—
		  ○ Set and adjusted by the Board without regard to the provisions of chapter 51 or subchapter III of chapter 53 of 5 U.S.C.; and
		  ○ Reasonably increased, notwithstanding any parity limitation, if the Board determines such increases are necessary to attract and hire qualified employees.
		• The Board may provide additional compensation and benefits to FMIC employees, of the same type of compensation or benefits that are then being provided by any agency referred to under FIRREA § 1206 (12 U.S.C. 1833b) or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees, the Board shall
			§ 105 Staff, Experts, and Consultants
			<u>Compensation</u>
			• The Director may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out the NMFA's functions.
			• Rates of basic pay and the total amount of compensation and benefits for all NMFA employees may be—
			  ○ Set and adjusted by the Director without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5 U.S.C.; and
			  ○ Reasonably increased, notwithstanding any limitation set forth in paragraph (3), if the Director determines such increases are necessary to attract and hire qualified employees.
			• The Director may provide additional compensation and benefits to NMFA employees, of the same type of compensation or benefits that are then being provided by any agency referred to under FIRREA § 1206 (12 U.S.C. 1833b) or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and	

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		consult with and seek to maintain comparability with the agencies referred to under FIRREA § 1206. Detail of Government Employees Upon the request of the Board, any Federal Government employee may be detailed to the FMIC without reimbursement from the FMIC, and such detail shall be without interruption or loss of civil service status or privilege. Experts and Consultants The FMIC may procure the services of experts and consultants as the FMIC considers necessary or appropriate. Technical and Professional Advisory Committees The Board may appoint such special advisory, technical, or professional committees as may be useful in carrying out the FMIC's functions.	benefits for employees, the Director shall consult with and seek to maintain comparability with the agencies referred to under FIRREA § 1206. Detail of Government Employees Upon the request of the Director, any Federal Government employee may be detailed to the NMFA without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. Experts and Consultants The Director may procure the services of experts and consultants as the Director considers necessary or appropriate. Technical and Professional Advisory Committees The Director may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the NMFA.	
Reports, Testimony, Audits		**§ 206 Reports; Testimony; Audits** Reports After the system certification date, the FMIC shall submit, on an annual basis, to the Senate Banking and House Financial Services Committees a written report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include—	**§ 106 Reports; Testimony; Audits** Reports The NMFA shall submit, on an annual basis, to the Senate Banking and House Financial Services Committees a written report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include an analysis of—	

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		• An analysis of—
		  ○ With respect to the MIF—
		    ▪ The current financial condition of the MIF;
		    ▪ The exposure of the MIF to economic conditions and an analysis of any stress tests conducted with respect to the Fund;
		    ▪ An estimate of the resources needed for the MIF to achieve the purposes of this Act; and
		    ▪ Any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to the future activities of the FMIC;
		  ○ Whether or not the actual MIF reserve ratio met—
		    ▪ The reserve ratio set for the preceding 12-month period; or
		    ▪ The reserve ratio goals established in § 303(c)(7);
		  ○ The detailed plan of the FMIC to ensure that the goals set for the MIF reserve ratio are met and maintained for the next 12-month period;
		  ○ The state of the private label MBS market, including the submission of a reasonable set of administrative, regulatory, and legislative proposals on how to limit the Federal Government's footprint in the
			• With respect to the MIF—
			  ○ The current financial condition of the MIF;
			  ○ The exposure of the MIF to changes in those economic factors most likely to affect the condition of that fund;
			  ○ A current estimate of the resources needed for the MIF to achieve the purposes of this Act; and
			  ○ Any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to the future activities of the NMFA;
			• The secondary mortgage market, the housing market, and the economy, including the affordability of mortgage finance, and the use of stress tests, and how such analysis was used to determine and set the reserve ratio for the MIF for the preceding 12-month period;
			• The state of the private markets for placement of first-loss credit risk, current optimal methods, and the estimated cost for a loan of placing such risk;
			• Whether or not the actual MIF reserve ratio met—
			  ○ The reserve ratio set for the preceding 12-month period; or
			  ○ The reserve ratio goals established in § 203(e);
			• How the NMFA intends to ensure that the	

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		secondary mortgage market; o How and the extent to which the FMIC and the Small Lender Mutual established under § 315(a)(1) has fulfilled its obligations to ensure that community and mid-size banks, credit unions, and other small lenders have equitable and meaningful access to the secondary mortgage market; and o The report required under § 208(b)(2)(B) [state of covered securities market]; • A discussion of the significant problems faced by consumers in shopping for or obtaining mortgage credit or services; • A justification of the FMIC's budget for the preceding 12-month period; • A list of the significant rules and orders adopted by the FMIC, as well as other significant initiatives conducted by the FMIC, during the preceding 12-month period and the plan of the FMIC for rules, orders, or other initiatives to be undertaken during the next 12-month period; • A list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the FMIC was a party during the preceding 12-month period; • The actions of the FMIC taken regarding rules, orders, and supervisory actions with	goals set for the MIF reserve ratio are to be met and maintained for the next 12-month period, and such analysis shall include a detailed and descriptive plan of the actions that the NMFA intends to take pursuant to its authorities under this Act; • How the NMFA has provided access to affordable mortgage credit, including 30-year fixed rate mortgages, in its support of a robust secondary mortgage market and the production of residential mortgage-backed securities; • The state of the private label MBS market, and such analysis shall include the submission of a reasonable set of administrative, regulatory, and any appropriate legislative proposals on how to minimize the Federal Government's footprint in the secondary mortgage market; and • The effect that change in loan limits would have on the secondary mortgage market, the housing market, and the economy. <u>Testimony</u> The Director of the NMFA, on an annual basis, shall provide testimony to the Senate Banking and House Financial Services Committees. <u>Audits</u>	

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		respect to covered entities; and • An assessment of significant actions by State attorneys general or State regulators relating to Federal law within the FMIC's jurisdiction. <u>Testimony</u> After the system certification date, the Chairperson shall appear annually before the Senate Banking and House Financial Services Committees to provide testimony on the report. <u>Reports to OMB</u> The FMIC shall provide OMB copies of the— o FMIC's financial operating plans and forecasts as prepared by the FMIC in the ordinary course of its operations; and o Quarterly reports of the FMIC's financial condition and results of operations as prepared by the FMIC in the ordinary course of its operations. This subsection shall not be construed to— o Require any obligation on the part of the FMIC to consult with, or obtain the consent or approval of, OMB respect to any such reports, plans, forecasts, or other information; or o Authorize any jurisdiction or oversight by OMB over the affairs or operations of the FMIC.	• GAO shall annually audit the financial transactions and conditions of the NMFA and the MIF in accordance with the U.S. generally accepted government auditing standards as may be prescribed by GAO. The audit shall be conducted at the place or places where accounts of the NMFA and the MIF, as applicable, are normally kept. • GAO representatives 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, or property belonging to or under the control of or used or employed by the NMFA or the MIF pertaining to its financial transactions and necessary to facilitate the audit required under this subsection, 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 NMFA and the MIF used to carry out the audit shall remain in the possession and custody of the NMFA and the MIF, as applicable. • GAO may obtain and duplicate any such books, accounts, documents, records,	

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		<u>Audit</u>
		• GAO shall annually audit the financial transactions of the FMIC and MIF. This audit shall be completed in accordance with the U.S. generally accepted government auditing standards as may be prescribed by GAO. The audit shall be conducted at the place or places where FMIC's accounts are normally kept.
		• Notwithstanding any other provision of law, upon request and in such reasonable form as GAO may request, GAO shall have access to—
		  ○ Any records, books, accounts, documents, reports, files, papers, property, or other information under the control of or used by the FMIC;
		  ○ Any records or other information under the control of a person or entity acting on behalf of or under the authority of the FMIC, to the extent that such records or other information are relevant to an audit required under this subsection; and
		  ○ The officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the FMIC (relating to the activities on behalf of the FMIC of such agent or representative).
			working papers, automated data and files, or other information relevant to such audit without cost to GAO and GAO's right of access to such information shall be enforceable pursuant to 31 U.S.C. § 716(c).
			• GAO shall submit to Congress a report of each such annual audit. The report to Congress shall set forth the scope of the audit and 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;
			  ○ Such comments and information as GAO may deem necessary to inform Congress of the financial operations and condition of the NMFA, together with such recommendations with respect thereto as GAO may deem advisable;
			  ○ Condition of the MIF;
			  ○ Actions of the NMFA regarding the placement of credit risk by originators or the issuer;
			  ○ Adequacy of the NMFA's analysis of the impact of such actions concerning credit risk on the affordability of mortgages for borrowers;
			  ○ Adequacy of underwriting standards	

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		All such records, books, accounts, documents, reports, files, papers, property, or other information shall remain in the possession and custody of the FMIC. • GAO may, as it considers appropriate, make and retain copies of the records, books, accounts, documents, reports, files, papers, property, or other information to which GAO is granted access. • GAO shall submit to Congress a report of each such annual audit not later than six and one-half months following the close of the year covered by such audit. The report shall set forth the scope of the audit and include— o The statement of assets and liabilities, as well as any surplus or deficit; o The statement of income and expenses; o The statement of sources and application of funds; o Such comments and information as GAO may deem necessary to inform Congress of the financial operations and condition of the FMIC, together with such recommendations with respect thereto as GAO may deem advisable; and o A description of any program,	imposed by the NMFA; and o Adequacy of NMFA oversight of retained assets of the Issuer. • For the purpose of conducting an audit under this subsection, GAO may employ by contract, without regard to § 3709 of the Revised Statutes of the U.S. (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. • Upon GAO request, the Director of the NMFA shall transfer to GAO from funds available, the amount requested by GAO to cover the reasonable costs of any such audit and report. GAO shall credit funds transferred to the account at Treasury established for salaries and expenses of GAO, and such amounts shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.	

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		expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in GAO's opinion, has been carried on or made without authority of law. A copy of each report shall be furnished to the President and to the Chairperson at the time such report is submitted to Congress. • For conducting this audit, GAO may employ by contract, without regard to § 3709 of the U.S. Revised Statutes (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. • Upon GAO request, the Chairperson shall transfer to GAO from funds available the amount requested by GAO to cover the reasonable costs of any such audit and report. GAO shall credit funds transferred to the account at the Treasury established for GAO salaries and expenses, and such amounts shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.		
Agency Offices		**§ 207 Specific Offices** Establishment The FMIC shall establish within the FMIC any office required to be established by this Act, may establish such other offices or	**§ 241 Office of Underwriting** Establishment There is established within the NMFA an Office of Underwriting which shall be headed by the Deputy Director of Underwriting, who	

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		suboffices as are necessary and proper for the functioning of the FMIC, and may eliminate or consolidate such other offices or suboffices. Except as may otherwise be specifically provided, the head of any such office shall be appointed by the Board.
		
		<u>Underwriting</u>
		The FMIC shall establish an Office of Underwriting in the FMIC, whose functions shall include ensuring that eligible single-family mortgage loans that collateralize a single-family covered security insured under this Act comply with the requirements of this Act and minimize risk to the MIF.
		
		<u>Securitization</u>
		The FMIC shall establish an Office of Securitization in the FMIC, whose functions shall include—
		• Overseeing and supervising the Securitization Platform established under part I of subtitle C of title III; and
		• Ensuring that small mortgage lenders have equitable access to—
		  o The Securitization Platform, including through the development and facilitation of options such as multi-guarantor pools and multilender pools of eligible single-family mortgage loans to be securitized and issued as single-
			shall be appointed by the Director.
			
			<u>Responsibilities</u>
			The Office of Underwriting shall ensure, through oversight, analysis, and examination, that eligible mortgages that collateralize a covered security insured under this Act comply with the requirements of this Act, including with respect to—
			• The submission of complete and accurate loan data on eligible mortgages;
			• The identification of ineligible mortgage loans;
			• Assisting lenders with originating high-quality, lower-risk eligible mortgages; and
			• Any other activity that the Director determines appropriate.
			
			§ 242 Office of Securitization
			<u>Establishment</u>
			There is established within the NMFA an Office of Securitization which shall be headed by the Deputy Director of Securitization, who shall be appointed by the Director.
			
			<u>Responsibilities</u>
			• The Office of Securitization shall—
			  o Oversee and supervise the common securitization platform developed by the business entity announced by the FHFA and established by the GSEs,	

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		family covered securities through such Platform; and o Any small lender mutual established or approved under § 315. FHLBs • Upon the system certification date, the FMIC shall establish an Office of FHLB Supervision in the FMIC, whose functions shall include— o Overseeing, coordinating, and supervising the FHLBs and the FHLB System; o Supervising any authorized subsidiary of 1 or more FHLBs that is an approved aggregator pursuant to § 312(m), including with respect to the capitalization of any such subsidiary; o Serving as the central point of coordination with the FMIC with respect to any regulations or regulatory actions relating to the role of an FHLB or subsidiary or joint office thereof, as a covered entity; and o Monitoring whether any regulation or regulatory action taken with respect to an FHLB or subsidiary or joint office thereof, approved under § 312 in its role as a covered entity does not adversely impact the traditional liquidity and advance mission of the	including by requiring that the platform have system capabilities to permit the issuance of multi-lender covered securities; and o Ensure that credit unions, community and mid-size banks, and small non-depository lenders have equitable access to any such platform, including through the development and facilitation of options for multi-lender pools of eligible mortgages to be securitized and issued as covered securities through such platform. • The NMFA, acting through the Office of Securitization, may promulgate rules— o Regarding the use of such common securitization platform; and o To permit securities other than covered securities to be issued through such platform for reasonable compensation. Any such rule may include a requirement that any security to be issued through the common securitization platform be subject to a uniform securitization agreement developed under § 233 and such other requirements as the NMFA shall specify. Such rules shall include any rules necessary to differentiate adequately between securities of a private sector issuer that are not guaranteed by the MIF and covered securities issued by the Issuer.	

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		FHLBs and FHLB System. • Effective on the system certification date, there are transferred to the Office of FHLB Supervision all functions of the FHFA of the FMIC relating to— o The supervision of the FHLBs and the FHLB System; and o All rulemaking authority of the FHFA of the FMIC relating to the FHLBs and the FHLB System. **§ 208 Office of Consumer and Market Access** <u>Establishment</u> The FMIC shall establish an Office of Consumer and Market Access in the FMIC. <u>Responsibilities</u> • The Office of Consumer and Market Access shall administer the Market Access Fund established under § 504. • The Office of Consumer and Market Access shall— o Monitor, on a macro level, the national, regional, and area single-family and multifamily housing finance markets to identify underserved markets, communities, and consumers in accordance with the market segments identified and defined under § 210; o Coordinate with Federal and State	**§ 243 Office of FHLB Supervision** <u>Establishment</u> There is established within the NMFA an Office of FHLB Supervision which shall be headed by the Deputy Director of FHLB Supervision, who shall be appointed by the Director. <u>Responsibilities</u> The Office of FHLB Supervision shall oversee, coordinate, and supervise the FHLBs and the FHLB System, including the transition of all activities transferred to the administration pursuant to § 301.	

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		agencies regarding existing policies and initiatives that address— ▪ The housing needs of underserved markets, communities, and consumers; and ▪ The affordable housing needs of markets, communities, and consumers; and ○ Provide information on business practices and technical assistance to market participants regarding communities identified as underserved with regards to addressing the housing needs of consumers in that community. • The Office of Consumer and Market Access shall, on an annual basis, submit a report to Congress on the state of the covered securities market, and make such report available to the public. The report shall include— ○ An assessment of the extent to which the covered securities market is providing liquidity to eligible borrowers in all segments of the mortgage origination primary market, including underserved segments identified and defined by the FMIC under § 210; and ○ Provide recommendations for such legislative, regulatory, or administrative actions as may be		

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		necessary to address any deficiencies in the availability of mortgage credit in any market or region identified pursuant to § 208(b)(2(B)(i) [may mean § 208(b)(2)(A)(i)] via existing Federal programs or the covered securities market.
		• In preparing each such report, the Office of Consumer and Market Access—
		  ○ Shall use, to the maximum extent practicable, publicly available data and data otherwise collected under this Act; and
		  ○ Shall not include or review any confidential information or information collected by the FMIC as part of its supervisory or examination authorities that is confidential.
		• The Office of Consumer and Market Access shall, on a biennial basis, conduct a study on incentives to encourage mortgage lenders and mortgage originators to address the housing needs of underserved markets and communities.
		• The FMIC shall include the annual report on the state of the covered securities market, and the study on incentives, in the annual report required under § 206 [to Congress].
		• The Office of Consumer and Market Access shall consult with the FHLBs and any small lender mutual established or		

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		approved under § 315 on approaches, methods, and practices designed to address the housing needs of underserved markets and communities. **§ 209 Office of Multifamily Housing** The FMIC shall establish an Office of Multifamily Housing in the FMIC, whose functions shall include— • Developing, adopting, and publishing specific eligibility criteria to ensure that eligible multifamily mortgage loans that collateralize multifamily covered securities insured under this Act comply with the requirements of this Act; and • Performing any other activity relating to the multifamily housing finance system that the FMIC may determine appropriate to fulfill the requirements of this Act.		
Market Access		**§ 210 Equitable Access for Lenders and Borrowers** <u>Equitable Access in Underserved Market Segments</u> • The FMIC shall seek to support the primary mortgage market for eligible mortgage loans on an equitable, nondiscriminatory, and non-exclusionary basis to help ensure that all eligible borrowers have access to mortgage credit, including underserved segments of the primary mortgage market as identified and defined by the FMIC.		

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		• The FMIC shall, by regulation, identify and define not more than 8 segments of the primary mortgage market in which lenders and eligible borrowers have been determined to lack equitable access to the housing finance system facilitated by the FMIC. This regulation shall set forth the criteria by which the FMIC identified such underserved market segments. The identified segments may include the following: o Historically underserved communities, including rural and urban communities. o Manufactured housing. o Small balance loans. o Low- and moderate-income creditworthy borrowers. o Preservation of existing housing stock created by state or Federal laws. o Affordable rental housing. • The FMIC shall require that each approved guarantor and approved aggregator engaged in a covered guarantee transaction or in a covered market-based risk-sharing transaction submit on annual basis a public report describing the actions taken by such approved guarantor or approved aggregator during the year, consistent with its business judgment, to provide		

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		credit to the underserved market segments identified and defined by the FMIC pursuant to this subsection, including corporate practices designed to serve such identified market segments. The annual report shall be approved by the board of directors and signed by the chief executive officer of the approved guarantor or approved aggregator submitting the report. The FMIC may establish an optional template for the annual report. Such an annual report shall not be subject to prior review or approval by the FMIC. The FMIC shall, in establishing the requirements for the annual report by guarantors and aggregators, coordinate with other Federal and State agencies, as necessary, to reduce duplicative reporting requirements. <u>Limitations</u> • In carrying out this title, the FMIC shall not interfere with the exercise of business judgment of an approved aggregator or approved guarantor in determining which specific mortgage loans to include in a covered guarantee transaction or a covered market-based risk-sharing transaction, including through the FMIC's use of— o The approval process for a guarantor or an aggregator established under		

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		subtitle B of title III; o Its general supervisory and examination authorities under subtitle B of title III; or o Information collected under this section or §§ 501 or 208. • Nothing in this subsection shall prevent the imposition of the variable incentive-based fees authorized in § 501, nor shall it exempt covered entities from compliance with the Fair Housing Act and ECOA as required in § 408(d). • The FMIC shall take appropriate measures designed to ensure that the requirements under this section are implemented in a manner consistent with safety and soundness principles.		
Taxpayer Protection		**§ 211 Office of Taxpayer Protection** <u>Establishment</u> The FMIC shall establish an Office of Taxpayer Protection whose functions shall include the responsibilities set forth below. <u>Responsibilities</u> • The Office of Taxpayer Protection shall semi-annually study and report to the Senate Banking and House Financial Services Committees on: o Market concentration in the secondary mortgage markets, including MIF exposure to the ten largest approved aggregators and		**§ 203 Authority to Protect Taxpayers in Unusual and Exigent Market Conditions** <u>In General</u> If Ginnie Mae, upon the written agreement of the Federal Reserve Chairman and the Treasury Secretary, and in consultation with the HUD Secretary, determines that unusual and exigent circumstances have created or threaten to create an anomalous lack of mortgage credit availability within the single-family housing market, multifamily housing market, or entire U.S. housing market that could materially and severely disrupt the functioning of the U.S. housing finance system, Ginnie Mae may, for a period of 6

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		approved guarantors, as measured by the total outstanding principal balance at origination of eligible single-family mortgage loans collateralizing single-family covered securities for which the aggregator or guarantor has obtained insurance provided under this Act in the previous 6 months; ○ The general state of underwriting standards in the origination of eligible single-family mortgage loans and the effect of insurance provided under this Act on such underwriting standards; ○ Whether the insurance under this Act produces a subsidy to any approved entity or approved entities; ○ A comparison of the treatment in the secondary mortgage markets of Ginnie Mae MBS and single-family covered securities insured under this Act, including: ▪ A discussion of the characteristics of loans collateralizing Ginnie Mae MBS and eligible single-family mortgage loans collateralizing single-family covered securities insured under this Act. ▪ An analysis of any actions taken in the secondary mortgage markets to manipulate Ginnie		months— • Modify or waive the reinsurance requirements of the Reinsurance Bid Program or the Guarantor Program; and • Establish provisional standards for approved entities. <u>Considerations</u> In exercising such authority under unusual and exigent circumstances, Ginnie Mae shall consider the severity of the conditions present in the housing markets and the risks presented to the Fund in exercising such authority. <u>Terms and Conditions</u> Insurance provided under unusual and exigent circumstances shall be subject to such additional or different limitations, restrictions, and regulations as Ginnie Mae may prescribe. <u>Bailout Strictly Prohibited</u> In exercising the authority for unusual and exigent circumstances, Ginnie Mae may not— • Provide aid to an approved entity or an affiliate of the approved entity, if such approved entity is in bankruptcy or any other Federal or State insolvency proceeding; or • Provide aid for assisting a single and specific company avoid bankruptcy or any other Federal or State insolvency proceeding.

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		Mae's guarantee and the insurance provided under this Act to the advantage of the secondary mortgage markets; and ○ What steps the FMIC has taken to minimize any potential long-term costs to taxpayers and the MIF relating to risks identified in the study. • The Office of Taxpayer Protection shall annually report to the Senate Banking and House Financial Services Committees on: ○ The adequacy of the first loss position required under this Act, including the sufficiency of any permissible risk-sharing or risk-mitigation permitted as a substitute for equity capital intended to cover the initial credit loses on a covered security before use of MIF, the ability of the first loss position to absorb credit loss on covered securities, and to protect taxpayers; and ○ The performance of eligible single-family mortgage loans collateralizing single-family covered securities insured under this Act based on current underwriting standards and how that performance differs from the performance of noneligible loans based on the underwriting standards		<u>Notice</u> Not later than 7 days after authorizing insurance or establishing provisional standards under unusual and exigent circumstances, Ginnie Mae shall submit to the Senate Banking and House Financial Services Committees a report that includes— • The justification for the exercise of such authority; • Evidence that unusual and exigent circumstances have created or threatened to create an anomalous lack of mortgage credit availability within the single-family housing market, multifamily housing market, or entire U.S. housing market that could materially and severely disrupt the functioning of the U.S. housing finance system; and • Evidence that failure to exercise such authority would have undermined the safety and soundness of the housing finance system. <u>Additional Exercise of Authority</u> • Subject to the limitation below (3 times in any 3-year period), the authority granted for unusual and exigent circumstances may be exercised for 2 additional 9-month periods within any given 3-year period, provided that Ginnie Mae, upon written agreement of the Chairman of the

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		for such noneligible loans, including with respect to: ▪ DTI ratios; ▪ LTV ratios; ▪ Credit history; ▪ Loan documentation; ▪ Occupancy status; ▪ Credit enhancements; ▪ Housing counseling by a HUD-approved counseling agency; ▪ Loan payments; ▪ Loan purpose, such as purchase or refinance; ▪ Loan product; ▪ Origination channel; ▪ Other underwriting criteria that would be useful to the Director of Taxpayer Protection; and o Recommended legislative, regulatory, or administrative actions to: ▪ Address any need to further limit MIF exposure to any one approved entity or business practice; ▪ Foster and encourage a robust private secondary mortgage market to noneligible mortgage loans and MBS that Ginnie Mae does not insure; and ▪ Assist the FMIC in protecting taxpayers, including recommending whether a		Federal Reserve and Treasury Secretary, and in consultation with the HUD Secretary— o Determines— ▪ For a second exercise of unusual and exigent circumstances authority, that a second exercise is necessary; or ▪ For a third exercise of such authority, by an affirmative vote of the Director of Ginnie Mae and an affirmative vote of 2⁄3 or more of the Federal Reserve Board then serving, that a third exercise is necessary; and o Provides notice, justification, and evidence to Congress. • Any additional exercise of authority under this subsection may occur consecutively or non-consecutively. <u>Limitation</u> The authority granted to Ginnie Mae under this section may not be exercised more than 3 times in any given 3-year period, which 3-year period shall commence upon the initial exercise of such authority. <u>Normalization and Reduction of Risk</u> Following any exercise of authority under this section, Ginnie Mae shall— • Establish a timeline for approved entities

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		countercyclical increase in the MIF reserve ratio or of approved guarantor capital standards is necessary to protect taxpayers. • The Office of Taxpayer Protection shall annually report to the Senate Banking and House Financial Services Committees on system-wide leverage in the secondary mortgage market. • The Office of Taxpayer Protection shall annually report to the Senate Banking and House Financial Services Committees on early payment defaults in eligible single-family mortgage loans for the preceding year, including any eligible single-family mortgage loan that becomes delinquent or that is in default within 24 months of origination. • In preparing such reports, the Office of Taxpayer Protection: o Shall use, to the maximum extent practicable, publicly available data and data otherwise collected under this Act; o Shall not include or review any confidential information or information collected by the FMIC as part of its supervisory or examination authorities that is confidential.		to meet the approval standards set forth in this Act; and • In a manner and pursuant to a timeline that will minimize losses to the Fund, establish a program to either— o Sell, in whole or in part, the first loss position on securities described in this section to private market holders; or o Transfer for value to approved entities, or work with approved entities to sell, in whole or in part, the first lost position on securities described in this section. <u>Authority to Respond to Sustained National Home Price Decline</u> • In the event of a significant decline of national home prices, in at least 2 consecutive calendar quarters, Ginnie Mae may for a period of 6 months permit the transfer of guarantees of eligible mortgage loans that secure securities issued under this Act if such eligible mortgage loans are refinanced, regardless of the value of the underlying collateral securing such eligible mortgage loans. Such authority may be exercised for additional 6-month periods. • Ginnie Mae shall not provide insurance under this Act to any security issued under this Act that includes mortgage

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				loans that do not meet the definition of an eligible mortgage loan, except for mortgage loans refinanced from eligible mortgage loans in securities issued under this Act. • No provision in this section shall be construed as permitting Ginnie Mae to lower any other requirement related to the requirements set forth under the definition of an eligible mortgage loan.
Agency Duties		**TITLE III—DUTIES and RESPONSIBILITIES** **Subtitle A—Duties and Authorities** **§ 301 Duties and Responsibilities** Duties The principal duties of the FMIC shall be to— • Carry out this Act in a manner that fulfills the purposes of the FMIC as described in § 201(b); • Minimize any potential long-term cost to the taxpayer, including through the use of the MIF, the assessment of insurance fees, and the approval of approved entities and credit risk-sharing mechanisms; • Facilitate fair access to the secondary mortgage market for small mortgage lenders originating eligible single-family and multifamily mortgage loans, including through the establishment, approval, and oversight of small lender mutuals;	**§ 201 NMFA Duties and Responsibilities** Standards In carrying out the duties under § 101(b), the NMFA shall— • Minimizes any potential long-term negative cost on the taxpayer; • Ensure, to the maximum extent possible— o A liquid and resilient national housing finance market for single-family and multifamily housing; and o The availability of affordable mortgage credit, including the 30-year fixed rate mortgage; • Develop standard form credit risk-sharing mechanisms, products, structures, contracts, or other security agreements that place private capital in the position of taking first losses on credit risk in front of the insurance fund for covered securities insured under this Act; • Provide insurance on any covered	

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		• Ensure integrity and discipline in the mortgage market, particularly by monitoring the safety and soundness of regulated entities and approved entities;
		• Ensure that approved entities maintain the capacity to further the requirements of the FMIC pursuant to § 201(b)(5) [FMIC purpose to credit and financing through business cycles] and that approved guarantors, approved multifamily guarantors, and approved aggregators are in compliance with § 210(a)(3) [required annual reports on underserved markets];
		• Promote the standardization of the secondary mortgage market through the use of uniform securitization agreements, servicing agreements, and the Securitization Platform; and
		• Increase transparency in single-family and multifamily mortgage markets, including through the national mortgage loan database.
		• Take necessary steps to prevent abuse and deceptive practices in the use of the credit risk-sharing mechanisms, including by:
		  ○ Creating appropriate standards relating to:
		    ▪ The vintages or categories of covered securities that are referenced by a credit risk-sharing mechanism;
		    ▪ Standardization of credit risk-
			security on which requirements for first loss regarding credit risk have been met either in the markets or by the Issuer;
			• Ensure that all geographic locations have access to both single-family and multifamily mortgage credit;
			• Charge and collect fees in exchange for providing such insurance, whereby such fees shall be sufficient to protect the taxpayer from the risk of providing such insurance and to fund the activities and operations of the NMFA;
			• Establish and maintain a MIF;
			• Facilitate securitization of eligible mortgages originated by credit unions and community and midsize banks without securitization capabilities;
			• Enforce discipline and integrity in the market for covered securities by setting standards for the Issuer and for approval of private mortgage insurers, servicers, bond guarantors, and other potential obligors;
			• Establish, operate, and maintain a database for the collection, public use, and dissemination of uniform loan level information on eligible mort gages consistent with protecting the privacy of the borrower;
			• Develop, adopt, and publish standard uniform securitization agreements for covered securities;	

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		sharing mechanism terms and features; and ▪ Measures that prevent the duplicative sale by a guarantor of the same mortgage credit risk in the same pool of eligible single-family mortgage loans; and ○ Requiring additional disclosures and affirmative representations that must be made by entities that create and issue credit risk-sharing mechanisms. <u>Scope of Authority</u> The authority of the FMIC shall include the authority to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the FMIC set forth in this Act. <u>Delegation of Authority</u> The Board of Directors may delegate to any duly authorized employee or representative, any power vested in the FMIC by law.	• Establish, operate, and maintain an electronic registry system for eligible mortgages that collateralize covered securities insured under this Act; • Oversee and supervise use of the common securitization platform developed by the business entity announced by FHFA and established by the GSEs; • Examine any loans held by the Issuer to ensure that assets that can feasibly be securitized without excessive costs are sold; • Monitor the state of the markets for placing credit risk and determine the cost to the borrower of differing methods; • Ensure that capital requirement placed on the Issuer and the reserve requirements of the MIF are adequate to address credit or counterparty risk held by the Issuer; and • Ensure that credit unions and community and mid-size banks have equal access to the common securitization platform and any other securitization platforms and are not discriminated against through discounts for volume pricing or other mechanisms. <u>Scope of Authority</u> NMFA's authority shall include the authority to exercise such incidental powers as may be necessary or appropriate to fulfill the NMFA's duties and responsibilities set forth under	

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			§ 101(b). <u>Delegation of Authority</u> The Director may delegate to NMFA officers and employees any of the NMFA functions, powers, or duties, as the Director determines appropriate.	

Credit Risk Sharing Mechanisms	**§ 106 Mandatory Risk-Sharing**
	The 1992 Act is amended by adding § 1328, Mandatory Risk-Sharing Transactions:
	• The Director shall require each GSE to develop and undertake transactions involving the GSEs' guarantee of securities and obligations based on or backed by mortgages on residential real properties designed principally for occupancy of from 1 to 4 families that provide for private market participants to share or assume credit risk associated with such mortgages, as follows:
	• The Director shall require that not less than 10% of the annual business of each GSE (measured in a manner the Director shall determine) in guaranteeing such securities and obligations involve such transactions.
	• The Director shall require that each GSE undertake multiple types of the following various transactions and structures: Transactions involving increased MI requirements, credit-linked notes and securities, senior and subordinated
		§ 302 Standards for Credit Risk-Sharing Mechanisms
		<u>Approval</u>
		• The FMIC shall develop, adopt, and publish, after notice and comment, standards for the consideration and, as appropriate, the approval of credit risk-sharing mechanisms that shall require that the first loss position of private market holders on single-family covered securities is—
		  ○ Adequate to cover losses that might be incurred in a period of economic stress, including national and regional home price declines, such as those observed during moderate to severe recessions in the U.S.; and
		  ○ Not less than 10% of the principal or face value of the single-family covered security at the time of issuance.
		• It shall be unlawful for any person to intentionally create and issue any instrument or security as a first loss position on a single-family covered
			§ 202 Credit Risk-Sharing Mechanisms, Products, Structures, Contracts, or Other Security Agreements
			<u>In General</u>
			The Director shall adopt rules concerning credit risk sharing mechanisms, products, structures, contracts, or other security agreements used to place or retain first-loss positions regarding credit risk by the Issuer with regard to a covered security or the originator regarding loans placed in such securities.
			
			<u>Private Capital</u>
			Private capital backing covered securities may include that of private market participants that purchase notes linked to credit risk or that guarantee credit risk, credit risk held by the originator, credit risk covered by capital set aside for credit risk by the Issuer, or similar mechanisms approved by the Director.
			
			<u>Residual Credit Risk</u>
			With regard to each product developed, the Director shall determine the amounts of credit risk losses that the product would cover and, if
				§ 202 Insurance Program – Either of Two
				<u>In General</u>
				Ginnie Mae shall insure 100% of each security issued by the Platform, as provided in this section.
				
				<u>Private Reinsurance</u>
				Ginnie Mae shall establish either a Reinsurance Bid Program or a Guarantor Program. In selecting which, Ginnie Mae shall determine which program is the most efficient way to operate the insurance requirements under this Act by incorporating private sector pricing.
				
				Reinsurance Bid Program
				A Reinsurance Bid Program shall include the following:
				• Before any particular quarter (or such other time period determined by Ginnie Mae), Ginnie Mae shall enter into contracts with market participants to reinsure the first 5% of loss on all securities issued by the Platform in such quarter (or other time period).

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	security structures, and such other structures and transactions as the Director considers appropriate to increase private market assumption of credit risk.	security that such person knows or in the exercise of reasonable care should have known does not satisfy the requirements of this section. Violations shall be punishable in accordance with 18 U.S.C. § 1343.
		
		<u>Approval of Credit Risk-Sharing Mechanisms</u>
		• In approving such credit risk-sharing mechanisms, the FMIC shall—
		  ○ Consider proposals that include credit-linked structures or other instruments that are designed to absorb credit losses on single-family covered securities;
		  ○ Consider any credit risk-sharing mechanisms undertaken by the GSEs;
		  ○ Ensure that the first loss position is fully funded to meet the 10% requirements;
		  ○ Ensure that each type of proposed mechanism—
		    ▪ Enables the FMIC to verify that the first loss position is fully funded;
		    ▪ Minimizes any potential long-term cost to the taxpayer;
		    ▪ Accommodates the availability of mortgage credit on equal and transparent terms in the secondary mortgage market for small mortgage lenders and
			relevant, the amount of counterparty credit risk created by the product. The Director shall determine the amount of capital that the Issuer shall hold to cover such residual credit and counterparty risk.
			
			<u>Content of Rules</u>
			Such credit risk-sharing rules shall be designed to maximize the amount of first loss credit risk that can be placed in the private markets, while minimizing additional costs to the borrowers. Such rules may apply to either the loan originators or the issuer, or both.
			
			<u>Standard</u>
			The Director shall ensure that the private capital used to cover first loss credit risk, combined with the capital required to be retained by the Issuer, is adequate to cover losses that might be incurred as a result of adverse economic conditions, wherein such conditions are generally consistent with the economic conditions, including national home price declines, observed in the U.S. during moderate to severe recessions experienced during the last 100 years.
			
			<u>Protection of Taxpayers</u>
			If the Director permits the Issuer to place or the originators to retain or place less than 5% of the first-loss credit risk, it shall adjust the amount of the capital requirements for the Issuer accordingly and may adjust the g-fee
				• Prior to any particular quarter (or such other time period determined by Ginnie Mae), Ginnie Mae shall sign—
				  ○ Contracts with market participants to reinsure the last 95% of loss on all securities issued by the Platform in such quarter (or other time period); and
				  ○ A retrocession contract with each such market participant under which Ginnie Mae will agree to offer retrocessional reinsurance to reinsure up to 90% of such 95% reinsured amount on a *pari passu* basis. (95 x 0.9 = 85.5)
				
				Guarantor Program
				A Guarantor Program shall include the following:
				• The mortgage originator or aggregator that wishes to deliver a pool of eligible mortgage loans to the Platform for securitization shall, prior to delivering such pool, contract directly with a market participant to insure the first 5% of loss on all securities issued by the Platform that are securitized by such pool of eligible mortgage loans.
				• For each such Platform security, Ginnie Mae shall sign—
				  ○ Contracts with market participants to reinsure the last 95% of loss on the

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		lenders from all geographic locations, including rural locations; ▪ Allows for broad availability of mortgage credit and secondary mortgage market financing through fluctuations in the business cycle for eligible single-family lending across all— ♦ Regions; ♦ Localities; ♦ Institutions; ♦ Property types, including housing serving renters; and ♦ Eligible borrowers; ▪ Fulfills the requirements under § 314 with respect to loan modifications and foreclosure prevention; ▪ Does not prevent the securitization of refinanced or modified single-family eligible mortgage loans within single-family covered securities during a period when the authority under § 305(i) [to respond to sustained home price declines] is exercised; ▪ Does not diminish market liquidity and resiliency; ▪ Does not prevent the refinancing	paid to the MIF to protect taxpayers against the additional risk assumed by the MIF. The Director also may determine to increase the extent to which private mortgage insurance is required in connection with loans placed in guaranteed securities. <u>Consultation</u> In determining the appropriate balance between placement of first losses credit risk and capital requirements, the Director shall consult with Treasury and the Federal Reserve. The Director also shall conduct such consultation concerning the appropriate level of g-fees to be contributed to the MIF. <u>Development Window for Risk-Sharing Mechanisms</u> • The Director shall complete the development and implementation of the initial mechanisms, products, structures, contracts, or other security agreements not later than 5 years after enactment. • In developing such mechanisms, products, structures, contracts, or other security agreements, the Director shall— o Examine proposals that include a senior-subordinated deal structure, credit-linked structures, and the use of regulated guarantors with sufficient equity capital to absorb losses associated with moderate or	security; and o A retrocession contract with each such market participant under which Ginnie Mae will agree to offer retrocessional reinsurance to reinsure up to 90% of such 95% reinsured amount on a *pari passu* basis. • If Ginnie Mae determines that it would be an efficient way to operate the insurance requirements under this Act and would encourage the incorporation of private sector pricing, Ginnie Mae may allow mortgage originators and aggregators who insure the first 5% to select the market participant who reinsures the 95%. If a market participant is selected by a mortgage originator or aggregator: o Such market participants shall be required to meet the same standards as a market participant selected by Ginnie Mae; and o For purposes of determining the insurance fee, Ginnie Mae shall contract with a private sector insurer to estimate the risk that the market participant may default. <u>Additional Program Requirements</u> • Ginnie Mae shall use a competitive bidding process to determine which market participants should be granted contracts under the Reinsurance Bid

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		of underwater eligible single-family mortgage loans; and ▪ Does not present an unnecessary risk to the MIF; and o Consider whether the approval of any credit risk-sharing mechanism will impair the operation and liquidity of forward market executions for single-family eligible mortgage loans and single-family covered securities, such as the TBA market, taking into consideration other risk-sharing options available to market participants. • The FMIC shall— o Provide prompt notice to any person seeking approval for a credit risk-sharing mechanism of the approval or denial of that credit risk-sharing mechanism; and o Make available on the website of the FMIC detailed information regarding approved mechanisms. • The FMIC may, from time to time and in its discretion— o Conduct reviews of approved credit risk-sharing mechanisms to determine whether such credit risk-sharing mechanisms continue to satisfy the considerations for approval; o Assess the functioning of the forward	severe economic downturns; o Consider any risk-sharing mechanisms, products, structures, contracts, or other security agreements undertaken by the business entity announced by FHFA and established by the GSEs to provide a common securitization platform for issuers in the secondary mortgage market; o Consider how each proposed mechanism, product, structure, contract, or other security agreement— ▪ Minimizes any potential long-term negative cost to the taxpayer; ▪ Impacts the availability of mortgage credit for consumers; ▪ Impacts the ability of small financial institutions, such as credit unions and community banks, to participate in the housing finance markets; ▪ Influences mortgage affordability; ▪ Allows for loan modifications and foreclosure prevention alternatives; ▪ Interacts with the TBA market; and ▪ Facilitates market liquidity and resiliency; and	Program, and under the Guarantor Program unless Ginnie Mae lets originators and aggregators select the 95% reinsurer. • With respect to any market participant that Ginnie Mae selects under a risk-sharing program, Ginnie Mae shall select an insurance broker, through a competitive bidding process, that will solicit bids, on behalf of Ginnie Mae, for the reinsurance contracts. • As part of a retrocession contract under either a Reinsurance Bid Program or a Guarantor Program, the market participants shall be paid a competitively-determined ceding commission for the underwriting and administrative costs of providing such reinsurance. • Ginnie Mae may, if it determines it appropriate— o Phase-in the 5 percent requirements under either program, by originally requiring a lower percentage; and o Phase-in the 90 percent requirement under either program, by originally requiring a higher percentage. <u>Insurance Fee and Terms</u> • Ginnie Mae shall set the insurance fee applicable to securities issued by the Platform in advance on a quarter-by-quarter basis, through forward contracts

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		market for eligible single-family mortgage loans and single-family covered securities, including the TBA market, to determine whether any approved credit risk-sharing mechanism has adversely affected the liquidity or resilience of such market; and ○ Suspend the approval of— ▪ Any credit risk-sharing mechanism that it determines does not satisfy the considerations for approval; or ▪ Any credit risk-sharing mechanism that it determines has adversely affected the liquidity or resilience of the forward market for eligible single-family mortgage loans and single-family covered securities, or the TBA market. ○ The FMIC shall develop an expedited process for the reinstatement of the approval of any credit risk-sharing mechanism that is suspended. If a credit risk-sharing mechanism is suspended, the credit risk-sharing mechanism may be adapted or revised, as necessary, for reconsideration for reinstatement of the approval of the credit risk-sharing mechanism under this expedited process. The suspension of the	○ Ensure that lenders of all sizes and from all geographic locations, including rural locations, have equitable access to secondary mortgage market financing. • Not later than 1 year after enactment, and annually thereafter until 5 years after enactment, the Director shall submit a report to the Senate Banking and House Financial Services Committees that— ○ Analyzes of the cost of placing credit risk exposure in the private markets, examining credit spreads in the markets; surveys by other agencies of credit conditions; comparisons between the cost of raising funds in the capital markets and the pricing of mortgage credit risk; and such other measures as the NMFA believes are appropriate in analyzing the cost and availability of private credit risk placement; ○ Details the benefits and drawbacks of each mechanism, product, structure, contract, or other security agreement that the Director considered in carrying out the requirement of this section; ○ Describes the operation and execution of any mechanisms, products, structures, contracts, or other security agreements that the Director determines best fulfills the	established with market participants based on the volume and type of securities Ginnie Mae anticipates the Platform issuing during such quarter. • The insurance fee shall reflect the anticipated cost to Ginnie Mae of providing insurance, including the cost of obtaining reinsurance. Ginnie Mae may adjust the insurance fee to reflect the historic quality of deliveries and rating of mortgage loans made by the mortgage originators or aggregators that originated or aggregated the mortgage loans included in the pool of eligible mortgage loans backing the security being insured, but in making such adjustments, Ginnie Mae shall ensure that the weighted average of the entire book of business matches the ultimate price determination. • The rate charged by a private market participant that contracts with Ginnie Mae pursuant to either the Reinsurance Bid Program or the Guarantor Program— ○ May not change during the first 100-day period for which such reinsurance is effective; and ○ Shall be adjusted based on market conditions, on a period to be determined by the Director. <u>Standards for Market Participants</u> • Ginnie Mae shall issue such general

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		approval of any credit risk-sharing mechanism shall have no effect on the status of single-family covered securities and related instruments using the credit risk-sharing mechanism that were issued prior to the suspension. • In addition to credit risk-sharing mechanisms approved by the FMIC, the FMIC shall consider and may approve additional fully-funded credit risk-sharing mechanisms that— o May be employed by an approved guarantor to manage the credit risk relating to guarantees provided for single-family covered securities; and o Do not represent the first loss position with respect to single-family covered securities. Nothing in this paragraph shall be construed to limit an approved guarantor from engaging in other forms of risk sharing or risk mitigation using mechanisms that have not been considered or approved by the FMIC. • Not later than 1 year after the agency transfer date, and annually thereafter until the system certification date, the FMIC shall submit a report to the Senate Banking and House Financial Services Committees that— o Discusses each credit risk-sharing	requirements of this section, and explains how the Director arrived at this determination. After the 5-year period and submission of the report required under subparagraph (A) [which requires multiple annual reports], each time the Director develops an additional credit risk-sharing mechanism, product, structure, contract, or other security agreement that fulfills the requirements of this section, the Director shall submit a report to the Senate Banking and House Financial Services Committees addressing the identical concerns required to be addressed in those reports.	standards for market participants under either the Reinsurance Bid Program or the Guarantor Program as Ginnie Mae determines appropriate. • Notwithstanding any other provision of law, Ginnie Mae shall require a market participant in either the Reinsurance Bid Program or the Guarantor Program to maintain at least an A-credit rating and shall consult with credit rating agencies and State insurance commissions, where applicable, to verify such rating. Ginnie Mae may waive or modify this credit rating requirement with respect to a new market participant. • For market participants in either the Reinsurance Bid Program or the Guarantor Program, Ginnie Mae shall establish, by regulation, capital standards and related solvency standards necessary to implement the provisions of this Act. o The regulations required under this paragraph shall define all such terms as are necessary to carry out the purposes of this paragraph. o In defining instruments and contracts that qualify as capital, Ginnie Mae— ▪ Shall include such instruments and contracts that will absorb losses before the Fund; and ▪ May assign significance to those instruments and contracts based

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		mechanism that the Chairperson considered; ◦ Describes how the operation and execution of each approved credit risk-sharing mechanism fulfills the requirements of this section; and ◦ Explains how the FMIC arrived at the determinations, including a discussion of the data considered. • On the system certification date and annually thereafter, the FMIC shall publish in the Federal Register a list of the credit risk-sharing mechanisms that it approved or suspended, addressing the identical concerns as in the report to Congress and, with respect to any suspension, the considerations that are no longer satisfied. • The FMIC shall include in the reports a description of the credit risk-sharing mechanisms approved for multifamily guarantors pursuant to § 703. <u>Collateral Diversification Standards</u> The FMIC shall establish, after notice and comment, standards for the appropriate minimum level of diversification for eligible single-family mortgage loans that collateralize single-family covered securities that are issued subject to an approved credit risk-sharing mechanism in order to reduce the credit risk such single-family covered		on the nature and risks of such instruments and contracts. ◦ Solely for the purposes of calculating a capital ratio appropriate to the business model of a market participant, Ginnie Mae shall consider for the denominator— ▪ Total assets; ▪ Total liabilities; ▪ Risk in force; or ▪ Unpaid principal balance. ◦ The capital and related solvency standards shall be designed to— ▪ Ensure the safety and soundness of a market participant; ▪ Minimize the risk of loss to the Fund; ▪ In consultation and coordination with the Federal Reserve, FDIC, and OCC, reduce the potential for regulatory arbitrage between capital standards for market participants and capital standards promulgated by Federal regulatory agencies for insured depository institutions and their affiliates; and ▪ Be specifically tailored to accommodate a diverse range of business models that may be employed by market participants. • To prevent or mitigate risks to the U.S.

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		securities could pose to the MIF. <u>Rule of Construction</u> Nothing in this section shall be construed to require the FMIC to approve any credit risk-sharing mechanism. <u>Applicability of the Commodity Exchange and Securities Acts</u> • No counterparty that enters into a swap, as defined by § 1a of the Commodity Exchange Act (7 U.S.C. 1a) (CEA), for purposes of structuring any FMIC-approved credit risk-sharing mechanism, which is designed to be used or is used by a private market holder to assume losses and to reduce the specific risks arising from losses realized under such credit risk-sharing mechanism associated with any single-family covered security insured in accordance with §§ 303 or 305, shall be deemed, by reason of such swap transaction, to be a commodity pool, as defined in CEA § 1a. Before approving any credit risk-sharing mechanism that would be exempt from the CEA, the FMIC shall consult with the CFTC. • Any credit risk-sharing mechanism that is approved by the FMIC pursuant to this section, which is designed to be used or is used by a private market holder to assume losses and to reduce the specific risks		secondary mortgage market that could arise from the material financial distress or failure, or ongoing activities, of large market participants that insure securities under this Act, Ginnie Mae— o Shall establish by regulation supplemental capital requirements for such large market participants; and o May establish by regulation such other standards that Ginnie Mae determines necessary or appropriate. o Shall define the term "large market participant". <u>Conflict of Interests</u> Ginnie Mae shall issue regulations to prevent conflicts of interest by market participants contracting with Ginnie Mae under this section. <u>Insurance Fund</u> • There is established an insurance fund (the "Fund"), which Ginnie Mae shall— o Maintain and administer; and o Use to cover losses incurred under this section with respect to MBS. • Ginnie Mae shall endeavor to ensure that the Fund attains a reserve balance— o Of 1.25% of the sum of the outstanding principal balance of the securities for which insurance is

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		arising from loses realized under such credit risk-sharing mechanism associated with any single-family covered security insured in accordance with §§ 303 or 305, shall be exempt from section 27B of the Securities Act of 1933 (15 U.S.C. 77z-2a). Before approving any credit risk-sharing mechanism that would be exempt from § 27B, the FMIC shall consult with the SEC.		being provided under this Act within 5 years of the date on which the Director determines that the Platform is fully functioning, and to strive to maintain such ratio thereafter, subject to clause (ii); and o Of 2.50% of the sum of the outstanding principal balance of the securities for which insurance is being provided under this Act within 10 years of the date on which the Director determines that the Platform is fully functioning, and to strive to maintain such ratio at all times thereafter. • Notwithstanding insurance fees and terms set quarterly to cover Ginnie Mae's costs, Ginnie Mae may raise or lower the fee charged for insurance under this section to maintain the reserve balance. • The Fund shall be credited with any fees received by Ginnie Mae in exchange for insurance made available under this section. • Amounts in the Fund may not be invested in any— o Standardized MBS insured under this Act; or o MBS issued by the GSEs. • The full faith and credit of the U.S. is pledged to the payment of all amounts that may be required to be paid under any

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				insurance provided under this section. **§ 302 Risk-Sharing Pilot Programs** Not later than 12 months after enactment, each GSE shall establish a risk-sharing pilot program to develop private sector first-loss positions on MBS. Such first-loss positions shall be a percentage of the principal or face value of an MBS, as determined from time-to-time by the Director, taking into consideration market conditions and the capability of the private sector to assume credit risk. **§ 404 Other Forms of Multifamily Risk-Sharing** The Director may establish such other methods and manner of risk-sharing and risk transfer relating eligible multifamily mortgage loans, in addition to the methods and manners authorized under this title, as may be appropriate taking into consideration the particular nature and characteristics of the multifamily housing finance market, which may include any risk-sharing activities of the GSEs relating to the multifamily housing business. **§ 405 Ginnie Mae Securitization of FHA Risk-Sharing Loans** <u>Qualified Participating Entities Risk-Sharing Program</u> Sections 542(b)(8) and 542(c)(6) of the Housing and Community Development Act of

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				1992 (12 U.S.C. 1715z–22(b)(8)) (which prohibits Ginnie Mae from securitizing certain multifamily loans in risk sharing arrangements) is amended to permit Ginnie Mae to securitize at the discretion of the Director, any multifamily loan insured under this section, provided that— • FHA provides mortgage insurance based on the unpaid principal balance of the loan, as shall be described in the risk-sharing agreement; • FHA shall not require an assignment fee for mortgage insurance claims related to the securitized mortgages; and • Any successors and assigns of the risk-sharing partner (including the holders of credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named) shall not assume any obligation under the risk-sharing agreement and may assign any defaulted loan to the FHA in exchange for payment of the mortgage insurance claim. • The risk-sharing agreement shall provide for reimbursement to Ginnie Mae by the risk-sharing partner or partners for either all or a portion of the losses incurred on the loans insured. There is a conforming amendment to Ginnie Mae's charter.
MIF		**§ 303 Insurance; MIF**	**§ 203 MIF**	

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		Authority
		The FMIC shall, in exchange for a fee, insure the payment of principal and interest on a covered security with respect to any failure to pay on such covered security subject to the requirements of this section.
		
		Terms and Conditions
		The FMIC shall, by regulation, establish terms and conditions for the provision of insurance under this Act. The terms and conditions shall, for single-family covered securities, include terms and conditions that ensure—
		• Eligible single-family mortgage loans collateralizing single-family covered securities have been delivered to the Platform; and
		• With respect to each single-family covered security, either—
		  o Private market holders have taken a first loss position that satisfies § 302; or
		  o An approved guarantor has provided a guarantee in satisfaction of § 311.
		The terms and conditions shall, for multifamily covered securities, include terms and conditions that ensure, with respect to each multifamily covered security, that an approved multifamily guarantor has provided a guarantee in satisfaction of § 703.
		
		Cash Payments; Continued Operations
			Establishment
			There is established the MIF, which the NMFA shall—
			• Maintain and administer; and
			• Use to cover losses incurred on covered securities insured under this Act, when such losses exceed the first position losses absorbed by private market holders of such securities and the capital held by the Issuer pursuant to § 213.
			
			Deposits
			The MIF shall be credited with any—
			• Insurance fee amounts required to be deposited in the Fund under this section; and
			• Amounts earned on investments of MIF funds that are not employed.
			
			Fiduciary Responsibility
			The Director shall have the responsibility to ensure that the MIF remains financially sound.
			
			Use
			• The MIF shall be solely available to the NMFA for use by the NMFA to carry out the functions authorized by this Act and may not be used or otherwise diverted to cover any other expense of the Federal Government.
			• Notwithstanding any other provision of law, amounts received by the MIF	

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
		The FMIC shall facilitate the timely and unconditional payment of principal and interest on covered securities insured under this Act by paying, in cash when due, any shortfalls of principal and interest due on the covered security, and continuing to charge and collect any fees for the provision of insurance relating to the covered security in the event of any losses that may be incurred: • In excess of the first loss position assumed by a private market holder; • In the case of a covered security that is guaranteed by an approved guarantor or approved multifamily guarantor as a result of the guarantor's insolvency; or • Upon the servicer's or guarantor's failure to transfer to the bond administrator for the covered security funds in amounts necessary to make timely payment of principal and interest due on the covered security. <u>Cost Recovery</u> If the FMIC makes a payment on a covered security based on a servicer's or guarantor's failure.to transfer funds necessary to make timely payment of principal and interest due, the FMIC shall recover such amount paid, and reasonable costs and expenses, from the servicer or guarantor. <u>MIF</u>	pursuant to fees shall not be subject to apportionment for the purposes of 31 U.S.C. chapter 15 or under any other authority. <u>MIF Reserve Ratio Goals</u> • The Director shall endeavor to ensure that the MIF attains a reserve balance— o Of 1.25% of the sum of the outstanding principal balance of the covered securities for which insurance is being provided under this title within 7 years of the NMFA certification date, and to strive to maintain such ratio thereafter, subject to the following; and o Of 2.25% of the sum of the outstanding principal balance of the covered securities for which insurance is being provided under this title within 12 years of the NMFA certification date, and to strive to maintain such ratio at all times thereafter. • The Director may reduce such percentages if a determination is made that the level of reserves held by the MIF is considered to be actuarially fair by an actuary hired by the NMFA for that purpose. To be considered to be actuarially fair for this purpose, reserves held in the MIF, in combination with the	

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
		• On the agency transfer date, there shall be established the MIF, which the FMIC shall— o Maintain and administer; o Use to carry out the insurance functions authorized under this Act, including any function or action authorized under § 305; and o Invest. • The MIF shall be credited with any— o Fee amounts required to be deposited in the MIF under this section; o Amounts earned on investments; o Assessment amounts authorized to be deposited into the Fund under § 405(b); and o Assessment amounts required to be deposited into the Fund under § 608(c). • In determining the amount of any FMIC-charged fee, the FMIC shall charge a separate fee for single-family covered securities and multifamily covered securities, as appropriate for each asset class. The FMIC shall keep and maintain separate accounting for deposits in the MIF related to fee amounts charged and collected for the insurance of single-family covered securities and multifamily covered securities. • The FMIC has the responsibility to ensure that the MIF remains financially sound.	capital held by the Issuer for the risks that it holds, should be adequate to cover losses at least equal to any experienced in the housing markets over the last 100 years. <u>Maintenance of Reserve Ratio; Establishment of Fees</u> • The NMFA shall charge and collect a fee, and may in its discretion increase or decrease such fee, in connection with any insurance provided under this title to— o Achieve and maintain the reserve ratio goals; o Achieve such reserve ratio goals, if the actual balance of such reserve is below the goal amounts; and o Fund the operations of the NMFA. • In exercising the fee authority, the NMFA shall consider— o The expected operating expenses of the MIF; o The risk of loss to the MIF in carrying out the requirements under this Act; o The risk presented by, and the loss absorption capacity of, the credit enhancement that is provided on the pool of eligible mortgages collateralizing the covered security to be insured under this title; o Economic conditions generally	

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
		• The MIF shall be solely available to the FMIC to carry out the functions authorized by this Act and for the expenses of the FMIC and for— ○ Compensation of FMIC employees; ○ Purposes of— ▪ Funding the CSP; and ▪ Establishing the Securitization Platform under § 321, multifamily subsidiaries under § 701, the initial Small Lender Mutual under § 315, and any other entity authorized by this Act that facilitates an orderly transition to the new housing finance system; and ○ All other FMIC expenses. The MIF may not be used or otherwise diverted to cover any other expense of the Federal Government. • Notwithstanding any other provision of law, amounts in the MIF shall not be subject to apportionment for the purposes of chapter 15 of 31 U.S.C. or under any other authority. • Amounts in the MIF shall not be construed to be Government or public funds or appropriated money. • The FMIC shall endeavor to ensure that the MIF attains a reserve ratio— ○ Of 1.25% of the sum of the outstanding principal balance of the	affecting the mortgage markets; ○ The extent to which the reserve ratio of the MIF met— ▪ The reserve ratio set for the preceding 12-month period; or ▪ The reserve ratio goals; and ○ Any other factor that the NMFA determines appropriate. • The required fee— ○ Shall be set at a uniform amount applicable to all institutions purchasing insurance under this title; ○ May not vary— ▪ By geographic location; or ▪ By the size of the institution to which the fee is charged; ○ May not be based on the volume of insurance to be purchased by an originator; and ○ May vary based on past performance of loans supplied by the originator. • Any fee amounts collected under this subsection shall be deposited in the MIF. <u>Investments</u> Amounts in the MIF that are not otherwise employed— • Shall be invested in obligations of the U.S.; and • May not be invested in any covered security insured under this Act.	

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
		covered securities for which insurance is being provided under this title within 5 years of the system certification date; and ○ Of 2.50% of the sum of the outstanding principal balance of the covered securities for which insurance is being provided under this title within 10 years of the system certification date, and after that date, endeavor to ensure that the MIF maintains a reserve ratio of not less than 2.50% of the sum of the outstanding principal balance of the covered securities for which insurance is being provided under this title. • The FMIC shall charge and collect a fee, and may in its discretion increase or decrease such fee, in connection with any insurance provided under this title to achieve and maintain the MIF reserve ratio goals and fund the FMIC's operations. • In establishing fees, the FMIC shall consider— ○ The expected operating expenses of the MIF; ○ The risk of loss to the MIF in carrying out the requirements under this Act; ○ The risk presented by, and the loss	<u>Initial Funding</u> FHFA, in consultation with Treasury, shall have authority to dedicate a portion of the g-fees received by the GSEs during the period in which they continue to conduct new business to initial funding of the MIF. **§ 204 Insurance** <u>Authority</u> The Director shall, upon application and in exchange for a fee in accordance with § 203(f), insure the payment of principal and interest on a covered security with respect to losses that may be incurred on such security. Payment under the insurance shall take place after first loss credit risk placement or retention and the capital of the Issuer has been exhausted, as determined by the NMFA. <u>Cash Payments; Continued Operations</u> In the event of a payment default on an eligible mortgage that collateralizes a covered security insured under this section that exceeds the first loss position assumed by a private market holder and the capital of the Issuer has been exhausted, the NMFA shall— • Pay, in cash when due, any shortfalls in payment of principal and interest under the eligible mortgage; and • Continue to charge and collect any fees for the provision of insurance relating to the covered security.	

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
		absorption capacity of, the credit risk-sharing mechanism or guarantee that is provided on the pool of eligible mortgage loans collateralizing the covered security to be insured under this title; ○ Economic conditions generally affecting the mortgage markets; ○ The extent to which the MIF reserve ratio met— ▪ The reserve ratio set for the preceding 12-month period; or ▪ The reserve ratio goals; and ○ Any other factors that the FMIC determines appropriate. • The fee— ○ Except as below, shall be set at a uniform amount applicable to all institutions purchasing insurance under this title; ○ May not vary— ▪ By geographic location; or ▪ By the size of the institution to which the fee is charged; and ○ May not be based on the volume of insurance to be purchased. This shall not prohibit or be construed to prohibit the FMIC from charging separate and distinct fees based on the type or form of credit risk-sharing mechanism applicable to the covered security to be insured.	<u>Full Faith and Credit</u> The full faith and credit of the U.S. is pledged to the payment of all amounts which may be required to be paid under any insurance provided under this section. <u>Prohibition on Federal Assistance</u> Subject to the next sentence and notwithstanding any other provision of law, no Federal funds may be used to purchase or guarantee obligations of, issue lines of credit to, provide direct or indirect access to any financing provided by the U.S. Government to, or provide direct or indirect grants and aid to any private market holder of the first loss position on a covered security which, on or after the date of enactment of this Act, has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the U.S. Government. This prohibition shall not apply with respect to liquidity facilities intended to address market conditions or related to the timing of payments.	

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055

		• Any fee amounts collected shall be deposited in the MIF.
		• The full faith and credit of the U.S. is pledged to the payment of all amounts from the MIF which may be required to be paid under any insurance provided under this title.
		• The Board of Directors may request Treasury to invest such portion of amounts in the MIF that, in the judgment of the Board, is not required to meet the "current--suggested deletion needs of the" FMIC. Treasury shall invest such portions in U.S. obligations bearing interest at a rate determined by Treasury, taking into consideration, at the time of the investment, market yields on outstanding U.S. marketable obligations of comparable maturity. Amounts in the MIF may not be invested in any—
		  o Covered security insured under this title; or
		  o MBS issued by the GSEs.
		
		<u>Mandatory Loss Review by FMIC IG</u>
		If the MIF is required to make any payment of principal or interest, or both, on a covered security with respect to losses incurred on such covered security to any holder of such covered security, the FMIC IG shall—
		• Review and make a written report to the FMIC regarding the FMIC's decision to		

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		insure such covered security and the FMIC's supervision of all market participants involved in the creation, issuance, servicing, guarantee of, or insurance of such covered security, which shall ascertain why the covered security resulted in a loss to the MIF, and make recommendations for preventing any such loss in the future; and
		• Provide a copy of the report to
		  o GAO;
		  o The appropriate Federal banking agency or State regulatory authority, as appropriate, of any market participant involved in the creation, issuance, servicing, guarantee of, or insurance of such covered security; and
		  o The Senate Banking and House Financial Services Committees.
		• The IG shall provide the report as expeditiously as possible, but in no event later than 6 months after the date on which the loss was incurred.
		• The FMIC shall disclose any such report on losses, upon a FOIA request, without excising—
		  o Any portion under section 552(b)(5) [exemption from disclosure for inter-agency or intra-agency communication not available to nonlitigants]; or		

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		◦ Any information under paragraph (4) (other than trade secrets) [trade secrets and confidential information] or paragraph (8) [examination reports] of 5 U.S.C. § 552(b). This does not require the FMIC to disclose the name of any holder of the covered security, or information from which the identity of such a person could reasonably be ascertained. • GAO shall, under such conditions as it determines to be appropriate, review any such IG report and recommend to the FMIC improvements in the supervision of market participants.		
MIF Initial Funding		**§ 608 Initial Fund Level for the MIF** Fund Amount on System Certification Date The FMIC shall endeavor to ensure that the MIF attains a reserve ratio of 0.75% of the sum of the outstanding principal balance of the covered securities for which insurance is projected to be provided under this Act for the 5 year-period beginning on the system certification date. Report to Congress on Projection The projection shall be determined by the FMIC and reported to the Senate Banking and House Financial Services Committees. Assessments Pursuant to the authorities granted to the		

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<table>
<tr><th></th><th>PATH Act, H.R. 2767</th><th>S. 1217</th><th>Waters Discussion Draft</th><th>H.R. 5055</th></tr>
<tr><td></td><td></td><td>FMIC under § 1316(i) of the 1992 Act, as added by § 405 (transition assessments), the amount of funds required to be held by the MIF under subsection (a) shall be acquired through assessments on the GSEs. The assessments required under this subsection shall be in effect for the period beginning on enactment and ending on the system certification date. The assessments required under this subsection shall be deposited in the MIF.</td><td></td><td></td></tr>
<tr><td>Loan Limits</td>
<td>§ 105 Modifications to Increases in Conforming Loan Limits
The conforming loan limit under current law is adjusted by adding an amount tied to house price increases, and if house prices decrease, there is no adjustment. This would be amended to permit the adjustment to be a decrease when house prices decrease.
The bill would strike a sentence (the “Repealed Sentence”) that increases the conforming loan limit, for a particular house size, in areas where 115% of the median house price, for that size house, exceeds the conforming loan limit for the same size house, to the lesser of 150% of the conforming loan limit for that size house, or 115% of the median house price for that size house.
It would add a provision that increases the conforming loan limit in some</td>
<td>§ 304 Loan Limits; Housing Price Index
<u>Establishment</u>
The FMIC shall establish limitations governing the maximum original principal obligation of eligible single-family mortgage loans that may collateralize a covered security to be insured by the FMIC under this title.

<u>Calculation of Amount</u>
This loan limit shall be calculated with respect to the total original principal obligation of the eligible single-family mortgage loan and not merely with respect to the amount insured by the FMIC.

<u>Maximum Limits</u>
Except as provided below, the maximum loan limit shall not exceed:
<table><tr><th># Units</th><th>Limit</th></tr><tr><td>1</td><td>$417,000</td></tr></table></td>
<td>§ 504 Conforming Loan Limits
Beginning on the date of the enactment, the limitations governing the maximum original principal obligation of conventional mortgages that may be purchased by Fannie Mae or Freddie Mac the Federal National shall be:
<table><tr><th># Units</th><th>Limit</th></tr><tr><td>1</td><td>$417,000</td></tr><tr><td>2</td><td>$533,850</td></tr><tr><td>3</td><td>$645,300</td></tr><tr><td>4</td><td>$801,950</td></tr></table>
These limitations shall be adjusted effective January 1 of each year beginning after the date of enactment of this Act. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month</td>
<td>§ 201(f)
<u>Loan Limits; Housing Price Index</u>
Ginnie Mae shall establish limitations governing the maximum original principal obligation of eligible mortgage loans that may collateralize a security issued under this Act.
The limitation loan limit shall be calculated with respect to the total original principal obligation of the eligible mortgage loan and not merely with respect to the amount insured by Ginnie Mae.
The maximum loan limit amount shall not exceed:
<table><tr><th># Units</th><th>Limit</th></tr><tr><td>1</td><td>$417,000</td></tr><tr><td>2</td><td>417,000 x 1.28 or $533,760</td></tr><tr><td>3</td><td>417,000 x 1.55 or $646,350</td></tr><tr><td>4</td><td>417,000 x 1.92 or $800,640</td></tr></table></td></tr>
</table>

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<table>
<tr><th></th><th>PATH Act, H.R. 2767</th><th>S. 1217</th><th>Waters Discussion Draft</th><th>H.R. 5055</th></tr>
<tr>
<td></td>
<td>circumstances.
o The new provision only applies, for properties of any size in a particular area, if, as of the date of enactment, the loan limits in effect for the area for any size property were determined under the Repealed Sentence.
o If the new provision applies, it applies only for five years.

Calculations under the new provision are as follows. They use an amount that varies for five years and that depends on house size:

<table>
<tr><td>s</td><td>Year 1</td><td>Year 2</td><td>Year 3</td><td>Year 4</td><td>Ye</td></tr>
<tr><td></td><td>20,000</td><td>40,000</td><td>60,000</td><td>80,000</td><td>100</td></tr>
<tr><td></td><td>25604</td><td>51,208</td><td>76,812</td><td>102,416</td><td>128</td></tr>
<tr><td></td><td>30,950</td><td>61,900</td><td>92,850</td><td>123,800</td><td>154</td></tr>
<tr><td></td><td>38,463</td><td>76,926</td><td>103,389</td><td>153,852</td><td>192</td></tr>
</table>
To calculate the loan limit for an X-unit home in an area where 115% of the median house price for an X-unit home exceeds the conforming loan limit for an X-unit, use the lesser of the following three amounts:
• The difference between:
o 150% of the conforming loan limit for a X-unit house (use 150% of the applicable limit for all calculations); and
o The dollar amount from the table for</td>
<td><table>
<tr><td>2</td><td>417,000 x 1.28 or $533,760</td></tr>
<tr><td>3</td><td>417,000 x 1.55 or $646,350</td></tr>
<tr><td>4</td><td>417,000 x 1.92 or $800,640</td></tr>
</table>
• These limits shall be adjusted effective January 1 of each year beginning after the effective date of this Act. Each adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Chairperson. If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next upward adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the house price index since the last adjustment. Declines in the house price index shall be accumulated and then reduce increases until subsequent increases exceed prior declines.
• The limits may be increased by not more than 50% with respect to properties</td>
<td>or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained pursuant to § 1322 of the 1992 Act. If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the house price index since the last adjustment. Declines in the house price index shall be accumulated and then reduce increases until subsequent increases exceed prior declines.
• The limitations shall be increased by not to exceed 50% with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands.</td>
<td>• The limits shall be adjusted effective January 1 of each year beginning after the effective date of this Act. Each adjustment shall be made by adding to each such amount (as previously adjusted) a percentage thereof equal to the percentage increase, during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by Ginnie Mae pursuant to this section. If the change in such house price index during the most recent 12-month or 4-quarter period ending before the time of determining such annual adjustment is a decrease, then no adjustment shall be made for the next year, and the next upward adjustment shall take into account prior declines in the house price index, so that any adjustment shall reflect the net change in the house price index since the last adjustment. Declines in the house price index shall be accumulated and then reduce increases until subsequent increases exceed prior declines.
• The limits may be increased by not more than 50% with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. The limits shall also be increased, with respect to properties of a</td>
</tr>
</table>

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
	the house size and year; • 115% of the median house price in the area for an X-unit house; or The limit in effect for the house size (number of units) and area under the Repealed Sentence, as in effect immediately before enactment, as of the date of enactment.	located in Alaska, Guam, Hawaii, and the Virgin Islands. Such foregoing limits shall also be increased, with respect to properties of a particular size located in any area for which 115% of the median house price for such size residence exceeds the otherwise applicable limit for such size residence, to the lesser of 150% of such limit for such size residence or the amount that is equal to 115% of the median house price in such area for such size residence. <u>Housing Price Index</u> The FMIC shall establish and maintain a method of assessing a national average single-family house price for use in calculating the loan limits for eligible single-family mortgage loans, and other averages as the FMIC considers appropriate, including— • Averages based on different geographic regions; and • An average for houses whose mortgage collateralized single-family covered securities. In establishing the method of assessing house prices, the FMIC may take into consideration the data collected in carrying out the functions described under § 333, and such other data, existing house price indexes, and other measures as the FMIC considers appropriate.		particular size located in any area for which 115% of the median house price for such size residence exceeds the limit for such size residence set forth in the chart above, to the lesser of 150% of the limit for such size residence or the amount that is equal to 115% of the median house price in such area for such size residence. • Ginnie Mae shall establish and maintain a method of assessing a national average single-family house price for use in calculating the loan limits for single-family mortgage loans, and other averages as Ginnie Mar considers appropriate, including— o Averages based on different geographic regions; and o An average for houses whose mortgage collateralized single-family covered securities. In establishing the method of assessing house prices, Ginnie Mae may take into consideration such data, including existing house price indexes, and other measures as Ginnie Mae considers appropriate. <u>Authority for Loan-Level Enhancement</u> With respect to an eligible mortgage loan that is or will be contained in a pool of mortgages delivered to the Platform, the mortgage originator of such mortgage loan may enter

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				into agreements with market participants to provide loan-level enhancement of such mortgage loan.
Exigent Circumstances		**§ 305 Authority to Protect Taxpayers in Unusual and Exigent Market Conditions** In General If the FMIC, upon the written agreement of the Chairman of the Federal Reserve and Treasury Secretary, and in consultation with HUD, determines that unusual and exigent circumstances have created or threaten to create an anomalous lack of mortgage credit availability within the single-family housing market, multifamily housing market, or entire U.S. housing market that could materially and severely disrupt the functioning of the U.S. housing finance system, the FMIC may, for a period of 6 months— • Provide insurance in accordance with § 303 to any single-family covered security regardless of whether such security has satisfied the requirements of § 302; and • Establish provisional standards for approved entities, notwithstanding any standard required under subtitle B or § 703, pursuant to § 607. Considerations In exercising such authority, the FMIC shall consider the severity of the conditions present in the housing markets and the risks presented		

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		to the MIF in exercising such authority. Terms and Conditions Insurance provided under such a determination shall be subject to such additional or different limitations, restrictions, and regulations as the FMIC may prescribe. Bailout Strictly Prohibited In exercising this authority, the FMIC may not— • Provide aid to an approved entity or an affiliate of the approved entity, if such approved entity is in bankruptcy or any other Federal or State insolvency proceeding; or • Provide aid to assist a single and specific company avoid bankruptcy or any other Federal or State insolvency proceeding. Notice Not later than 7 days after authorizing insurance or establishing provisional standards under this section, the FMIC shall submit to the Senate Banking and House Financial Services Committees a report that includes— • The justification for the exercise of authority to provide such insurance or establish such provisional standards; • Evidence that unusual and exigent circumstances have created or threatened to create an anomalous lack of mortgage		

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		credit availability within the single-family housing market, multifamily housing market, or entire U.S. housing market that could materially and severely disrupt the functioning of the U.S. housing finance system; and • Evidence that failure to exercise such authority would have undermined the safety and soundness of the housing finance system. <u>Additional Exercise of Authority</u> Subject to the limitation below, the authority to provide insurance in unusual and exigent circumstances may be exercised for 2 additional 9-month periods within any given 3-year period, provided that the FMIC, upon the written agreement of the Chairman of the Federal Reserve and the Treasury Secretary, in consultation with HUD— • Determines— o For a second exercise of such authority, by an affirmative vote of 2⁄3 or more of the Board of Directors then serving, that a second exercise of such authority is necessary; or o For a third exercise of such authority, by an affirmative vote of 2⁄3 or more of the Board of Directors then serving, and an affirmative vote of 2⁄3 or more of the Federal Reserve Board then serving, that a third		

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		exercise of such authority is necessary; and
		• Provides the same notice to Congress as for any exercise of such authority.
		Any additional exercise of authority under this subsection may occur consecutively or non-consecutively.
		
		<u>Limitation</u>
		The authority granted to the FMIC under this section may not be exercised more than 3 times in any given 3-year period, which 3-year period shall commence upon the initial exercise of authority.
		
		<u>Normalization and Reduction of Risk</u>
		Following any exercise of authority under this section, the FMIC shall—
		• Establish a timeline for approved entities to meet the approval standards set forth in this Act; and
		• In a manner and pursuant to a timeline that will minimize losses to the MIF, establish a program to either—
		  o Sell, in whole or in part, the first loss position on covered securities issued pursuant to this section to private market holders; or
		  o Transfer for value to approved entities, or work with approved entities to sell, in whole or in part, the first lost position on covered		

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
		securities issued pursuant to this section. <u>Authority to Respond to Sustained National Home Price Decline</u> • In the event of a significant decline of national home prices, in at least 2 consecutive calendar quarters, the FMIC, by an affirmative vote of 2⁄3 or more of the Board of Directors then serving, may for a period of 6 months permit the transfer of guarantees of eligible mortgage loans that secure covered securities if such eligible mortgage loans are refinanced, regardless of the value of the underlying collateral securing such eligible mortgage loans. • This authority may be exercised for additional 6-month periods, if upon each additional extension of such authority there is an affirmative vote of 2⁄3 or more of the Board of Directors then serving. • The FMIC shall not provide insurance under this section to any covered security that includes mortgage loans that do not meet the definition of an eligible mortgage loan, as defined by this Act, except for mortgage loans refinanced from eligible mortgage loans in covered securities. • No provision in this section shall be construed as permitting the FMIC to		

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		lower any other requirement related to the requirements set forth under the definition of an eligible mortgage loan.		
Agency Powers		**§ 306 General Powers** <u>Corporate Powers</u> The FMIC shall have the power— • To adopt, alter, and use a corporate seal, which shall be judicially noticed; • To enter into, execute, and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the U.S., or with any political subdivision thereof, or with any person, firm, association, or corporation; • To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; • In its corporate name, to sue and to be sued, and to complain and to defend, in any court or tribunal of competent jurisdiction, Federal or State, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the FMIC; • To conduct its business without regard to any qualification or similar statute in any U.S. State; • To lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain,	**§ 205 General Powers** <u>Corporate Powers</u> The NMFA shall have power— • To adopt, alter, and use a corporate seal, which shall be judicially noticed; • To enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the U.S., or with any State, Territory, or possession, or Puerto Rico, or with any political subdivision thereof, or with any person, firm, association, or corporation; • To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; • In its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the NMFA; • To conduct its business without regard to any qualification or similar statute in any State of the U.S., including D.C., Puerto Rico, and the Territories and possessions	

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		modernize, renovate, improve, use, and operate such property, and to sell, for cash credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may deem necessary or appropriate; • To prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; • To accept gifts or donations of services, or property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; • To appoint and supervise personnel employed by the FMIC; • To establish and maintain divisions, units, other offices within the FMIC, including those established in §§ 207, 208, and 209, to carry out the responsibilities of this Act, and to satisfy the requirements of other applicable law; and • To manage the affairs of the FMIC and conduct the business of the FMIC, as necessary. <u>Litigation Authority</u> • In enforcing any provision of this Act, any regulation or order prescribed under this Act, or any other provision of law, rule, regulation, or order, or in any other	of the U.S.; • To lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may deem necessary or appropriate; • To prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; • To accept gifts or donations of services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and • To do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business, including the establishment of such subgroups or corporate entities as are useful in conducting its business. <u>Expenditures</u> Except as may be otherwise provided in this title, in 31 U.S.C. chapter 91, or in other laws specifically applicable to Government corporations, the NMFA shall determine the necessity for, and the character and amount of	

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		action, suit, or proceeding to which the FMIC is a party or in which it is interested, and in the administration of conservatorships and receiverships, the FMIC may act in its own name and through attorneys or other agents acting on its behalf. • Except as otherwise provided by law, the FMIC shall be subject to suit (other than suits for claims for money damages) by a regulated entity or market participant with respect to any matter under this Act or any other applicable provision of law, rule, order, or regulation under this Act, in the U.S. district court for the judicial district in which the regulated entity or market participant has its principal place of business, or in the U.S. District Court for D.C., and the FMIC may be served with process in the manner prescribed by the Federal Rules of Civil Procedure. <u>Expenditures</u> Except as may be otherwise provided in this title, the FMIC shall determine the necessity for, and the character and amount of its obligations and expenditures, and the manner in which they shall be incurred, allowed, paid, and accounted for. <u>Exemption from Certain Taxes</u> The FMIC, including its franchise, capital, reserves, surplus, mortgage loans or other	its obligations and expenditures, and the manner in which they shall be incurred, allowed, paid, and accounted for. <u>Exemption from Certain Taxes</u> The NMFA, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by the U.S., by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the NMFA 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. <u>Exclusive Use of Name</u> No individual, association, partnership, or corporation, except the bodies corporate named under section 101, shall hereafter use the words “National Mortgage Finance Administration” or any combination of such words, as the name or a part thereof under which the individual, association, partnership, or corporation shall do business. Violations of the foregoing may be enjoined by any court of general jurisdiction at the suit of the proper body corporate. In any such suit, the plaintiff may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damages)	

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		security holdings, and income shall be exempt from all taxation now or hereafter imposed by the U.S., by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the FMIC shall be subject to State, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. <u>Exclusive Use of Name</u> No individual, association, partnership, or corporation, except the FMIC, shall hereafter use the words "Federal Mortgage Insurance Corporation" or any combination of such words, as the name or a part thereof under which such individual, association, partnership, or corporation shall do business. Violations may be enjoined by any court of general jurisdiction at the suit of the FMIC. In any such suit, the plaintiff may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damages) of not exceeding $1,000 for each day during which such violation is committed or repeated. <u>Fiscal Agents</u> The Federal Reserve banks are authorized and directed to act as depositories, custodians, and fiscal agents for the FMIC, for its own account or as fiduciary, and such banks shall	of not exceeding $100 for each day during which such violation is committed or repeated. <u>Fiscal Agents</u> The Federal Reserve banks are authorized and directed to act as depositories, custodians, and fiscal agents for the NMFA on behalf of the MIF, and such banks shall be reimbursed for such services in such manner as may be agreed upon. The NMFA, in consultation Federal Reserve, may authorize use of the Federal Reserve banks by the Issuer. **§ 801 Authority to Issue Regulations** The NMFA may prescribe such regulations and issue such guidelines, orders, requirements, or standards as are necessary to carry out this Act, or any amendment made by this Act.	

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		be reimbursed for such services in such manner as may be agreed upon, and the FMIC may itself act in such capacities, for its own account or as fiduciary, and for the account of others. <u>Other Powers</u> The FMIC is authorized to assess and collect fees on regulated entities and approved entities, including for applications, examinations, and other purposes, as authorized by this Act. <u>FHLB Assessment</u> The FMIC shall have authority to assess a fee on the FHLBs to cover the necessary costs related to supervising the FHLBs. The costs associated with the FHLBs' secondary market activities pursuant to § 312 shall be covered by this fee. <u>Fair Housing Rule of Construction</u> Nothing in this Act shall be construed as authorizing the FMIC to waive, repeal, amend, or modify fair housing requirements, including under the Fair Housing Act or ECOA.		
Exemptions / Risk Retention Amendment	**§ 407 Repeal of Credit Risk Retention Regulations** The Dodd-Frank Act is amended: • To strike § 941, risk retention. Section 941(a), which defines ABS in the	**§ 307 Exemptions** <u>Securities Exempt from SEC Regulation</u> • All securities insured or guaranteed by the FMIC shall, to the same extent as securities that are direct obligations of or	**§ 206 Exemptions** <u>Securities Exempt from SEC Regulation</u> • All covered securities insured or guaranteed by the NMFA shall, to the same extent as securities that are direct	

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	Securities Exchange Act, is also repealed. • The OCC, Federal Reserve, FDIC, CFPB, and SEC "may not issue any rule or regulation to require risk retention, the creation or maintenance of a premium capture cash reserve account, or any similar mechanism, unless directly authorized by an Act of Congress." • To make both of these amendments effective on July 21, 2010, "as if included in" the Dodd-Frank Act.	obligations guaranteed as to principal or interest by the U.S., be deemed to be exempt securities within the meaning of the laws administered by the SEC. • The first sentence of § 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by inserting "or any security insured or guaranteed by the Federal Mortgage Insurance Corporation;" after "Federal Reserve bank;". • Section 27B(c) of the Securities Act of 1933 (15 U.S.C. 77z-2a(c)) is amended by adding at the end the following: ''(3) purchases or sales of any asset-backed security that is a credit risk-sharing mechanism approved by the Federal Mortgage Insurance Corporation in accordance with section 302 or section 703(c) of the Housing Finance Reform and Taxpayer Protection Act of 2014, which credit risk-sharing mechanism is designed to be used or is used, as determined by the [FMIC], by a private market holder to assume losses and to reduce the specific risks arising from losses realized under such credit risk-sharing mechanism associated with any pool of eligible mortgage loans that collateralizes a covered security insured in accordance with section 303 or 305 of that Act.".	obligations of or obligations guaranteed as to principal or interest by the U.S., be deemed to be exempt securities within the meaning of the laws administered by the SEC. • The first sentence of § 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by adding "or any covered security, as such term is defined under section 2 of the Housing Opportunities Move the Economy Forward Act of 2014;" after "Federal Reserve bank;". <u>QRM Exemption</u> Section 15G(e) of the Securities Exchange Act of 1934 (risk retention) is amended— • In paragraph (3)(B). This language currently exempts from all of § 15G mortgage loan assets or securitizations based on an asset insured or guaranteed by federal agencies, but the GSEs and FHLBs are not agencies for this purpose. The bill would remove the FHLBs from this exclusion from the agency definition. • By adding at the end the following: Notwithstanding any other provision of this section, the requirements of this section shall not apply to any covered security, as such term is defined in § 2 of the Housing Opportunities Move the Economy Forward Act of 2014, insured	

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		Risk Retention Exemption Section 15G(e) of the Securities Exchange Act of 1934 (risk retention) is amended— • In paragraph (3)(B). This language currently exempts from all of § 15G mortgage loan assets or securitizations based on an asset insured or guaranteed by federal agencies, but the GSEs and FHLBs are not an agencies for this purpose. The bill would remove the FHLBs from this exclusion from the agency definition. • By adding at the end the following: Notwithstanding any other provision of this section, the requirements of this section shall not apply to any covered security, as such term is defined under § 2 of the Housing Finance Reform and Taxpayer Protection Act of 2014, insured or guaranteed by the FMIC or any institution that is subject to the supervision of the FMIC. Counterparties Exempt from the CEA Section 1a(10) of the Commodity Exchange Act is amended by adding at the end: "Solely as it relates to the specific role of a counterparty in connection with the swap transaction described in this paragraph, the term 'commodity pool' does not include any counterparty that enters into any swap for	or guaranteed by the NMFA.	

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		purposes of structuring a credit risk-sharing mechanism that is approved by the Federal Mortgage Insurance Corporation in accordance with section 302 or section 703(c) of the Housing Finance Reform and Taxpayer Protection Act of 2014, which credit risk-sharing mechanism is designed to be used or is used, as determined by the Federal Mortgage Insurance Corporation, by a private market holder to assume losses and to reduce the specific risks arising from losses realized under such credit risk-sharing mechanism associated with any pool of eligible mortgage loans that collateralizes a covered security insured in accordance with section 303 or 305 of that Act."		
Regulatory Coordination		**§ 308 Regulatory Consultation and Coordination** <u>Consultation Permitted</u> The FMIC may, in carrying out any duty, responsibility, requirement, or action authorized under this Act, consult with the Federal regulatory agencies, any individual Federal regulatory agency, Treasury, HUD, any State banking regulator, any State insurance regulator, and any other State agency, as the FMIC determines necessary and appropriate. <u>Coordination Required</u> The FMIC shall, as required by this Act, in carrying out any duty, responsibility, requirement, or action authorized under this	**§ 226 Protection of Privilege and Other Matters Relating to Disclosures by Market Participants** <u>Information Sharing and Maintenance of Privilege</u> The *FDIA* is amended— • In § 11(t), which currently provides that covered agencies may share information without waiving privileges, by adding the NMFA to the definition of covered agency. This change is also made in § 306(g)(3). • In § 18(x), which currently provides that submitting information to certain regulators does not waive privileges, by adding the NMFA to the list of agencies.	**§ 104 Regulatory Consultation and Coordination** <u>Consultation Permitted</u> The Director may, in carrying out any duty, responsibility, requirement, or action authorized under this Act, consult with the Federal regulatory agencies, any individual Federal regulatory agency, Treasury, any State banking regulator, any State insurance regulator, and any other State agency, as the Director necessary and appropriate. <u>Coordination Required</u> The Director shall, as appropriate, in carrying out any duty, responsibility, requirement, or action authorized under this Act, coordinate with the Federal regulatory agencies, any

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		Act, coordinate with the Federal regulatory agencies, any individual Federal regulatory agency, Treasury, HUD, any State banking regulator, any State insurance regulator, any other State agency. Avoidance of Duplication To the fullest extent possible, the FMIC shall— • Avoid duplication of examination activities, reporting requirements, and requests for information; • Rely on examination reports made by other Federal or State regulatory agencies relating to an approved entity and its subsidiaries, if any; and • Ensure that approved entities are not subject to conflicting supervisory demands by the FMIC and other Federal regulatory agencies. Protection of Privileges • Pursuant to these authorities to consult and coordinate, to facilitate the consultative process and coordination, the FMIC may share information with the Federal regulatory agencies, any individual Federal regulatory agency, Treasury, HUD, any State bank supervisor, any State insurance regulator, any other State agency, or any foreign banking authority, on a one-time, regular,	Permissible Consultation with Federal Banking Agencies • Pursuant to its authority under § 103(c), to facilitate the consultive process, the NMFA may share information with the Federal banking agencies, or any individual Federal banking agency, or any State bank supervisor, or foreign banking authority, on a one-time, regular, or periodic basis as determined by the NMFA regarding the capital, asset and liabilities, financial condition, risk management practices or any other practice of the Issuer or any approved private mortgage insurer, servicer, bond guarantor, or other entity. • Information so shared by the NMFA shall not be construed as waiving, destroying, or otherwise affecting any privilege or confidential status that the Issuer or any approved private mortgage insurer, servicer, bond guarantor or any other person may claim with respect to such information under Federal or State law as to any person or entity other than such agencies, agency, supervisor, or authority. • No provision of this subsection may be construed as implying or establishing that— ○ Any person waives any privilege applicable to information that is	individual Federal regulatory agency, Treasury, any State banking regulator, any State insurance regulator, any other State agency. Avoidance of Duplication To the fullest extent possible, the Director shall— • Avoid duplication of examination activities, reporting requirements, and requests for information; • Rely on examination reports made by other Federal or State regulatory agencies relating to an approved entity and its subsidiaries, if any; and • Ensure that market participants and participating aggregators are not subject to conflicting supervisory demands by Ginnie Mae and other Federal regulatory agencies. Protection of Privileges • Pursuant to the authorities to consult and coordinate, to facilitate the consultative process and coordination, the Director may share information with the Federal regulatory agencies, any individual Federal regulatory agency, Treasury, any State bank supervisor, any State insurance regulator, any other State agency, or any foreign banking authority, on a one-time, regular, or periodic basis, as determined

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		or periodic basis, as determined by the FMIC, regarding the capital assets and liabilities, financial condition, risk management practices, or any other practice of any market participant. • Information so shared by the FMIC shall not be construed as waiving, destroying, or otherwise affecting any privilege or confidential status that any market participant or any other person may claim with respect to such information under Federal or State law as to any person or entity other than such agencies, agency, supervisor, or authority. • No provision of this subsection may be construed as implying or establishing that— ○ Any person waives any privilege applicable to information that is shared or transferred under any circumstance to which this subsection does not apply; or ○ Any person would waive any privilege applicable to any information by submitting the information directly to the Federal regulatory agencies, any individual Federal regulatory agency, any State bank supervisor, any State insurance regulator, any other State agency, or any foreign banking authority, but for this subsection.	shared or transferred under any circumstance to which this subsection does not apply; or ○ Any person would waive any privilege applicable to any information by submitting the information directly to the Federal banking agencies, or any individual Federal banking agency, or any State bank supervisor, or foreign banking authority, but for this subsection.	by the Director, regarding the capital assets and liabilities, financial condition, risk management practices, or any other practice of any market participant or participating aggregator. • Information so shared by the Director shall not be construed as waiving, destroying, or otherwise affecting any privilege or confidential status that any market participant, participating aggregator, or any other person may claim with respect to such information under Federal or State law as to any person or entity other than such agencies, agency, supervisor, or authority. • No provision of this subsection (protection of privileges) may be construed as implying or establishing that— ○ Any person waives any privilege applicable to information that is shared or transferred under any circumstance to which this subsection does not apply; or ○ Any person would waive any privilege applicable to any information by submitting the information directly to the Federal regulatory agencies, any individual Federal regulatory agency, any State bank supervisor, any State insurance regulator, any other State agency, or

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		Federal Agency Authority Preserved Unless otherwise expressly provided by this section, no provision of this section shall limit or be construed to limit, in any way, the existing authority of any Federal agency.		any foreign banking authority, but for this subsection. Federal Agency Authority Preserved Unless otherwise expressly provided by this section, no provision of this section shall limit or be construed to limit, in any way, the existing authority of any Federal agency. Federal Regulatory Agency For purposes of this section, the term "Federal regulatory agency" means, individually, the Federal Reserve, OCC, FDIC, CFPB, NCUA, SEC, CFTC, and FHFA.
Eligible Mortgages and QM	**§ 408 Mortgages in Qualified Securities** TILA § 129C (15 U.S.C. 1639c) is amended by adding: "This section and any regulations promulgated under this section do not apply to a mortgage serving as collateral for a qualified security, as such term is defined under § 321 of the Protecting American Taxpayers and Homeowners Act of 2013." TILA § 129C contains the ability-to-repay rule, and prohibitions on: prepayment penalties on non-QM loans; financing single-premium credit insurance; mandatory arbitration in mortgages; and agreements to waive a cause of action relating to a mortgage.	**§ 336 Required Harmonization of Standards Within Eligible Mortgage Criteria** In General The FMIC shall consult and coordinate with the CFPB to ensure that the minimum standards issued by the FMIC with respect to eligible single-family mortgage loans pursuant to § 2(29) remain, to the greatest extent possible, substantially similar to rules promulgated by the Bureau pursuant to TILA § 129C(b) (QM) provided that any revisions to, or amendments of, such minimum standards issued by the FMIC— • Conform to all of the other requirements set forth under § 2(29); and • In the determination of the FMIC, do not negatively impact the MIF.		

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		<u>Annual Report on any Changes or Differences in Rules</u> The FMIC shall annually submit to the Chair and Ranking Member of the Senate Banking and House Financial Services Committees a report that— • Describes any such changes to the minimum standards; • Describes the economic analysis developed and used by the FMIC for any such changes to ensure such changes do not violate the duties of the FMIC to protect the MIF; and • Identifies any changes that occurred and differences that exist between the minimum standards developed, adopted, and maintained by the FMIC and the CFPB's QM rules.		
Rulewriting Authority		**§ 309 Authority to Issue Regulations** <u>General Authority</u> The FMIC may prescribe such regulations and issue such guidelines, orders, requirements, or standards, as necessary to carry out this Act, or any amendment made by this Act, and to ensure— • Competition among approved entities in the secondary mortgage market; • Liquidity in the secondary mortgage market and the forward execution market for single-family eligible mortgage loans and single-family covered securities, such		

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		as the TBA market; and
		• Mitigation of systemic risk in the secondary mortgage market.
		
		<u>Capital Standards</u>
		• For each type of covered entity the FMIC shall establish, by regulation, capital standards and related solvency standards necessary to implement the provisions of this Act.
		• The regulations required under this subsection shall define all such terms as are necessary to carry out the purposes of this subsection. In defining instruments and contracts that qualify as capital, the FMIC—
		  o Shall include such instruments and contracts that will absorb losses before the MIF; and
		  o May assign significance to those instruments and contracts based on the nature and risks of such instruments and contracts.
		• Solely for the purposes of calculating a capital ratio appropriate to the business model of the applicable entity, the FMIC shall consider for the denominator—
		  o Total assets;
		  o Total liabilities;
		  o Risk in force; or
		  o Unpaid principal balance.
		• The capital and related solvency		

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		standards established under this subsection shall be designed to— o Ensure the safety and soundness of a covered entity; o Minimize the risk of loss to the MIF; o In consultation and coordination with Federal Reserve, FDIC, OCC, and NCUA, reduce the potential for regulatory arbitrage between capital standards for covered entities and capital standards promulgated by Federal regulatory agencies for insured depository institutions and their affiliates; and o Be specifically tailored to accommodate a diverse range of business models that may be employed by covered entities. • To prevent or mitigate risks to the U.S. secondary mortgage market that could arise from the material financial distress or failure, or ongoing activities, of covered entities that are large approved aggregators and approved guarantors that engage in covered guarantee transactions, the FMIC, by regulation— o Shall establish supplemental capital requirements for covered entities that are large approved aggregators and approved guarantors; and o May establish such other standards for covered entities that are large approved aggregators and approved		

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		guarantors that the FMIC determines necessary or appropriate.
		
		<u>Market Share Limitation for Certain Large Entities</u>
		The FMIC shall establish, by regulation, market share limitations for large approved aggregators and approved guarantors that would take effect only in the event the FMIC has reason to believe the supplemental capital requirements and other standards are insufficient to prevent or mitigate risks to the U.S. secondary mortgage market that could arise from the material financial distress or failure, or ongoing activities, of such approved aggregators and approved guarantors.
		
		<u>Recognition of Distinctions Between Approved Entities and FHLBs</u>
		• Prior to promulgating any regulation or taking any other formal or informal action of general applicability and future effect relating to the FHLBs, including the issuance of an advisory document or examination guidance, the Chairperson, in consultation with the Office of FHLB Supervision, shall consider the differences between the FHLBs and the approved entities with respect to—
		  ○ The FHLB—
		    ▪ Cooperative ownership structure;
		    ▪ Mission of providing liquidity to		

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		its members; ▪ Affordable housing and community development mission; ▪ Capital structure; and ▪ Joint and several liability; and o Any other differences that the FMIC considers appropriate. • The FMIC, in coordination with the Office of FHLB Supervision, shall establish capital standards, as required under§ 309(b), with respect to an FHLB, or subsidiary or joint office thereof, that is approved as an aggregator under § 312, that: o Are adequate to support the role of an FHLB as a covered entity, consistent with the safe and sound operations of the FHLB(s) involved; and o Do not adversely impact the traditional liquidity and advance business of the FHLB system or the marketability or creditworthiness of FHLB consolidated obligations. <u>Regulations Relating to Force-Placed Insurance</u> The FMIC shall, by regulation, set standards for the purchase of force-placed insurance by market participants. These standards shall not concern the regulation of the business of insurance or preempt any state law, regulation,		

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		or procedure concerning the regulation of the business of insurance. <u>Use and Protection of Personally Identifiable Information</u> • In collecting information from any person, in publicly releasing information held by the FMIC, or in requiring approved entities to publicly report information, the FMIC shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under the FOIA, the Privacy Act of 1974, or any other provision of law, is not made public. • With respect to the application of any provision of the Right to Financial Privacy Act of 1978 to a disclosure by an approved entity subject to this subsection, the approved entity shall be treated as if it were a financial institution, as defined in 12 U.S.C. § 3401. • Unless otherwise specified by this Act, any personally identifiable information obtained or maintained by the FMIC in connection with any supervision or enforcement authority or function, including the Office of General Counsel and FMIC OIG, may not be disclosed to any non supervisory or non enforcement office, division, or employee of the		

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		FMIC, or to any other Federal or State agency unless— ○ The information is necessary and appropriate for such office, division, or employee of the FMIC to comply with this Act, and the office, division, or employee cannot reasonably obtain the information through the normal course of business of such office, division, or employee; ○ The other Federal or State agency has satisfied any conditions of information ○ Sharing that the FMIC may establish, including treatment of personally identifiable information and sharing of information that shall conform to the standards for protection of the confidentiality of personally identifiable information and for data integrity and security that are applicable to Federal agencies; or ○ 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 entity. • Any office created under § 207(a)(1)(B) [other offices the FMIC establishes as necessary and proper] shall develop		

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		standards regarding treatment and confidentiality of personally identifiable information and the collection and sharing of information that are tailored to the purpose or mission of the office; and obtain approval from the Chairperson of such standards prior to the operation of the office. Consumer Privacy The FMIC shall not obtain from an approved entity any personally identifiable financial information about a consumer from the financial records of the approved entity, except— • If the financial records are reasonably described in a request by the FMIC and the consumer provides written permission for the disclosure of such information by an approved entity to the FMIC; or • As may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).		
Approval of Guarantors		**§ 310 Equivalency in Protection of the MIF** In order to protect the MIF and promote multiple sources of first loss positions, the FMIC shall seek to ensure equivalent loss absorption capacity between approved credit risk-sharing mechanisms pursuant to § 302 and capital standards for approved guarantors	**§ 223 Authority Related to Oversight of Bond Guarantors and Other Private Market Credit Risk Guarantors** Standards for Approval The NMFA shall develop, adopt, and publish standards for the approval by the NMFA of bond guarantors or private market participants	**§ 403 Approval and Supervision of Multifamily Guarantors** In General The Director shall develop, adopt, publish, and enforce standards for the approval by the Director of multifamily guarantors to— • Issue securities collateralized by eligible

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		pursuant to § 311. **Subtitle B—Approval and Supervision of Guarantors** **§ 311 Approval and Supervision of Guarantors** Standards for Approval of Guarantors The FMIC shall develop, adopt, and publish standards for the approval by the FMIC of guarantors to guarantee the timely payment of principal and interest on securities collateralized by eligible single-family mortgage loans and insured by the FMIC. The standards shall include— • The financial history and condition of the guarantor; • A requirement that the guarantor maintain capital levels as defined by the FMIC; • The capability of the guarantor's management; • The general character and fitness of the guarantor's officers and directors, including their compliance history with Federal and State laws and rules and regulations of self-regulatory organizations as defined in § 3(a)(26) of the Exchange Act as applicable; • The risk presented by the guarantor to the MIF; • The adequacy of insurance and fidelity coverage of the guarantor;	that will guarantee credit risk related to covered securities. Such standards shall cover any credit risk holder that will have a continuing obligation to the originator or Issuer. The standards shall include— • The financial history and condition of the guarantor; • Minimum capital levels adequate to ensure that the guarantor can meet any credit losses it guarantees; • The general character and fitness of the management of the guarantor, including compliance history with Federal and State laws; • The risk presented by the guarantor to the MIF; • The adequacy of insurance and fidelity coverage of the guarantor; • A requirement that the guarantor submit audited financial statements to the Director; • A requirement that the guarantor meet a minimum tangible threshold as the NMFA determines necessary; and • Any other standard the NMFA deems appropriate. Rule of Construction A covered security that a bond guarantor has insured or in which a bond guarantor or other private market entity has guaranteed credit risk shall be deemed to have satisfied the	multifamily mortgage loans; and • Guarantee the timely payment of principal and interest on such securities collateralized by eligible multifamily mortgage loans and insured by Ginnie Mae. Required Standards The standards shall include standards sufficient to ensure that— • Each multifamily guarantor is well-capitalized; and • Credit risk-sharing levels under any such guarantees are commensurate with such levels under the Delegated Underwriting and Servicing Lender Program and the Capital Market Execution Program Series K Structured 2Pass-Through Certificates originated and offered under the Program Plus Lender Program. Pricing Ginnie Mae shall charge a g-fee for guarantees provided pursuant to this section and such fee shall be determined by Ginnie Mae— • In the same manner and using the same procedures used pursuant to title II to determine g-fees for securities backed by single-family housing mortgages, with such changes as Ginnie Mae determines to be necessary to account for the

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		• The ability of the guarantor to— ○ At the discretion of the guarantor, transfer investment risk and credit risk to private market holders in the single-family market in accordance with the credit risk-sharing mechanisms approved by the FMIC under § 302; ○ Create mechanisms to guarantee multi-lender pools; and ○ Ensure that eligible single-family mortgage loans that collateralize a single-family covered security insured under this title are originated in compliance with the requirements of this Act; • The capacity of the guarantor to take the first loss position; • That the guarantor has the capacity to guarantee eligible single-family mortgage loans in a manner that furthers the purposes of the FMIC described in § 201(b)(5) [FMIC purpose to credit and financing through business cycles], but this shall not be construed to prevent the FMIC from approving a small or specialty guarantor, provided that the guarantor has the capacity to adequately diversify its risk to meet appropriate safety and soundness concerns; • A requirement that the guarantor timely issue publicly available audited financials	requirements for placement of credit risk under § 202, provided that it meets all requirements of the NMFA. <u>Application and Approval</u> • The NMFA shall establish an application process, in such form and manner and requiring such information as the NMFA may require, for the approval under this section of bond guarantors and private market entities that will guarantee credit risk. • If an insured depository institution seeks such approval, such institution may only submit its application via a separately capitalized affiliate or subsidiary. • The NMFA may approve any such application provided the bond guarantor or private market entity meets the required standards. • The NMFA shall— ○ Publish in the Federal Register a list of newly approved bond guarantors and private market entities that will guarantee credit risk; and ○ Maintain an updated list of approved bond guarantors and private market entities that will guarantee credit risk on the NMFA's website. <u>Review, Suspension, and Revocation of Approved Status</u>	differences between the single-family guarantee business and the multifamily guarantee business; and • Taking into account the differences between the g-fees structures of the two GSEs. <u>Distinctions</u> The Director shall take into account, in carrying out this section, in providing any issuing platform, and in establishing any requirements relating to the guarantee of securities collateralized by eligible multifamily mortgage loans, the particular nature and characteristics of such securities and loans, as distinguished from eligible mortgages and securities guaranteed pursuant to title II, and as may be necessary to accommodate the multifamily housing financing market.

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		prepared in accordance with GAAP used in the industry;
		• That the guarantor is in compliance with § 210(a)(3) [required annual reports on underserved markets];
		• That the guarantor has substantial analytical capabilities to effectively manage credit risk;
		• That the guarantor does not originate eligible single-family mortgage loans and is not an affiliate of a person that actively engages in the business of originating eligible single-family mortgage loans; and
		• Any other standard the FMIC determines necessary to protect the MIF.
		To promote consistency and minimize regulatory conflict, the FMIC shall consult and coordinate with appropriate Federal and State regulators and officials when developing standards pursuant to this subsection.
		
		<u>Application and Approval</u>
		• The FMIC shall establish an application process, in such form and manner and requiring such information as the FMIC may require, for the approval of guarantors under this section. The FMIC shall establish internal timelines for its processing of applications, including timelines for any action to approve or to deny an application.
			• The NMFA may review the status of any approved bond guarantor or private market entities that will guarantee credit risk if the NMFA is notified of or becomes aware of any violation by the insurer of this Act or the rules promulgated pursuant to this Act.
			• If the NMFA determines, in such a review that an approved bond guarantor or private market entity that will guarantee credit risk no longer meets the standards for approval, the NMFA shall revoke the approved status of such guarantor or entity.
			• The revocation of the approved status of a bond guarantor or private market entity to guarantee credit risk shall have no effect on the status of any covered security.
			• The NMFA shall—
			  o Publish in the Federal Register a list of any approved bond guarantors or private market entities that will guarantee credit risk who lost their approved status; and
			  o Maintain an updated list of such guarantors and entities on the NMFA's website.
			
			<u>Appeals</u>
			• A bond guarantor or private market entity that will guarantee credit risk who submits an application to become	

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		• The FMIC may approve any guarantor application, provided the guarantor meets the applicable standards.
		• The FMIC shall have authority to deny any application if an officer or director of the guarantor has, at any time before approval been subject to a statutory disqualification pursuant to § 3(a)(39) of the Exchange Act or suspended, removed, or prohibited under FDIA § 8(g), prohibited pursuant to FDIA § 8(e)(6) or (7), subject to an action resulting in a written agreement or statement under FDIA § 8(u)(1), for which a violation may be enforced by an appropriate Federal banking agency, or subject to any final order issued under FDIA § 8.
		• The FMIC shall—
		  o Provide prompt notice to a guarantor of the approval or denial of any application of the guarantor to become an approved guarantor under this section;
		  o Publish a notice in the Federal Register upon approval of any guarantor; and
		  o Maintain an updated list of approved guarantors on the FMIC's website.
		
		<u>Requirement to Maintain Approval Status</u>
		• If the FMIC determines that an approved guarantor no longer meets the standards
			approved under this section may appeal a decision of the NMFA denying such application.
			• An approved bond guarantor or private market entity that will guarantee credit risk may appeal a decision of the NMFA suspending or revoking the approved status of such guarantor or entity.
			• Any bond guarantor or private market entity that will guarantee credit risk who files such an appeal shall file the appeal with the NMFA not later than 90 days after the date on which the person receives notice of the decision of the NMFA being appealed.
			• The NMFA shall make a final determination with respect to an appeal not later than 180 days after the date on which the appeal is filed.
			
			<u>Limitations on Approved Bond Guarantors or Other Private Market Credit Risk Guarantor</u>
			With respect to any eligible mortgage or covered security insured under this Act, an approved bond insurer or other private market credit insurer may not also provide insurance unless it meets such additional standards as the NMFA may specify.	

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		for such approval or violates the requirements under this Act, including any standards, regulations, or orders promulgated in accordance with this Act, the FMIC may— o Suspend or revoke the approved status of the approved guarantor; or o Take any other action with respect to such approved guarantor as may be authorized under this Act. • The suspension or revocation of the approved status of an approved guarantor shall have no effect on the status as a covered security of any covered security collateralized by eligible mortgage loans with which the approved guarantor contracted before the suspension or revocation. • The FMIC shall— o Promptly publish a notice in the Federal Register upon suspension or revocation of the approval of any approved guarantor; and o Maintain an updated list of such approved guarantors on the website of the FMIC. • In this subsection, the term "violate" includes any action, taken alone or with others, for or toward causing, bringing about, participating in, counseling, or aiding or abetting, a violation of the requirements under this Act.		

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		Prudential Standards for Supervision
		The FMIC shall prescribe prudential standards for approved guarantors in order to—
		• Ensure—
		  o The safety and soundness of approved guarantors; and
		  o The maintenance of approval standards by approved guarantors; and
		• Minimize the risk presented to the MIF.
		
		Reports and Examinations
		For purposes of determining whether an approved guarantor is fulfilling the requirements under this Act, the FMIC shall have the authority to require reports from and examine approved guarantors, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under FDIA § 9.
		
		Enforcement
		The FMIC shall have the authority to enforce the provisions of this Act with respect to approved guarantors, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under 12 U.S.C. 1818(b) through (n).
		
		Capital Standards
		• Pursuant to the requirement to establish		

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		capital and related solvency standards under § 309(b), the FMIC shall establish standards for approved guarantors that require an approved guarantor— o To hold 10 percent capital; and o To maintain solvency levels adequate for the approved guarantor to withstand losses that might be incurred by the approved guarantor in a period of economic stress, including national and regional home price declines, such as those observed during moderate to severe recessions in the U.S. For these purposes, the FMIC shall consider the extent, amount, and form of risk-sharing and risk mitigation through the use by approved guarantors of credit risk-sharing mechanisms approved pursuant to § 302(b)(4). The FMIC shall allow such risk-sharing and risk mitigation to fulfill required amounts of capital such that it ensures an equivalent amount of loss absorption capacity as required under § 302(a)(1)(B) while maintaining an appropriate structure of capital as determined by the FMIC. • The FMIC shall conduct appropriate stress tests of approved guarantors that have total assets of more than $10,000,000,000, provided that such		

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		stress tests shall be— o Specifically tailored to the business model of the approved guarantor; o Utilized to— ▪ Ensure the safety and soundness of the approved guarantor; and ▪ Minimize the risk the approved guarantor may present to the MIF; and o Coordinated with the Federal Reserve, if the approved guarantor is an affiliate of an insured depository institution. <u>Resolution Authority for Failing Guarantors</u> • Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the FMIC shall— o Have the authority to act, in the same manner and to the same extent, with respect to an approved guarantor, as the FDIC has with respect to insured depository institutions under 12 U.S.C. §§ 1821(c) through (s), 1822, and 1823 [conservatorship and receivership authority], while tailoring such actions to the specific business model of the approved guarantor, as may be necessary to properly exercise such authority under this subsection; o In carrying out any such authority,		

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		act, in the same manner and to the same extent, with respect to the MIF as the FDIC may act with respect to the Deposit Insurance Fund under such FDIA authorities; ○ Prescribe regulations governing the applicable rights, duties, and obligations of an approved guarantor placed into resolution under this subsection, its creditors, counterparties, and other persons, as the FMIC deems necessary to properly exercise such receivership and conservatorship authority; ○ Consistent with such FDIA authorities provided to the FMIC, immediately place an insolvent approved guarantor into receivership; and ○ Upon placing an approved guarantor into receivership, treat single-family covered securities insured under § 303 in the same manner as the FDIC treats deposit liabilities under FDIA § 11(d)(11)(A)(ii) and insured deposits under FDIA § 11(f), where the FMIC has the same right of subrogation as the FDIC has under FDIA § 11(g). • The FMIC may not exercise any such authority with respect to any approved guarantor unless the total amount of the expenditures by the FMIC and obligations		

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		incurred by the FMIC in connection with the exercise of any such authority with respect to such approved guarantor is the least costly to the MIF, consistent with the least cost approach specified in the FDIA (12 U.S.C. 1811 et seq.), of all possible methods for meeting the FMIC's obligations under this Act and expeditiously concluding its resolution activities, subject to FDIA § 13, where the FMIC and Board of Directors have the same authority as the FDIC and the FDIC's board. • The FMIC, in carrying out any authority provided in this subsection, shall prescribe regulations to ensure that any amounts owed to the U.S., unless the U.S. agrees or consents otherwise, shall have priority following administrative expenses of the receiver when satisfying unsecured claims against an approved guarantor, or the receiver therefor, that are proven to the satisfaction of the receiver. <u>Hearing</u> Upon notice of denial of an application for approval or upon a notice of suspension or revocation of the approved status of an approved guarantor, the applicant or approved guarantor shall be afforded a hearing under 12 U.S.C. 1818(h), in the same manner and to the same extent as if the FMIC were the		

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		appropriate Federal banking agency, provided that the approved guarantor submits a request to the FMIC for a hearing not later than 10 days after the date on which the notice is published. <u>Permission to Carry Out Other Activities</u> Nothing in this Act prohibits an approved guarantor from being an affiliate of an approved aggregator, provided that each aggregator and each guarantor, independent of each other, meets the approval standards established by the FMIC under this title. <u>Provision of Pool Level Insurance</u> Subject to such standards as the FMIC may provide, an approved guarantor may provide insurance or other credit enhancement on a pool of eligible single-family mortgage loans collateralizing a single-family covered security insured under this title. <u>Prohibited Activity</u> An approved guarantor may not— • Originate eligible single-family mortgage loans; or • Be an affiliate of a person that actively engages in the business of originating eligible single-family mortgage loans. <u>Guarantors Required to Pay Claims</u> Subject to such standards as the FMIC may		

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		provide, an approved guarantor may not for any reason withhold payment of funds that would ensure holders of single-family covered securities receive timely payment of principal and interest on single-family covered securities. The FMIC shall by regulation develop a process for the mediation and resolution of disputed payment amounts.		
Approval of Aggregators, or Originators and Aggregators	**§ 322(f) Standards for Aggregators** The Utility may develop, adopt, and publish standards for aggregation of eligible collateral by entities, institutions, or companies other than an issuer. Notwithstanding any such standards developed by the Utility, any FHLB may act as an aggregator and offer the service of aggregation to any member of such FHLB, subject to regulations prescribed by the Director.	**§ 312 Approval and Supervision of Aggregators** <u>Standards for Approval of Mortgage Aggregators</u> • The FMIC shall develop, adopt, and publish standards for the approval by the FMIC of mortgage aggregators to deliver eligible single-family mortgage loans to the Securitization Platform for securitization by such aggregator as a single-family covered security. • The standards shall include standards with respect to the ability of mortgage aggregator to— o Aggregate eligible single-family mortgage loans into pools, including multi-lender pools, as appropriate; o Transfer investment risk and credit risk to private market participants in accordance with the credit risk-sharing mechanisms approved by the FMIC under§ 302; o Ensure equitable access to the secondary mortgage market for		**§ 103 Regulation of Market Participants and Aggregators** <u>Approval Authority</u> The Platform [created in § 201] shall be available for use only by originators and aggregators of mortgages who meet standards for eligibility for such use, as shall be established by the Ginnie Mae Director (in this section referred to as the "Director"). <u>General Supervisory and Regulatory Authority</u> Pursuant to such authority: • All market participants and participating aggregators shall, to the extent provided in this section, be subject to the supervision and regulation of the Director. • Ginnie Mae shall have general regulatory authority over each market participant and participating aggregator and shall exercise such general regulatory authority to ensure that the purposes of this section are carried out.

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		single-family covered securities for all institutions regardless of size or geographic location; and o Ensure that eligible single-family mortgage loans that collateralize a single-family covered security insured under this title are originated in compliance with the requirements of this Act. • The standards shall also include— o The financial history and condition of the mortgage aggregator; o The adequacy of the capital structure of the mortgage aggregator; o The capability of the mortgage aggregator's management; o The general character and fitness of the mortgage aggregator's officers and directors, including their compliance history with Federal and State laws and rules and regulations of self-regulatory organizations as defined in § 3(a)(26) of the Exchange Act as applicable; o The risk presented by the mortgage aggregator to the MIF; o The adequacy of insurance and fidelity coverage of the mortgage aggregator; o A requirement that the mortgage aggregator submit audited financial statements to the FMIC; o That the mortgage aggregator has the		<u>Principal Duties</u> Among the principal duties of the Director shall be— • To oversee the prudential operations of each market participant and participating aggregator; and • To ensure that— o Each market participant and participating aggregator operates in a safe and sound manner, including maintenance of adequate capital and internal controls; and o Each market participant and participating aggregator complies with this section and the rules, regulations, guidelines, and orders issued under this section. <u>Prudential Management and Operations Standards</u> • The Director shall establish prudential standards, by regulation or guideline, for market participants and participating aggregators to— o Ensure— ▪ The safety and soundness of market participants and participating aggregators; and ▪ The maintenance of approval standards by market participants and participating aggregators;

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		capacity to aggregate mortgage loans in a manner that furthers purposes of the FMIC described in section § 201(b)(5). This shall not be construed to prevent the FMIC from approving a small or specialty mortgage aggregator, provided that the mortgage aggregator has the capacity to adequately diversify its risk to meet appropriate safety and soundness concerns; o That the mortgage aggregator is in compliance with § 210(a)(3); and o Any other standard the FMIC determines necessary to protect the MIF. To promote consistency and minimize regulatory conflict, the FMIC shall consult and coordinate with appropriate Federal and State regulators and officials when developing standards pursuant to this subsection. <u>Application and Approval</u> • The FMIC shall establish an application process, in such form and manner and requiring such information as the FMIC may require, for the approval of mortgage aggregators under this section. • The FMIC shall establish internal timelines for its processing of applications under this section, including timelines for any action to approve or to		and o Minimize the risk presented to the Fund. • In establishing such prudential standards, the Director shall distinguish between prudential standards for market participants and such standards for participating aggregators. <u>Authority to Require Reports</u> • The Director may require, by general or specific orders, a market participant or participating aggregator 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 market participant or participating aggregator, as the Director considers appropriate. • The Director may require, by general or specific orders, a market participant or participating aggregator to submit special reports on any of these topics or any other relevant topics, if, in the judgment of the Director, such reports are necessary to carry out the purposes of this Act. <u>Examinations and Audits</u> The Director may conduct such examinations and audits, including on-site examinations and audits, of market participants and participating

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		deny an application under this section.
		• The FMIC may approve any application, provided the mortgage aggregator meets the applicable standards.
		• The FMIC shall have authority to deny any application if an officer or director of the mortgage aggregator has, at any time before approval been subject to a statutory disqualification pursuant to § 3(a)(39) of the Exchange Act or suspended, removed, or prohibited under FDIA § 8(g), prohibited pursuant to FDIA § 8(e)(6) or (7), subject to an action resulting in a written agreement or statement under FDIA § 8(u)(1), for which a violation may be enforced by an appropriate Federal banking agency, or subject to any final order issued under FDIA § 8.
		• The FMIC shall—
		  ○ Provide prompt notice to a mortgage aggregator of the approval or denial of any application of the mortgage aggregator to become an approved aggregator under this section;
		  ○ Publish a notice in the Federal Register upon approval of any mortgage aggregator; and
		  ○ Maintain an updated list of approved aggregators on the website of the FMIC.
				aggregators as the Director considers appropriate to ensure compliance with this Act, to determine the condition of market participants and participating aggregators for the purpose of determining and ensuring their financial safety and soundness, and otherwise in any case that the Director determines an examination is necessary or appropriate.
				
				<u>Conflict of Interest Standards</u>
				The Director shall establish standards, by regulation or guideline, for market participants and participating aggregators as the Director considers appropriate to avoid any conflicts of interest among market participants.
				
				<u>Capital Stress Tests</u>
				The Director, in consultation with the Federal Reserve, shall—
				• Establish and carry out such risk-based capital tests as appropriate to evaluate whether each market participant and participating aggregator is maintaining a level of capital sufficient to absorb losses and support operations during adverse economic conditions so that they do not pose undue risks to their communities, other institutions, or the broader economy; and
				• Establish capital standards for market participants and participating aggregators based on such tests, which shall include

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		Requirement to Maintain Approval Status • If the FMIC determines that an approved aggregator no longer meets the standards for such approval or violates the requirements under this Act, including any standards, regulations, or orders promulgated in accordance with this Act, the FMIC may— ○ Suspend or revoke the approved status of the approved aggregator; or ○ Take any other action with respect to such approved aggregator as may be authorized under this Act. • The suspension or revocation of the approved status of an approved aggregator shall have no effect on the status as a covered security of any covered security collateralized by eligible mortgage loans with which the approved aggregator contracted before the suspension or revocation. • The FMIC shall— ○ Promptly publish a notice in the Federal Register upon suspension or revocation of the approval of any approved aggregator; and ○ Maintain an updated list of such approved aggregators on the FMIC's website. • In this subsection, the term "violate" includes any action, taken alone or with others, for or toward causing, bringing		the following classifications: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. Enforcement The Corporation shall have the authority to enforce the provisions of this Act with respect to market participants and participating aggregators, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under the provisions of FDIA § 8(b) through (n). Requirement to Maintain Approved Status • If the Director determines that a market participant or a participating aggregator under this section no longer meets the standards for such approval or violates the requirements under this Act, including any standards, regulations, or orders promulgated in accordance with this Act, the Director may— ○ Suspend or revoke the status of the market participant or participating aggregator as approved to utilize the Platform; or ○ Take any other action with respect to such market participant or a participating aggregator as may be authorized under this Act.

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		about, participating in, counseling, or aiding or abetting, a violation of the requirements under this Act.
		
		<u>Prudential Standards for Supervision</u>
		• Subject to the requirement below for the FMIC to consult with regulators for approval standards for depositories, the FMIC shall prescribe prudential standards for approved aggregators in order to—
		  ○ Ensure—
		    ▪ The safety and soundness of approved aggregators; and
		    ▪ The maintenance of approval standards by approved aggregators; and
		  ○ Minimize the risk presented to the MIF.
		• In prescribing such prudential standards, the FMIC shall—
		  ○ Distinguish between prudential standards for approved aggregators that are insured depository institutions, approved aggregators that are affiliates of insured depository institutions, and approved aggregators that are neither insured depository institutions nor affiliates of insured depository institutions; and
		  ○ Consult and coordinate with Federal and State banking agencies when
				• The suspension or revocation of the approved status of a market participant or a participating aggregator under this section shall have no effect on the status as an insured security of any security collateralized by eligible mortgages and insured prior to the suspension or revocation.
				• The Director shall—
				  ○ Promptly publish a notice in the Federal Register upon suspension or revocation of the approval of any market participant or a participating aggregator; and
				  ○ Maintain an updated list of such approved market participants and participating aggregators on the website of Ginnie Mae.
				• In this subsection, the term *violate* includes any action, taken alone or with others, for or toward causing, bringing about, participating in, counseling, or aiding or abetting, a violation of the requirements under this Act.
				
				<u>Resolution Authority</u>
				• Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Director shall—
				  ○ Have the authority to act, in the same manner and to the same extent, with

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		establishing prudential standards for approved aggregators that either are insured depository institutions or affiliates of insured depository institutions, to minimize duplication and conflicts with the prudential standards set by the appropriate Federal or State banking agencies of insured depository institutions or the affiliates of insured depository institutions. • Nothing in this section shall supersede the prudential standards established by the appropriate Federal banking agency. <u>Reports and Examinations</u> For purposes of gathering information to determine whether an approved aggregator is fulfilling the requirements under this Act, the FMIC shall have the authority to require reports from and examine approved aggregators as follows: • For approved aggregators that are neither an insured depository institution nor an affiliate of an insured depository institution, the FMIC shall have the authority to require reports from and examine approved aggregators, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under FDIA § 9(a). • For approved aggregators that are an		respect to a market participant or participating aggregator that the Director determines is classified as critically undercapitalized, as the FDIC has with respect to insured depository institutions under FDIA §§ 11(c) through (s), 12, and 13, while tailoring such actions to the specific business model of the market participant or participating aggregator, as the case may be, as may be necessary to properly exercise such authority under this subsection; ○ In carrying out such authority with respect to a critically undercapitalized market participant or participating aggregator, act, in the same manner and to the same extent, with respect to the Fund as the FDIC may act with respect to the Deposit Insurance Fund under FDIA §§ 11(c) through (s), 12, and 13; and ○ Consistent with FDIA §§ 11(c) through (s), 12, and 13, immediately place an insolvent market participant or participating aggregator into receivership. • Notwithstanding such resolution authority, if an insolvent participating aggregator is an insured depository institution or an affiliate of an insured depository institution, the Director shall

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		insured depository institution or an affiliate of an insured depository institutions: ○ To the fullest extent possible, the FMIC shall— ▪ Rely on the examinations, inspections, and reports of the appropriate Federal or State regulatory agencies; ▪ Avoid duplication of examination activities, reporting requirements, and requests for information; and ▪ Ensure that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by the FMIC and appropriate Federal and State banking agencies. ○ If the FMIC determines that the examinations, inspections, and reports obtained from other regulators are insufficient for the FMIC to adequately supervise approved aggregators, for compliance with this Act, the FMIC shall have the authority to require reports from and examine approved aggregators, in the same manner and to the same extent as the Federal Reserve has with respect to		recommend, in writing, to such participating aggregator's appropriate Federal banking agency or State banking regulator to resolve such participating aggregator pursuant to FDIA § 11(c) and other appropriate FDIA sections or appropriate Federal or State law, as applicable. • The Director may not exercise any resolution authority with respect to any market participant or any participating aggregator that is not an insured depository institution or an affiliate of an insured depository institution, unless— ○ The Director determines that the exercise of such authority is necessary to ensure proper and continued functioning of the secondary mortgage market; and ○ The total amount of the expenditures by the Director and obligations incurred by the Director in connection with the exercise of any such authority with respect to such market participant or participating aggregator is the least costly to the Fund, consistent with the least cost approach specified in the FDIA, of all possible methods for meeting Ginnie Mae's obligations under this Act and expeditiously concluding its resolution activities.

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		subsidiaries of bank holding companies institutions under 12 U.S.C. § 1844(c)(1) and (2). ○ Before commencing an examination of an approved aggregator, the FMIC shall provide reasonable notice to, and coordinate with, the appropriate Federal banking agency or State regulatory agency. ○ Nothing in this Act shall limit the authority of the FMIC to require reports of and examine an approved aggregator— ▪ To verify the sale of, and funds received, from the first loss position; and ▪ When the FMIC becomes aware— ♦ Of a material threat to the safety and soundness of the approved aggregator; ♦ That the approved aggregator is in material violation of this Act or FMIC rules; or ♦ That the activities of the approved aggregator threaten the financial stability of the housing finance system or the MIF. Enforcement		• The Director, in carrying out any resolution authority, shall ensure that any amounts owed to the U.S., unless the U.S. agrees or consents otherwise, shall have priority following administrative expenses of the receiver when satisfying unsecured claims against a market participant or participating aggregator, or the receiver therefor, that are proven to the satisfaction of the receiver.

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		The FMIC shall have the authority to enforce the provisions of this Act with respect to approved aggregators, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under FDIA § 8(b) through (n), provided that to the extent that the FMIC and an appropriate Federal banking agency are each authorized to enforce prudential standards with respect to an approved aggregator that is an insured depository institution or an affiliate of an insured depository institution, the appropriate Federal banking agency shall have primary authority to enforce such standards. <u>Capital Standards</u> For approved aggregators that are neither an insured depository institution nor an affiliate of an insured depository institution: • Pursuant to the requirement to establish capital and related solvency standards under § 309(b), the FMIC shall establish standards for approved aggregators that require an approved aggregator— ○ To hold capital in an amount comparable to that which is required to be held by insured depository institutions and their affiliates with respect to their applicable aggregating activities; and ○ To maintain solvency levels adequate for the approved aggregator to withstand losses that might be		

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		incurred by the approved aggregator in a period of economic stress, including national and regional home price declines, such as those observed during moderate to severe recessions in the U.S. • The FMIC shall conduct appropriate stress tests of such approved aggregators that have total assets of more than $10,000,000,000, provided that such stress tests shall be— ○ Specifically tailored to the business model of the approved aggregator; and ○ Utilized to— ▪ Ensure the safety and soundness of the approved aggregator; and ▪ Minimize the risk the approved aggregator may present to the MIF. <u>Resolution Authority for Failing Aggregators</u> • Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the FMIC shall— ○ Have the authority to act, in the same manner and to the same extent, with respect to an approved aggregator that is not an insured depository institution as the FDIC with respect to insured depository institutions		

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		under 12 U.S.C. §§ 1821(c) through (s), 1822, and 1823 [conservatorship and receivership authority], while tailoring such actions to the specific business model of the approved aggregator, as may be necessary to properly exercise such authority under this subsection; ○ In carrying out any such authority, act, in the same manner and to the same extent, with respect to the MIF as the FDIC may act with respect to the Deposit Insurance Fund under such FDIA authorities; ○ Prescribe regulations governing the applicable rights, duties, and obligations of an approved aggregator that is not an insured depository institution placed into resolution under this subsection, its creditors, counterparties, and other persons, as the FMIC deems necessary to properly exercise its conservatorship and receivership authorities; and ○ Consistent with such FDIA authorities provided to the FMIC immediately place an insolvent approved aggregator that is not an insured depository institution into receivership. • If an insolvent approved aggregator is an insured depository institution, the FMIC		

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		shall recommend, in writing, to such approved aggregator's appropriate Federal banking agency or State banking regulator to resolve such approved aggregator, which agency shall have sole authority to resolve such aggregator pursuant to FDIA § 11(c) or appropriate Federal or State law, as applicable. • The FMIC may not exercise any resolution authority with respect to any approved aggregator that is not an insured depository institution or an affiliate of an insured depository institution unless the total amount of the expenditures by the FMIC and obligations incurred by the FMIC in connection with the exercise of any such authority with respect to such approved aggregator is the least costly to the MIF, consistent with the least cost approach specified in the FDIA, of all possible methods for meeting the FMIC's obligations under this Act and expeditiously concluding its resolution activities, subject to FDIA § 13 where the FMIC and Board of Directors shall have the same authority as the FDIC and its board. • The FMIC, in carrying out any authority provided in this subsection, shall prescribe regulations to ensure that any amounts owed to the U.S., unless the U.S. agrees or consents otherwise, shall have		

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		priority following administrative expenses of the receiver when satisfying unsecured claims against an approved aggregator, or the receiver therefor, that are proven to the satisfaction of the receiver. <u>Hearing</u> Upon notice of denial of an application for approval or upon a notice of suspension or revocation of the approved status of an approved aggregator, the applicant or approved aggregator shall be afforded a hearing under FDIA § 8(h), in the same manner and to the same extent as if the FMIC were the appropriate Federal banking agency, provided that the approved aggregator submits a request for a hearing not later than 10 days after the date on which the notice is published. <u>Permission to Carry Out Other Activities</u> Nothing in this Act prohibits an approved aggregator from being an affiliate of an approved guarantor, if each aggregator and each guarantor, independent of each other, meets the approval standards established by the FMIC under this title. <u>Information Sharing Regarding Insured Depositories and Their Affiliates</u> • To the extent the FMIC has relevant information indicating that an approved aggregator that is an insured depository or		

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		an affiliate of an insured depository: o Faces a material threat to its safety and soundness, including insufficient capital, o May be in material violation of Federal banking law, or o May threaten the financial stability of the housing finance system or the MIF, the FMIC shall notify, in writing, such appropriate Federal banking agency that such conditions exist. The FMIC shall have no authority to enforce prudential standards established by an appropriate Federal banking agency pursuant to the appropriate Federal banking agency's authority. • To the extent an appropriate Federal banking agency or State banking agency has relevant information indicating that an approved aggregator that is an insured depository institution or an affiliate of an insured depository institution o Faces a material threat to its safety and soundness, including insufficient capital, o May be in material violation of this Act or FMIC rules, or o May threaten the financial stability of the housing finance system or the MIF, such appropriate Federal banking agency or State banking agency shall notify, in		

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		writing, the FMIC that such conditions exist. <u>Rule of Construction Regarding Preservation of FMIC Authority</u> Nothing in this section limits, or shall be construed to limit, the authority of the FMIC to provide exemptions to, or adjustments for, the provisions of this section based on the asset size of approved aggregators, or other criteria, as the FMIC deems appropriate, in order to reduce regulatory burdens while appropriately balancing protection of the MIF. <u>FHLBs, Joint Offices, and Bank Subsidiaries as Aggregators</u> • Section 12 of the FHLB Act (12 U.S.C. 1432) is amended, effective on the system certification date, by adding at the end: "(c) Subject to such regulations as may be prescribed by the Agency, in coordination with the Federal Mortgage Insurance Corporation, 1 or more Federal Home Loan Banks may establish a subsidiary or joint office in any form under the laws of any state, subject to approval of the Corporation. Any subsidiary or joint office established under this subsection shall be restricted to engaging in activities related to being an approved aggregator, as that term is defined under section 2 of Housing Finance Reform and Taxpayer Protection Act of 2014.		

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		"(d) Subject to such regulations as may be prescribed by the Agency, in coordination with the Federal Mortgage Insurance Corporation, 1 or more Federal Home Loan Banks or any subsidiary or joint office of a Federal Home Loan Bank established under subsection (c) may apply to become, and may become, an approved aggregator, as that term is defined under section 2 of the Housing Finance Reform and Taxpayer Protection Act of 2014." • Section 10(a) of the FHLB is amended, effective on the agency transfer date— ○ In paragraph (2)(B), by adding that long-term advances made be made for the purpose of CDFIs (even if not for small businesses, small farms, small agri-businesses, and community development activities, as under current law). ○ In paragraph (3)(E), by adding the bold text below, that advances may be secured by "Secured loans for small business, agriculture, or community development activities or securities representing a whole interest in such secured loans, in the case of any community financial institution **or community development financial institution"** and it would define CDFI the same as in § 103 of the Riegle Community		

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		Development and Regulatory Improvement Act (12 U.S.C. § 4702). • Notwithstanding FHLB Act § 11, and covered security secured by eligible mortgage loans transferred to the Platform by an FHLB or subsidiary or joint office thereof, acting as an approved aggregator, shall not be designated as, or considered to be the joint and several obligations of the FHLBs.		
Standards for Qualified Issuers	**§ 322(g) Standards for Qualified Issuers** Standards for Qualified Issuers • The Utility shall develop, adopt, and publish standards for an issuer to qualify as a qualified issuer. Such standards shall only include— ○ The experience, financial resources, and integrity of the issuer and its principals, including compliance history with Federal and State laws; ○ The adequacy of insurance and fidelity coverage of the issuer with respect to errors and omissions; and ○ A requirement that the issuer submit audited financial statements to the Utility, who shall make such statements publicly available through its website. • The Utility shall establish an application process for the qualification of issuers, in such form and manner and requiring such			

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	information as the Utility may prescribe, in accordance with such standards. o The Utility shall approve any application unless the issuer does not meet the adopted standards. o The Agency shall publish a list of newly qualified issuers in the Federal Register and the Utility shall maintain an updated list of qualified issuers on its Web site. • The Utility may review the status of a qualified issuer if the Utility is notified that a claim has been made against the issuer by a trustee with respect to a violation of a contractual term in a securitization document of the issuer. o If the Utility determines, subject to the approval of the Director, in such a review, that an issuer no longer meets the standards for qualification, the Utility shall revoke the issuer's qualified status. The revocation of an issuer's qualified status shall— ▪ Have no effect on the qualified status of any security issued before such revocation; and ▪ Not relieve the issuer of any obligation associated with any representation or warranty or any repurchase obligations related to any qualified security issued before such revocation. o The Utility shall establish standards			

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	by which a qualified issuer who no longer meets the standards for qualification may remediate and return to meeting the standards, without losing the issuer's qualified status. o The Agency shall publish a list of issuers who are no longer qualified in the Federal Register and the Utility shall maintain an updated list of such issuers on its Web site.			
Standards for Trustees	**§ 322(h) Standards for Trustees** • There shall at all times be one or more trustee for each pool of mortgages that acts as collateral for a qualified security. • The Director shall issue regulations regarding the qualifications of trustees that shall, to the extent practicable, be consistent with the qualification provisions applicable to trustees under section 310(a) of the Trust Indenture Act of 1934 (15 U.S.C. 77jjj(a)). • The Director shall issue conflict of interest regulations that apply to a qualified trustee. Such regulations shall, to the extent practicable, be consistent with those conflict of interest provisions applicable to an indenture trustee under section 310(b) of the Trust Indenture Act of 1934 (15 U.S.C. 77jjj(b)). • Any time a trustee brings a claim against a qualified issuer on behalf of investors			

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	with respect to a standard form securitization agreement, the trustee shall notify the Director of such claim. • For the purpose of protecting investor rights, each trustee shall— ○ Maintain a list of all investors (beneficial owners) in a qualified security; ○ Update such list from time to time; ○ Not make such list available to investors (beneficial owners); and ○ Act as a means to communicate information about the qualified security to investors (beneficial owners) and act as a means for investors (beneficial owners) to communicate with each other. • A trustee shall not be liable for the content of any information provided to the trustee by an investor (beneficial owner) that the trustee communicates to another investor (beneficial owner). • A person who becomes an investor (beneficial owner) in a qualified security shall promptly notify the trustee of such security of the change in ownership.			
Approval of PMIs		**§ 313 Approval of PMIs** Approval Standards The FMIC shall develop, adopt, and publish standards for its approval of private mortgage insurers to provide private mortgage loan insurance on eligible single-family mortgages	**§ 221 Approval of PMIs** Standards for Approval of Private Mortgage Insurers The NMFA shall develop, adopt, and publish standards for the approval by the NMFA of private mortgage insurers to provide private	

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
		that collateralize single-family covered securities. The standards shall include— • The financial history and current financial condition, including capital and loss reserves to comply with any applicable State law or regulation, of the insurer; • The capability of the insurer's management; • The general character and fitness of the insurer's officers and directors, including their compliance history with Federal and State laws and rules and regulations of self-regulatory organizations as defined in § 3(a)(26) of the Exchange Act as applicable; • That the insurer has the capacity to insure eligible single-family mortgage loans in a manner to comply with any applicable State law or regulation that furthers the purposes of the FMIC to facilitate the broad availability of mortgage credit and secondary mortgage market financing through fluctuations in the business cycle for eligible single-family and multifamily lending across all regions, localities, institutions, property types including rental, and eligible borrowers. This shall not be construed to prevent the FMIC from approving a small or specialty private mortgage insurer, provided that the private insurer has the capacity to adequately diversify its risk to meet	mortgage insurance on eligible mortgages. The required standards shall include— • The financial history and condition of the insurer; • The adequacy of the insurer's capital structure, including whether the insurer has sufficient capital to cover the first loss insurance obligations it assumes under this Act and that might be incurred in a period of economic stress, including, but not limited to, any period of economic stress that would result in a 30% (or greater) national home price decline; • The general character and fitness of the management of the insurer, including compliance history with Federal and State laws; • The risk presented by such insurer to the MIF; • The adequacy of insurance and fidelity coverage of the insurer; • A requirement that the insurer submit audited financial statements to the Director; and • Any other standard the NMFA determines necessary or appropriate. <u>Application and Approval</u> • The NMFA shall establish an application process, in such form and manner and requiring such information as the NMFA may require, for the approval of private	

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		solvency standards required by any applicable State law or regulation.
		• The risk presented by such insurer to the MIF;
		• The adequacy of insurance and fidelity coverage of the insurer;
		• A requirement that the insurer submit audited financial statements to the FMIC; and
		• Any other standard the FMIC, after notice and comment, determines necessary to avoid significant risk to the MIF, provided the standard does not materially conflict with State law.
		To promote consistency and minimize regulatory conflict, the FMIC shall consult and coordinate with appropriate Federal regulators and State regulators and officials when developing these standards.
		
		<u>Application and Approval</u>
		• The FMIC shall establish an application process, in such form and manner and requiring such information as the FMIC may require, for the approval of private mortgage insurers under this section. The FMIC shall establish internal timelines for its processing of applications, including timelines for any action to approve or to deny an application.
		• The FMIC shall notify the appropriate State insurance regulator upon receipt of
			mortgage insurers under this section.
			• The NMFA may approve any application provided the private mortgage insurer meets the required standards.
			• The NMFA shall—
			  ○ Publish in the Federal Register a list of newly approved private mortgage insurers; and
			  ○ Maintain an updated list of approved private mortgage insurers on its website.
			
			<u>Review, Suspension, and Revocation of Approved Status</u>
			• The NMFA may review the status of any approved private mortgage insurer if the NMFA is notified of or becomes aware of any violation by the insurer of this Act or the rules promulgated pursuant to this Act.
			• If the NMFA determines, in such a review, that an approved private mortgage insurer no longer meets the standards for approval, the NMFA may suspend or revoke the approved status of such insurer.
			• The suspension or revocation of an approved private mortgage insurer's approved status shall have no effect on the status of any covered security or on previously contracted insurance written by such private mortgage insurer.	

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		any application of by a private mortgage insurer to become an approved private mortgage insurer. • The FMIC may approve any such application if the insurer meets the adopted standards. • The FMIC shall have authority to deny any application if an officer or director of the insurer has, at any time before approval been subject to a statutory disqualification pursuant to § 3(a)(39) of the Exchange Act or suspended, removed, or prohibited under FDIA § 8(g), prohibited pursuant to FDIA § 8(e)(6) or (7), subject to an action resulting in a written agreement or statement under FDIA § 8(u)(1), for which a violation may be enforced by an appropriate Federal banking agency, or subject to any final order issued under FDIA § 8. • The FMIC shall: o Provide prompt notice to a private mortgage insurer of the approval or denial of any application of the private mortgage insurer to become an approved private mortgage; o Publish a notice in the Federal Register upon approval of any private mortgage insurer; o Maintain an updated list of approved private mortgage insurers on the FMIC's website; and	• The NMFA shall— o Publish in the Federal Register a list of any approved private mortgage insurers who lost their approved status; and o Maintain an updated list of such insurers on its website. <u>Appeals</u> • A private mortgage insurer who submits an application to become an approved private mortgage insurer may appeal a decision of the NMFA denying such application. An approved private mortgage insurer may appeal a decision of the NMFA suspending or revoking the approved status of such insurer. • Any insurer who files such an appeal shall file the appeal with the NMFA not later than 90 days after the date on which the person receives notice of the decision of the NMFA being appealed. • The NMFA shall make a final determination with respect to an appeal not later than 180 days after the date on which the appeal is filed. <u>Avoidance of Conflicts of Interest</u> With respect to any eligible mortgage collateralizing a covered security insured under this Act, an approved private mortgage insurer may not provide insurance both—	

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		○ Provide prompt notice to the appropriate State insurance regulator upon the approval or denial of any application of a private mortgage insurer. • Any insurer who was approved to insure mortgage loans for a GSE the day before the FMIC publishes provisional standards for approving insurers under § 607(a)(2) and was in good standing on that day: ○ Shall be deemed conditionally approved for one year from the date the FMIC publishes those § 607(a)(2) provisional standards; ○ Shall, within six months after the FMIC publishes insurer approval standards under § 313(a) apply for approval and; ○ Shall, if it applied within that six months, receive approval or denial of its application within one year after the FMIC publishes § 607(a)(2) provisional standards. <u>Review, Suspension, and Revocation of Approved Status</u> • If the FMIC determines that an approved private mortgage insurer no longer meets the standards for approval, or violates the requirements under this section, including any standards, regulations, or orders promulgated in accordance with this Act,	• In satisfaction of the credit enhancement required under § 2(7)(C) [apparently meaning § 2(7)(A)], and • To cover the first loss position of private market holders of such covered security, unless such mortgage insurer meets such heightened standards as the NMFA may establish.	

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		the FMIC may: o Provide prompt notice to the appropriate State insurance regulator that the FMIC determines that an approved private mortgage insurer no longer meets the approval standards; o Suspend or revoke the approved status of such insurer, or o Take any other action with respect to such approved insurer as may be authorized under this Act. • The suspension or revocation of an approved private mortgage insurer's approved status shall have no effect on the status as a covered security of any covered security collateralized by eligible mortgage loans with which the approved private mortgage insurer contracted prior to the suspension or revocation. • The FMIC shall: o Promptly publish in the Federal Register a notice of suspension or revocation of an insurer's approval, and o Maintain an updated list of approved insurers on its website. • In this subsection, the term "violate" includes any action, taken alone or with others, for or toward causing, bringing about, participating in, counseling, or aiding or abetting, a violation of the requirements under this Act.		

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		<u>State Regulation</u>
		The appropriate State insurance regulator of an approved private mortgage insurer has primary authority to examine and supervise the approved private mortgage insurer.
		
		<u>Reports and Examinations</u>
		• For purposes of determining whether an approved private mortgage insurer is fulfilling the requirements under this Act, the FMIC may, in coordination with the insurer's appropriate State insurance regulator, including providing that regulator to join the FMIC in an on-site examination, examine or review any approved private mortgage insurer if the FMIC has substantial reason to believe—
		  ○ That an approved private mortgage insurer has engaged in a material violation or pattern of violations of this Act or the rules promulgated pursuant to this Act; or
		  ○ That the activities of an approved private mortgage insurer may threaten the financial stability of the housing finance system or the MIF.
		• The FMIC shall conduct an examination of an approved private mortgage insurer once, but not more than once, every 3 years, provided the approved private mortgage insurer has not been examined		

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		on-site by an appropriate State insurance regulator. • In conducting such an exam or review, the FMIC shall— ○ Provide reasonable notice to, and coordinate with, the appropriate State insurance regulator before commencing an examination of the insurer ○ To the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information, including by relying on existing examinations, inspections, and reports of the appropriate State insurance regulator; and ○ Ensure that the approved private mortgage insurer is not subject to conflicting supervisory demands by the FMIC and State insurance regulators, as appropriate. • The State insurance regulator of an approved private mortgage insurer shall notify the FMIC if there has been a final determination that the insurer is in a troubled hazardous financial condition, provided that the FMIC agrees to maintain the confidentiality or privileged status of the documents, material, or other information received from the insurer's state insurance regulator.		

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		Enforcement • The FMIC shall have the authority to enforce the provisions of this section with respect to private mortgage insurers, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under FDIA § 8(b) through (n), provided the FMIC demonstrates that the enforcement action is necessary to avoid significant risk to the MIF. • Before taking any enforcement action against an approved private mortgage insurer, the FMIC shall promptly notify, consult, and coordinate with, the appropriate State insurance regulator. Resolution Authority • For any approved private mortgage insurer that the FMIC has substantial reason to believe is insolvent, as defined by State law, and would otherwise be subject to receivership proceedings under State law, the FMIC shall recommend, in writing, that the State insurance regulator for such private mortgage insurer take such actions as are necessary and authorized under applicable State law to resolve such private mortgage insurer. • Notwithstanding this requirement, if, after the end of the 60-day period beginning on		

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		the date on which the FMIC provides its written recommendation to the regulator, the appropriate State insurance regulator has not filed the appropriate judicial action in the appropriate State court to place such private mortgage insurer into receivership under the laws and requirements of the State, the FMIC shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such a private mortgage insurer into receivership under the laws and requirements of the State. <u>Hearing</u> Upon notice of denial of an application or upon a notice of suspension or revocation of the approved status of an approved private mortgage insurer, the applicant or approved private mortgage insurer shall be afforded a hearing under FDIA § 8(h), in the same manner and to the same extent as if the FMIC were the appropriate Federal banking agency, provided that the approved private mortgage insurer submits a request to the FMIC for a hearing not later than 10 days after the date on which the notice is published. <u>Rule of Construction Regarding Preservation of FMIC Authority</u> Nothing in this section limits, or shall be		

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		construed to limit, the authority of the FMIC to provide exemptions to, or adjustments for, the provisions of this section based on the asset size of approved private mortgage insurers, or other criteria, as the FMIC deems appropriate, in order to reduce regulatory burdens while appropriately balancing the protection of the MIF.		

Approval of Servicers / Servicing Standards	**§ 322(b) Servicing Standards**
	The Utility shall develop, adopt, and publish—
	• Servicing standards, including for the modification, restructuring, or work-out of any mortgage that serves as collateral for a qualified security; and
	• A servicer succession plan, which may include provisions for—
	  ○ A specialty servicer that can replace the existing servicer if the performance of the mortgage pool deteriorates to specified levels; and
	  ○ A plan to achieve consistency in servicing systems related to systematic note-taking, consistent mailing addresses, and other points of contact for borrowers to use, among other items.
	
	Standards for Servicer Reporting
	The Utility shall develop, adopt, and publish standards for the reporting obligations of servicers of any mortgage that serves as
		§ 314 Approval of Servicers
		Standards for Approval of Servicers
		• The FMIC shall, by regulation, establish standards for the approval by the FMIC of servicers to administer eligible single-family mortgage loans, including standards with respect to—
		  ○ The collection and forwarding of principal and interest payments;
		  ○ The maintenance of escrow accounts;
		  ○ The collection and payment of taxes and bona fide insurance premiums;
		  ○ The maintenance of records on eligible single-family mortgage loans;
		  ○ The establishment of loss mitigation options that seek to enhance value and prevent, to greatest extent possible, the need to trigger a claim on insurance offered by the FMIC pursuant to this title, including by—
		    ▪ Establishing, by rule, a consistent process through which borrowers who submitted an
			§ 222 Approval of Servicers and Mortgage Servicing Standards
			Standards for Servicers
			The NMFA shall develop, adapt, and publish standards for the approval by the NMFA of servicers to administer eligible mortgages, including standards with respect to—
			• The financial history and condition of the servicer;
			• The general character and fitness of the management of the servicer, including compliance history with Federal and State laws;
			• The risk presented by such servicer to the MIF;
			• A requirement that the servicer submit audited financial statements to the NMFA; and
			• Any other standard the NMFA determines necessary or appropriate.
			
			Additional Required Servicer Standards
			The NMFA shall also develop and publish additional standards for servicers that
				§ 204 Servicing Rights; Representations and Warranties
				Servicing Rights
				The servicing rights for MBS issued by the issuing platform shall be controlled by—
				• The reinsurance company reinsuring the first 5% loss position on such securities; or
				• In the case of securities that do not have a reinsurance company reinsuring the first 5% or with respect to which the reinsurance company is insolvent, Ginnie Mae.
				
				Advancing Payments
				The party controlling the servicing rights shall also control the advancing of payments.
				
				Representations and Warranties
				• With respect to each pool securitized by the Issuing Platform, there shall be a collateral manager who shall—
				  ○ Oversee representations and warranties;

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	collateral for a qualified security.	initial loan modification request will be evaluated by servicers and the securitization trust for an affordable loan modification; and ▪ Providing clear guidance regarding the treatment of second lien holders, taking into consideration the priority and subordination of liens under Federal and State laws; ○ The advancement of principal and interest payments to investors in the case of a delinquency by a borrower until such time as the borrower has made all payments in arrears, the borrower entered into a repayment plan or modification, a regulated entity has purchased the loan, or the property securing the eligible single-family mortgage loan has been liquidated, including specification that the servicer shall recover advances upon a permanent modification; ○ The establishment of procedures under which the servicer may initiate or continue a foreclosure, in accordance with applicable Federal and State laws and regulations that— ▪ Take into account— ♦ The servicer's evaluation of, and agreements with,	administer eligible mortgages, including standards with respect to— • Compensation structures which incent servicers to maximize returns to investors on both performing and non-performing eligible mortgages; • The collection and forwarding of principal and interest payments; • The maintenance of escrow accounts; • The collection and payment of taxes and bona fide and reasonable insurance premiums; • The application of fees imposed on borrowers in connection with the servicing of an eligible mortgage, which shall be reasonably related to costs; • The maintenance of records on eligible mortgages; • The establishment of foreclosure loss mitigation programs that seek to enhance investor value and prevent, to the greatest extent possible, the need to trigger any claim on insurance offered by the NMFA pursuant to this title, including through affordable loan modifications, which shall include as an option modifications that reduce the unpaid principal balance of an eligible mortgage, consistent with a publically available net present value determination as defined by the NMFA; • The establishment of procedures for the servicer to refrain from initiating a	○ Act for the benefit of investors; and ○ In the case of a mortgage loan that is in breach of the representations and warranties, facilitate the repurchase or replacement of such mortgage loan with a mortgage loan that is in compliance with representations and warranties. • In general. ○ All contracts for private label securities issued after enactment shall include the following provisions: ▪ The qualification, responsibilities, and duties of trustees, including requirements set forth in the indenture or pooling and servicing agreement, or any applicable provisions of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.). ▪ Trustees of private label securities shall have a fiduciary duty to protect the financial interests of investors of such securities. • For purposes of this paragraph, a trustee's fiduciary duty means that a trustee shall at all times oversee, monitor, and manage the trust that owns the mortgage loans securing the private label securities in the financial interests of the trust and its

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		borrowers for loss mitigation options; ♦ Potential losses caused by delays in collateral recovery; and ♦ The need to minimize risks to the MIF; and ▪ Provide the borrower, upon request, documentation establishing the right of the mortgagee to foreclose; ○ The provision of eligible single-family mortgage loan information to borrowers, upon request, including a copy of the pooling and servicing agreement and securitization trust requirements that address the ability of the servicer to offer loss mitigation options; and ○ Implementing the terms of any loss mitigation and foreclosure prevention as required by any uniform securitization agreement developed under § 326. • The standards shall also include— ○ The financial history and condition of the servicer; ○ The capability of the servicer's management; ○ The general character and fitness of the servicer's officers and directors, including their compliance history	judicial or non-judicial foreclosure, or where a foreclosure has been initiated, from taking any additional steps in the judicial or non-judicial foreclosure, once an initial request for loss mitigation has been made by the homeowner, until completion of the review of any loss mitigation application, including written notice to the homeowner documenting any denial and a requisite appeal process; • A proscription against any servicer maintaining any financial interest in insurance products related to mortgages serviced by the servicer or its affiliates other than the coverage provided by the insurance; • The advancement of principal and interest payments to investors in the case of a delinquency by a borrower until such time as the borrower has made all payments in arrears or the property securing the eligible mortgage has been liquidated, including provisions for the cessation of advances when there is no longer any reasonable possibility of the recovery of such advances from the liquidation of the property or as appropriate to facilitate modification of the loan pursuant to subparagraph (G); • The provision of information to the borrower, upon request, documentation establishing the right to foreclose; and	investors, with the same degree of care and skill that a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. In determining financial interests, the trustee's fiduciary duty shall consider all investors in a securitization, rather than the interests of any particular class of investors. A trustee that is deemed to be acting in accordance with its fiduciary duty to the trust shall not be liable to any investor, and shall not be subject to any injunction, stay, or other equitable relief sought by such investor, based solely upon such actions. • The governing documents of any private label securities issued after the date of the enactment of this Act shall automatically be deemed to include a trustee's fiduciary duty. The trustee's fiduciary duty may not be abrogated or altered by the parties to such documents and may not be amended by parties to contracts for private label securities. • Nothing in this paragraph shall be construed to relieve any party of its duties to participants and beneficiaries of any employee benefit plan under the Employee Retirement Income Security Act (29 U.S.C. 1101 et seq.). • To the extent that the provisions of this paragraph conflict with any provision of

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		with Federal and State laws and rules and regulations of self-regulatory organizations as defined in § 3(a)(26) of the Exchange Act as applicable; ○ The risk presented by such servicer to the MIF; and ○ Minimum operational and management standards for the servicer, including with respect to— ▪ Internal controls; ▪ Recordkeeping; ▪ Internal audit systems; ▪ The maintenance of adequate liquidity and reserves; and ▪ Reporting standards to the FMIC and investors, including audited financial statements. • To promote consistency and minimize regulatory conflict, the OCC, Federal Reserve, FDIC, CFPB, NCUA, and the FMIC shall— ○ Consult and coordinate with each other in developing and issuing regulations with respect to the rules and standards for the servicing of eligible single-family mortgage loans; and ○ Review existing regulations with respect to mortgage loan servicing rules and standards. • To promote consistency and minimize regulatory conflict, the FMIC shall	• The provision of eligible single-family mortgage loan information to borrowers, upon request, including a copy of the pooling and servicing agreement and securitization trust requirements that may restrict the ability of the servicer to offer loss mitigation options. <u>Standards for Servicing Eligible Mortgages</u> The NMFA shall develop, adopt, and publish standards regarding the servicing of eligible mortgages which shall provide as follows: • A servicer of an eligible mortgage, approved pursuant to this subsection, or any affiliate of such servicer, may not own, or hold any interest in, any other residential mortgage loan that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on the same dwelling or residential real property that is subject to the eligible mortgage. This shall not apply to— ○ A servicer of a residential mortgage loan, or an affiliate of such a server, that owns the sole interest in the mortgage, deed of trust, or other security interest that secures the residential loan serviced by the servicer; or ○ A servicer that is a State or local housing agency or State or local housing finance agency.	the Trust Indenture Act of 1939, the provisions of the Trust Indenture Act shall apply, but only to the extent of the conflict. • Ginnie Mae shall— ○ Within 3 years of enactment, conduct a first study to evaluate— ▪ The structure of compensation for trustees of private label securities; ▪ Any changes to such compensation attributable to the imposition of the fiduciary duty required under this paragraph; and ▪ Any effects of the imposition of such fiduciary duty on liquidity in the market for private label securities; ○ Within 3 years of enactment, conduct a second study to evaluate any effects of the imposition of the fiduciary duty required under this paragraph upon borrowers, including if the imposition of such fiduciary duty results in additional costs and expenses to borrowers; and ○ Report to Congress describing any findings and conclusions of the studies, within a year of commencing each. • For purposes of this paragraph, the term

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		consult and coordinate with appropriate State regulators when developing and issuing regulations with respect to the rules and standards for the servicing of eligible single-family mortgage loans.
		
		<u>Application and Approval</u>
		• The FMIC shall establish an application process—
		  o In such form and manner and requiring such information as the FMIC may require, for the approval of servicers under this section; and
		  o That does not discriminate against or otherwise disadvantage small servicers.
		• The FMIC may approve any application provided the servicer meets the adopted standards. The FMIC shall notify any applicant seeking to become an approved servicer of the decision of the FMIC with respect to such approval as promptly as practicable.
		• The FMIC shall have authority to deny any application if an officer or director of the servicer has, at any time before approval been subject to a statutory disqualification pursuant to § 3(a)(39) of the Exchange Act or suspended, removed, or prohibited under FDIA § 8(g), prohibited pursuant to FDIA § 8(e)(6) or (7), subject to an action resulting in a
			For this purpose, "affiliate" means, with respect to a servicer, any person or entity that controls, or is controlled by, or is under common control with such servicer, as the NMFA shall prescribe by regulation.
			• If a borrower's insurance policy has not been paid, the servicer shall make payments on the current policy or seek reinstatement of such policy where necessary and then make such payments, unless the policy has been terminated for reasons other than nonpayment. If escrow funds are not available, the servicer shall advance such funds. If the current policy cannot be, continued and force-placed insurance is provided, the costs and the coverage should be substantially equivalent to that provided in a standard homeowner's insurance policy. For this purpose, "force-placed insurance" has the meaning given such term in RESPA§ 6(k).
			• No servicer of an eligible mortgage shall render a real estate settlement service in connection with a transaction involving an eligible mortgage through a subsidiary of such person or through insourcing. For this purpose, "insourcing" means providing for services to be conducted by the servicer's affiliated entities.
			• Each servicer of an eligible mortgage, or
				"private label security" means MBS not issued by the Platform.
				
				<u>Mandatory Arbitration</u>
				Disputes between parties to a security issued by the Issuing Platform shall be subject to mandatory arbitration.

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		written agreement or statement under FDIA § 8(u)(1), for which a violation may be enforced by an appropriate Federal banking agency, or subject to any final order issued under FDIA § 8. • Any servicer who was approved to service mortgage loans for a GSE on the day before enactment, and was in good standing as of such date, shall be deemed to be an approved servicer for purposes of initial servicer approval by the FMIC and thereafter and subject to the requirements of this section as an approved servicer. • The FMIC shall, by regulation, provide exemptions to, or adjustments for, approved servicers that service 7,500 or fewer eligible single-family mortgage loans, to reduce regulatory burdens while appropriately balancing protection of the MIF. An approved servicer and its subsidiaries and affiliates are considered a single entity for this purpose. • RESPA § 6 is amended by adding: The CFPB shall, by regulation, provide exemptions to, or adjustments for, the provisions of this section for servicers that service 7,500 or fewer mortgage loans, to reduce regulatory burdens while appropriately balancing consumer protections. An approved servicer and its subsidiaries and affiliates are considered a single entity for this purpose.	agents of such servicer, shall, with respect to the borrower, establish— o A single electronic record for each account, the contents of which shall be accessible throughout the servicer, or agents of such servicer, including to all loss mitigation staff, all foreclosure staff, and all bankruptcy staff; and o A single point of contact for the borrower for all loss mitigation activities. • Each servicer of an eligible mortgage, or agents of such servicer, shall— o Maintain adequate staffing and systems for tracking borrower documents and information that are relevant to foreclosure, loss mitigation, bankruptcy, and o Other servicing operations; o Maintain adequate staffing and caseload limits for employees responsible for handling foreclosure, loss mitigation, bankruptcy, and related communication with borrowers and housing counselors; o Set reasonable minimum experience, education, and training requirements for loan modification staff; and o Document electronically each action on a foreclosure, loan modification, bankruptcy, or other servicing file, including all communication with the	

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		• The FMIC shall—
		  ○ Publish a notice in the Federal Register upon approving any servicer under this section; and
		  ○ Maintain an updated list of approved servicers on its website.
		
		<u>Review, Suspension, and Revocation of Approved Status</u>
		• The FMIC may examine or review any approved servicer if the FMIC has substantial reason to believe that a servicer has engaged in a material violation or pattern of violations of this Act or the rules promulgated pursuant to this Act, including—
		  ○ Any failure by an approved servicer to comply with terms set forth in any uniform securitization agreement developed under § 326; or
		  ○ Through the identification of any information indicating abnormal eligible single-family mortgage loan performance within the loan portfolio of the approved servicer.
		• In addition to this authority, the FMIC shall conduct an examination or review of an approved servicer once, but not more than once, every 2 years, provided that such examination or review shall be limited to compliance with this Act or regulations promulgated under this Act.
			borrower and other parties.
			• Each servicer of an eligible mortgage, for any transfer of servicing to a successor servicer, shall—
			  ○ Inform the successor servicer (including a subservicer) whether a loan modification is pending;
			  ○ Ensure that the successor servicer shall accept and continue processing prior loan modification requests; and
			  ○ Ensure that successor servicer shall honor trial and permanent loan modification agreements entered into by the transferring servicer.
			
			<u>Coordination with Other Regulators</u>
			In developing the servicer and servicing standards, the NMFA shall coordinate with the CFPB, and, to the extent the NMFA determines practical and appropriate, the other Federal Banking agencies.
			
			<u>Application and Approval</u>
			• The NMFA shall establish an application process—
			  ○ In such form and manner and requiring such information as the NMFA may require, for the approval of servicers; and
			  ○ That does not discriminate against or otherwise disadvantage small servicers.	

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		• In conducting such an exam or review, the FMIC shall— ○ Provide reasonable notice to, and coordinate with, the appropriate Federal banking agency, CFPB, or State regulatory agency, as appropriate, for an approved servicer that is regulated by such Federal banking agency, CFPB, or State regulatory agency before commencing an examination of the approved servicer under this section; and ○ To the fullest extent possible— ▪ Rely on the examinations, inspections, and reports of the appropriate Federal banking agency, CFPB, or State regulatory agency, as appropriate, for an approved servicer that is regulated by such Federal banking agency, CFPB, or State regulatory agency; ▪ Avoid duplication of examination activities, reporting requirements, and requests for information; and ▪ Ensure that approved servicers are not subject to conflicting supervisory demands by the FMIC, appropriate Federal banking agencies, CFPB, or State regulatory agencies, as	• The NMFA may approve any servicer's application provided the servicer meets the required standards. • The NMFA shall— ○ Cause to be published in the Federal Register a list of newly approved servicers; and ○ Maintain an updated list of approved servicers on its website. • The NMFA shall by rule, after consultation with the CFPB, provide exemptions to, or adjustments for, the provisions of this section for approved small servicers, in order to reduce the regulatory burdens while appropriately balancing protection of the MIF. <u>Review, Penalty Assessment, Suspension and Revocation of Approved Status</u> • The NMFA shall periodically review the performance of approved servicers. In connection with such review, the NMFA shall periodically publish a publicly-available scorecard outlining servicer performance relative to benchmarks. • The NMFA may assess civil monetary penalties, consistent with § 225, in connection with a servicer failing to comply with any standards pursuant to the servicing of eligible mortgages under this section. • The NMFA may review the status of any	

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		appropriate. • To facilitate any such exam or review, each approved servicer shall, on an annual basis and in accordance with such requirements as the FMIC may establish, certify in writing to the FMIC that the approved servicer is in compliance with the approval standards, all other requirements of this Act, and any rules promulgated pursuant to this Act. ○ The FMIC shall have the authority to impose enforcement penalties with respect to an approved servicer who submits a certification that contains false or misleading information, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under FDIA § 8(b) through (n), except that the penalties under subsection (j) shall not apply. ○ If the FMIC takes any enforcement action against an approved servicer, the FMIC shall notify the approved servicer's appropriate Federal banking agency, CFPB, or State regulator, if applicable. • If the FMIC determines, in any such exam or review, that an approved servicer no longer meets the standards for approval, the FMIC may suspend or revoke the approved status of such	approved servicer if the NMFA is notified of or becomes aware of any violation by the servicer of this Act or the rules promulgated pursuant to this Act, including any failure by an approved servicer to comply with the terms set forth in any uniform securitization agreement developed under this Act. • In conducting such a review, the NMFA shall— ○ Provide reasonable notice to, and coordinate with, the appropriate Federal banking agency or State regulatory agency, as appropriate, for an approved servicer that is regulated by such Federal banking agency or State regulatory agency before commencing an examination of the approved servicer; and ○ To the fullest extent possible— ▪ Rely on the examinations, inspections, and reports of the appropriate Federal banking agency or State regulatory agency, as appropriate, for an approved servicer that is regulated by such Federal banking agency or State regulatory agency; ▪ Avoid duplication of examination activities, reporting requirements, and requests for information; and	

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		servicer.
		• The suspension or revocation of an approved servicer's approved status shall have no effect on the status of any covered security.
		• The FMIC shall—
		  o Publish in the Federal Register a list of any approved servicers who lost their approved status; and
		  o Maintain an updated list of such servicers on its website.
		
		<u>Appeals</u>
		A servicer who submits an application to become an approved servicer may appeal a decision of the FMIC denying such application. An approved servicer may appeal a decision of the FMIC suspending or revoking the approved status of such servicer.
		• Any servicer who files such an appeal shall file the appeal with the FMIC not later than 90 days after the date on which the person receives notice of the decision being appealed.
		• The FMIC shall make a final determination with respect to an appeal not later than 180 days after it is filed.
		
		<u>Transfer of Servicing</u>
		• For any eligible single-family mortgage loan or pool of eligible single-family mortgage loans insured by the FMIC
			▪ Ensure that approved servicers are not subject to conflicting supervisory demands by the NMFA, appropriate Federal banking agencies, or State regulatory agencies, as appropriate.
			• If the NMFA determines, in such a review, that an approved servicer no longer meets the standards for approval, the NMFA may suspend or revoke the approved status of such servicer. The suspension or revocation of an approved servicer's approved status shall have no effect on the status of any covered security.
			• The NMFA shall—
			  o Cause to be published in the Federal Register a list of any approved servicers who lose their approved status; and
			  o Maintain an updated list of such servicers on its website.
			
			<u>Appeals</u>
			• A servicer who submits an application to become an approved servicer may appeal a decision of the NMFA denying such application.
			• An approved servicer may appeal a decision of the NMFA suspending or revoking the approved status of such	

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		under this title and in accordance with rules promulgated by the FMIC, the FMIC may require the approved servicer to enter into a subservicing arrangement with any independent specialty servicer approved by the FMIC. These rules shall— ○ Set forth with clarity the performance conditions of an approved servicer that would warrant or necessitate such a subservicing arrangement; ○ Require that the performance condition warranting or necessitating the use of such a subservicing arrangement be of such type or character so as to materially and adversely affect the ability of the FMIC to recover any amounts owed to the FMIC; and for this purpose, define the term "materially and adversely affect"; ○ Require that any approved servicer be provided a reasonable amount of time, provided that such time does not present a risk to the MIF, to rebut, address, or correct any determination of the FMIC regarding a performance condition, and only permit the FMIC to carry out the authority upon expiration of this period of time; ○ Limit the scope of any such authority to eligible single-family mortgage	servicer. • Any servicer who files an appeal shall file the appeal with the NMFA not later than 90 days after the date on which the person receives notice of the decision being appealed. • The NMFA shall make a final determination with respect to an appeal not later than 180 days after the date on which the appeal is filed. <u>Borrower Ombudsman</u> The NMFA shall establish an Office of the Ombudsman to receive complaints from homeowners, homeowners' representatives, and other designated third parties. The Ombudsman shall have the authority to investigate, including the right to obtain information, documents, and records, in whatever form kept, from the servicer, and to resolve disputes between any homeowner and the servicer of an eligible mortgage. The Ombudsman shall coordinate with the CFPB in doing so. <u>Transfer of Master Servicing</u> • The Issuer shall have the right to transfer master servicing on a covered security in the event that the current approved servicer or servicers have failed to appropriately protect the MIF. • Subject to the rules promulgated by the	

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		loans that share similar underwriting, borrower, and performance characteristics; ○ Ensure that the scope of any such authority is not applied broadly and without further limitation; and ○ Notwithstanding the above, provide that an approved servicer may be subject to more extensive programmatic discipline or correction measures, as determined by the FMIC, if, during any 5-year period— ▪ The servicing duties that are the subject of the current use of the FMIC's authority under this subsection marks the third instance of the use of such authority with respect to the same approved servicer; and ▪ With respect to the prior 2 separate and individual instances of the use of such authority, the same approved servicer failed to cure any identified performance conditions or implement corrective measures as determined by the FMIC. • If a required transfer to a subservicer occurs, the approved servicer from whom such servicing duties are extinguished shall cease to receive compensation for any such servicing activities related to	Issuer, if the credit risk-sharing on a covered security required pursuant to § 202 is provided by an approved bond guarantor, such guarantor shall have the right to transfer master servicing on a covered security in the event that the approved bond guarantor can demonstrate that the current approved servicer or servicers have failed to appropriately protect their investment, including by failing to meet any additional required servicer standard identified under § 222(a)(2). • If the credit-risk sharing on a covered security required pursuant to § 202 is provided using any other mechanisms for private credit risk-sharing other than by such bond guarantors, and the Issuer has not yet already exercised such right to transfer master servicing on a covered security, the private market holders of the first loss position in a covered security may petition the Issuer for a change in approved servicers if the private market holders can demonstrate that their current approved servicer or servicers have failed to appropriately protect their investment, including by failing to meet any additional required servicer standard identified under § 222(a)(2). • Once such transfer of servicing has occurred, the approved servicer from	

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		those duties.
		• The FMIC may establish a succession plan for each approved servicer, including provisions for—
		  ○ A specialized servicer to replace the approved servicer if the performance of the eligible single-family mortgage loan pool serviced by such approved servicer deteriorates to specified levels; and
		  ○ A plan to achieve continuity of contact for borrowers upon the replacement of the approved servicer.
		This shall not be construed as authorizing the FMIC to circumvent, evade, or otherwise disregard its rules when facilitating a servicing transfer.
		
		<u>Petitions for Change of Servicer by Private Market Holders</u>
		The FMIC shall develop a process by which private market holders of the first loss position in a single-family covered security may petition the FMIC for a change in approved servicers, including specialized servicers for individual eligible single-family mortgage loans, if the private market holders can demonstrate that its investment was not appropriately protected by the current approved servicer, including by failing to meet any standard or requirement for servicer approval. If a change in servicers is approved—
			whom such servicing rights are extinguished shall cease to receive compensation for any such servicing activities related to those rights.
			• Once such transfer of servicing has occurred, the servicer to whom the servicing rights were transferred shall suspend the completion of any foreclosure for an eligible mortgage loan whose servicing rights have been transferred for a period of 60 days.
			• The NMFA may establish a succession plan for each approved servicer, including provisions for—
			  ○ A specialized servicer to replace the approved servicer if the performance of the eligible single-family mortgage loan pool serviced by such approved servicer deteriorates to specified levels; and
			  ○ A plan to achieve continuity of contact for borrowers upon the replacement of the approved servicer.
			• The NMFA shall develop a process by which an approved servicer shall provide notice to the NMFA of any transfer of any servicing rights of such approved servicer to another approved servicer. This required process shall include the development of procedures to permit the NMFA to prevent, halt, or rescind any transfer of servicing rights from an	

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		• The change must occur within 30 days after FMIC approval; and • Once the change has occurred, the approved servicer from whom such servicing rights are extinguished shall cease to receive compensation for any such servicing activities related to those rights. <u>Notice of Transfer of Servicing by Current Servicer</u> The FMIC shall develop a process by which an approved servicer shall provide notice to the FMIC of any transfer of any servicing rights of such approved servicer to another approved servicer. This process shall include the development of procedures to permit the FMIC to prevent, halt, or rescind any transfer of servicing rights from an approved servicer to a servicer that is not approved to service eligible single-family mortgage loans or to any servicer whose approved status has been suspended or revoked. <u>General Authority Regarding Servicing Transfers</u> The FMIC may develop such other standards with respect to the transfer of servicing rights by approved servicers as the FMIC determines necessary and appropriate to facilitate an orderly transfer of servicing rights after the suspension or revocation of the approved	approved servicer to a servicer that is not approved to service eligible single-family mortgage loans under this section or to any servicer whose approved status has been suspended or revoked.	

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		status of a servicer. <u>Study of Servicer Compensation for Non-Performing Single-Family Loans</u> The FMIC shall carry out a study of servicing compensation for non-performing single-family mortgage loans, including alternatives to existing servicing compensation structures. The study shall include recommendations for the optimal structure of servicer compensation, in order to— • Improve service for borrowers; • Reduce financial risk to servicers; and • Provide flexibility for guarantors to better manage non-performing single-family mortgage loans. Not later than 1 year after enactment, the Chairperson shall issue a report to the Congress containing any findings and determinations made in carrying out the study. <u>Rule of Construction</u> Nothing in this section shall prohibit a mortgage originator from retaining rights to service the eligible single-family mortgage loans it originated, if the mortgage originator meets the standards to be an approved servicer, or qualifies for an exemption.		
Approval of Small Lender Mutuals / FHLB		**§ 315 Authority to Establish and Approve Small Lender Mutuals** <u>Establishment of Small Lender Mutuals</u> • The FMIC shall establish one entity		**§ 205 FHLBs** <u>FHLB Membership of Lenders</u> FHLB Act § 4 (12 U.S.C. 1424) is amended by adding:

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Membership and Pooling		known as the "Small Lender Mutual," which shall be an approved small lender mutual, owned by and operated for the benefit of its members.
		• The FMIC shall, by regulation, establish standards for the approval by the FMIC of such other small lender mutuals as may be necessary.
		
		<u>Purposes</u>
		The purpose of the Small Lender Mutuals shall be as follows:
		• To address the needs of small mortgage lenders with respect to covered securities.
		• To purchase eligible mortgage loans to securitize a covered security from its member participants—
		  ○ For cash, on a single loan basis; or
		  ○ Through the sale of a portion of a multi-lender pool or multi-guarantor pool collateralized by eligible mortgage loans securitized in a covered security.
		• To obtain all necessary and appropriate credit enhancements for covered securities to support the lending activities of small mortgage lenders.
		• To implement policies and procedures that ensure that the access rules and fees of any small lender mutual are not prohibitive and do not discriminate against originators of eligible mortgage
				• Any lender that satisfies the requirements for FHLB membership by an insured depository institution, insurance company, or CDFI shall be eligible to become an FHLB member.
				• Ginnie Mae shall issue regulations specifying that FHLBs shall issue a separate class of stock to such lenders who become members, and Ginnie Mae shall determine the applicable restrictions and requirements for such stock.
				
				<u>FHLB Pooling Services for Eligible Mortgages</u>
				FHLB Act § 11 is amended by adding:
				Each FHLB shall provide pooling services to both members and non-members who wish to pool eligible mortgages for securitizing through the Issuing Platform established by title II of the Partnership to Strengthen Homeownership Act of 2014. For this purpose, 'eligible mortgage' has the meaning given that term under § 2 of the Partnership to Strengthen Homeownership Act of 2014.

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		loans or approved aggregators on the basis of size, composition, business line, or loan volume. • To appropriately manage the risk of the small lender mutual to ensure the continued safety and soundness of such mutual. <u>Provisions to Ensure the Effective Operations of Small Lender Mutuals</u> • Not later than 1 year after enactment, FHFA shall conduct an assessment of the intellectual property, technology, infrastructure, and processes of the GSEs relating to the operation and maintenance of the systems needed to ensure small mortgage lender access to the secondary mortgage market to determine the needs of the single required Small Lender Mutual. This assessment shall be submitted to the Transition Committee established under § 404, or the Board if confirmed pursuant to § 404(d), and included in the transition plan required under § 602. • After the agency transfer date and before the system certification date, FHFA, consistent with title VI— o Shall dispose of the intellectual property, technology, infrastructure, and processes of the GSEs relating to the operation and maintenance of the		

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		systems needed for small mortgage lenders to access the secondary mortgage market; and o May manage such disposition through the sale, transfer, licensing, or leasing of such intellectual property, technology, infrastructure, and processes of a GSE to the single required Small Lender Mutual to ensure that the Small Lender Mutual can access the secondary mortgage market and fulfill the purposes of the section. • After the agency transfer date and before the system certification date, FHFA, consistent with § 604(h), may transfer to a subsidiary or subsidiaries of the GSEs any function, activity, infrastructure, property, including intellectual property, technology, or any other object or service of an enterprise that the FMIC determines is necessary and available for the single required Small Lender Mutual to carry out its activities and operations. • The initial capital necessary for the single required Small Lender Mutual to purchase a subsidiary or to purchase, lease, or license the GSE systems, and to perform all other activities and functions of the Small Lender Mutual, including the ability of the Small Lender Mutual to operate a cash window for the purchase of		

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		individual eligible mortgage loans, shall be provided by the GSEs. o The amount of any initial capital required to be provided by the GSEs shall be determined by the FMIC based on the needs of the Small Lender Mutual to carry out its activities and functions, as well as by the current volume of business from the GSE-approved sellers that are eligible to participate as a member of the Small Lender Mutual. o The amount of any initial capital required to be provided by the GSEs shall be repaid by the single required Small Lender Mutual on a schedule jointly agreed to by the Small Lender Mutual and the FMIC. Such repayment shall be completed within 7 years from the system certification date. The FMIC, after consultation with the mutual board of the single required Small Lender Mutual, may extend the repayment period for an additional 3 years, if, in the sole discretion of the FMIC, the FMIC deems such extension necessary. Ensuring Fair Competition FHFA may, consistent with the public interest, for the maintenance of fair competition among all small lender mutuals, and the purposes set forth in this section,		

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		provide, through a licensing agreement or other agreement, access to any transferred technology or platform. Eligibility Eligibility to participate as a member in any small lender mutual shall be limited to any— • Insured depository institution having less than $500,000,000,000 in total consolidated assets at the time of the initial participation of the institution in the small lender mutual; • Non-depository mortgage originator that— o Has a minimum net worth of $2,500,000; o Has annual eligible mortgage loan production of less than $100,000,000,000; and o Either ▪ Prior to the system certification date, was approved to sell mortgage loans to a GSE on the date that is 1 day prior to the establishment or approval of the small lender mutual, provided that such originator was in good standing as of such date; or ▪ Meets the standards established by the small lender mutual; • FHLB; and • The following if they meet the standards		

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		established by the small lender mutual: ○ CDFIs; ○ Mission-based non-profit lender; and ○ Housing finance agency. Each entity eligible to participate as a member of a small lender mutual: • May not be required to become an approved entity under this Act to access any function or operation of a small lender mutual; and • Shall meet all applicable standards and requirements under this Act. <u>Eligibility Thresholds</u> The FMIC may adjust the eligibility thresholds if the FMIC, in consultation with the mutual board of a small lender mutual, determines that— • The thresholds do not facilitate the purposes of the small lender mutual; • The thresholds restrict small multifamily lenders' participation in the small lender mutual; or • The eligibility thresholds pose a risk to the MIF. <u>Platform Membership</u> Each small lender mutual shall be a member of the Securitization Platform. <u>Funding Authority</u> • The mutual board of each small lender		

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		mutual shall charge and collect fees from its member participants for membership in the small lender mutual to cover the costs of— o In the case of the single required Small Lender Mutual— ▪ The purchase of any function, activity, infrastructure, property, including intellectual property, technology, or any other object or service from a GSE; ▪ Any initial capital for the establishment of a cash window; and ▪ The repayment by the single required Small Lender Mutual of its initial capital, provided that any fee charged to cover such repayment amounts is applicable only to those member participants identified and approved after the establishment date of the Small Lender Mutual and before the 7- or 10-year repayment date; and o The continued operation of the small lender mutual, including to build capital reserves and to manage risks. • In addition, the mutual board of the single required Small Lender Mutual may charge and collect a fee from member participants identified and approved after the 7- or 10-year repayment date to		

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		compensate member participants identified and approved prior to such repayment date for the share of the fees paid by such member participants to cover the cost of repayment by the single required Small Lender Mutual of its initial capital. • The mutual board of each small lender mutual may, in its discretion and upon consultation with the FMIC, increase or decrease any authorized fee. The mutual board of each small lender mutual shall, on an annual basis and upon any increase or decrease of any fee, provide the FMIC with a schedule of the fees charged by the small lender mutual to its member participants. • The authorized fees — o Shall be equitably assessed; and o Shall not discriminate against originators of eligible mortgage loans or approved aggregators based on size, composition, business line, or loan volume. • If a small lender mutual, in consultation with the FMIC, determines that any fee or fees authorized this subsection are prohibitive or discriminatory, the small lender mutual may, in the interest of building the membership of the small lender mutual, lower any such fee or fees. Each small lender mutual shall, in		

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		consultation with the FMIC, set reasonable criteria for any determination that a fee is prohibitive or discriminatory. The criteria shall consider the potential impact on the financial safety and soundness of the small lender mutual. <u>Governance</u> • The mutual board of each small lender mutual, in consultation with the FMIC, shall take all reasonable steps necessary to establish governance provisions that reflect the important role in the mortgage market played by the member participants of small lender mutuals. • The management of each small lender mutual shall be vested in a board of 15 directors (the "mutual board"), which shall include representatives of approved member participants of the small lender mutual. • The FMIC shall make initial appointments of the members of the mutual board for the single required Small Lender Mutual. Each such initial appointment shall be for a term of 1 year. Upon expiration of the 1-year period, the member participants of the single required Small Lender Mutual shall elect the members of its mutual board from within its membership. • The mutual board of each small lender		

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		mutual shall have at least 1 independent director to serve the public interest. This independent director shall have history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. • No more than one-third of the directors of the Small Lender Mutual's mutual board may be held by a single category of member participants, defined as community banks, credit unions, nondepository mortgage originators, FHLBs, HFAs, CDFIs, and mission-based non-profit lenders. • The Small Lender Mutual's mutual board shall select, on a rotating basis from representatives of its directors, an individual to serve as Platform Director under § 322. If more than one Small Lender Mutual is approved under this section, each shall rotate the § 322 representative position • Member participants of each small lender mutual shall have equal voting rights on any matters before the small lender mutual of which it is a member, regardless of the size of the individual member participant. • For these governance purposes, a member participant and its subsidiaries, joint offices, and affiliates, shall be treated as a		

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		single entity and shall be entitled to cast a single vote on any matters before the small lender mutual of which it is a member.
		
		<u>Approval of Member Participants</u>
		• Each mutual board shall develop standards and procedures to approve the application of member participants in the small lender mutual. The standards shall include standards relating to the—
		  ○ Prospective members' compliance history with Federal and State law;
		  ○ Safety and soundness of prospective member participants; and
		  ○ Mortgage underwriting practices of the prospective member.
		• In approving any prospective member to become a member participant in a small lender mutual, the mutual board of that small lender mutual may consult and share information with either the appropriate Federal banking agency and state regulator of the prospective member, or with the CFPB if the CFPB supervises the prospective member.
		  ○ Information so shared shall not be construed as waiving, destroying, or otherwise affecting any privilege or confidential status that a prospective member may claim with respect to such information under Federal or		

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		State law as to any person or entity other than the board of directors or its appropriate Federal banking agency. ○ No provision of this subsection may be construed as implying or establishing that— ▪ Any prospective member waives any privilege applicable to information that is shared or transferred under any circumstance to which this subsection does not apply; or ▪ Any prospective member would waive any privilege applicable to any information by submitting the information directly to its primary Federal or State regulator, but for this subsection. • Each mutual board shall develop streamlined membership standards and procedures for any lender who was approved to sell loans to a GSE the day before enactment, and was in good standing as of then. <u>Authority to Become an Approved Aggregator</u> Each small lender mutual may apply to the FMIC for approval to become an approved aggregator pursuant to § 312. <u>Cash Window</u>		

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		• Each small lender mutual shall have the ability to operate a cash window for the purchase of individual eligible single-family mortgage loans.
		• To ensure the safety and soundness of each small lender mutual, the FMIC shall establish standards for the regulation, supervision, and operation of each cash window.
		• The FMIC may, if it determines necessary or appropriate, establish a process and criteria for approved guarantors and approved aggregators to apply to the FMIC for approval to operate a cash window for the purchase of individual eligible single-family mortgage loans. It the FMIC does so, it—
		  ○ May grant approval to an approved guarantor or an approved aggregator that applies to operate a cash window for the purchase of individual eligible single-family mortgage loans only if the FMIC determines that—
		    ▪ The approved guarantor or approved aggregator meets the criteria; and
		    ▪ The operation of the cash window would not pose a risk to the MIF; and
		  ○ To ensure the safety and soundness of each approved guarantor and approved aggregator, shall establish		

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		standards for the regulation, supervision, and operation of each cash window that an approved guarantor or approved aggregator is approved to operate under this paragraph. • FHFA may, consistent with the public interest and for the maintenance of fair competition among entities providing cash window services, provide, through a licensing agreement or other agreement, access to any technology or platform relating to a cash window transferred to a GSE subsidiary. <u>Recognition of Distinction Between Small Lender Mutuals and Other Aggregators</u> Prior to promulgating any regulation or taking any other formal or informal action of general applicability, including the issuance of an advisory document or examination guidance, the FMIC shall consider the differences between small lender mutuals and other approved aggregators with respect to— • The cooperative ownership structure of small lender mutuals; • The purposes of small lender mutuals; • The capital structure of small lender mutuals; and • Any other differences that the FMIC considers appropriate.		

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		Coordination of Servicer Approval Each mutual board may coordinate with the FMIC to facilitate the application process for its member participants to become approved servicers of the FMIC pursuant to § 314. Multifamily Study Not later than 1 year after the agency transfer date, the FMIC shall conduct and complete a study to determine— • The access needs of small multifamily mortgage lenders to the secondary multifamily mortgage market; and • Whether the single required Small Lender Mutual can meet the access needs of small multifamily mortgage lenders.		
Approval of Collateral Risk Managers		**§ 327 Approval and Standards for Collateral Risk Managers** Standards for Approval of Collateral Risk Managers The FMIC shall develop, adopt, and publish standards for the use of collateral risk managers who may work with the Platform, as well as trustees and servicers of MBS to manage mortgage loan collateral, including standards with respect to— • Tracking mortgage loan repurchases; • Compliance with obligations under any applicable securitization documents; and • Managing any disputes and the resolution process.		

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		<u>Additional Required Standards</u> The standards shall include the review of foreclosure loss mitigation programs established under § 314 for approved servicers.		
Covered Entity Oversight		**§ 316 Supervisory Actions Related to Capital and Solvency** <u>Capital Classifications</u> • The FMIC shall establish, by regulation, capital classifications regarding the levels of capital maintained by each type of covered entity. The FMIC shall classify covered entities according to the following capital classifications: A covered entity shall be classified as: ○ *Well capitalized* if it meets all capital and solvency standards in § 309(b). ○ *Adequately capitalized* if it meets some, but not all, capital and solvency standards in § 309(b). ○ *Undercapitalized* if it fails to meet any of the capital and solvency standards in § 309(b). ○ *Significantly undercapitalized* if it is significantly below any of the capital and solvency standards in § 309(b). ○ *Critically undercapitalized* if it is critically below any of the capital and solvency standards in § 309(b). • The FMIC may reclassify a covered entity if— ○ At any time, the FMIC determines, in	**§ 224 Additional Authority Relating to Oversight of Market Participants** In carrying out its authorities under this subtitle, the NMFA may, in its discretion, develop, publish, and adopt such other additional standards or requirements as the NMFA determines necessary to ensure— • Competition among approved private mortgage insurers, servicers, bond guarantors, and other approved private market participants in the secondary mortgage market; • Competitive pricing among approved private mortgage insurers, servicers, bond guarantors, and other approved private market participants in the secondary mortgage market; and • Access to affordable mortgage credit, including 30-year fixed rate mortgages, in the secondary mortgage market. **§ 225 Civil Money Penalties** <u>Authority</u> The NMFA may, in its discretion, impose a civil money penalty on the Issuer or any approved private mortgage insurer, servicer, bond guarantor, or other entity previously	

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		writing, that the covered entity is engaging in conduct that could result in a rapid depletion of capital held by the covered entity; ○ After notice and an opportunity for hearing, the FMIC determines that the covered entity is in an unsafe or unsound condition; ○ Pursuant to the requirements of this title, the FMIC deems the covered entity to be engaging in an unsafe or unsound practice; ○ The covered entity does not submit a capital restoration plan within the applicable time period that is substantially in compliance with regulations for such plans adopted by the FMIC; ○ The FMIC does not approve the capital restoration plan submitted by the covered entity; or ○ The FMIC determines that the covered entity has failed to comply with the capital restoration plan and fulfill the schedule for the plan approved by the FMIC in any material respect. • In addition to any other action authorized under this title, including the reclassification of a covered entity for any reason not specified in this subsection, if the FMIC makes any discretionary reclassification, the FMIC may classify a	approved by the NMFA that has failed to comply with or otherwise violates— • Any standard adopted by the NMFA pursuant to this subtitle; or • Any other requirement or provision of this Act, or any order, condition, rule, or regulation issued pursuant to this Act, applicable to the Issuer or to such private mortgage insurer, servicer, bond guarantor, or other entity as the case may be. <u>Procedures</u> • The NMFA shall establish standards and procedures governing the imposition of civil money penalties under this section. Such standards and procedures— ○ Shall provide for the NMFA notify the Issuer or any approved private mortgage insurer, servicer, bond guarantor, or other entity, as the case may be, in writing of the determination of the NMFA to impose the penalty, which shall be made on the record; ○ Shall provide for the imposition of a penalty only after the Issuer or any approved private mortgage insurer, servicer, bond guarantor, or other entity, as the case may be, has been given an opportunity for a hearing on the record; and	

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		covered entity as appropriate. • A covered entity shall make no capital distribution if, after making the distribution, the covered entity would be classified as anything other than well capitalized or adequately capitalized. The FMIC may permit a covered 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— o Is made in connection with the issuance of additional shares or obligations of the covered entity in at least an equivalent amount; o Will reduce the financial obligations of the covered entity or otherwise improve the financial condition of the covered entity; o Will enhance the ability of the covered entity to promptly meet the minimum capital level for the covered entity; o Contributes to the long-term financial safety and soundness of the covered entity; or o Furthers the public interest. <u>Adequately Capitalized</u> • The FMIC shall require a covered entity that is classified as adequately capitalized	o May provide for review by the NMFA of any determination or order, or interlocutory ruling, arising from a hearing. • In determining the amount of a penalty, the NMFA shall give consideration to factors including— o The gravity of the offense; o Any history of prior offenses; o Ability to pay the penalty; o Injury to the public; o Benefits received; o Deterrence of future violations; and o Such other factors as the NMFA may determine, by regulation, to be appropriate. <u>Action to Collect Penalty</u> If the Issuer or any previously approved private mortgage insurer, servicer, bond guarantor, or other entity, as the case may be, fails to comply with an order by the NMFA imposing a civil money penalty under this section, the NMFA may bring an action in the U.S. District Court for D.C. to obtain a monetary judgment against the Issuer or any previously approved private mortgage insurer, servicer, bond guarantor, or other entity, as the case may be, 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 U.S. in connection with the action. In an action under	

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		to— o Submit to the FMIC a capital restoration plan; and o Implement the plan after approval. • The FMIC may take, with respect to an adequately capitalized covered entity, any of the actions authorized to be taken with respect to an undercapitalized covered entity, if the FMIC determines that such actions are necessary to carry out the purposes of this subtitle. <u>Undercapitalized</u> • The FMIC shall require a covered entity that is classified as undercapitalized to— o Submit to the FMIC a capital restoration plan; and o Implement the plan after approval. • An undercapitalized covered entity shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless— o The FMIC has accepted the capital restoration plan of the covered entity; o Any increase in total assets is consistent with the capital restoration plan; and o The ratio of capital to total assets of the covered entity increases during the calendar quarter at a rate sufficient to enable the covered entity	this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review. <u>Settlements</u> The NMFA may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section. <u>Deposit of Penalties</u> The NMFA shall use any civil money penalties collected under this section to help fund the MIF. <u>Suspension and Revocation Authority.</u> Nothing in this section shall limit the authority of the NMFA to suspend or revoke the approved status of any private mortgage insurer, servicer, bond guarantor, or other entity previously approved by the NMFA.	

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		to become adequately capitalized within a reasonable time. • An undercapitalized covered entity shall not, directly or indirectly, acquire any interest in any entity or engage in a new activity, unless— o The FMIC has accepted the capital restoration plan of the covered entity, the covered entity is implementing the plan, and the FMIC determines that the proposed action is consistent with and will further the achievement of the plan; or o The FMIC determines that the proposed action will further the purpose of this section. • The FMIC shall— o Closely monitor the condition of any undercapitalized covered entity; o Closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized covered entity under this section; and o Periodically review the capital restoration plan, restrictions, and requirements applicable to an undercapitalized covered entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section. • The FMIC may take, with respect to an		

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		undercapitalized covered entity, any of the actions authorized to be taken with respect to a significantly undercapitalized covered entity, if the FMIC determines that such actions are necessary to carry out the purpose of this subtitle.
		
		<u>Significantly Undercapitalized</u>
		• The FMIC shall require a covered entity that is classified as significantly undercapitalized to—
		  o Submit to the FMIC a capital restoration plan; and
		  o Implement the plan after approval.
		• In addition to any other actions taken by the FMIC, the FMIC may, at any time, take any of the following actions with respect to a covered entity that is classified as significantly undercapitalized:
		  o Limit any increase in, or order the reduction of, any obligations of the covered entity, including off-balance sheet obligations.
		  o Limit or prohibit the growth of the assets of the covered entity, or require reduction of the assets of the covered entity.
		  o Require the covered entity to raise new capital in a form and amount determined by the FMIC.
		  o Require the covered entity to		

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		terminate, reduce, or modify any activity that creates excessive risk to the covered entity, as determined by the FMIC. o Take 1 or more of the following actions: ▪ Order or hold a new election for the board of directors of the covered entity. ▪ Require the covered 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 covered entity became undercapitalized. ▪ Require the covered entity to employ qualified executive officers (who, if the FMIC so specifies, shall be subject to approval by the FMIC). <u>Critically Undercapitalized</u> • The FMIC shall have the authority to resolve a critically undercapitalized covered entity that is a regulated entity pursuant to § 1367 of the 1992 Act. • The FMIC shall have the authority to resolve a critically undercapitalized covered entity that is not a regulated entity pursuant to the resolution authority granted to the FMIC under §§ 311(h),		

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		312(h), 313(g), and 703(i), as applicable.		
Acquisitions of Covered Entities		**§ 317 Ownership, Acquisitions, and Operations of Covered Entities** <u>Acquisitions of Covered Entities</u> It shall be unlawful, except with the prior approval of the FMIC, for any person to— • Directly or indirectly own, control, or have power to vote 10% of any class of voting shares of any covered entity (except to the extent that voting stock is required to be purchased by Federal statute as a condition to participate in the covered entity's programs); • Control in any manner the election of a majority of the directors or trustees of any covered entity; • Exercise a controlling influence over the management or policies of any covered entity; • Merge or consolidate with any covered entity; or • Divest a covered entity, or any substantial line of business of a covered entity, into any surviving entity. <u>Application and Approval Process</u> The FMIC shall establish, by regulation, an application, in such form and manner and requiring such information as the FMIC may require, for the approval of acquisitions, mergers, consolidations, or divestitures. The FMIC shall—		

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		• Establish internal timelines for its processing of applications under this section, including timelines for any action to approve or to deny an application under this section; and • Notify any applicant of the FMIC's decision to approve or to deny their application as promptly as practicable. <u>Standards for Approval of Application</u> The FMIC shall establish, by regulation, standards for the approval by the FMIC of acquisitions, mergers, consolidations, or divestitures. The standards shall, at a minimum, be based on— • The application process established by the FMIC; • The financial history and condition of the applicant; • The capability of the applicant's management; • The general character and fitness of the applicant's officers and directors, including their compliance history with Federal and State laws and rules and regulations of self-regulatory organizations as defined in § 3(a)(26) of the Exchange Act as applicable; • The risk presented by such acquisition, merger, consolidation, or divestiture to the MIF; • Any other standard the FMIC determines		

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		necessary to promote competition and mitigate market dislocations among covered entities in the secondary mortgage market; and
		• Any other standard the FMIC determines necessary or appropriate.
		
		<u>Approval</u>
		The FMIC—
		• May approve any application made pursuant to this section if the applicant meets the standards; and
		• May not approve—
		  o Any application under this section which would result in a monopoly; or
		  o Any other proposed acquisition or merger or consolidation under this section whose effect in any area of the U.S. may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the FMIC finds that the anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the needs of consumers and the communities served.
		• Shall have authority to deny any application if an officer or director of the applicant has, at any time before approval		

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		been subject to a statutory disqualification pursuant to § 3(a)(39) of the Exchange Act or suspended, removed, or prohibited under FDIA § 8(g), prohibited pursuant to FDIA § 8(e)(6) or (7), subject to an action resulting in a written agreement or statement under FDIA § 8(u)(1), for which a violation may be enforced by an appropriate Federal banking agency, or subject to any final order issued under FDIA § 8.
		
		<u>Restrictions on Engaging in Other Lines of Business</u>
		• An approved guarantor or approved multifamily guarantor may not engage in any activity relating to the business of insurance, other than any activity carried out by an approved guarantor or approved multifamily guarantor and approved by the FMIC pursuant to §§ 311 or 703.
		• An approved guarantor or approved multifamily guarantor may engage in any business activity unrelated to the business of insurance, subject to—
		  ○ The prior approval of the FMIC; and
		  ○ Any terms and conditions set forth by the FMIC.
		• This shall not be construed to prevent an approved guarantor from being an affiliate of a private mortgage insurer if approved by the FMIC.		

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		Limits on Support or Guarantee Arrangement • An approved guarantor or approved multifamily guarantor may not enter into any agreement, covenant, or other arrangement (including credit risk-sharing arrangement) with an affiliate or other person to support, guarantee, or finance any operation or activity of that affiliate. • Subject to any terms and conditions established by the FMIC, by regulation or order, an approved guarantor or approved multifamily guarantor may enter into an agreement, covenant, or other arrangement with an affiliate solely for the purpose of supporting, guaranteeing, or financing an operation or activity of the approved guarantor or approved multifamily guarantor. • Nothing in this section shall supersede the § 23A and 23B requirements of the Federal Reserve Act (transactions with affiliates). Anti-Steering Requirement The FMIC shall by regulation prohibit discounts made by an approved guarantor for any mortgage originator that is an investor, or affiliate of an investor, in the approved guarantor that are not otherwise available to other similar mortgage originators. The FMIC IG shall annually report to the FMIC and		

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		Congress on guarantors' practices and internal controls with respect to steering or preferential treatment for their investors prohibited by this section.		

New Utility Findings, Purposes, Definitions	**§ 302 Findings and Purposes**
	<u>Findings</u>
	The Congress finds that—
	• The liquidity and efficiency of the national housing finance market is enhanced by a robust secondary market for residential mortgage loans, including securities backed by residential mortgage loans;
	• The financial crisis that began in 2007 revealed weaknesses in the market infrastructure related to residential mortgage-backed securities, including—
	  ○ Weaknesses in standards—
	    ▪ For underwriting and servicing residential mortgage loans that may be collateral for mortgage-backed securities; and
	    ▪ For issuers and trustees of such securities;
	  ○ Weaknesses in the manner of recording and registering ownership and security interests in residential mortgage loans that backed pools of securities; and
	  ○ Weaknesses in the availability of information to assess performance of pools;			

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	• Weaknesses revealed in the financial crisis created uncertainty and impeded timely and successful resolution of troubled residential mortgage loans, and have impeded the return of private capital to the market for securities backed by residential mort- gage loans in the absence of a Federal guarantee of timely payment of principal and interest to investors; and • Improved standards and information availability and a national system for registering mort- gage-related documents, including notes, mortgages and deeds of trust, and ownership and security interests established therein, with standard procedures for demonstrating the right to act with regard to such notes or other registered data, would assist in addressing these weaknesses. <u>Purposes</u> The purposes of the national mortgage market utility created by this title are— • To enhance efficiency, liquidity, and security in the secondary market for residential mortgages, including mortgage-backed securities; • To establish standards related to originating and servicing eligible collateral and for issuers and trustees of qualified securities, which would be			

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	exempt from the Securities Act of 1933; • To improve uniformity, quality and accessibility of information related to the performance of residential mortgage loans; • To operate a common securitization platform that could be available to issuers of residential mortgage-backed securities; • To foster the use and uniformity of electronic methods for the creation, authentication, transmission, storage, and availability of materials relating to mortgages; • To provide a central repository for notes, mortgages, and other mortgage-related information, and address problems that can arise when paper notes cannot be produced, due to loss or destruction as a result of natural disaster or other causes; and • To provide a uniform procedure for demonstrating the right to act with regard to such notes or other registered data for all actions in any State or Federal proceeding, judicial or nonjudicial, involving such notes or other data. **§ 303 Definitions** With respect to the Utility, *Affiliate* means any entity that controls, is controlled by, or is under common control with, the Utility.			

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	Agency means FHFA.
	
	Depositor means—
	• Any person authorized to submit documents or data for registration with the Repository; and
	• Any person qualified pursuant to § 331 (relating to organization and operation of the Repository) to inform the Repository of—
	  ○ Newly identified interest holders, whether through creation, assignment, or transfer; or
	  ○ Changes to interests of existing holders, including through modification, amendment, or restatement of, or dis- charge related to, any registered mortgage- related document.
	
	Director means the FHFA Director.
	
	Eligible Collateral means a residential mortgage loan that meets any standard for mortgage classification established pursuant to § 322 (relating to standards for qualified securities).
	
	Enterprise or GSE means Fannie Mae, Freddie Mac, or any affiliate thereof.
	
	Mortgage-related document means any			

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	document or other information or data related to the use of residential real estate as security for a loan, including documents establishing an obligation to repay a loan secured by residential real estate, establishing a security interest in real estate, establishing the value of the real estate at the time the security interest is created, and insuring clear title to residential real estate pledged as security, or as the Director by regulation may define, and may include electronic documents. *Organizer* means the person or entity that establishes the Utility. *Participant* means any person authorized to use data maintained or created by the Repository that is not otherwise available to the public. *Platform* means the securitization infrastructure FHFA announced on October 4, 2012, and as developed by a GSE or the GSEs in conservatorship, under FHFA authority under the 1992 Act. *Repository* means the national mortgage data repository organized under § 331. *Utility* means the national mortgage market utility established under § 311. *Utility-Affiliated Party* means—			

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	• Any director, officer, employee or controlling stockholder of, or agent for, the Utility;
	• Any shareholder, affiliate, consultant, or joint venture partner of the Utility, 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 the Utility;
	• Any independent contractor of the Utility (including any attorney, appraiser or accountant) if—
	    o The independent contractor knowingly or recklessly participates in any violation of law or regulation, any breach of fiduciary duty or any unsafe or unsound practice; and
	    o 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 Utility.			

Securitization Utility / Platform / Cooperative Establishment	**§ 311 Establishment** <u>Authority of Director</u> Under such regulations as the Director may prescribe, the Director shall provide for the organization, incorporation, examination, operation, and regulation of a national mortgage market utility ("Utility"), and issuance of a charter for such Utility. The Utility shall be organized, operated, and	**Subtitle C—Securitization Platform and Transparency in Market Operations** **Part I—Securitization Platform** **§ 321 Establishment of the Securitization Platform** <u>In General</u> The FMIC shall establish an entity known as the Securitization Platform (or Platform) that shall be a utility owned by and operated for	**§ 211 Establishment of the Mortgage Securities Cooperative** <u>Establishment</u> There shall be established a cooperative entity to be known as the Mortgage Securities Cooperative that shall serve as the sole issuer for covered securities to be insured under § 204.	**§ 201 Issuing Platform** <u>Establishment</u> There is established within Ginnie Mae an entity to be known as the Issuing Platform (the "Platform"), which shall issue standardized MBS to increase homogeneity in the eligible securities market. The Platform may— • Make contracts, incur liabilities, and borrow money;

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	managed as a not-for-profit entity.
	
	Formation of Utility; Application
	• Subject to the terms of this subtitle and any regulations issued by the Director, a person or entity may file an application with the Director to establish the Utility. The Utility may be chartered as a corporation, mutual association, partnership, limited liability corporation, cooperative, or any other organizational form that the applicant may deem appropriate.
	• An application for establishment of the Utility shall include—
	  ○ The proposed articles of association;
	  ○ A statement of the general object and purpose of the Utility, consistent with the provisions of this subtitle;
	  ○ The proposed capitalization and business plan for the Utility;
	  ○ The proposed State whose law would govern, by election of the applicant, the operation of the Utility to the extent not otherwise covered by this subtitle;
	  ○ Information on the financial resources of the applicant;
	  ○ A statement of the relevant housing finance experience of the applicant;
	  ○ Identification of the proposed senior managers of the Utility, and the
		the benefit of its members as—
		• A nonprofit cooperative; or
		• A cooperative entity other than a nonprofit cooperative that—
		  ○ Best achieves the purposes and obligations of the Platform under § 325; and
		  ○ Serves the public interest.
		
		Regulated by the FMIC
		• The Platform shall be regulated and supervised by the FMIC.
		• The Platform shall not be an agency or instrumentality of the Federal Government.
		• The FMIC shall determine the legal form of incorporation of the Platform.
		• The FMIC shall—
		  ○ Determine in which of the several States to incorporate the Platform; and
		  ○ Have the authority to amend the State of incorporation to best effectuate the purposes and obligations of this part and other provisions of this Act.
		• Not later than 1 year after the agency transfer date, the FMIC shall file and submit the necessary documents to incorporate the Platform in the State the FMIC determines.
		
		Funding by the FMIC and Transfer of
			Membership
			Institutions that wish to issue insured covered securities through the Issuer, or to contribute loans into a mechanism for aggregating loans from multiple originators, shall be members of the Issuer, subject to such rules as established or approved by the NMFA.
			
			Governance
			Governance of the Issuer shall be on the basis of one-member, one-vote. The board of the Issuer shall have representation of originators of a range of sizes and charters to ensure that small institutions are adequately represented. The NMFA may establish or approve rules regarding governance and board representation.
			
			Common Securitization Platform
			Subject to such rules as the Director may establish, the Issuer may use the common securitization platform established by the GSEs to issue covered securities that are subject to the guarantee, subject to such requirements as the FHFA Director and Treasury shall establish.
			
			Corporate Powers
			The Issuer shall have power—
			• To adopt, alter, and use a corporate seal, which shall be judicially noticed;
			• To enter into and perform contracts,
				• Purchase, sell, receive, hold, and use real and personal property;
				• Create, execute, and administer trusts; and
				• Take such actions as the Platform determines are necessary or incidental to carry out the Platform's duties under this Act.
				
				Delivery of Pool to the Platform
				A mortgage originator or aggregator that wishes to make use of the Platform and have Ginnie Mae insure the securities issued by the Platform shall deliver to the Platform a pool of eligible mortgage loans.
				
				Securitization
				The Platform shall, upon receiving a pool of eligible mortgages—
				• Create standardized MBS collateralized by such mortgages; and
				• Transfer the standardized MBS to the mortgage originator or aggregator from which the Platform received the pool of eligible mortgages that are collateralizing the securities or the designee of such originator or aggregator.
				
				Standardized Criteria for Securities
				In issuing securities under this section, the Platform shall establish standardized criteria for such securities, including—

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	relevant experience of such individuals; and ○ Any other information the Director determines to be necessary to evaluate the back- ground, experience, and integrity of the applicant and the proposed senior managers, or information otherwise relevant to determine the likely success of the proposed Utility. Issuance of Charter and Chartering Criteria • Within 2 years of enactment, the Director shall issue a charter for the Utility to the applicant that the Director determines, in the Director's sole discretion, has the managerial, financial, and operational resources to succeed, consistent with the purposes of this subtitle. At the discretion of the Director, the charter may require the Utility to obtain specific approval from the Director before commencing any business operation, including operations related to the Platform or the Repository, which approval shall be provided when the Director determines, in the Director's sole discretion, that the Utility demonstrates appropriate operational, managerial, and governance capability with regard to such operation, including successful completion of testing and transition periods.	Property • At a time established by the FMIC, the FMIC shall transfer to the Platform such funds as the FMIC, in consultation with the Platform Directors, determines may be reasonably necessary for the Platform to begin carrying out its activities and operations. • Consistent with Title VI, the FHFA, in consultation with the FMIC and, as appropriate, the GSEs, may direct the GSEs to transfer or sell to the Platform any property, including but not limited to, intellectual property, technology, systems, and infrastructure (including technology, systems, and infrastructure developed by the GSEs for the CSP), as well as any other legacy systems, infrastructure, and processes that may be necessary for the Platform to carry out the functions and operations of the Platform. • As may be necessary for the FMIC, the FHFA, and the GSEs to comply with legal, contractual, or other obligations, the FHFA shall have the authority to require that any such transfer to the Platform occurs as an exchange for value, including though the provision of appropriate compensation to the GSEs or other entities responsible for creating, or contracting with, the CSP. • The transfer or sale of property to the	leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the U.S., or with any State, Territory, or possession, or Puerto Rico, or with any political sub division thereof, or with any person, firm, association, or corporation; • To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; • In its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Issuer; • To conduct its business without regard to any qualification or similar statute in any State of the U.S., including D.C., Puerto Rico, and the Territories and possessions of the U.S.; • To lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may	• Uniform loan delivery, servicing, and pooling requirements; • Remittance requirements; • Underwriting guidelines and refinance programs; • The credit quality of the guarantee provided to each security; • Servicing standards and loan repurchase policies; • Disclosure policies; • Security terms and features; and • Standards for the appropriate minimum level of diversification for the mortgage loans that collateralize such securities, in order to reduce the credit risk such securities could pose to the Fund. Securitization Fee The Platform shall charge a fee for securitization services provided under this section. Such fee shall be set by the Director and shall be in an amount sufficient to offset the costs to the Platform of carrying out this section. Certification Ginnie Mae shall, upon a determination that the Platform is able to efficiently carry out the issuance of standardized mortgage-backed securities and that there exists a sufficient number of market participants to serve as insurers and reinsurers under § 202, certify to

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	• In making such a determination, the Director shall consider the competence, experience, and integrity of the applicant and proposed senior managers of the Utility, and the financial and operational resources and future prospects of the Utility. The Director may not issue a charter if the applicant fails to— ○ Comply with all applicable formation requirements; ○ Provide all information requested by the Director; ○ Demonstrate the competence, experience, and integrity necessary to operate the Utility in a safe and sound manner; ○ Demonstrate sufficient financial resources necessary to operate the Utility in a safe and sound manner; ○ Provide the Director with assurances that it will operate and maintain the Platform in an open-access manner that does not discriminate against eligible loan originators, aggregators, or qualified issuers; or ○ Provide the Director with assurances that the Utility will make available to the Director, on an on-going basis, such information on the operation and activities of the Utility, or any affiliate of the Utility, that the Director deems necessary to ensure the safe and sound operation of the	Platform shall, as appropriate, be managed by the FHFA to obtain resolutions that maximize the return for the GSEs' senior preferred shareholders to the extent that such resolutions— ○ Are consistent with facilitating— ▪ A deep, liquid, and resilient secondary mortgage market for single-family and multifamily MBS to support access to mortgage credit in the primary mortgage market; and ▪ An orderly transition from housing finance markets facilitated by the GSEs to housing finance markets facilitated by the FMIC with minimum disruption in the availability of loan credit; ○ Are consistent with applicable Federal and State law; ○ Comply with the requirements of this Act and the amendments made by this Act; and ○ Protect the taxpayer from having to absorb losses incurred in the secondary mortgage market. • The FHFA may not require the GSEs to make such a sale to the Platform that involves the disposition of the property or assets of the GSEs unless FHFA determines that the sale— ○ Is consistent with an orderly	deem necessary or appropriate; • To prescribe, repeal, and amend or modify, rules or requirements governing the manner in which its general business may be conducted; • To accept gifts or donations of services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and • To do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business, including the establishment of such subgroups or corporate entities as are useful in conducting its business. <u>Exemption from Certain Taxes</u> The Issuer, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Issuer 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. <u>Exclusive Use of Name</u> No individual, association, partnership, or corporation, except for the Issuer, shall	the Congress that such determination has been made. <u>Duty to Serve all Markets</u> • In carrying out its responsibilities under this title, Ginnie Mae shall facilitate the broad availability of mortgage credit and secondary mortgage market financing through fluctuations in the business cycle for single-family and multifamily lending across all— ○ Regions; ○ Localities; ○ Institutions; ○ Property types, including housing serving renters; and ○ Borrowers. • Ginnie Mae shall issue a semiannual report to the Congress on— ○ How Ginnie Mae is carrying out the duties to serve all markets; and ○ The extent to which the provisions of this title and the programs carried out pursuant to this title are benefitting underserved communities. <u>Exemption From SEC Laws and Regulations</u> Standardized MBS issued by the Platform shall be exempt from the Federal securities laws (as defined under Exchange Act § 3(a)) and all regulations issued pursuant to such laws.

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	Utility and to enforce compliance with this subtitle.
	• Within 30 days of denying any application for the issuance of a charter, the Director shall provide the applicant with a written explanation of the basis for the denial.
	
	<u>Authority to Suspend</u>
	• The authority of the Director shall include the authority to suspend the charter of the Utility, if the Director determines, in the Director's discretion, that—
	  ○ The organizers have failed to make adequate progress in establishing the Utility or any business operation;
	  ○ The organizers engaged in waste of appropriated funds made available for establishment of the Repository; or
	  ○ Such suspension is necessary for any other reason related to safe and sound operation of the Utility.
	• The Director shall issue regulations to address suspension of the charter, including a process for remediation.
	
	<u>Status</u>
	• The Utility is not, and shall not be deemed to be, a department, agency, or instrumentality of the U.S. Government and shall not be subject to title 5 or 31 of
		transition from housing finance markets facilitated by the enterprises to efficient housing finance markets facilitated by the FMIC with minimum disruption in the availability of loan credit;
		  ○ Does not impede or otherwise interfere with the ability of the FHFA or FMIC to carry out the functions and requirements of this Act;
		  ○ Does not transfer, convey, or authorize any guarantee or Federal support, assistance, or backing, implicit or explicit, related to any such property or assets being sold; and
		  ○ Will maximize the return for the senior preferred shareholders.
		
		<u>Platform Operability</u>
		The FMIC shall establish sufficient redundancies in the Platform so that in the event of operational disruption of the Platform, there is sufficient back-up capacity to—
		• Process payments on existing securities issued through the Platform; and
		• Structure, form, and enable issuers to issue new securities through the Platform.
		
		<u>Use by Other Entities in Exigent Circumstance</u>
			hereafter use the words "Mortgage Securities Cooperative" or any combination of such words, as the name or a part thereof under which the individual, association, partnership, or corporation shall do business. Violations may be enjoined by any court of general jurisdiction at the suit of the proper body corporate. In any such suit, the plaintiff may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damages) of not exceeding $100 for each day during which such violation is committed or repeated.	

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	the U.S. Code. • Notwithstanding any other provision of law, the Utility shall be subject to the exclusive supervision and regulation by the Agency, and shall not be subject to supervision or regulation by any other Federal department or agency or by any State. The Utility is authorized to conduct its business without regard to any qualification or similar statute in any State. • The Utility shall be exempt from all taxation imposed by the U.S., any U.S. territory, dependency, or possession, or any State, county, municipality, or local taxing authority, except that any real property of the Repository shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property. <u>Directors</u> Next row down. <u>Reports to Congress</u> Commencing with the first annual report of the Director following the date of the enactment of this Act, the annual report of the Director under § 1319B of the 1992 Act (12 U.S.C. 4521) shall include a description of the Agency's activities with regard to	• On and after the system certification date, if the FMIC determines that operational or other problems with the Platform do not permit the Platform to operate in a manner that allows the Platform to achieve the purposes and obligations of the Platform under § 325, the FMIC shall have the authority to permit the Platform Directors to use entities other than the Platform to perform issuance functions required to be performed by the Platform for issuers and that are necessary for the proper functioning of the secondary mortgage market. • Any entity permitted to perform issuance functions that would ordinarily be expected to be performed by the Platform shall be regulated and supervised, as appropriate, by the FMIC as if such entity were the Platform itself.		

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	organization, incorporation, examination, operation, and regulation of the Utility.			
Securitization Platform Management	**§ 311(f) Directors** The Utility shall be governed by a board of directors, which shall consist of a number of directors determined by the Director to meet the needs of the Utility, of which— • Not less than two members shall be from larger financial institutions; • Not less than two members shall be from smaller financial institutions; • Not less than two members shall have expertise in residential mortgage securitizations; • Not less than two members shall have expertise in legal and electronic documentation and systems; and • Such other members as the Director may provide, who shall have such qualifications as the Director may establish in the charter or by regulation to meet the requirements for independence and any provisions of applicable State law.	**§ 322 Management of the Platform** <u>Platform Directors</u> • The Platform Directors shall have all the powers necessary to carry out the purposes, powers, and functions of the Platform, and in the exercise of such purposes, powers, and functions, and upon approval of the FMIC, shall adopt such rules and guidance and issue such orders as they deem necessary and appropriate. • The Platform Directors shall develop policies and procedures to monitor and mitigate potential conflicts of interest in carrying out the purposes, powers, and functions of the Platform. • The initial Platform Directors shall be comprised of 5 directors, each of whom shall be appointed by the Board of Directors but none of whom shall be a member of the Board of Directors. The initial Platform Directors shall be appointed not later than 180 days after the later of— ○ The filing of the necessary documents to incorporate the Platform as required under § 321(c); or ○ The approval of the incorporation of the Platform by the relevant State.		

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		• Each initial Platform Director shall serve for a term of 1 year. The Board of Directors may—
		  ○ In its discretion, extend for an additional year the term of each initial Platform Director; and
		  ○ Upon a determination by the FMIC that the Platform membership does not reflect the diversity or variety of market participants required to conduct the election of the Platform Directors (below), extend for an additional 2 years the term of each initial Platform Director.
		• The initial Platform Directors shall—
		  ○ Draft and enact initial bylaws and other governance documents for the operation of the Platform, including policies and procedures to monitor and mitigate conflicts of interest;
		  ○ Establish criteria for membership in the Platform consistent with the requirements of § 323;
		  ○ Establish any necessary initial fee structures or usage fee structures under § 324; and
		  ○ Organize and conduct the election of the Platform Directors from the Platform members.
		• Upon the expiration of the term of the members of the initial Platform Directors, the members of the Platform shall, in		

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		accordance with the following, elect new Platform Directors. o The elected Platform Directors shall reflect the diverse range of Platform members, including large, mid-size, and small business members. The elected Platform Directors shall be comprised of nine directors as follows: ▪ Eight member directors, including: ♦ Seven who shall be elected from representatives of Platform members, at least 1 of whom shall represent the interests of small mortgage lenders; and ♦ One who shall be a representative of a small lender mutual established under § 315. ▪ One independent director. The independent director shall not be an affiliated of any member in the Platform, and shall have demonstrated knowledge of, or experience in, financial management, financial services, risk management, information technology, or housing finance, which may include affordable housing finance.		

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		○ The Chairperson of the Platform Directors shall be elected from among the elected Platform Directors. ○ Each elected Platform Director shall serve for a term of 2 years, but: ▪ The first elected chairperson of the Platform Directors shall be elected to serve for a term of 2 years; and ▪ Of the first 8 other Platform Directors not elected to serve as chairperson: ♦ Four shall be elected to serve for a term of 2 years. ♦ Four shall be elected to serve an initial term of 1 year. ○ Platform Directors shall have equal voting rights on any matters before the Platform Directors. ○ Procedures for the nomination and election of Platform Directors shall be prescribed by the bylaws adopted by the Platform Directors in a manner consistent with the purposes and provisions of this part. • The elected Platform Directors, with approval from the FMIC, may choose to restructure or reorganize the Platform Directors in a manner different than what is specified following a determination by		

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		the Platform Directors and the FMIC that a different Platform board structure or Platform board composition would better achieve the purposes and obligations of this Act, or better serve the owners of the Platform in a manner consistent with the public interest. <u>Executive Officers</u> The Platform Directors shall appoint a chief executive officer, chief financial officer, comptroller, chief regulatory officer, and any other officers as the Platform Directors deem necessary to carry out the management and administration of the functions and operations of the Platform.		

Securitization Platform Members		**§ 323 Membership in the Platform**
		<u>Application</u>
		• A person seeking to become a member in the Platform, or to be reinstated as a member in the Platform, shall file an application with the Platform Directors.
		• Consistent with achieving a broad membership that includes small mortgage lenders, as well as large, mid-size, and small business members, the Platform Directors shall develop procedures and standards for—
		  ○ The application of persons seeking to become members in the Platform; and
		  ○ The approval of applicants for		

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		membership in the Platform. • The standards for the approval by the Platform Directors of an approved entity as a member in the Platform shall be consistent with and supplement any standards, requirements, and obligations applicable to the approved entity under subtitle B of this title, or any other provision of this Act. <u>Members</u> The Platform Directors may approve as a member of the Platform any person that applies for membership in the Platform that is— • A mortgage aggregator; • A mortgage guarantor; • A mortgage originator; • An FHLB or a subsidiary or joint office approved under § 312 of one or more FHLBs; • A small lender mutual established or approved under § 315; or • Any other market participant, provided that in the sole determination of the Platform Directors, having such market participant as a member of the Platform is necessary or helpful to fulfilling the purposes and obligations of the Platform under § 325. <u>Termination</u>		

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		The Platform Directors may terminate membership in the Platform of any member for failure to adhere to any standards established by the Platform Directors.		

Securitization Platform Fees	**§ 313 Transfer of Ownership of Platform**
	• Within 6 months of enactment, the Director shall determine a method for recovering the cost to each GSE of developing the Platform, in consultation with Treasury, and agree on a valuation of the Platform upon transfer to the Utility.
	• Not later than the end of the 1-year period beginning on the date of the issuance of the charter of the Utility by the Director, the Director shall oversee the transfer to the Utility of ownership of the Platform. At the time of such transfer, the agreed value of the Platform shall be deemed transferred to the Utility, and shall be repaid to the Treasury by the Utility within 10 years after such transfer.
	• After transfer of the Platform to the Utility, to the extent feasible the Platform shall be made available to the Agency on terms and conditions applicable to other users, to assist with managing the wind-down of any GSE for which the Agency is conservator or receiver pursuant to § 1367 of the 1992 Act (12 U.S.C. 4617).
	
	§ 314 Funding
		§ 324 Fees
		<u>In General</u>
		The Platform Directors may assess and collect fees, and may, in their discretion, increase or decrease such fees, from the members in the Platform—
		• For initial membership in the Platform;
		• To maintain ongoing membership in the Platform;
		• For use of the Platform; and
		• To cover the ongoing costs of the functions and operations of the Platform, including—
		  o The purchase of property, technology, and systems developed by either GSE or others;
		  o To develop and invest in new technology;
		  o To build a capital base that would be able to offset, or otherwise mitigate, losses that might occur due to the potential operational failure of the Platform; and
		  o To conduct any other activities approved by the Platform Directors.
		
		<u>Initial Fee</u>
		Upon approval of its application to become a		

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<table>
<tr><th></th><th>PATH Act, H.R. 2767</th><th>S. 1217</th><th>Waters Discussion Draft</th><th>H.R. 5055</th></tr>
<tr><td></td><td>There is authorized to be appropriated $150,000,000 for the establishment and initial oversight, regulation, and supervision of the Utility and its operation (initial funding).
The Utility shall repay to the Treasury of the U.S. the amount of the initial funding within 10 years after the Utility is chartered.
After establishment, all expenses of the Utility shall be paid for by fees collected based on services provided by and operations of the Utility. The Utility shall—
Establish, subject to the approval of the Director, a fee schedule and may differentiate fees based on classes or types of services, operations, and users of services or operations, and such differentiation shall not be deemed discriminatory; and
Review and publish the fee schedule not less frequently than annually, but may review, revise, and publish the schedule more frequently than annually.</td><td>member in the Platform, each new approved member shall pay to the Platform a fee in an amount to be determined by the Platform Directors, provided that such fee amount is consistent with obtaining a broad membership in the Platform that includes small mortgage lenders, as well as large, mid-size, and small business members.

<u>Usage Fees</u>
Each member in the Platform shall pay usage fees, as such fees are determined by the Platform Directors.
The Platform Directors shall, not less than annually, review the fee structure established under this subsection and submit any resulting recommendations to amend the fee structure to the FMIC.
Except as below, usage fees charged and collected shall be equitably assessed and based upon the member's use of the services offered by the Platform, as such use is to be measured by the total principal balance of the mortgage loans or MBS securitized for the member through the Platform.
If the Platform Directors determine that certain entities face a barrier to use the Platform, the Platform Directors may adopt a tiered usage fee structure to promote greater access and a more competitive</td><td></td><td></td></tr>
</table>

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		market for the Platform that may include differential fee structures for usage fee charges incurred by housing finance agencies, small mortgage lenders, CDFIs, mission-based nonprofit lenders, community land trusts, permanently affordable homeownership programs, or other organizations selected by the FMIC. o The Platform Directors may adopt a tiered usage fee structure that may include differential fee structures for usage fee charges for the issuance of noncovered securities that differ from the usage fees charged for the issuance of covered securities. • Usage fees charged under this subsection shall be paid by the member at the time the mortgage loans or MBS are delivered by the member to the Platform. <u>FMIC Review of Initial Fees and Usage Fees</u> • The Platform Directors shall submit any fee structure proposal for initial fees or usage fees to the FMIC. The FMIC shall approve any initial fee or usage fee structure proposed by the Platform Directors unless the FMIC determines that the fee structure is not consistent with— o Facilitating, a deep, liquid, and resilient secondary mortgage market		

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		for MBS; and ○ The purposes and obligations of the Platform under § 325. • If the FMIC does not issue an order of disapproval of an initial fee or usage fee structure proposed by the Platform Directors within 60 days following the submission of the proposed initial fee or usage fee structure to the FMIC, the proposed initial fee or usage fee structure shall automatically go into effect for the Platform and its members. • If the FMIC disapproves an initial fee or usage fee structure proposed by the Platform Directors, the Platform Directors may— ○ Submit to the FMIC a revised fee or usage fee structure for approval; or ○ If applicable, use the existing approved fee or usage fee structure.		
Securitization Powers / Activities	**§ 312 General Powers; Authorized and Prohibited Activities** General Powers The Utility may— • Adopt and use a corporate seal; • Determine a State whose law will govern the corporate business activities of the Utility; • Adopt, amend, and repeal by-laws; • Sue or be sued, subject to § 334 (relating to judicial review); • Make contracts, incur liabilities, borrow	**§ 325 Purposes and Obligations of the Platform** Purpose The purposes of the Platform are to— • Purchase and receive from its members eligible mortgage loans or securities collateralized by eligible mortgage loans for securitization by issuers as covered securities; • Issue to its members standardized covered securities, or other covered securities, issued by issuers and insured by the	**§ 212 Issuer Standards** In General The NMFA shall develop, adopt, and publish standards for issuance of covered securities, including standards with respect to the Issuer's ability to— • Aggregate eligible mortgage loans into pools; • Securitize eligible mortgage loans for sale to private investors as a covered security; • Transfer or otherwise place credit risk with private market participants in	

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	money, and issue notes, bonds, or other obligations; • Purchase, receive, hold, and use real and personal property and other assets necessary for the conduct of its operations; • Elect or appoint directors, officers, employees and agents, subject to § 311(f); and • Upon receipt of the Director's prior written approval, establish subsidiaries or affiliates that shall be subject to the same rights, duties and responsibilities as the Utility. <u>Authorized Activities</u> The Utility shall— • Develop standards related to originating, servicing, pooling, and securitizing residential mortgage loans in accordance with §§ 321 – 325; • Operate and maintain the Platform and establish fees for use of the Platform; • Establish the Repository and establish fees for registration of mortgage-related documents and maintenance and use of data of the Repository, in accordance with §§ 331 – 335; • Perform any other service or engage in any other activity that the Director determines, by regulation or order, to be incidental to the activities enumerated in	FMIC pursuant to this Act; • Purchase and receive from its members noneligible mortgage loans or securities not collateralized by eligible mortgage loans for securitization by issuers as noncovered securities, to the extent desired or requested by its members; and • Issue to its members standardized noncovered securities, or other noncovered securities issued by issuers, that are not insured by the FMIC pursuant to this Act, to the extent desired or requested by its members. <u>Powers and Functions</u> The powers and functions of the Platform are to— • Develop the ability to issue, and to issue, standardized covered securities, insured by the FMIC, in accordance with subsection (e); • Develop, adopt, and publish standardized securitization documents and agreements (including, but not limited to, uniform pooling, trust, and custodial agreements)— ○ Required for all covered securities issued by or through the Platform in accordance with § 326(a) (and which shall be made optional for all noncovered securities issued through the Platform); and	accordance with the risk-sharing mechanisms developed by the NMFA under § 202; • Ensure equitable access to the secondary mortgage market for covered securities for all institutions regardless of size or geographic location; • Create mechanisms for multi-lender pools for smaller lenders that will be acceptable to the private market; and • Ensure that eligible mortgage loans that collateralize a covered security insured under this title are originated in compliance with the requirements of this Act. <u>Additional Required Standards</u> Such standards shall include— • The financial condition of the Issuer; • The adequacy of the capital structure of the Issuer; • The risk presented by the Issuer to the MIF; • The adequacy of insurance and fidelity coverage of the Issuer; • A requirement that the Issuer submit audited financial statements to the NMFA; • The capacity of the Issuer to secure first loss credit enhancement on its own behalf or to ensure that its member provide such enhancement to loans insured through the	

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	this subsection; and • Establish fees for the provision of other related or incidental services not inconsistent with the purposes of this subtitle. <u>Prohibited Activities</u> The Utility shall not— • Originate, service, insure, or guarantee any residential mortgage or other financial instrument that is associated with a residential mortgage; • Guarantee timely payment of principal or interest on any mortgage-related security; • Adopt access rules or fees for the Platform the effect of which is to discriminate against eligible loan originators, aggregators, or qualified issuers based on size, composition, business line, or loan volume; or • Perform any service or engage in any activity other than those authorized under this subtitle, unless such activity has been determined by the Director to be incidental to an authorized activity. **§ 322(k) through (n) Data Standards; Public Involvement** <u>Data Standards; Disclosure Standards</u> • The Utility shall develop, adopt, and publish standard data definitions for all aspects of loan origination, appraisals,	○ Which— ▪ Shall be drafted in consultation with the FMIC, CFPB, HUD, and such other Federal regulatory agencies as the Platform Directors determine appropriate; ▪ May rely on existing documentation and forms the GSEs or other Federal regulatory agencies require, to the extent the Platform Directors determine practical or appropriate; and ▪ Before being issued through the Platform, shall be approved by the FMIC as being consistent with the requirements under § 326(a) and with facilitating a deep, liquid, and resilient secondary mortgage market for MBS; • Develop standardized documents approved by the FMIC for servicing and loss mitigation standards pursuant to § 314 for eligible mortgage loans that collateralize the covered securities issued through the Platform to its members, which shall be based on standards set by the FMIC and which may rely on existing documentation and forms the GSEs or other Federal or State regulatory agencies require, to the extent the Platform Directors determine practical or	Issuer; • Standards for membership by originators of mortgages, including standards relating to the safety and soundness of prospective members and regarding the underwriting and other practices of such members, including the retention or placement of credit risk; and • Any other standard the NMFA determines necessary or appropriate. **§ 213 Capital Requirements** <u>Establishment</u> The NMFA shall establish capital standards that the Issuer shall be required to meet in order to protect the MIF from the risk of loss. Such standards shall take account the risk of the mortgages securitized and the quality of the first-loss credit risk placement or retention by originators or the Issuer. <u>Building Capital</u> The NMFA shall not require that all capital be paid in advance prior to the operation of the Issuer, but may allow capital of the Issuer to be built through retained earnings. Such capital may include preferred shares issued by Treasury for the purpose of providing early capitalization to the Issuer. The NMFA may determine to treat any required capital to be paid in to the Issuer to differ by the size of the member.	

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	and servicing. In developing such definitions, the Utility shall consider the data standard-setting work undertaken by MISMO through the GSEs' Uniform Mortgage Data Program announced by FHFA on May 24, 2010. • The Utility shall develop, adopt, and publish standards for disclosure of loan origination, appraisal, and servicing data, including data required relating to underwriting criteria, for residential mortgage loans that comprise qualified securities, and that allow for trading of qualified securities in a forward market. • In developing the data and disclosure standards required by this subsection, the Utility shall ensure that such standards are coordinated. • In prescribing the definitions and standards required under this sub- section, the Utility shall take into consideration issues of consumer privacy and all statutes, rules, and regulations related to privacy of consumer credit information and personally identifiable information. Such standards shall expressly prohibit the identification of specific borrowers. • When reviewing any disclosure standards established under this subsection, the Director shall consult with the SEC. <u>Timing of Issuance; Agency Review;</u>	appropriate; • As expressly provided in § 326(b)(2)(F), develop, adopt, and publish the required contractual terms for contracts for noncovered securities issued through the Platform, which shall be— ○ Developed in consultation with the FMIC, CFPB, HUD, and such other Federal regulatory agencies as the Platform Directors determine appropriate; and ○ Before being issued through the Platform, approved by the FMIC as being consistent with the requirements under § 326(b) and with facilitating a deep, liquid, and resilient secondary mortgage market for MBS; • Develop, adopt, and publish optional standardized securitization documents and agreements (including, but not limited to, uniform pooling, trust, and custodial agreements) tailored for noncovered securities issued through the Platform, and which may be used as desired or requested by the members of the Platform, in accordance with § 326(c), and which standardized securitization documents and agreements— ○ Shall be drafted in consultation with the FMIC, CFPB, HUD, and such other Federal regulatory agencies as	<u>Added Risk</u> To the extent that market conditions have limited the level of credit risk that may be placed in the private markets, the NMFA shall increase the capital requirements to which the Issuer is subject in order to provide adequate protection to the MIF for the added risk. <u>Form</u> The NMFA may determine the form in which such capital shall be held, and any other standard that the NMFA determines to be necessary or appropriate. **§ 214 Limited Authority to Hold Eligible Mortgage Loans** <u>Authority</u> The Issuer may hold a limited amount of eligible mortgage loans, subject to the oversight and rules of the NMFA, for the following purposes: • To work out troubled loans that were included in guaranteed issuance. • To assemble loans for current issuance. • To hold loans from the smallest lenders until such loans can be aggregated into multi-lender loans. • To hold multi-family loans until such loans can be securitized. <u>Securitization</u>	

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	<u>Authority to Revise Standards</u> • The Director shall issue any regulations required by this section within 12 months of enactment. The Utility shall issue any definitions, standards, rules, processes, or procedures required by this section within 12 months of issuance of the charter. • Any definition, standard, rule, process or procedure established by the Utility shall be submitted to the Director for review and approval prior to its implementation if, in the Director's discretion, the Director requires such submission. Any definition, standard, rule, process or procedure that the Director requires be submitted to the Agency for review and approval shall be reviewed within three months of submission. • The Utility may review, revise, and, if revised, re-publish any standard form securitization agreement or other definition, standard, rule, process, or procedure required to be developed by §§ 301 – 344 if the Utility determines review or revision to be necessary or appropriate to satisfy the goals of this subtitle. Any such revisions shall apply only to securitizations made after the date of such revision. <u>Effect of Conflict</u> In the event a definition, standard, rule,	the Platform Directors determine appropriate; ○ May rely on existing documentation and forms the GSEs or other Federal or State regulatory agencies require, to the extent the Platform Directors determine practical or appropriate; and ○ Before being issued through the Platform, shall be approved by the FMIC as being consistent with the requirements under § 326(c) and with facilitating a deep, liquid, and resilient secondary mortgage market for MBS; • To the extent otherwise provided in this subsection, the Platform Directors shall endeavor to use or rely on existing documentation and forms the GSEs or other Federal or State regulatory agencies require, to the extent the Platform Directors determine practical or appropriate; • Establish a strong business continuity plan that meets industry best practices and establish sufficient redundancies so that in the event of an operational failure of the Platform there is sufficient back-up capacity to process payments and issue covered and noncovered securities; • Verify that the eligible mortgage loans and securities collateralized by eligible	The NMFA shall examine the loans retained by the Issuer each year and may determine that loans held can be securitized promptly without undue economic burden. **§ 215 Responsibility to Ensure Broad Market Access** <u>Responsibility</u> Consistent with the purposes of this Act, the Issuer shall facilitate a robust secondary market for eligible mortgages across the spectrum of creditworthy borrowers, including borrowers in underserved rural and urban markets. <u>Evaluation and Reporting of Compliance</u> Within one year of the NMFA certification date, the NMFA shall establish guidelines or rules for evaluating compliance by the Issuer with its duty to facilitate such a market to ensure broad market access and for rating the extent of such compliance. The NMFA shall evaluate such compliance and rate the performance of the Issuer as to the extent of such compliance. The NMFA shall include in such evaluation and rating in the report submitted pursuant to § 106 for that year. <u>Prohibition of Consideration of Affordable Housing Fund and Capital Magnet Fund for Ensuring Broad Market Access</u> In determining whether the Issuer has complied with its duty to facilitate such a	

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	process, or procedure established by the Utility is in conflict with any definition, standard, rule, process, or procedure established by another Federal department or agency, the Director shall consult with the other Federal department or agency, and provide prompt written notification to the Senate Banking Committee and the House Financial Services Committee, of the conflict.
	
	<u>Public Involvement</u>
	In developing definitions, standards, rules, processes, and procedures required by this subtitle, the Utility shall work with market participants, including servicers, originators, and mortgage investors, and develop methods for gathering information and comment from such groups.
		mortgage loans purchased and received by the Platform, including from any small lender mutual established or approved under § 315, for securitization as covered securities, meet the requirements for covered securities under this Act and any regulations adopted by the FMIC pursuant thereto;
		• Verify that the noneligible mortgage loans and securities not collateralized by eligible mortgage loans purchased and received by the Platform, including from any small lender mutual established or approved under § 315, for securitization as noncovered securities, meet the requirements for noncovered securities under this Act and any regulations adopted by the FMIC pursuant thereto;
		• For the purpose of securitization, purchase or receive from Platform members—
		    o Eligible mortgage loans, pools of eligible mortgage loans, securities collateralized by eligible mortgage loans, or outstanding MBS issued by the GSEs for securitization as covered securities; and
		    o Noneligible mortgage loans, pools of noneligible mortgage loans, or securities collateralized by noneligible mortgage loans for securitization as noncovered
			market, the NMFA may not consider any amounts used under § 402 or § 403 of this Act.
			
			<u>Enforcing Compliance with the Responsibility to Ensure Broad Market Access</u>
			• The Director shall monitor and enforce compliance with the Issuer's duty to facilitate such a market.
			• If, after a review of the evaluation and rating in the § 106 report, the Director preliminarily determines that the Issuer has not fulfilled the responsibility to ensure broad market access, the Director shall provide written notice to the Issuer of such a preliminary determination, the reasons for such determination, and the information on which the NMFA based the determination.
			• During the 30-day period beginning on the date on which the Issuer is provided such notice, the Issuer may submit any written information that the Issuer considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether achievement of such duty was or is feasible. The Director may extend the period for response for good cause for not more than 30 additional days.
			• After the expiration of the response period, or upon receipt of information	

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		securities, to the extent desired or requested by members of the Platform; • For the purpose of securitization, facilitate the issuance by issuers of— ○ All covered securities of members of the Platform that are collateralized by eligible mortgage loans, or outstanding MBS issued by the GSEs; ○ All covered securities of members of the Platform that are pooled from— ▪ A single mortgage originator, mortgage aggregator, approved entity, or regulated entity; or ▪ Multiple mortgage originators, mortgage aggregators, approved entities, or regulated entities; ○ Noncovered securities collateralized by noneligible mortgage loans received from members of the Platform; and ○ Noncovered securities collateralized by noneligible mortgage loans received from members of the Platform that are pooled from— ▪ A single mortgage originator, mortgage aggregator, or regulated entity; or ▪ Multiple mortgage originators, mortgage aggregators, or regulated entities;	provided during such period by the Issuer, whichever occurs earlier, the Director shall issue a final determination as to whether the Issuer has failed to meet the duty. In making a final determination, the Director shall take into consideration any relevant information submitted by the Issuer during the response period. The Director shall provide written notice, including a response to any information submitted during the response period, to the Issuer, the Senate Banking and House Financial Services Committees, of the final determination that Issuer has failed to meet the duty and the reasons for each such final determination. • If the Director finds that the Issuer has failed to meet the duty, the Director may require that the Issuer submit a plan under this subsection subject to such deadline as the Director shall establish. ○ The Director shall review the submission by the Issuer, including a 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 the Director determines is likely to	

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		• Perform bond administration, data validation, and reporting for all covered and noncovered securities issued through the Platform, including those issued on behalf of any small lender mutual established or approved under § 315; • Facilitate systems to lower barriers to entry for new mortgage originators and approved entities or access to membership in the Platform; • Provide essential functions necessary to issue standardized TBA securities, for covered securities and, if appropriate, noncovered securities; • Manage operational and systems related risks associated with delivering covered and noncovered securities and receiving eligible and noneligible mortgage loans; • Develop the capability to offer securitization services to private label issuers; • Facilitate for issuers the securitizations for multifamily loans, establish common documentation, or develop other requirements necessary to permit the Platform, or a subsidiary or affiliate thereof, to be used for multifamily loan securitizations if the Platform Directors issue a determination that it would be desirable and practical for the Platform, or a subsidiary or affiliate thereof, to be used to issue or otherwise facilitate	succeed. ○ If the Director makes such a finding and the Issuer refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a plan describing specific actions the Issuer will be required to take for the next calendar year and to make such improvements and changes in its operations as are reasonable in the remainder of the current year, in sufficient detail to enable the Director to monitor compliance periodically. ○ The Director shall provide written notice to the Issuer 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. ▪ The Director may issue and serve a notice of charges under this subparagraph upon the Issuer if the Director determines that the Issuer has failed to submit a plan that complies with this section within the applicable period or the Issuer has failed to comply with a plan under this section. ▪ Each notice of charges shall contain a statement of the facts	

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		multifamily loan securitizations; and • Require the servicing documentation used for mortgage loans that collateralize securities issued through the Platform to provide a standard method (which may include use of a single e-verification system) for a mortgagor who has been denied a loan modification to verify such denial at no cost to the mortgagor. • Establish by the system certification date a Collateral Valuation Advisory Committee— ○ Comprised of 9 members appointed by Platform Directors, including representatives of appraisers, mortgage originators (including small mortgage lenders), investors, real estate professionals, homebuilding professionals, consumer advocates, and Federal and state appraisal regulatory organizations; ○ The purpose of the Committee shall be to: ▪ Provide recommendations to the Platform and FMIC regarding secondary mortgage market residential appraisal guidelines, standards, and reporting formats consistent with RESPA, TILA, and all other applicable federal and state law;	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. If the Director finds on the record made at a hearing that any conduct specified in the notice of charges has been established, the Director may issue and serve upon the Issuer an order requiring the Issuer to submit a housing plan in compliance with this section and comply with the housing plan. ▪ A cease and desist shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the Issuer (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. ○ The Director may impose a civil money penalty, in accordance with the provisions of this subparagraph,	

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		▪ Make recommendations regarding the continuation of a repository for valuation reports, taking into account existing operational structures and contractual arrangements; and o Which shall as appropriate consult and coordinate with the FFIEC Appraisal Subcommittee. <u>Prohibited Activities</u> The Platform may not— • Guarantee any mortgage loans or MBS; • Assume or hold mortgage loan credit risk; • Purchase any mortgage loans for cash on a single loan basis for the purpose of securitization; • Undertake the issuance of any MBS by an issuer unless the first loss position is already held by a private entity; • Own or hold any mortgage loans or MBS for investment purposes; • Make or be a party to any representation and warranty agreement on any mortgage loans; or • Take lender representation and warranty risk. <u>Interoperability with Multifamily Loan Securitization Issuance</u> The Platform shall be developed in a manner that may permit, and would not preclude, the	on the Issuer if the Issuer has failed to— ♦ Submit information to the NMFA pursuant to subsection of this section; ♦ Submit a housing plan or perform its responsibilities under a remedial order issued within the required period; or ♦ Comply with a housing plan for the Issuer of this subsection. ▪ The Director shall establish standards and procedures governing the imposition of civil money penalties under this subparagraph. Such standards and procedures— ♦ Shall provide for the Director to notify the Issuer in writing of the determination of the Director to impose the penalty, which shall be made on the record; ♦ Shall provide for the imposition of a penalty only after the Issuer has been given an opportunity for a hearing on the record; and ♦ May provide for review by	

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		Platform, or any subsidiary or affiliate thereof, to be used for the issuance of multifamily loan securitizations, provided that the development of this vehicle for multifamily loan securitizations does not delay the ability of the Platform to perform its obligations under this section with respect to single-family securities by the system certification date. <u>Timing of Platform Capacity to Develop and to Issue Standardized Securities for the Single-Family Covered Securities</u> Not later than 2 years following the election of the elected Platform Directors under § 322(a)(3), the Platform shall develop the Platform's ability to issue, and issue, standardized securities for single-family covered securities, or as otherwise permitted under § 601. <u>Discretion to Issue Standardized Securities for Single-Family Noncovered Securities</u> The Platform Directors may develop an ability for the Platform to issue standardized securities for single-family noncovered securities, if the Platform Directors determine that sufficient demand exists among the Platform members for the Platform to issue such a product.	the Director of any determination or order, or interlocutory ruling, arising from a hearing. ▪ In determining the amount of a penalty under this subparagraph, the Director shall give consideration to factors including— ♦ The gravity of the offense; ♦ Any history of prior offenses; ♦ Ability to pay the penalty; ♦ Injury to the public; ♦ Benefits received; ♦ Deterrence of future violations; ♦ The length of time that the Issuer should reasonably take to achieve the duty; and ♦ Such other factors as the Director may determine, by regulation, to be appropriate. ▪ The Director may compromise, modify, or remit any civil money penalty, which may be, or has been, imposed under this subparagraph. ▪ The Director shall use any civil money penalties collected under this section to help fund the	

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			Housing Trust Fund established under § 1338 of the 1992 Act, the Capital Magnet Fund established under § 1339 of such Act, and the Market Access Fund established under § 404 of this Act, pursuant to the allocations provided in § 401 of this Act. <u>Consistency with Safety and Soundness</u> The NMFA shall take appropriate measures designed to ensure that the requirements under this section are implemented in a manner consistent with safety and soundness principles.	
Utility Regulation	**§ 315 Regulation, Supervision, and Enforcement** <u>General Oversight</u> The Director shall exercise, by rule, order, or guidance, oversight of the Utility, which shall include the authority to regulate, supervise, and examine the Utility and take enforcement actions against the Utility or any Utility-affiliated party, consistent with the 1992 Act. <u>Scope of Authority</u> The authority of the Director under this section shall include the authority to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the oversight, supervision, and regulation of the			

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	Utility. <u>Division of Utility Regulation</u> The Director shall establish within the Agency a Division of Utility Regulation, which shall— • Be headed by a Deputy Director designated by the Director from among individuals who are U.S. citizens who have a demonstrated understanding of financial management or oversight and of mortgage securities markets and housing finance; and • As requested by the Director, conduct examination and supervision activities, gather any information attendant to such activities, and provide recommendations to the Director regarding the safe and sound operation of the Utility and regarding any requests to revise, alter, or amend existing or proposed activities. <u>Consultation with Other Agencies</u> In exercising authority to regulate and supervise the Utility, the Director shall consult with other Federal departments and agencies that regulate or supervise entities, institutions, or companies that are or may become subject to standards, rules, processes, or procedures developed by the Utility (including issuers through the Platform and depositors or participants in the Repository), including the			

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	CFPB and any appropriate Federal banking agency (as defined under FDIA§ 3). <u>Annual Assessment</u> The Director shall establish and collect from the Utility an annual assessment in an amount not exceeding the amount sufficient to provide for reasonable costs (including administrative costs) and expenses of the Agency related to its oversight of the Utility. The amounts received by the Director from assessments under this section shall not be construed to be Government or public funds or appropriated money. Notwithstanding any other provision of law, the amounts received by the Director from assessments under this section shall not be subject to apportionment for the purpose of 31 U.S.C. chapter 15 or under any other authority. **§ 316 Civil and Criminal Liability** • Except as expressly authorized by U.S. statute, no person or organization (except the Repository, Utility, and Platform) shall use the term "National Mortgage Market Utility", "Common Securitization Platform", or "National Mortgage Data Repository", or such other name as the Director may establish in the charter of the Utility or any combination of words that appears to indicate that such use of the term conflicts with the operation of the Utility or any function created herein.			

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	No individual or organization shall use or display— o Any sign, device, or insignia prescribed or approved by the Utility for use of display by the Utility; o Any copy, reproduction or colorable imitation of any such sign, device, or insignia; or o Any sign, device or insignia reasonably calculated to convey the impression that it is a sign, device or insignia used by the Utility or prescribed by the Utility contrary to policies or procedures of the Utility prohibiting, limiting or restricting such use by any individual or organization. • The Agency or Utility may seek to enjoin or recover damages for any breach of this section and refer to the Attorney General any matters that may constitute criminal activity for a breach of this section. • Except as expressly authorized by statute of the U.S., no person or organization (except the Utility) shall operate a national registry or repository of mortgage-related documents. Any State of the U.S. may operate a State registry or repository system, subject to the laws of that State, provided that any such State registry or repository system does not conflict with the Repository or the			

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	purposes of this subtitle. • In any action for breach of contract, including breach of representation or warranty, or breach of privacy related to data collected and maintained by the Repository, no prevailing party may recover more than an amount established by the Director, by regulation. When issuing any such regulation, the Director shall take into consideration intentional, willful, reckless, or negligent actions or omissions. Such regulations shall be reviewed not less frequently than annually, and may be revised in the Director's discretion.			
Utility Qualified Securities	**§ 321 Qualified Securities** For purposes of §§ 301 – 344, *qualified security* means a security that— • Is collateralized by a class, or multiple classes, of residential mortgages established under § 322(a); • Is issued in accordance with a standard form securitization agreement under § 322(b); • Is issued by a qualified issuer in accordance with § 322(g); • Is issued through the Platform; and • Is not guaranteed, in whole or in part, by the U.S. Government. **§ 322(a) Standard Mortgage Classifications** • The Utility shall prescribe classifications			

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	for residential mortgages having various degrees of credit risk, ranging from a classification of mortgages having little to no credit risk to a classification of mortgages having higher credit risk. In prescribing such classifications the Utility shall seek to allow for the pricing of credit risk, allow for the trading of securities collateralized by each classification of mortgages established pursuant to this sub- section in the forward market, and maintain well-functioning liquid markets in securities collateralized by each of the classifications of mortgages established pursuant to this subsection.
	• For each such classification of mortgages, the Utility shall establish standards for each of the following underwriting criteria:
	  ○ The ratio of the amount of the total monthly debt of the mortgagor to the amount of the monthly income of the mortgagor.
	  ○ The ratio of the principal obligation under the mortgage to the value of the residence subject to the mortgage, at the time of mortgage origination.
	  ○ Information on the credit history of the mortgagor, including credit scores of the mortgagor.
	  ○ The extent of loan documentation and verification of the financial			

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	resources of the mortgagor used to qualify the mortgagor for the mortgage, including any appraisal. o Whether the residence subject to the mortgage is occupied by the mortgagor. o Whether any mortgage insurance or other type of insurance or credit enhancement was obtained at the time of origination. o The terms of the mortgage that determine the magnitude and timing of payments due from the mortgagor, including the term to maturity of the mortgage, the frequency of payment, the type of amortization, any prepayment penalties, and whether the interest rate is fixed or may vary. Terms shall include a 30-year fixed interest rate mortgage. o Such other underwriting criteria as the Utility may establish, consistent with the goals of §§ 301 – 344. • The Utility shall prescribe definitions for each of the following terms: o *Mortgage*, which definition shall include only mortgages on residential properties. o *Default*, with respect to a mortgage. o *Delinquency*, with respect to a mortgage. o *Loan Documentation*, with respect to a mortgage.			

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	○ Such other terms as the Utility may establish. **§ 322(c) Registration with Repository** The Utility shall require that any mortgage-related document associated with eligible collateral for qualified securities be registered with the Repository.			
Uniform Securitization Agreement	**§ 322(b) Standard Form Securitization Agreement** • The Utility shall develop, adopt, and publish standard form securitization agreements for eligible collateral. • The standard form securitization agreements shall include terms relating to— ○ Pooling and servicing; ○ Purchase and sale; ○ Representations and warranties, including representations and warranties as to compliance or conformity with standards established by the Utility, as appropriate; ○ Indemnification and remedies, including principles of a repurchase program that will ensure an appropriate amount of risk retention under the representations and warranties; and ○ The qualification, responsibilities,	**§ 326 Uniform Securitization Agreements for Covered Securities and Required Contractual Terms for Noncovered Securities** <u>Required Uniform Securitization Agreements for Covered Securities Issued by or Through the Platform</u> • The Platform Directors shall develop standard uniform securitization agreements for all covered securities to be issued through the Platform, as required pursuant to section § 325(b)(2). • The standard uniform securitization agreements shall include terms relating to— ○ Pooling and servicing, including the development of uniform standards and practices consistent with the standards specified by the FMIC pursuant to § 314; ○ Loss mitigation procedures consistent with those specified by the FMIC pursuant to § 314;	**§ 233 Uniform Securitization Agreements** <u>In General</u> The NMFA shall develop, adopt, and publish standard uniform securitization agreements for covered securities which are insured under this Act. <u>Required Content</u> The standard uniform securitization agreements shall include terms relating to— • Pooling and servicing, including the development of uniform standards and practices— ○ Regarding remittance schedules and payment delays; and ○ Permitting the transfer of servicing rights consistent with § 222(h); • Loss mitigation, including the development of uniform standards and practices— ○ Requiring servicers to offer homeowners affordable loan modifications, which shall include	

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	and duties of trustees.	○ Minimum representations and warranties; ○ Indemnification and remedies, including for the restitution or indemnification of the FMIC with respect to early term delinquencies of eligible mortgage loans that collateralize a covered security; ○ The requirements of the indenture for MBS that are exempt from the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) and the requirements, responsibilities, and duties of trustees, as set forth in the indenture or pooling and servicing agreement; ○ The qualification, responsibilities, and duties of trustees; and ○ Any other terms or standards the Platform Directors, with approval of the FMIC, determine to be necessary or appropriate. • In developing the uniform securitization agreements, the Platform Directors shall also develop, adopt, and publish, upon approval by the FMIC, clear and uniform standards that define and illustrate what actions, or omissions to act, comprise a violation of the representations and warranties clauses that are made a part of such agreements. <u>Required Contractual Terms for Contracts for all Noncovered Securities Issued Through the</u>	modifications that reduce the unpaid principal balance of an eligible mortgage, consistent with a publically available net present value determination, as defined by the NMFA; and ○ Requiring servicers to refrain from initiating a judicial or non-judicial foreclosure, or where a foreclosure has been initiated, from taking any additional steps in the judicial or non-judicial foreclosure, once an initial request for loss mitigation has been made by the homeowner, until completion of the review of any loss mitigation application, including written notice to the homeowner documenting any denial and a requisite appeal process; • Representations and warranties, including representations and warranties as to compliance or conformity with the requirements of this Act; • Indemnification and remedies, including for the restitution or indemnification of the NMFA with respect to early term delinquencies of eligible mortgages collateralizing a covered security; • The qualification, responsibilities, and duties of trustees; and • Any other terms or standards the NMFA determines necessary or appropriate.	

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		<u>Platform</u> • All contracts for noncovered securities issued through the Platform shall include a set of required contractual terms relating to the obligations of the parties to each contract. • The required contractual terms for agreements for all noncovered securities issued through the Platform shall provide the obligations of the parties to a contract including the following considerations: ○ Pooling and servicing. ○ Loss mitigation procedures. ○ Representations and warranties. ○ Indemnification and remedies. ○ The qualification, responsibilities, and duties of trustees, including but not limited to, requirements set forth in the indenture or pooling and servicing agreement, or any applicable provisions of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.). ○ Other terms or standards the Platform Directors, with approval of the FMIC, determine to be necessary or appropriate to protect or facilitate the operation of the Platform. • Parties to contracts for noncovered securities described under this subsection may supplement the required contractual terms with any additional contractual	<u>Defining Representation and Warranty Violations</u> In developing the uniform securitization agreements, the NMFA shall also develop, adopt, and publish clear and uniform standards that define and illustrate what actions, or omissions to act, comprise a violation of the representations and warranties clauses that are made a part of such agreements. <u>Consultation</u> The NMFA shall work with industry groups, including the Issuer and servicers, originators, mortgage investors, and other interested entities, including stakeholders representing the interests of homeowners, to develop the uniform securitization agreements. <u>Private Issuers Using Common Securitization Platform</u> To the extent that the NMFA determines that private issuers may use the common securitization platform for private securities that are not insured by the MIF, the NMFA may determine the extent to which such uniform agreements are required for such private issuance.	

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		terms so desired by the parties to contracts for noncovered securities issued through the Platform. <u>Optional Uniform Securitization Agreements for Noncovered Securities Issued Through the Platform</u> The Platform Directors may develop optional uniform securitization agreements for use by noncovered securities that are issued through the Platform that include standards and obligations that are different from those included in the uniform securitization agreements for covered securities, provided that— • The agreements include the required contractual terms required for noncovered securities that are issued through the Platform; and • The Platform Directors determine that sufficient demand exists among the members of the Platform for the Platform to issue such optional uniform securitization agreements for use by noncovered securities. <u>Agreements for Noncovered Securities Issued off the Platform</u> Nothing in this section shall preclude, or require, noncovered securities that are not issued through the Platform from adopting the—		

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		• Uniform securitization agreements for covered securities issued through the Platform; • Optional uniform securitization agreements for noncovered securities issued through the Platform; or • Required contractual terms for contracts for noncovered securities issued through the Platform developed. <u>Consultation Required</u> The Platform Directors shall consult with market participapatns, including servicers, originators, issuers, and mortgage investors, and community stakeholders and representatives of homeowners in developing— • The uniform securitization agreements; • The required contractual terms for contracts for noncovered securities issued by or through the Platform; and • The optional uniform securitization agreements for noncovered securities issued by or through the Platform.		
Loan Document Access	**§ 322(i) Independent Third Party** If the majority of investors (beneficial owners) in a pool of qualified securities chooses to hire an independent third party to act on behalf of the best interests of the investors (beneficial owners), such party shall— • Be granted access to the loan documents for the mortgage loans backing such	**Part II—Transparency in Market Operations** **§ 331 Review of Loan Documents; Disclosures** <u>In General</u> The FMIC, in consultation and coordination with the SEC, shall, by rule— • Require market participants, as	**§ 231 Review of Loan Documents; Disclosures** <u>In General</u> The NMFA shall, by rule— • Require that the Issuer— ○ Grant access to private market investors seeking to take the first loss position in a covered security to all—	

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	security and all servicing reports the servicer provides to investors (beneficial owners) or the trustee; • Be granted access to the list of investors (beneficial owners) maintained by the trustee, on the condition that the independent third party will not make the list available to the investors (beneficial owners); and • Have the right, on behalf of the investors (beneficial owners), to inform the trustee of such securities of any breach of the securitization agreement identified by the third party. **§ 322(j) Mandatory Arbitration** • All disputes between an owner of a qualified security and the qualified issuer of such security relating to representations and warranties shall be subject to mandatory arbitration procedures established by the Utility, in accordance with current market practices. • Investors (beneficial owners) and issuers subject to such a dispute shall have the right to agree on an independent arbitrator. If the parties cannot agree on an independent arbitrator, the Utility shall select an independent arbitrator for the parties. • The arbitrator shall provide the Utility with notice upon commencement of any	appropriate, to make available to private market investors in connection with the first loss position on a covered security, including through use of the Securitization Platform, all— ○ Documents relating to eligible mortgage loans collateralizing that covered security; and ○ Servicing reports of the approved servicer relating to such eligible mortgage loans; • Require market participants, as appropriate, to disclose to investors information that is substantially similar, to the extent practicable, to disclosures required of ABS issuers under § 13(a) or 15(d) of the Exchange Act until the covered security is fully paid, other than information the FMIC determines, in consultation and coordination with the SEC, is not applicable to a covered security, a particular type of covered security, or eligible mortgage loans collateralizing a covered security; • Require that all disclosures must be made consistent with the antifraud provisions of the Federal securities laws; and • Establish the timing, frequency, and manner in which such access and disclosures are made. <u>Access and Disclosures</u>	▪ Documents relating to eligible mortgage loans collateralizing that covered security; and ▪ Servicing reports of any approved servicer relating to such mortgages; and ○ Disclose any other material information that a reasonable investor would want to know, and make no material omission of such information, relating to eligible mortgage loans collateralizing a covered security; and • Establish the timing, frequency, and manner in which such access and disclosures are made. <u>Privacy Protections</u> In prescribing the rules required under this section, the NMFA shall take into consideration issues of consumer privacy and all statutes, rules, and regulations related to privacy of consumer credit information and personally identifiable information. Such rules shall expressly prohibit the identification of specific borrowers or the release of information that would enable the identification of a specific borrower.	

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	arbitration under this subsection. • Upon conclusion of any such arbitration, the arbitrator shall provide the Utility with— o The decision reached by the arbitrator; and The basis for the arbitrator's decision, including any evidence or testimony received during the arbitration process.	In prescribing these rules, the FMIC shall take into consideration— • The potential cost of such access and disclosures; • The effect of such access and disclosures on liquidity in the housing finance market; and • The interests of investors. <u>Privacy Protections</u> In prescribing these rules, the FMIC shall take into consideration issues of consumer privacy and all statutes, rules, and regulations related to privacy of consumer credit information and personally identifiable information. Such rules shall expressly prohibit the identification of specific borrowers.		
Investor Immunity		**§ 332 Investor Immunity** No cause of action may be brought under Federal or State law against a market participant that has taken the first loss position in a covered security or that has otherwise invested an any covered security, with respect to whether eligible mortgage loans that collateralize a covered security insured under this title have complied with the requirements of this Act, including with respect to any underwriting requirements applicable to such eligible mortgage loans, any representations or warranties made by a market participant with respect to such eligible mortgage loans, or whether the terms of any uniform	**§ 232 Investor Immunity** Any private market investor that has purchased the first loss position in a covered security or that has otherwise invested in any covered security insured under this Act shall have immunity and protection from civil liability under Federal and State law, and no cause of action may be brought under Federal or State law against such investor, with respect to whether or not eligible mortgages that collateralize a covered security insured under this Act have complied with the requirements of this Act, including, but not limited to, with respect to any underwriting requirements applicable to such mortgage, any	

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		securitization agreement have been met.	representations or warranties made by the Issuer with respect to such mortgages, or whether or not the terms of any uniform securitization agreement have been met.	
Mortgage Database		**§ 333 National Mortgage Database** Transfer Effective on the system certification date, there are transferred to the FMIC all functions of the FHFA of the FMIC relating to the rights, responsibilities, and obligations of the FHFA pursuant to the Inter-Agency Agreement (or any successor thereto) entered into by FHFA and the CFPB with respect to the development, construction, maintenance, operation, and funding of the National Mortgage Database. Privacy In exercising authority under this section, the FMIC and the CFPB shall— • Take steps to ensure the privacy of consumers, including prohibiting the identification of specific borrowers; • Minimize the collection and storage of personally identifiable information; and • Consider all statutes, rules, and regulations relating to the privacy of consumer credit information and personally identifiable information. Duplication The Chairperson and the CFPB Director shall	**§ 234 Uniform Mortgage Database** Uniform Mortgage Database The NMFA shall establish, operate, and maintain a database for the collection, public use, and dissemination of uniform loan level information on eligible mortgages relating to— • Loan characteristics; • Borrower information; • The property securing the eligible mortgages; • Loan data required at the time of application for insurance from the NMFA under this title; • The quality and consistency of appraisal and collateral data on eligible mortgages; • Industry-wide servicing data standards; • The identification of subordinate liens that have been issued on the property securing an eligible mortgage, as well as the performance of such subordinate liens; and • Such other data, datasets, information, facts, or measurements as the NMFA determines appropriate to improve and enhance loan quality and operational efficiencies within the secondary mortgage market.	

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		take all reasonable steps necessary to minimize conflicts and duplication of the data required under this section with data collected, published, or otherwise obtained by other Federal regulators, including the data disclosure system required under HMDA § 304(f) (12 U.S.C. 2803(f)). <u>Minimize Burden on Reporting Entities</u> If 2 or more entities are required by this section to report the same mortgage data relating to the same mortgage loan, the entities may, by agreement that is clearly communicated to the FMIC and the CFPB, determine that only 1 of such entities will report the data. If 1 of such entities reports the required mortgage data, it shall not be a violation of this section for the other entities not to report the data. <u>Access to Data</u> The FMIC and the CFPB shall each establish, and cause to be published in the Federal Register, the initial date on which— • The public shall begin to have access to any data put into the public domain, in accordance with this section and in a manner that is easily accessible to the public; and • All mortgage data is required to be put into the public domain, in accordance with this section.	<u>Considerations</u> In establishing the database, the NMFA shall take into consideration, build upon, and adopt to the extent the NMFA determines appropriate, the existing data standards developed by the FHFA, CFPB, Federal Reserve, OCC, and the SEC. <u>Regulations</u> The NMFA shall, by regulation— • Establish the manner and form by which any loan level information may be accessed by the public, including permitting members of the public to access information on properties at no charge; and • Require that such loan level information be made available to the public in a uniform manner, in a form designed for ease and speed of access, ease and speed of downloading, and ease and speed of use. <u>Protection of Personally Identifiable Information</u> The NMFA shall ensure the protection of any personally identifiable information contained in any information, or mix of information, collected and made available for public access, but may determine to allow access to data by address.	

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			Monthly Update The database shall be updated not less frequently than once a month. Consolidation of Reporting Systems The NMFA may choose to consolidate the Uniform Mortgage Database and the Electronic Registration System required under § 235 if the NMFA provides a written determination that such consolidation would improve the efficiency of mortgage data collection, the ease and speed of use of mortgage data, and the integrity and reliability of mortgage data, while preserving the protection of any personally identifiable information to the greatest extent possible.	
Electronic Mortgage Registration	**§ 331 Organization and Operation** • Under such regulations as the Director may prescribe, the Utility shall organize and operate a national mortgage data repository ("Repository"). • In addition to organizing and operating the Repository, the Utility shall— o Establish and operate a repository for mortgage-related documents; o Establish standards for qualification of any depositor of mortgage-related documents to the Repository; o Establish standards and procedures for submission of mortgage-related documents to the Repository,	**§ 334 Working Group on Electronic Mortgage Registration** Establishment Not later than 180 days after the agency transfer date, the FMIC shall establish a working group to study— • Whether the establishment of a national electronic mortgage registry system is necessary; and • How to establish, operate, and maintain a national electronic mortgage registry system for single-family mortgage loans and multifamily mortgage loans. Composition	**§ 235 Electronic Registration of Eligible Mortgages** Establishment of Electronic Registration System The NMFA shall establish, operate, and maintain an electronic registry system for all eligible mortgages purchased, guaranteed, or securitized by the Issuer. The system shall automate, centralize, standardize, and improve the tracking of changes in— • The ownership of mortgages, deeds of trust, promissory notes, and other instruments relating to a covered security interest under the Act; and • Servicing rights for any mortgage loan	

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	including required information and the type and format of information and data; ○ Establish procedures for validation of mortgage-related documents and the data contained in the Repository; ○ Establish standards and procedures for acceptance of mortgage-related documents (including electronic copies), and notice of acceptance, by the Repository; ○ Establish standards and procedures for registration of any mortgage-related document with the Repository, including notice of registration and the assignment of a unique identifier; ○ Establish standards and procedures for recording the creation, assignment, or transfer of an interest in any registered mortgage-related document; ○ Establish standards and procedures for qualification of depositors and participants in the Repository; ○ Establish procedures for proper demonstration of registration of mortgage-related documents with the Repository and recordation of an interest by the holder of an interest in any such document, subject to regulations issued by the Director in accordance with § 332 (relating to	The working group shall be composed of the following: • The Chairperson or the Chairperson's designee. • The CFPB Director; the Chairman of the FDIC, SEC, or the Federal Reserve; the Comptroller; or the designee of any of these; • A representative from the FHLB System and from a Federal Reserve Bank; • Individuals selected by the Chairperson from among the following: ○ State and local government agencies and representatives, including housing finance agencies and those with expertise in property records, electronic recording, and the UCC. ○ The National Conference of Commissioners on Uniform State Laws. ○ Industry groups, including single family and multifamily mortgage originators, title insurers, servicers, issuers, and investors. ○ Consumer groups, including representatives of homeowners, community stakeholders, and housing organizations. ○ Individuals with technical expertise, including those with expertise in designing, constructing, and maintaining mortgage databases.	covered under the Act. <u>Identification of Mortgages and Notes</u> The tracking system shall assign an identification number to each security instrument and its related promissory note upon initial registration with the system. The identification number shall continue to identify the security instrument and note through all subsequent assignments and transfers. The NMFA shall develop a numbering system that will assign unique numbers to participants to help in the identification of individual participants. <u>Individuals Authorized to Make Registry Entries</u> The NMFA shall develop procedures to register individuals authorized to make entries in the data system. The procedures shall require that servicers and agents of loan owners identify the principal for whom each individual is authorized to act, the scope of the agency, and the identity of the individual's employer. <u>Custody of Note</u> The tracking system shall identify by name and street address the entity holding physical custody of the original promissory note for each eligible mortgage purchased, guaranteed or securitized by the Issuer that is in paper form. If the note is in electronic format and it	

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	legal effect of registration with the Repository); ○ Establish and maintain a catalog of the mortgage-related documents registered with the Repository; ○ Establish standards and procedures for dis- position of mortgage-related documents, including safekeeping, long-term storage, or destruction of paper documents; ○ Establish standards and procedures for making data publicly available; ○ Ensure that data collected and maintained by the Repository are kept secure and protected against unauthorized disclosure, including disclosure of personally identifiable information that is not otherwise available as part of any public record; ○ Establish a process, including notification from the public, for identification and correction of incorrect information submitted to or maintained by the Repository; ○ Establish fees for registration of mortgage- related documents and maintenance and use of data, and for the provision of other related services not in- consistent with the purposes of §§ 301 – 344; and ○ Perform any other service or engage in any other activity that the Director determines, by regulation or order, to	<u>Duties</u> The duties of the working group are to assess and develop recommendations on the necessity for and feasibility of establishing, operating, and maintaining a national electronic mortgage registry system for single-family mortgage loans and multifamily mortgage loans to document custody and registration of mortgage loans, notes, titles, liens, deeds of trust, and other security instruments, in order to automate, centralize, standardize, and improve the tracking of changes in— • The ownership of mortgage loans, deeds of trust, and other security instruments; • The ownership of the beneficial interest in promissory notes secured by any mortgage loan, deed of trust, or other security instrument; • The servicing rights for any mortgage loan, deed of trust, or other security instrument; and • Such other information as the FMIC may require. <u>Considerations</u> In carrying out the duties under this section, the working group shall consider— • The cost to States and localities, including any impact on revenue generated by local recording of mortgage loan documents;	is not registered in the system, the system shall reference an electronic database where the note is registered. The electronic note registry shall be accessible to the public without charge. <u>Mandatory Participation</u> Participation in the registry system shall be mandatory for all eligible mortgages purchased, guaranteed, or securitized by the Issuer. Holders of loans or their agents shall have a duty to register each eligible mortgage purchased, guaranteed, or securitized by the Issuer and maintain the accuracy of current system data. All transfers, assignments, and other changes in the holding of covered promissory notes and security instruments, and servicing rights, shall be entered into the system. The tracking system will identify each entity entered in the system by name, address, and other contact information. If there is more than one servicer for a particular purchased, guaranteed, or securitized by the Issuer, each servicer shall be identified in the system, including whether the entity is a master servicer, subservicer, or other servicer. <u>Borrower Access to Information</u> To the extent that the NMFA permits issuers of private securities that are not insured under this Act to use the common securitization platform, it may adopt appropriate rules to ensure that a borrower has access to any	

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	be incidental to the activities enumerated in this subsection. • Each participant shall comply with such requirements as may be set by the Repository for using data maintained or created by the Repository, and use such designation as the Repository may provide, such as a unique identifier. **§ 332 Legal Effect of Registration with Repository** Notwithstanding any provision of State or Federal law to the contrary, by proper demonstration of registration with the Repository, any holder of an interest in any mortgage-related note shall satisfy any requirement for demonstration of a right to act regarding such note or other registered data that exists in State or Federal law, including any obligation to produce or possess an original note. The Director shall provide for the establishment of procedures for proper demonstration of registration of any mortgage-related document and of an interest by the holder of an interest in any such document with the Repository. Once registered with the Repository, such registration shall be a legal right enforceable in any judicial or nonjudicial process. **§ 333 Grants to States; Repayment** • There is hereby authorized to be	• The feasibility of allowing States and localities to continue to collect fees and revenue; • The implications of data accuracy on judicial and nonjudicial foreclosure; • The need to minimize conflicting mortgage loan registry requirements; • The need to provide consumers with access to key information about the ownership and servicing of their mortgage loans; • The need to provide data accuracy, security, and privacy; • The need to make data publicly available at minimal cost to consumers; • Existing State real property and commercial laws and any such laws in development, including an electronic mortgage registry law developed as a uniform State law proposal; • The costs and benefits of developing and maintaining a national mortgage registry system, including any potential impact on consumer mortgage credit and industry participants; • The feasibility of using existing industry standards and capabilities in the operation of a national mortgage registry system; and • Any research, reports, or other work undertaken by outside experts, including Federal and State entities.	information necessary under this section and § 234. <u>Enforcement of Registry Requirements; Sanctions</u> The NMFA shall develop a schedule of sanctions that shall be imposed upon an originator or holder or its agent in the event that the loan owner or agent fails to maintain accurate current information in the system for an eligible mortgage purchased, guaranteed, or securitized by the Issuer. The sanctions shall be in a form that will be effective to deter non-compliance. <u>Free Access</u> All information on the registry shall be electronically accessible, at no charge, to the public. <u>State and Local Law</u> Nothing in this Act shall be deemed to preempt or limit State and local law regarding recording or registration of interests in land or the foreclosure of interests in land.	

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	appropriated $50,000,000 to the Director for the establishment of a fund to be administered by the Agency for providing grants to States, on application to the Agency, to facilitate participation in the Repository by any depositor or participant or class of depositors or participants, or any other person upon appropriate demonstration to the Agency that such a grant would assist in the accomplishment of the purposes of this subtitle. Any such amounts appropriated and not granted by the Agency within five years of the date of the enactment of this Act shall be returned to the Treasury.
	• The Director shall cause to be collected from the Utility and deposit in the Treasury an amount equal to the aggregate amount provided as grants to States within 10 years after the first grant is made.
	
	§ 334 Judicial Review
	Except as otherwise expressly provided under this part, no person other than the Director or the Attorney General, or any duly authorized representative of the Director or the Attorney General, may proceed against the Repository in any State or Federal court. The prohibition in the preceding sentence shall not apply to a civil action against the Repository or any duly authorized agent thereof for breach of a contract, including breach of a representation
		<u>Report</u>
		Not later than 2 years after the working group is established, the working group shall issue a publicly available report, which shall—
		• Include recommendations—
		  ○ As to whether the establishment of a national electronic mortgage registry system is necessary or appropriate in the public interest or for the protection of the MIF; and
		  ○ On how to establish, operate, and maintain a national electronic mortgage registry system for single-family mortgage loans and multifamily mortgage loans; and
		• If the working group recommends that the establishment of the national electronic mortgage registry system is necessary or appropriate, outline the minimum requirements for such registry, which shall include considerations for the development and implementation of electronic mortgage registry systems by State and local government agencies, including requirements to ensure accurate reporting to such systems, and shall satisfy the recommendations of this report.
		
		<u>Rulemaking</u>
		• Beginning 5 years after publication of the		

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	or warranty, or breach of privacy related to data collected and maintained by the Repository or any duly authorized agent thereof. **§ 335 Transition Provisions** • The Agency shall provide for a transition period to permit the efficient implementation of the provisions of §§ 331 – 335. Such transition may include periods for testing, early adoption, and final mandatory adoption for all recorded mortgages. • The Repository shall accept electronic submissions and paper-based documents submitted electronically subject to rules of the Repository. Ten years after enactment, subject to an extension for up to 5 additional years if the Director determines appropriate, the Repository shall require only electronic submission.	report, the FMIC may, by rule, establish a national electronic mortgage registry system for single-family mortgage loans and multifamily mortgage loans, deeds of trust, or other security instruments in accordance with the findings of the report if— ○ The FMIC determines that electronic mortgage registry systems have not been created by State and local government agencies in accordance with the minimum requirements established in the report; and ○ The establishment of a national electronic mortgage registry system for single-family mortgage loans and multifamily mortgage loans remains necessary or appropriate in the public interest or for the protection of the MIF. • If the FMIC establishes a national electronic mortgage registry system, the FMIC shall provide approved entities a reasonable amount of time to correct a filing made in the national electronic mortgage registry system that is in direct conflict with any filing in a State or local real property recording system. The FMIC, in consultation with appropriate State and local government agencies responsible for real property recordation, may extend the period for a single period of not more than 5 years if the FMIC		

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		determines that the extension is necessary or appropriate. • To promote consistency in and minimize disruption to the housing finance system and systems for the local recording of loan documents, the FMIC shall consult and coordinate with appropriate State and local government agencies responsible for real property recordation when developing and issuing rules under this subsection. • The rules and standards promulgated under this section shall recognize and protect valid perfected security interests in registered mortgage-related documents. <u>Rules of Construction</u> • Nothing in this section shall be construed as implying or establishing a private right of action against an approved entity for filings made to the established national electronic mortgage registry system or other filing actions taken pursuant to subsection (f) (rulemaking). • Nothing in this section shall be construed as authorizing the FMIC, before the establishment of a national electronic mortgage registry system under subsection (f), to exercise supervisory or enforcement authority with respect to an approved entity relating to a real property filing action in a State or local real		

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		property recording system by the approved entity. • Nothing in this section shall be construed as preempting, altering, annulling, exempting, or affecting the applicability of any State or local law, including those laws relating to real property recording or foreclosure.		
Multiple Liens	**§ 413 Notice of Junior Mortgage or Lien** With respect to the dwelling of a borrower that serves as security for a securitized senior mortgage loan, if the borrower enters into any credit transaction that would result in the creation of a new mortgage or other lien on such dwelling, the creditor of such new mortgage or other lien shall notify the servicer of the senior mortgage loan of the existence of the new mortgage or other lien. **§ 414 Limitation on Mortgages Held by Servicers** • Neither the servicer of a residential mortgage loan, nor any affiliate of such servicer, may own, or hold any interest in, any other residential mortgage loan that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on the same dwelling or residential real property that is subject to the mortgage, deed of trust, or other security interest that secures the residential mortgage loan serviced by the	**§ 335 Multiple Lender Issues** With respect to the dwelling of a borrower that serves as security for an eligible mortgage loan, if the borrower enters into any credit transaction that would result in the creation of a new mortgage loan or other credit lien on such dwelling where the LTV ratio of such credit transaction amount is 80% or more, the creditor (as defined in 12 C.F.R. § 1026.2(a)(17) shall notify the creditor of the senior eligible mortgage loan within 30 days after consummation.	**§ 701 Multiple Lender Issues** With respect to the dwelling of a borrower that serves as security for an eligible mortgage, if the borrower enters into any credit transaction that would result in the creation of a new mortgage or other lien on such dwelling where the loan-to-value ratio of such credit transaction amount is 80% or more, the creditor of such new mortgage or other lien shall seek and obtain the approval of the creditor of the senior eligible mortgage loan before any such credit transaction becomes valid and enforceable.	

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	servicer.
	• For these purposes, the following definitions apply:
	  ○ *Affiliate* means "any company that controls, is controlled by, or is under common control with another company."
	  ○ *Residential Mortgage Loan* means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or an extension of credit relating to a plan described in section 11 U.S.C. § 101(53D).
	  ○ *Servicer* has the meaning in TILA § 129A ["the person responsible for the servicing for others of residential mortgage loans (including of a pool of residential mortgage loans)"], except that such term includes a person who makes or holds a residential mortgage loan (including a pool of residential mortgage loans) if such person also services the loan.
	• For purposes of the ownership limitation, ownership of, or holding an interest in, a residential mortgage loan includes ownership of, or holding an interest in—			

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	◦ A pool of residential mortgage loans that contains such residential mortgage loan; or ◦ Any security based on or backed by a pool of residential mortgage loans that contains such residential mortgage loan. • This section shall apply— ◦ With respect to the servicer (or affiliate of the servicer) of a residential mortgage loan that is originated after the date of the enactment of this Act, on such date of enactment; and ◦ With respect to the servicer (or affiliate of the servicer) of a residential mortgage loan that is originated on or before the date of the enactment of this Act, upon the expiration of the 12-month period beginning upon such date of enactment.			
Agency Transfer – Definitions		**TITLE IV—FHFA and FMIC TRANSITION** **§ 401 Definitions** In this title— *Director* means— • During the period beginning on the date of enactment of this Act and ending on the day before the agency transfer date, the Director of the Existing Agency; and • On and after the agency transfer date, the		

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		Director of the FHFA of the FMIC appointed under § 402(a)(2). *Existing Agency* means the FHFA, as constituted on the day before the agency transfer date. *Function* means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program. *Regulated entity* Fannie Mae, Freddie Mac, or an FHLB. *Transition Committee* means the FMIC Transition Committee established under § 404(a)(1).		

Agency Transfer – the Transfer		**§ 402 FHFA Transition**
		Establishment
		Effective on the agency transfer date, there is established in the FMIC the FHFA, which shall be maintained as a distinct entity within the FMIC. The FHFA shall be headed by a Director, who shall be—
		• Appointed by the President, by and with the advice and consent of the Senate; and
		• A non-voting member of the Board of Directors.
		
		FHFA Transfer
		• Effective on the agency transfer date and unless otherwise specified by this Act, all
			§ 301 Powers and Duties Transferred
			FHLB Functions Transferred
			• There are transferred to the NMFA all functions of FHFA and its Director relating to—
			  ○ The supervision of the FHLBs and the FHLB System; and
			  ○ All rulemaking authority of the FHFA and its Director relating to the FHLBs and the FHLB System.
			• The NMFA shall succeed to all powers, authorities, rights, and duties that were vested in FHFA and its Director, including all conservatorship or receivership authorities, on the day before
				§ 101 Ginnie Mae Removal From HUD; Establishment as Independent Entity
				In General
				National Housing Act § 302(a)(2) (12 U.S.C. 1717(a)(2)) [creating Ginnie Mae] is amended by striking "in the Department of Housing and Urban Development" and inserting "independent of any other agency or office in the Federal Government."
				
				Conforming Amendments
				Title III of the National Housing Act (12 U.S.C. 1716 et seq.) is amended—
				• In § 306(g)(3)(D) (12 U.S.C. 1721(g)(3)(D)), by striking "Secretary"

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		FHFA property and functions are transferred to the FHFA of the FMIC.
		• The individual serving as the Director of the Existing Agency the day before the agency transfer date may serve as the Director of the FHFA of the FMIC until the end of the term of such individual as Director of the Existing Agency under § 1312(b)(2) of the 1992 Act, as in effect on the day before the agency transfer date.
		• During the period beginning on the agency transfer date and ending on the date on which the first individual is appointed as Chairperson under § 202, the Director shall serve as the Transition Chairperson of the FMIC and shall exercise all authorities of the Chairperson, unless stated otherwise. In so serving, the Director shall not have the authority to establish any rule under § 2 or any rule relating to approved entities under title III.
		
		<u>Powers and Duties</u>
		• The Director of the FHFA of the FMIC shall—
		  o Retain and exercise all powers, including conservatorship and receivership powers as amended by this Act, of the Director of the Existing Agency on the day before
			the transfer date in connection with the functions and authorities transferred. Notwithstanding requirements for mandatory use of the receivership authority, the NMFA, in consultation with Treasury, HUD, and the Federal Reserve, shall have authority to determine whether the Issuer shall be placed in receivership, regardless of its capital level.
			• The transfer of functions shall take effect on the transfer date.
			
			<u>Continuation and Coordination of Certain Actions</u>
			All regulations, orders, determinations, and resolutions described shall remain in effect according to their, and shall be enforceable by or against the NMFA until modified, terminated, set aside, or superseded in accordance with applicable law by the NMFA, any court of competent jurisdiction, or operation of law. A regulation, order, determination, or resolution includes any that—
			• Was issued, made, prescribed, or allowed to become effective by the FHFA or a court of competent jurisdiction, and relates to functions transferred by this Act;
			• Relates to the performance of functions that are transferred by this section; and
			• Is in effect on the transfer date.
				and inserting "Association";
				• In § 307 (12 U.S.C. 1722), by striking "Secretary of Housing and Urban Development" and inserting "Association"; and
				• In § 317 (12 U.S.C. 1723i)—
				  o In (a)(1), by striking "Secretary of Housing and Urban Development" and inserting "Director of the Association";
				  o In (c)(4), by striking "Secretary's" and inserting "Director of the Association's";
				  o In (d)(1), by striking "Secretary's" and inserting "Director of the Association's";
				  o In the heading for (f), by striking "BY SECRETARY"; and
				  o By striking "Secretary" each place such term appears and inserting "Director of the Association".
				
				<u>Management; Director</u>
				National Housing Act § 308(a) (12 U.S.C. 1723(a)) is amended—
				• In the first sentence—
				  o By striking "Secretary of Housing and Urban Development" and inserting "Director of the Association appointed pursuant to this subsection"; and
				  o By striking "of the Secretary" and

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		the agency transfer date relating to the FHLB System, the FHLBs, and the GSEs; ○ Manage and implement actions authorized by the FMIC related to the transition to the new housing finance system that impact the conservatorship or receivership of regulated entities; and ○ Consult with other members of the Transition Committee and the Board of Directors as may be appropriate to fulfill the requirements of this Act. • Except as provided in § 604(a)(2), or as otherwise specifically provided in this Act, the Chairperson and the Board of Directors may not— ○ Intervene in any matter or proceeding before the Director, unless otherwise specifically provided by law; ○ Appoint, direct, or remove any officer or employee of the FHFA of the FMIC; or ○ Merge or consolidate the FHFA of the FMIC, or any of the functions or responsibilities of the FHFA of the FMIC, with any division, office, or other component of the FMIC. <u>Agency Expenditures and Budget</u> • After the agency transfer date, the Director of the FHFA of the FMIC—	<u>Disposition of Affairs</u> During the period preceding the transfer date, the FHFA Director, for the purpose of winding up FHFA's affairs connection with the performance of functions that are transferred by this section— • Shall manage the employees of such Agency and provide for the payment of the compensation and benefits of any such employees which accrue before the transfer date; and • May take any other action necessary for the purpose of winding up the affairs of the Office. <u>Use of Property and Services</u> • The NMFA may use FHFA property and services to perform functions which have been transferred to the NMFA until such time as the Agency is abolished under § 303 to facilitate the orderly transfer of functions transferred under this section, any other provision of this Act, or any amendment made by this Act to any other provision of law. • Any agency, department, or other instrumentality of the U.S., and any successor to any such agency, department, or instrumentality, that was providing supporting services to the Agency before the transfer date in	inserting "of the Director"; • In the second sentence, by striking "Secretary" and inserting "Director"; • In the third sentence— ○ By striking "in the Department of Housing and Urban Development"; and ○ By inserting before the period at the end the following: ", and shall be appointed for a term of 5 years, unless removed before the end of such term for cause by the President"; • In the last sentence, by striking "Secretary" and inserting "Director"; and • By adding at the end the following undesignated paragraph: "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. If the Senate has not confirmed a Director, the President may designate either the individual nominated but not yet confirmed for the position of Director or another individual, to serve as the Acting Director, and such Acting Director shall have all the rights, duties, powers, and responsibilities of the Director, until

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		○ Except as limited in amount below, may obligate and expend amounts available to the FHFA; and ○ Shall submit regular updates to the Board of Directors. • During the period beginning on the agency transfer date and ending on the date on which the first individual is appointed as Chairperson under § 202, the Director shall require approval from the Transition Committee for any agency capital expenditure in excess of $5,000,000. • On and after the date on which the first individual is appointed as Chairperson under § 202, the Director shall require approval from the Board of Directors for any agency capital expenditure in excess of $5,000,0000. <u>Cooperation</u> During the period beginning on the date of enactment of this Act and ending on the system certification date, the Board of Directors and the Director shall cooperate and coordinate in the exercise of their respective authorities to facilitate and achieve an orderly transition from housing finance markets facilitated by the enterprises to housing finance markets facilitated by the FMIC with minimum disruption in the availability of credit.	connection with functions that are transferred to the NMFA shall— ○ Continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and ○ Consult with any such agency to coordinate and facilitate a prompt and reasonable transition. <u>Continuation of Services</u> The NMFA may use the services of employees and other personnel of FHFA, on a reimbursable basis, to perform functions which have been transferred to the NMFA for such time as is reasonable to facilitate the orderly transfer of functions pursuant to this section, any other provision of this Act, or any amendment made by this Act to any other provision of law. <u>Savings Provisions</u> • The transfer of FHLB functions and § 303 shall not affect the validity of any right, duty, or obligation of the U.S., the FHFA Director, the FHFA, or any other person, that existed on the day before transfer date. • No action or other proceeding commenced by or against the FHFA Director in connection with the functions that are transferred to the NMFA under	such time as a Director is confirmed by the Senate. An individual may serve as the Director after the expiration of the term for which appointed until a successor has been appointed or confirmed." • 5 U.S.C. § 5315 is amended, in the item relating to the Ginnie Mae President by striking ". Department of Housing and Urban Development". <u>FSOC Membership</u> • Dodd-Frank Act § 2(12)(E), the definition of primary financial regulatory agency, is amended to define Ginnie Mae as the primary financial regulatory agency for the MIF established under § 202(g), the FHLBs or the FHLB System. • Dodd-Frank § 111(b)(1)(H), FSOC voting members, is amended to replace the FHFA Director with the Ginnie Mae Director. <u>Personnel</u> National Housing Act § 309(d) (12 U.S.C. 1723a(d)) is amended by striking paragraph (d)(1) and inserting the following: • The Director of the Association may appoint and fix the compensation of such officers and employees of the Association as the Director considers necessary to carry out the functions of the Association.

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		<u>Coordination and Continuation of Certain Actions</u>
		• All regulations, orders, determinations, and resolutions described in the paragraph below shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the FHFA of the FMIC until modified, terminated, set aside, or superseded in accordance with applicable law by the FHFA of the FMIC, any court of competent jurisdiction, or operation of law.
		• A regulation, order, determination, or resolution is described in this paragraph if it—
		  ○ Was issued, made, prescribed, or allowed to become effective by—
		    ▪ The Existing Agency;
		    ▪ The Federal Housing Finance Board; or
		    ▪ A court of competent jurisdiction, and relates to functions transferred by this section;
		  ○ Relates to the performance of functions that are transferred by this section; and
		  ○ Is in effect on the agency transfer date.
			this section shall abate by reason of the enactment of this Act, except that the NMFA shall be substituted for the FHFA Director as a party to any such action or proceeding.
			
			<u>Conforming Amendments</u>
			Effective on the transfer date:
			The *FHLB Act* is amended—
			• By striking the Director and inserting the NMFA each place that term appears;
			• By striking Chairman of the Director of Governors and inserting Chairman of the Board of Governors each place that term appears;
			• By striking the Agency and inserting the NMFA each place that term appears;
			• In § 2(11), the definition of Director, by replacing it with a definition of NMFA to mean the NMFA; and
			• By striking § 2(12), the definition of FHFA.
			
			The *1992 Act* is amended in § 1316 (assessments) is amended by removing authority to assess the FHLBs.
			
			The *Right to Financial Privacy Act of 1978* is amended in § 1113(o) (exclusion for disclosure to or examination by FHFA), to replace FHFA with NMFA.
				Officers and employees may be paid without regard to 5 U.S.C. chapter 51 and chapter 53 subchapter III relating to classification and GS pay rates.
				• In carrying out this subsection, Ginnie Mae shall appoint and develop human capital (which shall have such meaning as determined by Ginnie Mae, in consultation with the Board of Governors of the Federal Reserve, taking into consideration differences between the banking and insurance industries) necessary to ensure that it possesses sufficient expertise regarding the insurance industry and insurance issues.
				• In fixing and directing compensation under subparagraph (A), the Director of the Association shall consult with, and maintain comparability with, compensation of officers and employees of the OCC, Federal Reserve, and the FDIC.
				• In carrying out the duties of the Association, the Director of the Association 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.
				• Notwithstanding any provision of law limiting pay or compensation, the Director of the Association may appoint

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		<u>Use of Agency Services</u>
		Any U.S. agency, department, or other instrumentality, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Existing Agency before the agency transfer date in connection with functions that are transferred to the FHFA of the FMIC shall—
		• Continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and
		• Consult with any such agency to coordinate and facilitate a prompt and reasonable transition.
		
		<u>Savings Provisions</u>
		• Subsection (a) (establishing the FHFA of the FMIC) shall not affect the validity of any right, duty, or obligation of the U.S., the Director of the Existing Agency, or any other person, which—
		  ○ Arises under the 1992 Act, the Fannie Mae or Freddie Mac charters, or any other provision of law applicable with respect to the Existing Agency; and
		  ○ Existed on the day before the agency transfer date.
		• No action or other proceeding commenced by or against the Director of the Existing Agency in connection with functions that are transferred to the FHFA
			§ 303 Abolishment of FHFA
			Effective upon certification by Treasury that the Agency has substantially completed the actions necessary to wind down the remaining assets of the GSEs, FHFA and the FHFA Director's position are abolished.
			
			§ 304 Transfer of Property and Facilities
			Effective upon the certification by Treasury pursuant to § 303, all FHFA property shall transfer to the NMFA, except as determined by Treasury to be necessary to continue activities to wind down the GSEs.
			
			§ 305 Residual Corpus of GSEs in Conservatorship
			Upon certification of Treasury pursuant to § 303, the Agency may transfer the remaining assets and authority over the corpuses of GSEs to complete the wind down of those remaining assets.
				and compensate such outside experts and consultants as such Director determines necessary to assist the work of the Association.
				
				<u>Transitional Provision</u>
				Notwithstanding this section, from enactment until the Ginnie Mae Director is confirmed pursuant to National Housing Act § 308 as amended by this section, the person serving as the Ginnie Mae President shall act for all purposes as, and with the full powers of, the Director of the Association.
				
				<u>References</u>
				On and after the date of the enactment, any reference in Federal law to the Ginnie Mae President or to such Association shall be deemed a reference to such Ginnie Mae or to such Association, as appropriate, as organized pursuant to this subsection and the amendments made by this section.
				
				§ 102 Transfer to Ginnie Mae of FHFA Powers, Personnel, and Property
				<u>Powers and Duties Transferred</u>
				• There are transferred to Ginnie Mae and the Ginnie Mae Director all functions of FHFA and the FHFA Director. Ginnie Mae and its Director shall succeed to all powers, authorities, rights, and duties that were vested in FHFA and the FHFA Director, respectively, including all

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		of the FMIC shall abate by reason of the enactment of this Act, except that the Director of the FHFA of the FMIC shall be substituted for the Director of the Existing Agency as a party to any such action or proceeding.
		
		<u>Technical and Conforming Amendments</u>
		The following changes are effective on the agency transfer date. (Note that the technical changes in § 407 are effective on the system certification date.)
		
		The *1992 Act* is amended—
		• In § 1303(2), the definition of Agency, to mean the FHFA of the FMIC.
		• In § 1303(9), the definition of Director, to mean the Director of the Agency.
		• In § 1311(a), by striking language that creates FHFA and inserting language that creates the FHFA within the FMIC, which shall be maintained as a distinct entity within the FMIC.
		• In § 1312(b)(1), by striking language that the FHFA Director is appointed by the President and confirmed by the Senate, and inserting language that the Director is appointed in accordance with § 402(a)(2) of the Housing Finance Reform and Taxpayer Protection Act of 2014.
		• In § 1367(a)(7), which currently provides that the FHFA Director, when acting as
				conservatorship or receivership authorities, on the day before the transfer date in connection with the FHFA functions and authorities transferred.
				• Such transfer shall take effect 6 months after enactment Act.
				• All such FHFA regulations, orders, determinations, and resolutions shall remain in effect according to their terms, and shall be enforceable by or against Ginnie Mae until modified, terminated, set aside, or superseded in accordance with applicable law by Ginnie Mae, any court of competent jurisdiction, or operation of law. This includes a regulation, order, determination, or resolution if it—
				  ○ Was issued, made, prescribed, or allowed to become effective by FHFA or a court of competent jurisdiction, and relates to FHFA functions transferred;
				  ○ Relates to the performance of functions that are transferred by this subsection; and
				  ○ Is in effect on the transfer date [6 months after enactment].
				• During the period preceding the 6-month transfer date, the FHFA Director, for the purpose of winding up FHFA's affairs in connection with the performance of functions that are transferred by this

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		conservator or receiver, acts independently of other agencies, is amended to make an exception as may be provided in § 604(a)(2) of the Housing Finance Reform and Taxpayer Protection Act of 2014, or as otherwise specifically provided for in such Act. • In § 1367(b)(2)(D), which currently authorizes the FHFA Director, as conservator, to actions to put a GSE in sound condition and to carry on its business, is amended to provide that: o On and after the agency transfer date, the Agency shall, as conservator, take such actions as are necessary— ▪ To wind down of the operations of the GSEs in an orderly manner that complies with the 2014 Act; ▪ To manage the GSEs' affairs, assets, and obligations and to operate the GSEs in compliance with the requirements of such Act; ▪ To undertake and carry out any sale, transfer, or disposition authorized in §§ 315(c), 321(d), 604(i)(2), 701(b), or 702 of that Act to facilitate the orderly transition to the new housing finance system authorized by such Act; and ▪ To maintain liquidity and		section— o Shall manage FHFA employees and provide for the payment of their compensation and benefits which accrue before such transfer date; and o May take any other action necessary to wind up FHFA's affairs. • Ginnie Mae may use FHFA's property and services to perform functions transferred to Ginnie Mae until FHFA is abolished to facilitate the orderly transfer of functions under this Act, or any amendment made by this Act to any other provision of law. Any agency, department, or other instrumentality of the U.S., and any successor to any such agency, department, or instrumentality, that was providing supporting services to FHFA before the transfer date in connection with functions that are transferred to Ginnie Mae shall— o Continue to provide such services, on a reimbursable basis, until the transfer is complete; and o Consult with any such agency to coordinate and facilitate a prompt and reasonable transition. • Ginnie Mae may use the services of employees and other personnel of FHFA, on a reimbursable basis, to perform functions which have been transferred to Ginnie Mae for such time as is reasonable

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		stability in the secondary mortgage market until the GSEs have no authority to conduct new business. o The FMIC may, as conservator, take such actions as are— ▪ Necessary to put an FHLB in a sound and solvent condition; and ▪ Appropriate to carry on the business of an FHLB and preserve and conserve its assets and property. The *FHLB Act* is amended— • By striking Chairman of the Director of Governors each place that term appears and inserting Chairman of the Board of Governors; and • In § 2(11), the definition of Director, by replacing FHFA with Agency; and • In § 2(12), the definition of Agency, by replacing FHFA with the FHFA within the FMIC. The *FDIA* is amended— • In § 11(t), which currently provides that covered agencies may share information without waiving privileges, by adding the FMIC to the definition of covered agency. • In § 18(x), which currently provides that submitting information to certain regulators does not waive privileges, by		to facilitate the orderly transfer of functions pursuant to this Act, or any amendment made by this Act to any other provision of law. • The transfer and abolishment of FHFA shall not affect the validity of any right, duty, or obligation of the U.S., the FHFA Director, FHFA, or any other person, that existed on the day before the 6-month transfer date. • No action or other proceeding commenced by or against the FHFA Director in connection with the functions that are transferred to Ginnie Mae shall abate by reason of the enactment of this Act, except that Ginnie Mae shall be substituted for the FHFA Director as a party to any such action or proceeding. <u>Abolishment of FHFA</u> Effective upon the 6-month transfer date, FHFA and the position of the FHFA Director are abolished. <u>Transfer of Property and Facilities</u> Effective on the 6-month transfer date, all FHFA property shall transfer to Ginnie Mae. <u>References in Federal Law</u> On and after the 6-month transfer date, any reference in Federal law to the FHFA Director or FHFA, in connection with any function of

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		adding the FMIC to the list of agencies. The *FFIEC Act* is amended: • In § 1004 by adding the FMIC Chairman to the FFIEC; • In § 1011 by adding the FMIC to the FFIEC Appraisal Subcommittee; and • By adding § 1012, establishing a servicing subcommittee: The FFIEC has a Subcommittee on Mortgage Servicing, consisting of designees of heads of the Federal financial institution regulatory agencies, the CFPB, FMIC, FHFA, and a representative of the State Liaison Committee established under § 1007. *FIRREA* is amended in § 1216(a), which requires equal opportunity in the Federal Government for listed agencies, to remove FHFA and add FMIC. The *Housing and Urban-Rural Recovery Act of 1983* is amended in § 469, which requires HUD in cooperation with several agencies to report to Congress on mortgage delinquencies and foreclosures, to add FMIC to the list of agencies. The *Paperwork Reduction Act* is amended to replace FHFA with FMIC.		the FHFA Director or FHFA transferred shall be deemed a reference to the Ginnie Mae Director or Ginnie Mae, as appropriate and consistent with the amendments made by this Act.

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		Public Law 93-495, 12 U.S.C. § 250, which makes several agencies independent, is amended to add the FMIC. The *Right to Financial Privacy Act of 1978* is amended in § 1101(7), which defines supervisory agency, to add the FMIC. 5 U.S.C. § 5313, which applies Level II of the Executive Schedule to specified positions, is amended by adding the FMIC Chairperson. 5 U.S.C. § 3132(a)(1)(D), which excludes certain independent agencies from the definition of agency for SES purposes, to add FMIC to the excluded agencies. 18 U.S.C. is amended in §§ 212 (loan or gratuity to examiners), 657 (misapplication of funds by agency employees), 1006 (false entry by agency employees), 1014 (false statement on loan application to influence agency), and 1905 (federal employees divulging trade secret) by replacing FHFA with FMIC. The *Federal Credit Union Act* is amended in § 107(7)(e) to authorize Federal credit unions to invest in obligations backed by the FMIC. The *Bank Holding Company Act* is amended		

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		in § 5(c)(5)(B) to add to the definition of functionally regulated subsidiary an approved guarantor under § 311 of this Act.		
Agency Transfer – Employees		**§ 403 Transfer and Rights of FHFA Employees** Transfer • Effective on the agency transfer date, each employee of the Existing Agency, including each employee of the OIG of the Existing Agency, who is in good standing, shall be transferred to the FMIC for employment, and such transfer shall be deemed a transfer of function for purposes of 5 U.S.C. § 3503. • A transferred employee shall be appointed to a position in the FHFA of the FMIC. On and after the agency transfer date, the Chairperson, in consultation with the Director of FHFA of the FMIC, may reassign a transferred employee to a different component of the FMIC, if the reassignment is in the best interest of the FMIC. Guaranteed Positions Each transferred employee shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. A transferred employee holding a permanent position on the day immediately preceding the	**§ 302 Transfer and Rights of FHFA Employees** Transfer Each FHFA employee that is employed in connection with functions that are transferred to the NMFA under § 301 shall be transferred to the NMFA for employment, not later than the transfer date, and such transfer shall be deemed a transfer of function for purposes of 5 U.S.C. § 3503. Status of Employees The transfer of functions under this title, and the abolishment of FHFA, may not be construed to affect the status of any transferred employee as an employee of an agency of the U.S. for purposes of any other provision of law. Guaranteed Positions Each transferred employee shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Employees who remain with FHFA to assist with wind down of the entities shall be ensured of transfer to the NMFA at a later date. Appointment Authority for Excepted	**§ 102(b)** Transfer and Rights of FHFA Employees • Each FHFA employee that is employed in connection with functions that are transferred to Ginnie Mae shall be transferred to Ginnie Mae for employment, not later than the 6-month transfer date, and such transfer shall be deemed a transfer of function for purposes of 5 U.S.C. § 3503. • The transfer of functions, and the abolishment of FHFA, may not be construed to affect the status of any transferred employee as an employee of a U.S. agency for purposes of any other provision of law. • Each such employee transferred shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. • In the case of an employee occupying a position in the excepted service, any appointment authority established under law or by OPM regulations for filling such position shall be transferred. Ginnie Mae may decline such a transfer to the extent that such authority relates to a

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		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. <u>Appointment Authority for Excepted and SES Employees</u> In the case of an employee occupying a position in the excepted service or the SES, any appointment authority established under law or by OPM regulations for filling such position shall be transferred. However, the FMIC may decline such a transfer, 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; or • A noncareer appointee in the SES. <u>Employee Benefit Programs</u> • Any employee of the Existing Agency accepting employment with the FMIC as a result of a transfer may retain, for 12 months after such transfer occurs, membership in any employee benefit program of the Existing Agency or the FMIC, as applicable, including insurance, to which such employee belongs on the	<u>Employees</u> In the case of an employee occupying a position in the excepted service, any appointment authority established under law or by OPM regulations for filling such position shall be transferred. However, the NMFA may decline such a transfer, 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. <u>Reorganization</u> If the NMFA determines, after the end of the 1-year period beginning on the transfer date, 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 5 U.S.C. § 8336(d)(2) or § 8414(b)(1)(B). <u>Employee Benefit Programs</u> • Any FHFA employee of accepting employment with the NMFA as a result of a transfer may retain, for 12 months after the date on which such transfer occurs, membership in any employee benefit program of the Agency or the NMFA, as applicable, including insurance, to which such employee belongs on the transfer date if— ○ The employee does not elect to give	position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character. • If Ginnie Mae determines, after the 1-year period after the 6-month transfer date, 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 5 U.S.C. § 8336(d)(2) or 8414(b)(1)(B). • Any FHFA employee accepting employment with Ginnie Mae as a result of a transfer may retain, for 12 months after the transfer occurs, membership in any employee benefit program of FHFA or Ginnie Mae, as applicable, including insurance, to which such employee belongs on the 6-month transfer date if the employee does not elect to give up the benefit or membership and Ginnie Mae continues t=the benefit or program. ○ Ginnie Mae shall pay the difference in the costs between the benefits that FHFA would have provided and those provided by this subsection. **If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by Ginnie Mae, the employee shall be permitted to select an alternate**

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		date of the transfer, if—
		  ○ The employee does not elect to give up the benefit or membership in the program; and
		  ○ The benefit or program is continued by the FMIC.
		• The difference in the costs between the benefits which would have been provided by the Existing Agency and those provided by this section shall be paid by the FMIC.
		• If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the FMIC, 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.
		
		<u>GSE Employees</u>
		To ensure an orderly transition to the new housing finance system established under this Act and to facilitate the organization, formation, and competency of the FMIC, the FMIC may hire employees from the GSEs.
		
		<u>Reorganization</u>
		If the FMIC determines that a reorganization of the workforce is required, the
			up the benefit or membership in the program; and
			  ○ The benefit or program is continued by the NMFA.
			• The difference in the costs between the benefits which would have been provided by FHFA and those provided by this section shall be paid by the NMFA.
			• If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the NMFA, 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.
				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.

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		reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under 5 U.S.C. § 8336(d)(2) or § 8414(b)(1)(B).		
Agency Transfer – Transition Committee		**§ 404 Transition Committee** Establishment and Purpose Effective on enactment, there is established the FMIC Transition Committee. Its purpose shall be to— • Develop a plan to facilitate an orderly transition to a new housing finance system in accordance with this Act; and • Provide advice to the Transition Chairperson or the Board when consulted. Composition • The Transition Committee shall be comprised of— o The Director; o The Chairman of the FDIC; o The Comptroller of the Currency; o The Chairperson; and o Any member of the Board of Directors. • Until the date on which the first individual is appointed as Chairperson under § 202, the Director shall serve as the Chairperson of the Transition Committee. On and after that date, the Chairperson shall serve as the Chairperson of the Transition Committee. • In the event of a vacancy in the office of		

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		the head of a member agency, and pending the appointment of a successor, or during the absence or disability of the head of a member agency, the acting head of the member agency shall serve as a member of the Transition Committee in the place of that agency head. • As necessary to carry out the duties of the Transition Committee, the Chairperson of the Transition Committee may, before the agency transfer date, use employees of the Existing Agency, and on and after that date, use employees of the FMIC. <u>Transition Plan</u> The Transition Committee shall develop the transition plan required by § 602 of this Act. The transition plan may not be submitted to Congress under § 602, unless it is approved by a majority of the Transition Committee. <u>Dissolution</u> The Transition Committee shall be dissolved upon the later of— • The date on which the first individual is appointed as Chairperson under § 202; or • The date on which the transition plan is submitted to Congress in accordance with §§ 404(c)(2) and 602.		
Agency Transfer – Assessments		**§ 405 Transition Assessments** <u>In General</u> Section 1316(i) is added to the 1992 Act:	**§ 107 Initial Funding** <u>In General</u> Section 1316(i) is added to the 1992 Act:	

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		Notwithstanding title VI of the Housing Finance Reform and Taxpayer Protection Act of 2014 or any other provision of law, for the period beginning on the date of enactment of this subsection and ending on the system certification date, the Agency shall establish and collect from the GSEs annual assessments in addition to those required under § 1316(a) [paid to FHFA] in an amount not exceeding the amount sufficient to provide for the reasonable costs (including administrative costs) and expenses of the FMIC, including those purposes detailed in § 604(b)(4)(A) of the Housing Finance Reform and Taxpayer Protection Act of 2014. All amounts collected under this subsection shall be transferred to the FMIC. The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1. Treatment of Assessments • FMIC must deposit these § 1316(i) assessments in the MIF. • Amounts received by the Existing Agency beginning on enactment until the agency transfer date from assessments imposed under § 1316(i) shall be held in an account of the Existing Agency and shall be transferred to the FMIC on the agency transfer date for deposit in the	Notwithstanding title V of the Housing Opportunities Move the Economy Forward Act of 2014 or any other provision of law, for the period beginning on the date of enactment of this subsection and ending on the NMFA certification date, the FHFA Director, in consultation with NMFA Director, shall establish and collect from the GSEs annual assessments in addition to those under § 1316(a) [paid to FHFA] in an amount not exceeding the amount sufficient to provide for the reasonable costs (including administrative costs) and expenses of the NMFA. All amounts collected under this subsection shall be transferred to the NMFA. The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1. Treatment of Assessments • NMFA must deposit these § 1316(i) assessments in the manner provided in § 5234 of the Revised Statutes of the U.S. (12 U.S.C. 192) for monies deposited by the Comptroller of the Currency. • These § 1316(i) amounts received by the NMFA shall not be construed to be Government or public funds or appropriated money. • Notwithstanding any other provision of	

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		MIF. • Notwithstanding any other provision of law, amounts received by the FMIC from any assessment imposed under § 1316(i) shall not be subject to apportionment for the purposes of 31 U.S.C. chapter 15, or under any other authority. • Amounts received by the FMIC from any § 1316(i) assessment shall not be construed to be Government or public funds or appropriated money. • The Existing Agency shall use amounts received from assessments imposed under § 1316(i) solely to fund the MIF on the agency transfer date. The Existing Agency may request Treasury to invest such portions of the § 1316(i) amounts received. Pursuant to such a request, Treasury shall invest such amounts in Federal Government obligations— o Guaranteed as to principal and interest by the U.S. with maturities suitable to the needs of the Existing Agency; and o Bearing interest at a rate determined by Treasury, taking into consideration current market yields on outstanding marketable U.S. obligations of comparable maturity.	law, the § 1316(i) amounts received by NMFA shall not be subject to apportionment for the purpose of 31 U.S.C. chapter 15, or under any other authority. • NMFA may use any amounts received from § 1316(i) assessments o For compensation of NMFA employees; and o For all other NMFA. • NMFA may request Treasury to invest such portions of amounts received from § 1316(i) assessments that, in the NMFA's discretion, are not required to meet NMFA's current working needs. Pursuant to such a request, Treasury shall invest such amounts in Government obligations— o Guaranteed as to principal and interest by the U.S. with maturities suitable to the needs of the NMFA; and o Bearing interest at a rate determined by Treasury taking into consideration current market yields on outstanding marketable U.S. obligations of comparable maturity.	
Agency Transfer – FHFA of		**§ 406 Transfers on the System Certification Date; Continuation and Coordination of Certain Actions**		

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FMIC to FMIC		Transfer of Functions
		Effective on the system certification date and except as provided in § 333(a), there are transferred to the FMIC all functions of the FHFA of the FMIC and the Director thereof.
		
		Coordination and Continuation of Certain Actions
		All regulations, orders, determinations, and resolutions described below shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the FMIC until modified, terminated, set aside, or superseded in accordance with applicable law by the FMIC, any court of competent jurisdiction, or operation of law. This applies to a regulation, order, determination, or resolution that—
		• Was issued, made, prescribed, or allowed to become effective by—
		  o The Existing Agency;
		  o The FHFA of the FMIC;
		  o The Federal Housing Finance Board; or
		  o A court of competent jurisdiction;
		• Relates to the performance of functions that are transferred by subsection (a); and
		• Is in effect on the effective date of that transfer.
		
		Use of Agency Services		

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		Any agency, department, or other instrumentality of the U.S., and any successor to any such agency, department, or instrumentality, which was providing supporting services to the FHFA of the FMIC before the system certification date in connection with functions that are transferred to the FMIC shall—
		• Continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and
		• Consult with any such agency to coordinate and facilitate a prompt and reasonable transition.
		
		<u>Savings Provisions</u>
		• The § 406 transfers shall not affect the validity of any right, duty, or obligation of the U.S., the Director of the FHFA of the FMIC, or any other person, which—
		    ○ Arises under the 1992 Act, the Fannie Mae or Freddie Mac charter acts, or any other provision of law applicable with respect to the FHFA; and
		    ○ Existed on the day before the system certification date.
		• No action or other proceeding commenced by or against the Director of the FHFA of the FMIC in connection with functions that are transferred to the FMIC shall abate by reason of the		

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		enactment of this Act, except that the FMIC shall be substituted for the Director of the FHFA of the FMIC as a party to any such action or proceeding.		
Agency Transfer – Technical Amendments		**§ 407 Technical and Conforming Amendments Relating to Abolishment of FHFA** The following changes are effective on the system certification date. (Note that the technical changes in § 402 are effective on the agency transfer date.) The *Local TV Act of 2000* is amended in § 1004(d)(2)(D)(iii), which prohibits loans made by entities that FHFA regulates from backing by the Local TV Loan Guarantee Board, by replacing FHFA with FMIC. The *Commodity Exchange Act,* in § 1a(39)(E) (defining prudential regulator) is amended by replacing FHFA with FMIC. *EESA* is amended: • In § 104(b)(3) by replacing the FHFA Director with the FMIC Chairperson, as a member of the Financial Stability Oversight Board; • In § 109(b) by replacing FHFA with FMIC, as an agency with whom Treasury must coordinate in foreclosure mitigation efforts; and	**§ 306 Technical and Conforming Amendments** The amendments made by this section shall take effect on enactment. On and after the date of enactment, any reference in Federal law to the FHFA Director or the FHFA, in connection with any function of the FHFA Director or the Federal Housing Finance Agency transferred under § 301, shall be deemed a reference to the Director of the NMFA or the NMFA, as appropriate and consistent with the amendments made by this Act. 18 U.S.C. is amended— • In § 1905 (federal employees divulging trade secret), by adding NMFA; • In § 212(c)(2)(F) (loan or gratuity to examiners), by adding NMFA as a federal financial institution regulatory agency. • In § 657 (misapplication of funds by agency employees), by adding NMFA to the list of agencies; • In § 1006 (false entry by agency employees), by adding NMFA to the list of agencies; • In § 1014 (false statement on loan	

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		• In § 110(a)(1)(A) by replacing FHFA with FMIC, in the capacity as GSE conservator, as a federal property manager for providing homeowner and tenant assistance. The *GSE charter acts* are amended in several places to replace FHFA with FMIC. The *FDIA* is amended in several places to replace FHFA with FMIC. The *FFIEC Act of 1978* is amended in § 1011 by removing FHFA from the FFIEC Appraisal Subcommittee. The *FHLB Act* is amended: • In § 2(11), the definition of Director, as amended by § 402, to replace agency with the FMIC Chairperson. • In § 2(12), the definition of Agency, as amended by § 402, to replace FHFA within the FMIC with the FMIC established under § 201. • In § 10(a)(3)(B) to permit advances to be collateralized by FMIC-insured covered securities, subject to regulations the FMIC may issue to ensure the safety and soundness of the FHLBs. • In § 11(h) to permit FHLBs to invest surplus funds in FMIC-insured covered securities, subject to regulations the	application to influence agency), by adding NMFA to the list of agencies. The *Flood Disaster Protection Act of 1973* is amended in § 102(b)(5) (agencies must require flood insurance) by adding NMFA to the list of agencies. 5 U.S.C. § is amended— • 5 U.S.C. § 5313, which applies Level II of the Executive Schedule to specified positions, is amended by adding the NMFA Director. • 5 U.S.C. § 3132(a)(1)(D), which excludes certain independent agencies from the definition of agency for SES purposes, by adding NMFA to the excluded agencies. The *Sarbanes-Oxley Act* is amended in § 105(b)(5)(B)(ii)(II), which authorizes PCAOB disclosures to several agencies without loss of privilege, by adding the NMFA Director to the list of agencies. The *FDIA* is amended— • In § 7(a)(2)(A) (giving FDIC access to examination reports of other agencies), by NMFA to the list of agencies. • In § 8(e)(7)(A)(vi) (persons prohibited from participating in a banking organization may not work in specified regulators), by adding NMFA to the list	

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		FMIC may issue to ensure the safety and soundness of the FHLBs. The *1992 Act* is amended: • In § 1303(2), as amended by § 402, the definition of Agency, to replace FHFA within the FMIC with the FMIC established under § 201. • By deleting § 1303(4), the definition of Federal Housing Finance Oversight Board. • In § 1303(9), as amended by § 402, the definition of Director, to replace Director of the Agency with FMIC Chairperson. • By deleting § 1313A, which established the Federal Housing Finance Oversight Board. • By deleting § 1317(d), which created the FHFA IG. • In § 1367 to replace FHFA with FMIC in headings. In *FIRREA*, by replacing FHFA with FMIC in § 402(e) (ARM loans that refer to agencies); § 1124 (AMC regulation); and § 1125(b) (writing AVM regulations). The *Flood Disaster Protection Act of 1973* is amended in § 102(f)(3)(A) (enforcement against the GSEs) by replacing the FHFA Director with the FMIC Chairperson.	of agencies; • In § 11(t), which currently provides that covered agencies may share information without waiving privileges, by adding the NMFA to the definition of covered agency. This change is also made in § 226(a)(1). • In section 33(e) (employee whistleblower protection for agency employees), by adding NMFA to the list of agencies. The *Riegle Community Development and Regulatory Improvement Act of 1994* is amended in § 117(e) (in making annual reports, the CDFI Fund must consult with several agencies) by adding NMFA to the list of agencies. The *Multifamily Assisted Housing Reform and Affordability Act of 1997* is amended in § 517(b)(4) (42 U.S.C. 1437f note) (mortgage restructuring and rental assistance sufficiency plans may include GSE enhancements) by adding that they may include NMFA enhancements. The *Paperwork Reduction Act* is amended by adding NMFA to the definition of independent regulatory agencies The *Local TV Act of 2000* is amended in § 1004(d)(2)(D)(iii), which prohibits	

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		HERA § 1002(b) (references in this Act) is amended by replacing FHFA with FMIC and by replacing FHFA Director with FMIC Chairperson. The *Housing and Urban-Rural Recovery Act of 1983* is amended in § 469 (requiring HUD in cooperation with several agencies to report to Congress on mortgage delinquencies and foreclosures) to remove FHFA from the list of agencies. The *Multifamily Assisted Housing Reform and Affordability Act of 1997* is amended in § 517(b)(4) (42 U.S.C. 1437f note) (mortgage restructuring and rental assistance sufficiency plans may include GSE enhancements) by replacing FHFA with FMIC. *Public Law 93-495*, 12 U.S.C. § 250, which makes several agencies independent, is amended to remove FHFA. The *Neighborhood Reinvestment Corporation Act* is amended in § 606(c)(3) (funding by several agencies is permitted) to replace FHFA with FMIC. The *Riegle Community Development and Regulatory Improvement Act of 1994* is amended in § 117(e) (in making annual	loans made by entities that FHFA regulates, from backing by the Local TV Loan Guarantee Board, to prohibit such backing for loans by entities the NMFA supervises. *FIRREA* is amended— • In § 1216(a), which requires equal opportunity in the Federal Government for listed agencies, by adding NMFA to the list of agencies; • In § 1216(c) (requiring listed agencies to have minority and women outreach programs for contracting), by adding NMFA to the list of agencies; • In § 402(e) (ARM loans that refer to agencies) by replacing FHFA with NMFA; • In § 1124 (AMC regulation) by adding NMFA to the list of agencies; and • In § 1125(b) (writing AVM regulations) by adding NMFA to the list of agencies. *EESA* is amended— • In § 104(b) by adding NMFA to the Financial Stability Oversight Board; • In § 109(b) by adding NMFA as an agency with whom Treasury must coordinate in foreclosure mitigation efforts; and The *Dodd-Frank Act* is amended—	

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		reports, the CDFI Fund must consult with several agencies) to replace FHFA with FMIC. The *Right to Financial Privacy Act of 1978* is amended in § 1113(o) (exclusion for disclosure to or examination by FHFA), to replace FHFA with FMIC. The *Sarbanes-Oxley Act* is amended in § 105(b)(5)(B)(ii)(II), which authorizes PCAOB disclosures to several agencies without loss of privilege, by replacing the FHFA Director with the FMIC Chairperson. The *Securities Exchange Act* is amended in § 15G (risk retention) by replacing FHFA with FMIC and by replacing FHFA Director with FMIC Chairperson. *TILA* is amended: • In § 129H(b)(4) (appraisals on HPMLs) by transfer rulewriting authority from FHFA to FMIC (the authority is interagency). • In § 129E(g)(1) and (h) (appraisal independence) by transfer rulewriting authority from FHFA to FMIC (the authority is interagency). On and after the system certification date, any	• In § 342(g)(1) (requiring several agencies to have an Office of Minority and Women Inclusion) by adding NMFA to the list of agencies; • In § 989E(a)(1) (establishing a Council of IGs on Financial Oversight), by adding NMFA's IG to the council. • In § 1481 (requiring HUD's multifamily mortgage resolution program and requiring HUD to coordinate with several agencies) by adding NMFA to the list of agencies. The *Housing and Urban-Rural Recovery Act of 1983* is amended in § 469 (requiring HUD in cooperation with several agencies to report to Congress on mortgage delinquencies and foreclosures) by adding NMFA to the list of agencies. The *Neighborhood Reinvestment Corporation Act* is amended in § 606(c)(3) (funding by several agencies is permitted) by adding NMFA to the list of agencies. The *Federal Insurance Office Act* (Dodd-Frank Title V Subtitle A) is amended in 31 U.S.C. § 313(r)(4) (defining federal financial regulatory agency) by adding NMFA to the list of agencies. The *Commodity Exchange Act,* in § 1a(39)(E)	

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		reference to FHFA or its Director in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the system certification date shall be considered to refer and apply to the FMIC and its Chairperson, respectively.	(defining prudential regulator) is amended— • By replacing FHFA with respect to a regulated entity with FHFA with respect to a GSE; and • By adding NMFA in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an FHLB. *TILA* is amended: • In § 129H(b)(4) (appraisals on HPMLs) by adding NMFA to the list of agencies with rulewriting authority. • In § 129E(g)(1) and (h) (appraisal independence) by adding NMFA to the list of agencies with rulewriting authority. The *FFIEC Act of 1978* is amended in § 1011 adding NMFA to the FFIEC Appraisal Subcommittee.	
Transition Oversight		**§ 606 Oversight of Transition of the Housing Finance System** Testimony Beginning on the agency transfer date and ending on the system certification date, the Chairperson shall, on an annual basis, appear before the Senate Banking and House Financial Services Committees to provide testimony on the progress made in carrying out the requirements of this title. IG Report on Transition		

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		Beginning on the agency transfer date and ending on the system certification date, the FMIC IG shall, on an annual basis—
		• Submit a report to the Senate Banking and House Financial Services Committees—
		    o On the status of the transition to the new housing finance system authorized by this Act;
		    o That includes recommendations to facilitate an orderly transition to the new housing finance system authorized by this Act; and
		    o On the impact of various actions required by this Act on borrowers and small mortgage lenders; and
		• Appear before the Senate Banking and House Financial Services Committees to provide testimony on the report.
		
		<u>GAO Report on Transition</u>
		Not later than 18 months after the system certification date, GAO shall conduct a study and submit a report to the Senate Banking and House Financial Services Committees reviewing the transition required by this Act. The study shall review—
		• All property, including intellectual property, of the GSEs that may have been sold, transferred, or licensed for value pursuant to this title or any amendment made by this title;		

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		• The number and market share of each type of approved entity; and • The amount of any taxpayer repayment.		
Provisional Standards		**§ 607 Authority to Establish Provisional Standards** Provisional Standards • Notwithstanding any standard required under subtitle B of title III or § 703, the FMIC may establish provisional standards for the approval of approved entities in order to ensure the sufficient participation of financially sound entities in the housing finance system. • The FMIC is authorized to establish such provisional standards before the system certification date and such provisional standards shall— o Be published in the Federal Register for notice and comment; and o Remain in effect until the FMIC adopts and publishes final standards for the approval of approved entities pursuant to subtitle B of title III or § 703. • The FMIC is authorized to establish such provisional standards during periods when the authority of the FMIC under § 305 is exercised and such provisional standards shall— o Be published in the Federal Register; and o Remain in effect until the final date		

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		of the timeline established by the FMIC pursuant to § 305(h)(1). • Nothing allowing the FMIC to establish the provisional standards before the system certification date shall be construed to allow the FMIC to delay or otherwise not implement the phased-in capital standards for approved guarantors in § 607(c) in the required timeframe. <u>Oversight of Approved Entities</u> During any period in which such a provisional standard is in effect, the FMIC shall maintain all oversight and enforcement authorities with regard to approved entities in accordance with the requirements and authorities of subtitles B and C of title III and § 703. <u>Phased-In of Capital Standards for Approved Guarantors</u> • The requirement under § 311(g)(1)(A) shall take effect 8 years after the FMIC approves the first approved guarantor under this section. Beginning on the date the FMIC approves the first approved guarantor under this section and ending on that 8-year date, the FMIC shall— o Require an approved guarantor to maintain an appropriate level of capital necessary to help ensure an orderly transition pursuant to this title; and		

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		○ Increase annually, in equal increments, the required amount of capital to be held by the approved guarantor. • Each such capital level, including each such annual increase, shall only apply with respect to new business being guaranteed by an approved guarantor on and after the date each capital level becomes effective.		
Repeal of Mandatory Housing Goals	**§ 104(c) Limitations on GSE Authority** The 1992 Act is amended: • By striking §§ 1331 through 1336. This repeals the GSE affordable housing goals, including the duty to serve underserved markets, and their enforcement. • There are conforming amendments to: ○ Section 1303(28) (definition of low-income area); ○ Section 1324(b)(1)(A) (annual housing report); ○ Section 1339(h) (restriction on using Capital Magnet Fund to meet housing goals); ○ Section 1341 (housing goals enforcement); ○ Section 1345(to remove penalties for violations of the housing goals); ○ Section 1345(f), by removing language that civil money penalties collected for affordable housing goals and housing reports violations	**§ 408 Repeal of Mandatory Housing Goals** • Effective on enactment, the GSEs' mandatory housing goals are repealed. • Notwithstanding any other provision of this Act, approved entities and the Securitization Platform shall comply with Federal and State nondiscrimination laws, including the Fair Housing Act and ECOA. • In carrying out this Act, the FMIC shall comply with Federal and State nondiscrimination laws. The FMIC shall periodically review its policies, standards, and guidelines with respect to eligible mortgage loans, including but not limited to any AUS, to ensure that such policies, standards, and guidelines are consistent with this requirement. • The 1992 Act is amended in § 1325 as follows: **(a) IN GENERAL.** The Secretary of HUD	**§§ 506 and 507 Repeal of Mandatory Housing Goals** The 1992 Act is amended: • By striking §§ 1331 through 1336. This repeals the GSE affordable housing goals, including the duty to serve underserved markets, and their enforcement. • There are conforming amendments to: ○ Section 1303(28) (definition of low-income area); ○ Section 1324(b)(1)(A) (annual housing report); ○ Section 1341 (housing goals enforcement); ○ Section 1345(a) (to remove penalties for violations of the housing goals); and ○ Section 1371(a)(2) (housing goals enforcement). This does not eliminate the Issuer's responsibility to comply with the Fair	

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	fund the Housing Trust Fund. o Section 1371(a)(2) (housing goals enforcement).	shall— (1) by regulation, prohibit each enterprise**, approved guarantor, approved multifamily guarantor, approved aggregator, and the Securitization Platform** from discriminating in any manner in the purchase **or guarantee** of any mortgage **or MBS** 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)**(A)** 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; **and** **(B) with respect to the market for covered guarantee transactions and covered market-based risk-sharing transactions, by regulation, require each approved guarantor, approved multifamily guarantor, and approved aggregator to submit data to the Secretary to assist the Secretary in investigating whether a mortgage lender with which the approved guarantor, approved multifamily guarantor, or approved aggregator does business has failed to comply with the Fair Housing Act.** (3)**(A)** by regulation, require each enterprise	Housing Act. The NMFA may impose reporting requirements or take other action as it deems necessary for enforcement purposes.	

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		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 ECOA, and shall submit any such information received to the appropriate Federal agencies, as provided in ECOA § 704 for appropriate action; **and** **(B) with respect to the market for covered guarantee transactions and covered market-based risk-sharing transactions, by regulation, require each approved guarantor, approved multifamily guarantor, and approved aggregator to submit data to the Secretary to assist the Secretary in investigating whether a mortgage lender with which the approved guarantor, approved multifamily guarantor, or approved aggregator does business has failed to comply with ECOA, and shall submit any such information received to the appropriate Federal agencies, as provided in ECOA § 704, 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 ECOA and make such information available to the enterprises **and FMIC**; (5)**(A)** direct the enterprises to undertake various remedial actions, including suspension, probation, reprimand, or		

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		settlement, against lenders that have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or the ECOA, 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 **(B) with respect to the market for covered guarantee transactions and covered market-based risk-sharing transactions, apply 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 ECOA, pursuant to a final adjudication on the record, and after opportunity for an administrative hearing [under the APA].** (6)**(A)** 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~~.~~**; and** **(B) with respect to the market for covered guarantee transactions and covered market-based risk-sharing transactions, periodically review and comment on the underwriting and appraisal guidelines of each approved guarantor, approved multifamily guarantor, and approved aggregator, and the policies, standards, and**		

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<table>
<tr><th></th><th>PATH Act, H.R. 2767</th><th>S. 1217</th><th>Waters Discussion Draft</th><th>H.R. 5055</th></tr>
<tr><td></td><td></td><td>guidelines of the Securitization Platform to ensure that such guidelines are consistent with the Fair Housing Act and this section.
(b) DEFINITIONS. [incorporating definitions from § 2.]</td><td></td><td></td></tr>
<tr><td>Affordable Housing Allocations</td><td>Section 104(c) repeals § 1337, affordable housing allocation.</td><td>§ 501 Affordable Housing Allocations
<u>Fee and Allocation of Amounts</u>
In addition to any fees for the provision of insurance established in accordance with title III, in each fiscal year the FMIC shall—
• Charge and collect a fee as determined below for each dollar of the outstanding principal balance of eligible mortgage loans collateralizing covered securities for which insurance is being provided under this Act; and
• Annually allocate or otherwise transfer—
o 75% of such fee amounts to HUD to fund the Housing Trust Fund established under § 1338 of the 1992 Act;
o 15% of such fee amounts to Treasury to fund the Capital Magnet Fund established under § 1339 of the 1992 Act; and
o 10% to the FMIC to fund the Market Access Fund established under § 504.

<u>Determination of Fee</u>
The fee shall be determined as follows:
• From enactment until the date that is 12</td><td>§ 401 Affordable Housing Allocations
<u>Fee and Allocation of Amounts</u>
Subject to suspensions below, and in addition to any fees for the provision of insurance established in accordance with title II, in each fiscal year the NMFA shall—
• Charge and collect a fee of 10 basis points for each dollar of the outstanding principal balance of eligible mortgages collateralizing covered securities, and of eligible multifamily mortgages collateralizing covered multifamily securities pursuant to § 603, and on any securities insured through the common securitization platform where insurance is not being provided by the MIF; and
• Of this amount, allocate or otherwise transfer—
o 75% to HUD to fund the Housing Trust Fund, of which not more than 5% of the aggregate amount allocated to a State or State designated entity under this subsection shall be used for activities under § 1338 (c)(7)(B);
o 15% to Treasury to fund the Capital</td><td>§ 501 Affordable Housing Allocations
<u>Fee and Allocation of Amounts</u>
In addition to any fees for the provision of insurance established in accordance with title II, in each fiscal year the Platform shall—
• Charge and collect a fee in an amount equal to 10 basis points for each dollar of the outstanding principal balance of—
o All eligible mortgage loans that collateralize securities insured under this Act; and
o All other mortgage loans that collateralize securities on which Ginnie Mae guarantees the timely payment of principal and interest pursuant to title III of the National Housing Act; and
• Allocate or otherwise transfer the fees annually—
o 75% to HUD to fund the Housing Trust Fund;
o 15% to Treasury to fund the Capital Magnet Fund; and
o 10% to Ginnie Mae to fund the Market Access Fund established under § 504 of this Act.</td></tr>
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		months after the date of the approval of at least 2 approved guarantors, approved multifamily guarantors, or approved aggregators, the fee shall be 10 basis points for each dollar of the outstanding principal balance of eligible mortgage loans collateralizing covered securities insured under this Act. • Not later than 6 months after approval of at least 2 such parties, the FMIC shall, by regulation, after notice and comment, establish a formula for determining the fee that meets the following criteria: o The average of fees charged on the total outstanding principal balance of all eligible mortgage loans collateralizing covered securities insured under this Act shall be equal to 10 basis points. o The highest basis point fee charged to an approved guarantor, approved multifamily guarantor (collectively "Approved Guarantor"), or approved aggregator engaged in a covered guarantee transaction or an approved aggregator engaged in a covered market-based risk-sharing transaction shall not exceed 2 times the lowest basis point fee charged. o The formula shall provide that the amount by which any particular fee charged to an Approved Guarantor, or approved aggregator engaged in a	Magnet Fund; and o 10% to the Issuer to fund the Market Access Fund established under § 404 of this Act. Suspension of Contributions • The NMFA may temporarily suspend such allocations, for a period of not longer than one year, upon submission by the NMFA, to the House Financial Services and Senate Banking Committees, of a written determination that such allocations are contributing, or would contribute, to the financial instability of the Issuer. • The NMFA, upon written agreement with Treasury and HUD, may continue such suspension for periods of 6 months following the initial suspension, provided that the NMFA, with Treasury and HUD, provides a written determination to the House Financial Services and Senate Banking Committees that continuing the termination of such suspension would contribute to the financial instability of the Issuer.	Continuing Obligation The required fee shall be collected for the life of the security. Suspension of Contributions The Director may temporarily suspend allocations to the Housing Trust Fund, Capital Magnet Fund, and Market Access Fund, for an initial period of one year, upon submission to the Senate Banking and House Financial Services Committees of a written determination by the Director that such allocations are contributing, or would contribute, to the financial instability of the § 202 insurance Fund. The Director may continue such suspension for additional periods, each up to one year in length, pursuant to the same submission and determination requirements. Rule of Construction The cost of the required fee shall not be borne by eligible borrowers.

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		covered guarantee transaction or an approved aggregator engaged in a covered market-based risk-sharing transaction may be more or less than the average fee (on the total balance of all eligible loans collateralizing covered, insured securities) based upon consideration of the following: ▪ The performance of each Approved Guarantor, or approved aggregator engaged in a covered guarantee transaction and each approved aggregator engaged in a covered market-based risk-sharing transaction in serving underserved market segments, as identified and defined under § 210, relative to the performance of all other Approved Guarantors, or approved aggregators engaged in a covered guarantee transaction or covered market-based risk-sharing transaction. ▪ The performance of each Approved Guarantor, or approved aggregator engaged in a covered guarantee transaction and each approved aggregator engaged in a covered market-based risk-sharing transaction in serving underserved market segments, as identified and		

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		defined under § 210, relative to the level of primary market mortgage originations in each of the underserved market segments so identified and defined that were facilitated by the Approved Guarantor, or approved aggregator's engagement in a covered guarantee transaction or the approved aggregator's engagement in a covered market-based risk-sharing transaction. ▪ The relative extent to which each of the underserved market segments, as identified and defined under § 210, that have primary market mortgage originations facilitated by the Approved Guarantor, or approved aggregator's engagement in a covered guarantee transaction or the approved aggregator's engagement in a covered market-based risk-sharing transaction is underserved. ▪ The formula shall assign such weights to each of these factors as the FMIC determines necessary and appropriate. ▪ To measure the performance in		

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		serving underserved market segments, as identified and defined under § 210, by Approved Guarantor, or approved aggregators engaged in a covered guarantee transaction and approved aggregators engaged in a covered market-based risk-sharing transaction and the extent to which a market segment is underserved, the formula determined under this subsection shall provide for the use of— ♦ The identifications and definitions of underserved market segments established by the FMIC under § 210; ♦ Data and other information in the annual report filed with the FMIC by each Approved Guarantor, or approved aggregator engaged in a covered guarantee transaction and each approved aggregator engaged in a covered market-based risk-sharing transaction, as required under § 210; ♦ Loan level data, to the extent possible in the		

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		manner required by HMDA on activities related to covered securities; and ♦ Other publicly available data. ○ The FMIC, through a competitive process, shall select an entity independent of the FMIC to gather, use, and provide to the FMIC the data required to measure the performance in serving underserved market segments. This independent entity shall— ▪ Analyze the data and rank the approved guarantors, approved multifamily guarantors, or approved aggregators engaged in a covered guarantee transaction and the approved aggregators engaged in a covered market-based risk-sharing transaction, applying the formula established by the FMIC; and ▪ On an annual basis, provide the rankings. The annual rankings shall begin at a time to be determined mutually by the independent entity and the FMIC, so that the FMIC will be positioned to determine, charge, and collect the first incentive-based fees beginning on the date that is 12 months after the date		

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		of approval of at least 2 approved guarantors, approved multifamily guarantors, or approved aggregators. ○ The FMIC shall, by regulation, establish procedures for collecting the incentive-based fee on a periodic basis, and shall collect all incentive-based fees consistent with these procedures. ▪ Subject to the opt-outs below, the FMIC shall charge and collect the first incentive-based fees required under this subsection beginning on the date that is 12 months after the date of the approval of at least 2 approved guarantors, approved multifamily guarantors, or approved aggregators ▪ Subject to the opt-outs below, the FMIC shall charge and collect incentive-based fees annually on the first business day of each 12-month period that begins after the expiration of the initial 12-month period. ▪ The FMIC shall make appropriate adjustments to the incentive-based fee for any year based on the application of the formula and the measured performance in that year. Any		

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		such adjustments may take the form of a credit against the fee or an additional amount owing for the year. ▪ In determining the appropriate periodic basis for collecting the incentive-based fees, the FMIC shall take into consideration the need to make appropriate adjustments to the fees through credits or additional billings. ▪ This shall not be construed to waive, override, or in any manner supersede the requirement that the average fees be 10 basis points on the total loan balances. ○ Notwithstanding any provision of § 504 or any other provision of law, the FMIC may use up to 50% of the amounts in the Market Access Fund, determined as of the date that an incentive-based fee is to be charged in any year, to provide 1 or more approved guarantors, approved multifamily guarantors, or approved aggregators engaged in a covered guarantee transaction or approved aggregators engaged in a covered market-based risk-sharing transaction with additional incentives to serve underserved market segments, as identified and defined under § 210,		

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		through the award of a credit that may be applied to reduce the annual fee to any person that exceeds performance measures related to the service of such underserved market segments established by the FMIC. The FMIC shall establish, by regulation, the terms, conditions, and performance measures for the awarding of such credits. • An Approved Guarantor, or approved aggregator engaged in a covered guarantee transaction or an approved aggregator engaged in a covered market-based risk-sharing transaction may elect to be excepted from the incentive-based fee by notifying the FMIC in writing and agreeing to pay the fee described below. ○ For any 12-month period for which an incentive-based fee will be charged, an opt-out election may be made not later than 3 months before the beginning of such 12-month period. ○ Upon an opt-out, the FMIC shall charge, and collect, a fee in an amount equal to the highest fee charged by FMIC for the 12-month period under the independent party's annual performance ranking. ○ An opt-out shall not release, diminish, or otherwise affect any requirement set forth by this Act that		

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		requires a party to furnish to the FMIC such information as the FMIC is authorized by this Act to obtain, including the annual report required to be filed with the FMIC under § 210. Continuing Obligation The fee shall be collected for the life of the covered security. Suspension of Contributions The FMIC may temporarily suspend allocations upon a finding by the FMIC that such allocations are contributing, or would contribute, to the financial instability of the MIF. Rule of Construction The cost of the fee shall not be borne by eligible borrowers. Suspension of Contributions The FMIC may temporarily suspend such allocations upon a finding by the FMIC that such allocations are contributing, or would contribute, to the financial instability of the MIF.		
Housing Trust Fund	Section 104(c) repeals § 1338, housing trust fund. A conforming amendment removes a reference to § 1338, from § 1303(24)(B).	**§ 502 Housing Trust Fund** The 1992 Act, in § 1338, housing trust fund, is amended— • In subsection (a)(1) by permitting grants	**§ 402 Housing Trust Fund** Section 1338 of the 1992 Act is amended— • In subsection (a), by striking language	**§ 502 Housing Trust Fund** Section 1338 of the 1992 Act (12 U.S.C. 4568) is amended. • To add as a purpose of the Housing Trust

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		to federally-recognized tribes. • By repealing subsection (b), allocations for HOPE bond payments. • In (c)(2), which permits state grantees to fund tribally designated housing entities, by removing the definition of these entities, and providing that an Indian tribe receiving such grants may designate a federally recognized tribe or a tribally designated housing entity to receive such grant amounts. This shall not shall limit or be construed to limit the ability of an Indian tribe or a tribally designated housing entity from being a permissible designated recipient of grant amounts provided by a State under this section. • In (c)(3). Currently, this requires HUD to distribute funds to states to provide affordable housing to extremely low- and very-low households. This survives, but only receives amounts remaining after a new distribution. The new distribution is as follows: ○ HUD, acting through the Office of Native American Programs ("ONAP"), shall distribute via competitive grants the amounts determined below and made available under this subsection to federally recognized tribes and tribally designated housing entities. ○ The total amount to be distributed for	that has the GSEs fund the Housing Trust Fund under § 1338, and replacing it with funding pursuant to § 401 of the Housing Opportunities Move the Economy Forward Act of 2014. • By repealing subsection (b), allocations for HOPE bond payments. • In § 1338(c)(10)(A). This currently caps at 10% the § 1338(b) allocations to a state or state-designated entity used for housing production, preservation, and rehabilitation for homeownership. It would be amended to provide, of that such amounts: • In each fiscal year, the State or State designated entity shall ensure that, at a minimum, such amounts are distributed for the benefit of nonentitlement areas in that State in the same proportion that the total population of nonentitlement areas in that State bears to the total population of that State. For this purpose, "nonentitlement area" has the same meaning as under § 102(a)(7) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(7)). • By striking § 1338(c)(10)(E), which prohibits goals credit to the GSEs for grants used for housing production, preservation, and rehabilitation for homeownership.	Fund to provide grants to federally-recognized tribes. • In (c)(2) (permissible state designees), to delete the 25 U.S.C. § 4103 definition of tribally designated housing entity and add: "An Indian tribe receiving grant amounts under this subsection may designate a federally recognized tribe or a tribally designated housing entity to receive such grant amounts. Nothing in this subsection shall limit or be construed to limit the ability of an Indian tribe or a tribally designated housing entity to be a permissible designated recipient of grant amounts provided by a State under this section." • To add a new distribution to paragraph (c)(3)(A). Currently, this requires HUD to distribute § 1338(c) funds by a formula to states for housing for extremely-low and very-low income households. That remains, but only from amounts left after the new distribution. The new distribution is not subject to the current §§ 1338(c)(3) formula, procedures, eligible activities, or tenant protections. The new distribution is as follows: ○ HUD, acting through the Office of Native American Programs ("ONAP"), shall distribute via competitive grants the amounts made

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		a fiscal year is the greater of $20,000,000, or 2% of the total amount of amounts allocated for the Housing Trust Fund under this section. ○ Competitive grant amounts received by a federally recognized tribe or a tribally designated housing entity may be used, or committed to use, only for those activities that are identified as eligible affordable housing activities under § 202 of the Native American Housing Assistance and Self–Determination Act of 1996 (25 U.S.C. 4132). ▪ In evaluating any application for the receipt of competitive grant amounts, HUD, acting through ONAP, shall consider with respect to the federally recognized tribe applicant or tribally designated housing entity applicant and to Indian reservations and other Indian areas associated with the federally recognized tribe applicant or served by the tribally designated housing entity applicant evaluation criteria, including the following: ♦ Level of poverty on the Indian reservation or in the Indian area.		available under this subsection to federally recognized tribes and tribally designated housing entities. ○ The amount to be distributed for a fiscal year is the greater of $20,000,000, or 2% of the total amount of amounts allocated for the Housing Trust Fund under this section. ○ Competitive grant amounts received by a federally recognized tribe or a tribally designated housing entity may be used or committed only for activities identified as eligible affordable housing activities under § 202 of the Native American Housing Assistance and Self–Determination Act of 1996 (25 U.S.C. 4132). ○ In evaluating an application, HUD, through the ONAP, shall consider with respect to the applicant and to Indian reservations and other Indian areas associated with the federally recognized tribe applicant or served by the tribally designated housing entity applicant evaluation criteria, including the following: ▪ Level of poverty on the Indian reservation or in the Indian area. ▪ Level of unemployment on the Indian reservation or in the Indian area.

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		♦ Level of unemployment on the Indian reservation or in the Indian area. ♦ Condition of housing stock on the Indian reservation or in the Indian area. ♦ Level of overcrowded housing, as measured by the number of households in which the number of persons per room is greater than 1. ♦ Presence and prevalence of black mold on the Indian reservation or in the Indian area. ♦ Demonstrated experience, capacity, and ability of the applicant to manage affordable housing programs, including rental housing programs, homeownership programs, and programs to assist purchasers with down payments, closing costs, or interest rate buy-downs. ♦ Demonstrated ability of the applicant to meet the requirements under the Native American Housing Assistance and Self-		▪ Condition of housing stock on the Indian reservation or in the Indian area. ▪ Level of overcrowded housing on the Indian reservation or in the Indian area, as measured by the number of households in which the number of persons per room is greater than one. ▪ Presence and prevalence of black mold on the Indian reservation or in the Indian area. ▪ Demonstrated experience, capacity, and ability of the applicant to manage affordable housing programs, including multifamily rental housing programs, homeownership programs, and programs to assist purchasers with down payments, closing costs, or interest rate buy-downs. ▪ Demonstrated ability of the applicant to meet the requirements under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et. seq.), including the timely and efficient expenditure of funds. ▪ Such other criteria as HUD may specify to evaluate the overall quality of the proposed project,

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		Determination Act of 1996 (25 U.S.C. 4101 et. seq.), including the timely and efficient expenditure of funds. ♦ Such other criteria as may HUD may specify to evaluate the overall quality of the proposed project, the feasibility of the proposed project, and whether the proposed project will address the housing needs on the Indian reservation or in the Indian area. ▪ In evaluating any application for the receipt of competitive grant amounts authorized under this clause, the Secretary, acting through ONAP, shall permit a federally recognized tribe applicant or a tribally designated housing entity applicant to supplement or replace, in whole or in part, any data compiled and produced by the Census Bureau and upon which HUD, acting through ONAP, relies, provided such tribally-collected data meets HUD's standards for accuracy. ▪ Notwithstanding any other provision of law, competitive		its feasibility, and whether it will address the housing needs on the Indian reservation or in the Indian area. ○ In evaluating any application, HUD, acting through the ONAP, shall permit a federally recognized tribe applicant or a tribally designated housing entity applicant to supplement or replace, in whole or in part, any data compiled and produced by the Census Bureau and upon which HUD, acting through the ONAP, relies, provided such tribally-collected data meets HUD's standards for accuracy. ○ Notwithstanding any other provision of law, competitive grant amounts received under this clause shall not be considered Federal funds for purposes of matching other Federal sources of funds. • In § 1338(c)(3)(iv)(B), which currently requires HUD to make grants in fiscal years other than 2009, the bill removes the 2009 exception. • In § 1338(c)(4)(c). Currently, this sets an annual minimum allocation to each state, despite the formula, of $3 million. (The increase is deducted *pro rata* from the other states.) This is revised and has a new exception.

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		grant amounts received under this clause shall not be considered Federal funds for purposes of matching other Federal sources of funds. ▪ This new distribution is not subject to the preexisting distribution formula, its allocation requirements, activity and tenant protection requirements, or its required amount for homeownership. • Also in § 1338(c)(4)(B), the existing minimum state allocation is revised. Currently, if the formula would allocate less than $3 million to a state, the allocation for that state is increased to $3 million, with the increase deducted from the other states *pro rata*. This is revised: ○ The minimum allocation to a state is increased to $10 million. ○ However, if the allocation to the Housing Trust Fund under § 501(a)(2)(A) of the Housing Finance Reform and Taxpayer Protection Act of 2014 for a fiscal year is less than $1 billion, the minimum allocation to any state shall be the greater of $5 million or 1% percent of the total allocated for the Housing Trust Fund under § 1338 and the increase is deducted from the allocation above the minimum to the		○ The revision is to change $3 million to the greater of $10 million or 1% of the total allocation under § 1338. ○ The exception is, if the allocation to the Housing Trust Fund under § 501(a)(2)(A) of the Partnership to Strengthen Homeownership Act of 2014 for a fiscal year is less than $1 billion, the minimum to any state is the greater of $5 million or 1% percent of the total allocation under § 1338. • There is a new § 1338(c)(11): Nothing in this subsection shall be construed to limit the ability of a federally recognized tribe or a tribally designated housing entity from receiving grant amounts provided by a State under this section. • To add to §1338(f), definitions, that *federally recognized tribe*, *Indian area*, *Indian tribe*, and *tribally designated housing entity* have the meaning in § 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103), and that *Indian reservation* means land subject to the jurisdiction of an Indian tribe.

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		other states *pro rata*. • In § 1338(c)(5)(A) to require States or State-designated entities that receive grants under this subsection in a year to plan for achieving geographic diversity, including the distribution of grants to rural areas in proportion to housing needs in those areas. • In § 1338(c)(7)(A), eligible activities are amended as follows: Assistance for "the production, preservation, and rehabilitation of rental housing, including housing ~~under the programs identified in § 1335(a)(2)(B)~~ **subsidized under Federal law or comparable State or local laws** . . . ." [There is no § 1335(a)(2)(B).] • In § 1338(c)(9), which lists eligible recipients to include agencies, is amended to clarify that agencies include public housing agencies. • In § 1338(c), the following is added: Nothing in this subsection shall be construed to limit the ability of a federally recognized tribe or a tribally designated housing entity from receiving grant amounts provided by a State under this section. • In § 1338(f), to add: ○ The terms 'federally recognized tribe', 'Indian area', 'Indian tribe', and 'tribally designated housing		

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		entity' have the same meaning as in § 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103). ○ The term 'Indian reservation' means land subject to the jurisdiction of an Indian tribe. ○ The term 'rural area' means any community eligible for assistance under § 520 of the Housing Act of 1949. • In § 1338(g) (regulations) to add to the current requirement for regulations to require funding priority for, among other things, geographic diversity. The addition is that geographic diversity includes the distribution of grants to rural areas in proportion to housing needs in those areas.		
Capital Magnet Fund	Section 104(c) amends § 1339: • In § 1339(b)(1), by striking language that provides that the GSEs fund the Capital Magnet Fund under § 1337. • By repealing § 1339(h)(7), which prohibits goals credit to the GSEs for Capital Magnet Fund amounts used for housing development, preservation, rehabilitation, or purchase for extremely-low, very-low, and low-income families, or economic development activities, such as through loan-loss reserves, a revolving loan fund, an affordable housing fund, or	**§ 503 Capital Magnet Fund** Section 1339 of the 1992 Act is amended— • In subsection (b)(1), by striking language that provides that the GSEs fund the Capital Magnet Fund under § 1337, and replacing it with amounts transferred under § 501 of the Housing Finance Reform and Taxpayer Protection Act of 2014. • In subsection (c)(2), which provides that funds may be used to stabilize or revitalize low-income or underserved areas, by adding that funding is	**§ 403 Capital Magnet Fund** Section 1339 of the 1992 Act is amended— • In subsection (b)(1) by striking language that has the GSEs fund the Capital Magnet under § 1337, and replacing it with funding pursuant to § 401 of the Housing Opportunities Move the Economy Forward Act of 2014. • By repealing § 1339(h)(7), which prohibits goals credit to the GSEs for Capital Magnet Fund amounts used for housing development, preservation, rehabilitation, or purchase for extremely-	**§ 503 Capital Magnet Fund** Section 1339 of the 1992 Act is amended— • In subsection (c)(2), by adding tribal areas to the areas where expenditures for economic development activities and community service facilities are permissible. • In subsection (h)(2)(A), by adding tribal areas to the areas where Treasury should seek geographic diversity. • To add (unclear where) that *federally recognized tribe*, *Indian area*, *Indian tribe*, and *tribally designated housing*

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	risk-sharing loans.	permissible for activities designed to foster revitalization in areas experiencing severe economic distress and property disinvestment, including but not limited to demolition, property rehabilitation, and infrastructure configuration; and to add that funds may be used for tribal areas. • In (f)(4), which lists eligible uses of funds, adding (c)(3) activities. [There is no (c)(3).] • In subsection (h)(2)(A), which requires funding to be geographically diverse, including metropolitan and underserved rural areas, to add tribal areas.	low, very-low, and low-income families, or economic development activities, such as through loan-loss reserves, a revolving loan fund, an affordable housing fund, or risk-sharing loans.	*entity* have the meaning in § 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103), and that *Indian reservation* means land subject to the jurisdiction of an Indian tribe.
Market Access Fund		**§ 504 Market Access Fund** <u>Establishment</u> The FMIC shall establish the Market Access Fund, maintained and administered by the Office of Consumer and Market Access. <u>Deposits</u> The Market Access Fund shall be credited with— • The share of the fee charged and collected by the FMIC under § 501; and • Such other amounts as may be appropriated or transferred to the Market Access Fund. <u>Purpose</u> Amounts in the Market Access Fund shall be eligible for use by grantees to address the	**§ 404 Market Access Fund** <u>Establishment and Purpose</u> The NMFA shall establish and manage a Market Access Fund, which shall be funded with amounts allocated pursuant to § 401 of this Act. The purpose of the Market Access Fund is to promote innovation in housing finance and affordability. <u>Eligible Activities</u> Amounts allocated pursuant to this section shall be used for the following assistance: • For grants and loans, including through the use of pilot programs of sufficient scale, to support the research and development of sustainable homeownership and affordable rental programs, provided that such grant or	**§ 504 Market Access Fund** <u>Establishment</u> Ginnie Mae shall establish the Market Access Fund. <u>Deposits</u> The Market Access Fund shall be credited with— • The 10% share of the fee charged and collected by the Platform under § 501(a)(1)(B)(iii) [meaning (a)(2)(C)]; and • Such other amounts as may be appropriated or transferred to the Market Access Fund. <u>Purpose</u> Amounts in the Market Access Fund shall be

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		homeownership and rental housing needs of underserved or hard-to-serve populations by—
		• Providing grants and loans for research, development, and pilot testing of innovations in consumer education, product design, underwriting, and servicing;
		• Offering additional credit support for certain eligible mortgage loans or pools of eligible mortgage loans, such as by covering a portion of any capital required to obtain insurance from the FMIC under this Act, provided that amounts for such additional credit support do not replace borrower funds required of an eligible mortgage loan;
		• Providing grants and loans, including through the use of pilot programs of sufficient scale, to support the research and development of sustainable homeownership and affordable rental programs, which programs shall include manufactured homes purchased through real estate and personal property loans and manufactured homes used as rental housing, provided that such grant or loan amounts are used only for the benefit of families whose income does not exceed 120% of the median income for the area as determined by the FMIC, with adjustments for family size;
		• Providing limited credit enhancement,
			loan amounts are used only for the benefit of families whose income does not exceed 120% of the area median income as determined by the Director, with adjustments for family size.
			• To provide limited credit enhancement, and other forms of credit support, for product and services that—
			  ○ Will increase the rate of sustainable homeownership and affordable rental by individuals or families whose income does not exceed 120% of the area median income as determined by the Director, with adjustments for family size; and
			  ○ Might not otherwise be offered or supported by a pilot program of sufficient scale to determine the viability of such products and services in the private market.
			• Grants and loans, to be used in partnership with HUD, to redevelop abandoned and foreclosed properties in areas of greatest need.
				eligible for use by grantees to address the homeownership and rental housing needs of extremely low-, very low-, low-, and moderate-income and underserved or hard-to-serve populations by—
				• Providing grants and loans for research, development, and pilot testing of innovations in consumer education, product design, underwriting, and servicing;
				• Offering additional credit support for certain eligible mortgage loans or pools of eligible mortgage loans, such as by covering a portion of any capital required to obtain insurance from the Ginnie Mae under this Act, provided that amounts for such additional credit support do not replace borrower funds required of an eligible mortgage loan;
				• Providing grants and loans, including through the use of pilot programs of sufficient scale, to support the research and development of sustainable homeownership and affordable rental programs, which programs shall include manufactured homes purchased through real estate and personal property loans and manufactured homes used as rental housing, provided that such grant or loan amounts are used only for the benefit of families whose income does not exceed 120% of the median income for the area

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		and other forms of credit support, for product and services that— o Will increase the rate of sustainable homeownership and affordable rental housing, including manufactured homes purchased through real estate and personal property loans and manufactured homes used as rental housing, by individuals or families whose income does not exceed 120% of the area median income as determined by the FMIC, with adjustments for family size; and o Might not otherwise be offered or supported by a pilot program of sufficient scale to determine the viability of such products and services in the private market; • Providing housing counseling by a HUD-approved housing counseling agency; • Providing incentives to achieve broader access to credit; and • Providing grants and loans for activities designed to foster revitalization in areas experiencing severe economic distress and property disinvestment, including but not limited to demolition, rehabilitation, infrastructure configuration, and reuse of vacant land. <u>Annual Report</u> The Chairperson shall report to Congress, in		as determined by Ginnie Mae, with adjustments for family size; • Providing limited credit enhancement, and other forms of credit support, for product and services that— o Will increase the rate of sustainable homeownership and affordable rental housing, including manufactured homes purchased through real estate and personal property loans and manufactured homes used as rental housing, by individuals or families whose income does not exceed 120 percent of the area median income as determined by Ginnie Mae, with adjustments for family size; and o Might not otherwise be offered or supported by a pilot program of sufficient scale to determine the viability of such products and services in the private market; • Providing housing counseling by a HUD-approved housing counseling agency; and • Providing incentives to achieve broader access to credit. <u>Annual Report</u> The Ginnie Mae Director shall report annually to Congress on the performance and outcome of grants, loans, or credit support programs funded by the Market Access Fund, including an evaluation of how each grant, loan, or

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		its annual § 206 report, on the performance and outcome of grants, loans, or credit support programs funded by the Market Access Fund in accordance with its purposes, including—
		• An evaluation of how each grant, loan, or credit support program:
		  o Succeeded in meeting or failed to meet the need of certain populations, especially extremely low-, very low-, low-, and moderate-income and underserved or hard-to-serve populations; and
		  o Succeeded in maximizing or failed to maximize the advantage of public investment made for each such grant, loan, or credit support program.
		• For each Market Access Fund award for a grant, loan, or credit support program—
		  o The funds recipient;
		  o The purpose of the funds;
		  o The amount, excluding administrative costs, used to directly meet the identified purpose, including meeting the housing needs of extremely low-, very low-, low-, and moderate-income and underserved or hard-to-serve populations.
				credit support program—
				• Succeeded in meeting or failed to meet the need of certain populations, especially extremely low-, very low-, low-, and moderate-income and underserved or hard-to-serve populations; and
				• Succeeded in maximizing or failed to maximize the leverage of public investment made for each such grant, loan, or credit support program.

Restrictions on Political Activity		**§ 505 Additional Taxpayer Protections** <u>Not to be Used for Political Activities</u> Consistent with the existing requirements under §§ 1338(c)(10)(D) and 1339(h)(5) of	**§ 405 Additional Taxpayer Protections** <u>Not to Be Used for Political Activities</u> Consistent with the existing requirements under §§ 1338(c)(10)(D) and 1339(h)(5) of	

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		the 1992 Act and § 504 of this Act, HUD, Treasury, and the Office of Community and Market Access, respectively, shall ensure that grant amounts allocated by covered grantees to eligible recipients or allocated to individuals by such eligible recipients are not used for— • Political activities; • Political advocacy; • Lobbying, whether directly or through other parties; • Influencing the selection, nomination, election, or appointment of 1 or more candidates to any Federal, State or local office; • Personal counseling services; • Travel expenses; and • Preparing or providing advice on tax returns. <u>Penalties</u> • If an eligible recipient or any other individual in receipt of grant amounts described by this section violates any such restriction on funding political activity, HUD, Treasury, or the FMIC, as the case may be, may impose a civil penalty on such recipient or individual, as the case may be, of not more than $1,000,000 for each violation. • Whoever, being subject to the restrictions, knowingly participates, directly or	the 1992 Act, HUD and Treasury, respectively, shall ensure that grant amounts allocated by covered grantees to eligible recipients or allocated to individuals by such eligible recipients are not used for— • Political activities; • Advocacy; • Lobbying, whether directly or through other parties; • Influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State or local office; • Personal counseling services not related to preparing potential borrowers for homeownership or addressing avoidance of foreclosure; • Travel expenses; and • Preparing or providing advice on tax returns. <u>Penalties</u> If an eligible recipient or any other individual in receipt of grant amounts described by this section violates any provision of subsection (a) or (b) [apparently meaning (a), the ban on political activity], HUD or Treasury, as the case may be, may impose a civil penalty on such recipient or individual, as the case may be, of not more than $1,000,000 for each violation. These penalties shall be in addition to any other available penalty and may be	

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		indirectly, in any manner in conduct that results in a violation of such restrictions shall, notwithstanding 18 U.S.C. § 3571, be fined not more than $1,000,000 for each violation, imprisoned for not more than 5 years, or both. • These civil and criminal penalties shall be in addition to any other available civil remedy or any other available criminal penalty and may be imposed whether or not HUD, Treasury, or the FMIC, as the case may be, imposes other administrative sanctions. <u>Definition</u> As used in this section— *Covered grantee* means— • For purposes of the Housing Trust Fund, a State or State designated entity; and • For purposes of the Capital Magnet Fund, an eligible grantee as described under § 1339(e) of the 1992 Act; *Eligible recipient* means— • For purposes of the Housing Trust Fund, a recipient as described under § 1338(c)(9); and • For purposes of the Capital Magnet Fund, a recipient of assistance from the Capital Magnet Fund; *Capital Magnet Fund* means the Capital Magnet Fund established under § 1339, and	imposed whether or not HUD or Treasury imposes other administrative sanctions. <u>Definition</u> As used in this section— *Covered grantee* means— • For purposes of the Housing Trust Fund, a State or State designated entity; and • For purposes of the Capital Magnet Fund, an eligible grantee as described under § 1339(e); *Eligible recipient* means— • For purposes of the Housing Trust Fund, a recipient as described under § 1338(c)(9) and • For purposes of the Capital Magnet Fund, a recipient of assistance from the Capital Magnet Fund; *Capital Magnet Fund* means the Capital Magnet Fund established under § 1339 and *Housing Trust Fund* means the Housing Trust Fund established under § 1338.	

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		Housing Trust Fund means the Housing Trust Fund established under § 1338. <u>Rule of Construction</u> Nothing in restriction on funding political activity shall be construed to prevent funds from being used for— • HUD-approved housing counseling services; • Financial literacy education; or • Application fees, permits, or other construction-related expenses, if funds are authorized for such construction.		

Promoting Affordable Housing Investment		**§ 506 Promoting Affordable Housing Investement**
		• There is added to § 542(c) of the Housing and Community Development Act of 1992:
		  o Ginnie Mae may, at the Secretary's discretion, securitize any multifamily loan insured under this subsection, if:
		    ▪ FHA provides insurance based on the UPB as shall be described by regulation;
		    ▪ FHA shall not require an assignment fee for insurance claims related to the securitized mortgages;
		    ▪ The risk-sharing agreement must provide for reimbursement to the Secretary by the risk share partner or partners for either all		

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		or a portion of the losses incurred on the loans insured, regardless of whether the servicing rights or other related mortgage interest have been transferred to a different entity; and ▪ Any entity that subsequently acquires the servicing rights or other related mortgage interest of the risk share partner or partners shall not assume any obligation under the risk-sharing agreement. ○ There is a conforming change to § 306(g)(1) of the National Housing Act relating to the same loans. • Both of these revisions sunset September 30, 2021.		
Criteria Before Transfer		**TITLE VI—TRANSITION and TERMINATION of GSEs** **§ 601 Minimum Housing Finance System Criteria to be Met Prior to System Certification Date** <u>System Certification Date</u> The system certification date shall be the date that the Board of Directors, in its sole discretion, certifies by a majority vote that— • The FMIC is able to undertake, in a manner found satisfactory to the Board, the duties specified by this Act, and any amendments made by this Act; and		

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		• All the minimum criteria set forth below with respect to the housing finance system have been fully satisfied. <u>Minimum Housing Finance System Criteria</u> The Board of Directors shall consider the following minimum criteria in determining whether to certify that the new housing finance system is ready: • Treasury advised the Board of Directors that laws and contracts are in place to provide for compensation to the Department for its support of the GSEs and the housing finance system. • The Securitization Platform is developed and able to issue standardized securities for the single-family covered securities market. • At least 1 small lender mutual is fully operational and able to undertake the duties specified in § 315. • A sufficient number of approved entities have been approved pursuant the provisions of subtitle B of title III— ○ To assume a reasonable level of first loss position through approved guarantors or through approved credit risk-sharing mechanisms established under § 302; and ○ To generate a substantial volume of secondary mortgage market activity with respect to single-family eligible		

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		mortgage loans collateralizing single-family covered securities insured in accordance with this Act.
		• The FMIC has approved multiple multifamily guarantors pursuant to Title VII who are providing sufficient multifamily financing in the primary, secondary, and tertiary geographical markets, including in rural markets and through a diversity of experienced multifamily lenders.
		  ○ Approved multifamily guarantors are meeting the requirements of this Act.
		  ○ There is a competitive multifamily market for approved multifamily guarantors engaging in multifamily covered securities.
		  ○ Noncompliance with the requirements of this Act by any individual approved multifamily guarantor shall not constitute grounds to prevent system certification.
		
		<u>Rule of Construction</u>
		The FMIC shall take all steps necessary to meet each of these minimum housing finance system criteria as expeditiously and efficiently as practicable. The FMIC may commence providing guarantees on single-family or multifamily covered securities before meeting all the minimum housing finance system criteria.		

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		Notification to Congress
		• The Chairperson shall promptly submit to the Senate Banking and House Financial Services Committees a written notification that the Board of Directors has certified that the minimum housing finance system criteria have been met.
		• The FMIC shall do so within 5 years of enactment.
		  ○ If the FMIC is unable to make such a certification within 5 years, the Board of Directors may, with an affirmative vote of the majority of the Board, extend the deadline an additional 2 years.
		  ○ If, after a first extension of 2 years, the FMIC is unable to make such a certification, the Board of Directors may, with an affirmative vote of at least 2⁄3 of the Board, extend the deadline an additional 2 years.
		  ○ If, after a second extension of 2 years, the FMIC is unable to make such a certification, the Board of Directors may, with a unanimous affirmative vote of the Board and upon the written agreement of the Chairman of the Federal Reserve and the Treasury Secretary, and in consultation with HUD, extend the deadline an additional year, and annually thereafter utilizing the same		

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		process until the Board of Directors makes the certification. **§ 602 Transition of the Housing Finance System** Transition Plan The Transition Committee established under § 404 shall develop a transition plan not later than 12 months after enactment to facilitate an orderly transition to the new housing finance system authorized by this Act. Contents of Plan The transition plan shall include— • Estimated timeframes by which to achieve the minimum housing finance system criteria set forth under § 601(b) within 5 years after enactment; • Detailed actions that the FMIC will take to achieve such minimum criteria; • Estimated timeframes and detailed actions that the FMIC, including FHFA, will take to provide an orderly wind down of the GSEs; • A detailed inventory of all intellectual property owned, held, or licensed by the GSEs, including patents, trademarks, software, credit evaluation systems, and data and information on mortgage performance and plans for using any such intellectual property, technology, infrastructure, or processes of the GSE in		

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		effecting the transition plan;
		• Description and updates on the ongoing operations of the FMIC, including the operations of FHFA;
		• Detailed plans and timeframes for establishing, as soon as practicable, a multifamily covered securities market;
		• Detailed plans and timeframes for establishing, as soon as practicable, a standardized security issued through the Securitization Platform for the single-family covered securities market; and
		• Detailed plans for increasing the level of credit risk-sharing in the secondary mortgage market.
		
		<u>Considerations</u>
		• For purposes of facilitating an orderly transition to the new housing finance system authorized by this Act, the FMIC shall consider in determining how to best fulfill the requirements of this title the estimated impact of various transition options with respect to the following:
		  o Housing prices and affordability.
		  o The effectiveness of consumer protections in the housing market.
		  o Volume and characteristics of mortgage loan originations.
		  o The condition of the rental housing market.
		  o Small lender participation in the		

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		secondary mortgage market. o Access to credit in rural and underserved communities. o Competition among market participants. o The condition of the multifamily housing market. o Innovation among secondary mortgage market participants. o Taxpayer repayment. o Private capital in the secondary mortgage market. • A description and analysis of each such consideration shall be included in the following report to Congress. <u>Report to Congress</u> • Not later than 12 months after enactment and in accordance with § 404(c)(2), the Transition Committee shall submit the transition plan to the Senate Banking and House Financial Services Committees. • Not later than 1 year after the date on which the transition plan is submitted and annually thereafter until the system certification date, the Chairperson shall update the transition plan and submit such updated plan to the Senate Banking and House Financial Services Committees.		
Resolution Authority		**§ 603 Resolution Authority; Technical Amendments**		

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Amendments		The amendments made by this section shall take effect on the agency transfer date.
		
		Section 1367 of the 1992 Act (conservator and receivership authority) is amended:
		• By replacing "stockholder" and "stockholders" with "shareholder, member," and "shareholders, members," respectively, each place those terms appear;
		• By replacing "wind up" and "winding up" with "wind down" and "winding down" each place those terms appear;
		• In § 1367(a)—
		  ○ In paragraph (3)(G) (losses as a basis for conservatorship or receivership), by removing the requirement that there be no reasonable prospect for the regulated entity to become adequately capitalized;
		  ○ By replacing paragraph (3)(J) (undercapitalization as a basis for conservatorship or receivership) with a basis that the regulated entity is insolvent or near-insolvent;
		  ○ By striking paragraph (3)(K) (critical undercapitalization as a basis for conservatorship or receivership);
		  ○ In paragraph (4)(B) with conforming changes;
		  ○ In paragraph (4)(B) to remove the requirement that a conservator or		

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		receiver preserve and conserve the entity's assets. • In § 1367(b) — ○ In paragraph (2)(H) (payment of valid obligations "to the extent of proceeds from" contracts or assets), by replacing this with to the extent that funds are available; ○ In paragraph (2)(I)(i)(I) (conservator or receiver may exercise subpoena powers under § 1348 [which probably meant to refer to subpoena powers under § 1379D]), by amending this to refer to powers under part II of this subtitle [this subtitle does not have parts]; ○ In paragraph (2)(I)(iii) (this subsection does not limit the agency's power under §§ 1317 (examinations) or 1379B (public disclosure of orders)), by amending this to refer to subtitle B of this Act (§§ 4511 to 4603); ○ By replacing paragraph (3)(A) (receiver may determine claims under paragraph (4)) with: The Agency— ▪ May, as receiver, determine claims in accordance with the requirements of this subsection and any regulations prescribed under paragraph (4); and ▪ May define the term 'creditor'		

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		and may distinguish between creditors, in order to facilitate the orderly administration of the regulated entity in conservatorship or receivership, in accordance with the requirements of this section. ○ In paragraph (3)(B) (notice to creditors in winding up a closed entity), by striking the word closed; ○ In paragraph (5)(D)(iii)(II) (receiver may not disallow security interests in the entity's assets securing a loan), to read: "any **legally enforceable and perfected** security interest in the assets of the regulated entity securing any such extension of credit." ○ By striking paragraph (7) (arbitration to resolve claims); ○ In paragraph (10)(E) [as renumbered from the current (11)(E)] (disposition of assets to maximize returns and to ensure fair treatment), by also requiring the disposition to: ▪ Prohibit discrimination on the basis of race, sex, or ethnic group in the solicitation or consideration of offers; and ▪ Mitigate the potential for serious adverse effects to the financial system. • By replacing § 1367(c) (claims priority – administrative expenses, then senior		

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		debts, then junior debts, then shareholders) with: (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) Claims of the receiver for administrative expenses. (B) Any amounts owed to the U.S., unless the U.S. agrees or consents otherwise. (C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (F)), but only to the extent of $12,475 for each individual (as indexed for inflation, by regulation of the Agency) earned not later than 180 days before the appointment of the Agency as receiver. (D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the appointment of the Agency as receiver, to the extent of the number of employees covered by each such plan, multiplied by $12,475 (as indexed for inflation, by regulation of the Agency), less the		

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		aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan. (E) Any claim arising solely from a covered guarantee transaction involving the regulated entity. (F) Any other general or senior liability of the regulated entity (which is not a liability described under subparagraph (G), (H), or (I)). (G) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (H) or (I)). (H) Any wages, salaries, or commissions, including any vacation, severance, and sick leave pay earned, owed to senior executives and directors of the regulated entity. (I) Any obligation to shareholders or members arising as a result of their status as shareholders or members. (2) CLAIMS OF THE U.S.— Unsecured claims of the U.S. shall, at a minimum, have a higher priority than liabilities of the regulated entity that count as regulatory capital. (3) CREDITORS SIMILARLY SITUATED.— All creditors that are similarly situated under		

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		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 Agency determines that such action is necessary to— (i) maximize the value of the assets of the regulated entity; (ii) maximize the present value return from the sale or other disposition of the assets of the regulated entity; (iii) initiate and continue operations essential to implementation of the receivership or any limited-life regulated entity; (iv) minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; or (v) preserve the financial stability of the U.S.; and (B) all creditors that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (f)(2). (4) 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		

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		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. • By adding § 1367(d) (and redesignating (d) through (j) ((k) is repealed, as below)): (d) SUBROGATION.— (1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Agency, upon the payment to any person as provided in subsection (c) in connection with any covered guarantee transaction, shall be subrogated to all rights of the person against such regulated entity to the extent of such payment or assumption. (2) DIVIDENDS ON SUBROGATED AMOUNTS.—The subrogation of the Agency under paragraph (1) with respect to any regulated entity shall include the right on the part of the Agency to receive the same dividends, fees, or other amounts from the proceeds of the assets of such regulated entity and recoveries on account of stockholders' liability as would have been payable to the person on a claim related to the covered guarantee transaction. (3) WAIVER OF CERTAIN CLAIMS.—The		

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		Agency shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the regulated entity or its creditors, for the amount unpaid upon such stock in such regulated entity, but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Agency is not subrogated.
		
		• In § 1367(e), [as redesignated from the current (d)]
		  ○ In paragraph (8) (qualified financial contracts), by adding:
		  ○ The Agency may prescribe regulations requiring that regulated entities maintain such records with respect to qualified financial contracts (including market valuations) that the Agency determines to be necessary or appropriate in order to assist the Agency as receiver for a regulated entity in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).
		  ○ By revising paragraph (9) as follows:
		
		(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—		

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	PATH Act, H.R. 2767	S. 1217	Waters Discussion Draft	H.R. 5055
		(A) IN GENERAL.— 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) transfer to 1 person, other than a person for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—** (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 **sub**clause (I), or any claim described in **sub**clause (II) or (III) under any such contract; or (~~B~~**ii**) transfer none of the financial contracts, claims, or property referred to under ~~subparagraph (A)~~ **clause (i)** (with respect to such person and any affiliate of such person).		

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		(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Agency as receiver for a regulated entity shall not make such transfer to a foreign person unless, under the law applicable to such foreign person, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements, are enforceable substantially to the same extent as permitted under this section. • In § 1367(e)(13)(C)(ii) [as redesignated from the current subsection (d)] (which lists exceptions to the requirement for Agency approval to terminate a contract with a GSE in 90 days after a receivership) by adding a new exception for the rights of parties to netting contracts pursuant to subtitle A of title IV of the FDIA (12 U.S.C. 4401 et seq.). • In § 1367(g) [as redesignated from the		

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		current (f)] by revising it as follows: Except as provided in this ~~section or at the request of the Director~~ **title**, 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~~ **the conservator or receiver hereunder, and any remedy against the Agency as conservator or receiver shall be limited to money damages determined in accordance with this title**. • In § 1367(j)(1)(A)(ii) [as redesignated from the current subsection (i)] (GSE receiver shall organize a limited-life regulated entity) by replacing shall with may, and a conforming amendment to a heading; • In § 1367(j)(2)(A) [as redesignated from the current subsection (i)] (GSE limited-life regulated entity succeeds to GSE charter) to provide that the limited-life entity succeeds to the GSE's registered status. • In § 1367(j)(3) [as redesignated from the current subsection (i)], by adding that, notwithstanding any other law, the Agency may permit a limited-life regulated entity to operate without any capital or surplus. • In § 1367(j)(3) [as redesignated from the current subsection (i)], by adding: • Upon the organization of a limited-life		

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		regulated entity, and thereafter, as the Agency may, in its discretion, determine to be necessary or advisable, the Agency may make available to the limited-life regulated entity, upon such terms and conditions and in such form and amounts as the Agency may in its discretion determine, funds for the operation of the limited-life regulated entity in lieu of capital. • In § 1367(j)(6)(A) [as redesignated from the current subsection (i)] (limited-life regulated entity survives 2 years unless the time is extended) to require, for a GSE but not an FHLB, the entity's wind down when the Agency determines necessary and appropriate. • In § 1367(j)(7)(A)(iv) [as redesignated from the current subsection (i)] (asset transfers require equitable treatment of similarly situated creditors, unless necessary to maximize the return on assets and the creditor receives no less than it would have if the Agency had liquidated the assets) by providing the Agency with discretion to distinguish between creditors to: o Maximize the value of the assets of the regulated entity; o Maximize the present value return from the sale or other disposition of the assets of the regulated entity;		

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		○ Initiate and continue operations essential to the implementation of the limited-life regulated entity; ○ Minimize the amount of any loss realized upon the sale or other disposition of the assets of the regulated entity; ○ Preserve the financial stability of the U.S.; and The Agency must ensure that all similarly situated creditors under subsection (c)(1) receive not less than they would have had the agency liquidated the assets and not formed a limited-life regulated entity. • In § 1367(j)(11)(C) [as redesignated from the current subsection (i)] (limited-life regulated entity may sometimes borrow with a super-priority lien after notice and hearing, but the lien may not be above loans backing GSE MBS) by removing the protection for loans backing GSE MBS, and requiring the hearing to be in federal court. • By striking § 1367(k), which prohibits a GSE receiver from revoking, annulling, or terminating a GSE charter. Finally, by adding that nothing in this 2014 Act, or any amendments made by this Act, except as may be explicitly provided for in this Act, or any amendment made by this Act, shall be deemed to alter the powers,		

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		authorities, rights, or duties that are vested in the FHFA or its Director with respect to supervision and regulation of the GSEs, until the FHFA and the position of its Director are transferred in accordance with Title IV.		

Wind Down	**§ 103 Termination of Conservatorship; Mandatory Receivership**
	Five years after enactment, the Director shall, with respect to each GSE, immediately appoint FHFA as receiver under § 1367 of the 1992 Act.
	
	§ 109 Receiver's Discretionary Authority to Create Receivership Entity
	The 1992 Act § 1367(i) (limited-life regulated entities) is revised to read:
	<u>Receivership Entity</u>
	The Agency, as receiver, may establish a receivership entity in such form or structure as the Agency deems appropriate to meet the purposes of receivership and this section.
	• Upon creation of such receivership entity, the Agency may transfer to it any assets or liabilities of the regulated entity in default as the Agency, in its discretion, determines to be appropriate, and may authorize the receivership entity to perform any temporary function that the Agency, in its discretion, prescribes in accordance with this section. The transfer of any assets or liabilities of a regulated entity for which the Agency has been
		§ 604 Wind Down
		<u>Authority of FHFA Director</u>
		• Beginning on enactment and ending on the system certification date, the FHFA Director, in consultation with the FMIC, shall take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of the GSEs in an orderly manner that complies with the requirements of this Act and any amendments made by this Act.
		• Notwithstanding any such wind down authority—
		  ○ The sale, exchange, license, or other disposition of any asset for value subject to the wind down required under this section shall be prohibited, if the FMIC—
		    ▪ In its discretion determines that such sale, transfer, exchange, license, or disposition would materially interfere with the ability of the FMIC to carry out the requirements of this Act; and
		    ▪ Notifies, in writing, the FHFA Director within 14 days of such
			§ 501 Transition
			<u>Cessation of New Business</u>
			Upon the expiration of the 5-year period beginning on the date of the enactment, the Fannie Mae and Freddie Mac shall cease providing new guarantees on securities backed by mortgages and all other new business (other than the rollover of debt related to existing assets). At that time, the GSEs shall continue to manage activities related to the remaining portfolio, including outstanding debt and MBS, capital lease obligations, obligations with respect to letters of credit and bankers' acceptances, and similar obligations, to minimize risk to Treasury and maximize return, with earnings to be distributed as specified below. Treasury may determine to extend such deadline for no more than one year for cause.
			
			<u>Distribution of Earnings</u>
			Upon the expiration of such 5-year (up to 6-year) period, the net GSE earnings from the beginning of the conservatorships until the end of such period shall be distributed in the following order of priority:
			• Repayment of the Senior Preferred Shares
				TITLE III—WIND DOWN OF FANNIE MAE AND FREDDIE MAC
				§ 301 Limitation on Business
				The Ginnie Mae Director shall provide that, after the certification date—
				• The GSEs may not issue, guarantee, or purchase any security backed by mortgages on 1- to 4-family residences except as specifically authorized by this Act;
				• A GSE may act as a participating aggregator of eligible mortgages for securitization pursuant to § 201 if such eligible mortgages are originated by originators whose volume of such business is insufficient to allow for such originators to aggregate and securitize such mortgages, until the earlier of—
				  ○ Such time as the Director determines that any other qualified entity or entities provide sufficient market access to such originators under competitive rates and terms and requires the GSEs to cease such business; or
				  ○ The commencement of the receivership under § 304(a); and

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	appointed receiver shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto. Such authority is in addition to any other power the Agency may have as receiver or may confer on the receivership entity. • Notwithstanding any other provision of Federal or State law, any receivership entity established by the Agency pursuant to this section, its franchise, property and income, shall be exempt from all taxation now or hereafter imposed by the U.S., by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. • The Agency may promulgate such regulations as the Agency determines to be necessary or appropriate to implement this sub- section. • A receivership entity established pursuant to this section shall not be a U.S. agency, establishment, or instrumentality. (Under current § 1367(i), the limited-life entity succeeds to the GSE charter, can issue stock, winds up in 2 years without GSE charter repeal, and can obtain unsecured and super-priority credit.) **§ 110 Receiver's Authority to Repeal GSE Charter** The 1992 Act § 1367(k) (charter repeal	determination; and ○ The FMIC may direct the conservator of the GSEs to sell, transfer, exchange, license or otherwise dispose of any asset for value subject to the wind down required under this section, if the Board of Directors certifies by a majority vote that— ▪ Not completing such sale, transfer, exchange, license, or other disposition for value would be inconsistent with the transition plan approved pursuant to § 602; and ▪ Such sale, transfer, exchange, license, or disposition for value would not violate the duties of the conservator. <u>Authority of FMIC</u> Beginning on the system certification date, the FMIC shall take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of the enterprises in an orderly manner that complies with the requirements of this Act and any amendments made by this Act. <u>Resolution Plan</u> • Each GSE shall develop a resolution plan in order to facilitate an orderly transition to the new housing finance system	owned by the Treasury. • 10% rate of interest per year over the term of the Senior Preferred Shares. • Establishment of any reserve funds that Treasury determines are needed in connection with the wind-down of the GSEs businesses. • Payment of any deferred contributions to the Housing Trust Fund and Capital Magnet Fund that have not been paid. • Purchase of other outstanding preferred shares. • Purchase of outstanding common shares, for which purpose warrants held by the Treasury shall be treated as common stock. <u>Earnings after Cessation of New Business</u> GSE earnings that accrue after the date on which new business ceases (including reserves that are not needed) may be paid in accordance with the distribution schedule above after all obligations and earnings of the GSEs have been extinguished or received, including the proceeds of sales to the Issuer. <u>Sale of Assets</u> In connection with the wind down of the entities, Treasury, in consultation with the NMFA and the Agency, may determine to sell GSE assets, including the common securitization platform, multi-family	• A GSE may act as a reinsurer for MBS in accordance with § 202(b) until the commencement of the receivership. **§ 303 Continued Conservatorship** <u>Timing</u> The conservatorships of the GSEs in effect upon the enactment shall continue until the commencement of the receivership, subject to the transfer of FHFA functions to Ginnie Mae. <u>Aligning Purposes of Conservatorship</u> Notwithstanding § 1367(b)(2)(D) of the 1992 Act (12 U.S.C. 4617(b)(2)(D) (authorizing a GSE conservator to restore a GSE's solvency and preserve and conserve its assets), after enactment of this Act, the Director shall, as conservator of each GSE, take such actions as are necessary to manage the affairs, assets, and obligations of each GSE, and to operate each GSE, in compliance with this section. <u>Return of GSEs to Private Market</u> During the term of the GSE conservatorships, the Director shall— • Carry out the conservatorship in a manner that furthers achievement of the goals and terms of the mandatory receiverships; • Identify any GSE assets necessary for Ginnie Mae to carry out its functions and responsibilities under §§ 201, 202, and 401 of this Act; and

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	prohibition) is revised to read:
	• Five years after enactment, the charter of each GSE is repealed and the GSE shall have no authority to conduct new business under such charter, except that the charter provisions in effect immediately before such repeal shall continue to apply with respect to the rights and obligations of any holders of—
	  ○ Outstanding debt obligations of the GSE, including any—
	    ▪ Bonds, debentures, notes, or other similar instruments;
	    ▪ Capital lease obligations; or
	    ▪ Obligations in respect of letters of credit, bankers' acceptances, or other similar instruments; or
	  ○ MBS guaranteed by the GSE.
	• The full faith and credit of the U.S. is pledged to the payment of all amounts which may be required to be paid under the continuing charter provisions.
	• Notwithstanding any other provision of law, provision 2(a) (relating to Dividend Payment Dates and Dividend Periods) and provision 2(c) (relating to Dividend Rates and Dividend Amount) of the Senior Preferred Stock Purchase Agreement (between Treasury and each GSE), or any provision of any certificate in connection with such Agreement creating or designating the terms, powers,
		authorized by this Act.
		• Each GSE resolution plan shall be submitted to the FHFA Director not later than 90 days after the agency transfer date.
		• Each GSE resolution plan shall include a full description and valuation of the assets, liabilities, and contractual obligations of the GSE, and any other information that the FHFA Director may require.
		• Notwithstanding any provision of a GSE resolution plan, FHFA and the FMIC shall retain and exercise full discretion to the extent that either the Agency or the FMIC utilizes or relies on such a resolution plan, either in whole or in part, in fulfilling any duty or responsibility required by this Act.
		• After reviewing each GSE resolution plan, the FMIC shall make available to the public a summary of each such resolution plan.
		• After reviewing each GSE resolution plan, the FMIC shall conduct a valuation study of each GSE's business segments, including any technology, business unit, legacy book, and other assets and liabilities that may be sold for value in a manner consistent with the purposes and requirements of this Act.
			businesses, and other assets to the Issuer. In affecting such sales, Treasury may issue new preferred shares to the Issuer.
			
			<u>Full Faith and Credit</u>
			The full faith and credit of the U.S. is pledged to ensure that all payments on any obligation of the GSEs are paid. Treasury remains obligated to ensure that the GSEs remain in a position to pay all holders of obligations or other outstanding debt in the GSEs, as well as employees who continue to be employed by the GSEs.
			
			§ 502 Wind Down
			<u>Wind Down</u>
			• Beginning on enactment and ending on the date certified by Treasury, the FHFA Director, in consultation with the NMFA and Treasury, shall take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of the GSEs in an orderly manner that complies with the requirements of this Act and any amendments made by this Act. Notwithstanding any such authority granted to the FHFA Director, the sale, transfer, exchange, or other disposition of any asset subject to the wind down required under this section shall be prohibited, if the NMFA—
			  ○ In its discretion determines that such
				• Prepare for the transfer of the GSEs' multifamily business in accordance with § 401 of this Act.
				
				§ 304 Mandatory Receivership
				<u>Commencement</u>
				The Director shall, with respect to each GSE, immediately appoint Ginnie Mae as receiver upon the later of the following:
				• The expiration of the 60-month period beginning on the date of the enactment of this Act, as the duration of such period may be adjusted pursuant to subsection (c).
				• The certification date has occurred and the Director has determined that—
				  ○ A competitive private housing finance market has been established;
				  ○ Competitive and equitable access to the Platform for smaller mortgage lenders is available;
				  ○ The FHLB pooling services competitive with services made available by the GSEs before the certification date;
				  ○ The FHLBs are capable of meeting the cash window needs of credit unions, community and mid-sized depository institutions, and non-depository mortgage originators with competitive rates and terms; and
				  ○ The FHLBs have created a "to be

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	preferences, privileges, limitations, or any other conditions of the Variable Liquidation Preference Senior Preferred Stock of an GSE issued pursuant to such Agreement— o Shall not be amended, restated, or otherwise changed to reduce the rate or amount of dividends, except that any amendment to facilitate the sale of GSE assets shall be permitted; and o Shall remain in effect until the GSEs' MBS guarantee obligations are fully extinguished. • All g-fee amounts derived from the GSEs' single-family mortgage guarantee business in existence as of five years after the date of the enactment shall be deposited into the Treasury, for purposes of deficit reduction. • For purposes of the existing guarantee obligations, *Senior Preferred Stock Purchase Agreement* means— o The GSE agreement with Treasury dated September 26, 2008, as amended on May 6, 2009, December 24, 2009, and August 17, 2012, and as such Agreement may be further amended and restated; and o Any provision of any certificate in connection with such Agreement creating or designating the terms, powers, preferences, privileges,	<u>Prohibition on New Business</u> Effective on the system certification date, the GSEs shall have no authority to conduct new business under their charters. • For this purpose, "new business" means any new— o For both GSEs, purchase of, servicing of, or dealing in any insured or conventional mortgages under § 302(b) of Fannie Mae's charter or § 305(a) of Freddie Mac's charter; o For both GSEs, issue of an obligation under § 304(b) of Fannie Mae's charter or § 306(a) of Freddie Mac's charter, including— ▪ Bonds, notes, debentures, and other similar instruments; ▪ Capital lease obligations; ▪ Obligations in respect of letters of credit, bankers acceptances, or other similar instruments; ▪ Guarantees of new securities based on mortgages set aside; and ▪ Swap, security-based swap, derivative product, or other similar instrument; o For both GSEs, issue of a subordinated obligation of the GSE under § 304(e) of Fannie Mae's charter or under Freddie Mac's charter;	sale, transfer (other than to the NMFA or the Issuer), exchange, or disposition would materially interfere with the ability of the NMFA to carry out the requirements of this Act; and o Notifies, in writing, the FHFA Director within 14 days of such determination. • Notwithstanding any such authority granted to the FHFA Director, the FHFA Director— o Shall have no authority to sell, transfer, exchange, or otherwise dispose of any guarantee obligations described under § 501(a)(2) and (b)(2) [there is no § 501(a)(2); § 501(b)(2) is 10% interest on Treasury's preferred GSE shares]; and o Shall have no rights, claims, or title to, nor any authority to sell, transfer, exchange, or otherwise dispose of, g-fee amounts derived from the single-family mortgage guarantee business of the GSEs in existence as of the NMFA certification date. <u>Division of Assets and Liabilities; Authority to Establish Holding Corporation and Dissolution Trust Fund</u> Such wind down authority— • May include the establishment and	announced" market that is viable in all economic cycles. <u>Goals and Terms</u> Ginnie Mae shall carry out the GSE receivership under the authority of § 1367 of the 1992 Act, subject to the following requirements: • In carrying out the receivership of each GSE, Ginnie Mae shall strive to achieve both of the following goals: o Obtaining an adequate return of taxpayer investment in the GSE, taking into consideration the total cost to the taxpayers, the value provided to the GSE, and the risk and exposure to the Federal Government involved, together with interest on such investment at a rate determined by the Director, in consultation with the Federal Reserve and Treasury. o Removing barriers to private sector competition in the housing finance market by providing for the transfer of the assets of the GSE into the private sector to compete in a functioning housing finance market. • Any entities emerging from such receivership shall be fully private and any obligations and securities of such entities shall not constitute a debt or obligation of the U.S. nor or any agency or

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	limitations, or any other conditions of the Variable Liquidation Preference Senior Preferred Stock of a GSE issued or sold pursuant to such Agreement. **§ 102 Definitions** For purposes of this title, the following definitions shall apply: *Charter* means the Fannie Mae charter with respect to Fannie Mae, and the Freddie Mac charter with respect to Freddie Mac. *Director* means the FHFA Director. *Enterprise* or *GSE* means Fannie Mae or Freddie Mac.	○ For Fannie Mae, purchase of a mortgage in Fannie Mae's secondary mortgage market operations under § 304(a) of Fannie Mae's charter; ○ For Fannie Mae, setting aside of any mortgages it held and any new issue and sale of securities based on the mortgages so set aside under § 304(d) of the Fannie Mae's charter; and ○ For Freddie Mac, issue of MBS under the Freddie Mac charter; • New business shall not include any new— ○ For both GSEs, purchase of a non-performing mortgage from a pool of mortgages previously set aside by the GSE; ○ For both GSEs, issue of an obligation if, after giving effect to the issuance, the aggregate amount of such obligations does not exceed 120% of the amount of mortgage assets permitted to be owned by the GSE under § 605; ○ For both GSEs, transfer of guarantees of MBS guaranteed by the GSE if the mortgage loans collateralizing such securities are refinanced, regardless of the value of the underlying collateral and the homeowner's current employment status and income; or	execution of plans to provide for an equitable division, distribution, and liquidation of the assets and liabilities of a GSE, including any infrastructure, property, including intellectual property, platforms, or any other thing or object of value, provided such plan complies with the requirements of this Act and any amendments made by this Act; and • May provide for establishment of— ○ A holding corporation organized under the laws of any State of the U.S. or D.C. for the purpose of winding down a GSE; and ○ One or more trusts to which to transfer— ▪ Outstanding debt obligations of a GSE; or ▪ Outstanding mortgages held for the purpose of collateralizing MBS guaranteed by a GSE. <u>Determination of Distributions of GSE Earnings</u> The amount of any proceeds to be paid pursuant to § 501(b) (distribution of earnings) shall be jointly determined by the FHFA Director, the NMFA, and Treasury. The wind down of each GSE required under this section shall be managed by the FHFA Director, in consultation with the NMFA and Treasury, to obtain resolutions that maximize the earnings distributed to the senior preferred	instrumentality thereof. • The receivership shall provide, notwithstanding any other provision of this Act, for the transfer of the GSEs' multifamily business in accordance with § 401 of this Act. • The receivership shall provide for— ○ The identification of any GSE assets that are not necessary for the operation of the limited-life entities; and ○ Making such assets available at auction for acquisition by any private entities, which shall include the private entities established pursuant to paragraph (6)(C). • The receivership shall provide for the restructuring of the Senior Preferred Stock Purchase Agreements between the GSEs and Treasury on September 26, 2008, as amended and restated thereafter, to— ○ Permit the redemption of senior preferred shares of the Treasury; ○ Provide for the cancellation of the warrants for the purchase of GSE common stock issued to Treasury; and ○ Provide for the appropriate level of compensation to the government for the financial support and commitment provided to the GSEs.

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		○ For both GSEs, entry into any swap, security-based swap, or other similar instrument, or purchase of sale of any derivative product, or other similar instrument, to facilitate the orderly wind down of the GSE and appropriate loss mitigation on any outstanding GSE guarantees under § 605. ○ For Fannie Mae, setting aside of mortgages Fannie Mae previously set aside, or any new issue and sale of securities based on the mortgages so previously set aside, to refund or replace an outstanding issue of securities based on mortgages previously set aside, if the face amount of the refunding or replacing MBS does not exceed the face amount of the MBS being refunded or replaced; ○ For Freddie Mac, issue of MBS, to refund or replace an outstanding issue of MBS, if the face amount of the refunding or replacing MBS does not exceed the face amount of the MBS being refunded or replaced. • Nothing in new business prohibition shall adversely affect the rights and obligations of any holders of— ○ Outstanding debt obligations of the GSE, including any— ▪ Bonds, notes, debentures, or	shareholder, to the extent that such resolutions— • Are consistent with the goal of supporting a sound, stable, and liquid housing market; • Are consistent with applicable Federal and State law; • Comply with the requirements of this Act and any amendments made by this Act; and • Protect the taxpayer. **§ 503 Aligning Purpose of Conservatorship with NMFA** <u>Power as Conservator</u> The 1992 Act is amended in § 1367(b)(2) by adding subparagraph (D): After the date of enactment of the Housing Opportunities Move the Economy Forward Act of 2014 the Agency shall, as conservator, take such actions as are necessary— • To ensure the efficient, effective, and expeditious wind down of the GSEs; • To manage the affairs, assets, and obligations of the GSEs and to operate the GSEs in compliance with the requirements of the Housing Opportunities Move the Economy Forward Act of 2014; • To assist the NMFA, in a consultative capacity, in carrying out the requirements under the Housing Opportunities Move	• Under the receivership— ○ The receiver shall organize a limited-life regulated entity for the GSE in accordance with § 1367(i) of the 1992 Act, except that— ▪ Any GSE assets and liabilities that the receiver determines are necessary to allow the limited-life regulated entity to operate independent from the resolution of the GSE shall be transferred to the limited-life regulated entity; and ▪ In winding up the affairs of the limited-life regulated entity, its remaining assets shall be made available to the successor entities and to other private guarantors engaged in providing insurance for eligible MBS in accordance with § 202; ○ The GSE charter shall be repealed; and ○ The receiver shall provide for reorganizing and chartering the successor entity to the limited life regulated entity as an entity established to operate as an insurer under § 202(b)(2)(A) of this Act or a participating aggregator of eligible mortgages for securitization pursuant to § 201 if such eligible mortgages are originated by originators whose

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		other similar instruments; ▪ Capital lease obligations; ▪ Obligations in respect of letters of credit, bankers' acceptances, or other similar instruments; or ▪ Swap, security-based swap, derivative product, or other similar instrument; or ○ MBS guaranteed by the GSE. • The prohibition on new business by the GSEs shall not prohibit, nor be construed to prohibit, the FMIC from managing the GSE. • The full faith and credit of the U.S. is pledged to the payment of all amounts which may be required to be paid under any obligation that is exempt from the new business prohibition or outstanding debt or MBS that the new business prohibition does not adversely affect, including any obligation issued on or after the system certification date to refund or replace an obligation that was outstanding on the day before the system certification date. ○ The GSEs shall include as eligible loans for the purposes of refinancing all current loans that qualify as eligible mortgage loans and meet those underwriting requirements for eligibility for same servicer refinancing, except that the GSEs	the Economy Forward Act of 2014; and • To maintain liquidity and stability in the secondary mortgage market with respect to the debt of the GSEs. <u>Rule of Construction</u> Nothing in this Act, or any amendments made by this Act, except as may be explicitly provided for in this Act, or any amendment made by this Act, shall be deemed to alter the powers, authorities, rights, and duties that are vested in the FHFA and the FHFA Director with respect to its supervision and regulation of the GSEs.	volume of such business is insufficient to allow for such originators to aggregate and securitize such mortgages. <u>Adjustment of Timing</u> Ginnie Mae may adjust the duration of the 5-year period for appointing Ginnie Mae receiver by establishing requirements to be met by market participants before such period may be considered to be concluded. Such requirements may include requirements regarding— • Ensuring that there is an adequate level of private capital available for efficient financing of single-family and multifamily housing mortgages through— ○ The market for initial public offerings; ○ Retained earnings of market participants; and • Ensuring that any anticompetitive liquidity advantages in mortgage-backed securities are adequately protected against. **§ 305 Repeal of GSE Charters** Section 1367 of the 1992 Act is amended • By striking the prohibition on GSE charter repeal and inserting: Effective upon the certification date (as defined in § 2 of the Partnership to

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		may not disqualify or impose varying rules based on LTV, combined LTV, employment status, or income with regard to refinancing mortgage loans that collateralize MBS issued by a GSE before the system certification date. ○ Notwithstanding the provisions of this section or any other provision of law, provision 2(a) relating to Dividend Payment Dates and Dividend Periods) and provision 2(c) (relating to Dividend Rates and Dividend Amount) of the Senior Preferred Stock Purchase Agreement, or any provision of any certificate in connection with such Agreement creating or designating the terms, powers, preferences, privileges, limitations, or any other conditions of the Variable Liquidation Preference Senior Preferred Stock of a GSE issued pursuant to such Agreement— ▪ Shall not be amended, restated, or otherwise changed to reduce the rate or amount of dividends in effect pursuant to such Agreement as of the Third Amendment to such Agreement dated August 17, 2012, except that any amendment to such Agreement shall be permitted if it facilitates the sale of assets of		Strengthen Homeownership Act of 2014), the GSE charters are repealed and the GSEs shall have no authority to conduct new business under such charter, except that the provisions of such charter in effect immediately before such repeal shall continue to apply with respect to the rights and obligations of any holders of— ○ Outstanding GSE debt obligations, including any— ▪ Bonds, debentures, notes, or other similar instruments; ▪ Capital lease obligations; or ▪ Obligations in respect of letters of credit, bankers' acceptances, or other similar instruments; or ○ MBS guaranteed by the GSE that are not eligible MBS insured by Ginnie Mae pursuant to § 202 of the Partnership to Strengthen Homeownership Act of 2014. • The full faith and credit of the U.S. is pledged to the payment of all amounts which may be required to be paid under any such GSE obligations • Notwithstanding any other provision of law, provision 2(a) and (c) (Dividend Payment Dates and Dividend Periods, and Dividend Rates and Dividend Amount) of the Senior Preferred Stock Purchase Agreement, as amended, or any provision of any certificate in connection with such

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		the GSEs to facilitate compliance with this title; and ▪ Shall remain in effect until the guarantee obligations that are exempt from the new business prohibition or outstanding debt or MBS that the new business prohibition does not adversely affect, are fully extinguished. • Notwithstanding the provisions of this section, all g-fee amounts derived from the mortgage guarantee business of the GSEs in existence as of the system certification date, after satisfying the fee amounts required to be collected by § 1327 of the 1992 Act (until 2021, g-fee increases are paid to Treasury and are not a reimbursement to the government for the costs or subsidy provided to a GSE) shall be subject to the terms of the Senior Preferred Stock Purchase Agreement. <u>Charters Revoked</u> Effective upon the date the guarantee obligations, that are backed by the full faith and credit of the U.S. for obligations that are exempt from the new business prohibition or outstanding debt or MBS that the new business prohibition does not adversely affect, are fully extinguished, the GSE charters are repealed, but not the provisions of Fannie Mae's charter act that relate to Ginnie Mae.		Agreement creating or designating the terms, powers, preferences, privileges, limitations, or any other conditions of the Variable Liquidation Preference Senior Preferred Stock of a GSE issued pursuant to such Agreement— o Shall not be amended, restated, or otherwise changed to reduce the rate or amount of dividends in effect pursuant to such Agreement as of the Third Amendment of August 17, 2012, except that any amendment to facilitate the sale of GSE assets shall be permitted; and o Shall remain in effect until the debt and MBS guarantee obligations are fully extinguished. • All g-fees derived from the GSEs' single-family mortgage guarantee business in existence as of the certification date shall be subject to the Senior Preferred Stock Purchase Agreement. • Ginnie Mae shall provide that during the 30-year period beginning upon the certification date, any GSE MBS may be exchanged, at the request of the holder, for securities insured under § 202 of the Partnership to Strengthen Homeownership Act of 2014, and Ginnie Mae shall ensure fungibility between such securities exchanged. Ginnie Mae may establish such terms and conditions for

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		Authority to Insure Outstanding MBS; GSE MBS
		• After the agency transfer date, and subject to such procedures, standards, terms, and conditions as may be adopted by the FMIC, the FMIC may—
		  ○ Upon application and in exchange for a fee determined by the FMIC, provide insurance on outstanding MBS issued by the GSEs; and
		  ○ Facilitate, including through the operations of the GSEs or the utilization of the Platform, the—
		    ▪ Exchange of MBS issued by either GSE for covered securities;
		    ▪ Exchange of MBS issued by 1 GSE for those of the other GSE;
		    ▪ Issuance of MBS by both GSEs through a single issuer; and
		    ▪ Issuance of REMIC securities, consisting of MBS issued by the GSEs.
		• The FMIC shall develop and adopt procedures, standards, terms, and conditions, to enable the FMIC and each of the GSE, as applicable, to implement each of such FMIC activities.
		• In the development and adoption of the procedures, standards, terms, and conditions, the FMIC shall consider the effect of each activity with respect to the
				such exchanges as Ginnie Mae considers appropriate, except that Ginnie Mae shall provide that in such exchanges the GSE MBS securities shall receive a risk weight of zero.
				
				§ 306 Ginnie Mae Authority Regarding Timing
				Authority
				The Director may extend any deadline in §§ 301 (GSE new business limitations), 303(a) (continuing the conservatorships), 304(a) (mandatory receivership), or § 305 (charter repeals), but only if the Director—
				• Makes a determination, after consultation with the Federal Reserve, that such deadline is posing significant risk to the housing market; and
				• Causes notice of such determination to be published in the Federal Register.
				
				Extensions
				• The first such extension shall be for a period of an additional 2 years.
				• If, after the first extension, the Director makes a determination after consultation with the Federal Reserve, that such deadline is posing significant risk to the housing market, the Director may extend the deadline an additional 2 years.
				• If, after the second extension, the Director makes a determination after consultation

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		following: o Lender access to the secondary mortgage market. o The liquidity and trading price of existing GSE MBS. o The ability of market participants and the GSEs to issue new MBS. o The costs to the GSEs or the FMIC to exchange, restructure, or insure MBS. <u>Report to Congress</u> Before the agency transfer date, the FHFA Director shall submit a study considering the feasibility of activities under the FMIC's authority to insure outstanding MBS to the Senate Banking and House Financial Services Committees. Following the agency transfer date, the FMIC shall provide updates on such activities in the transition plan (and in each annual update thereof) required under § 602. <u>Division of Assets and Liabilities; Authority to Establish Holding Companies, Trusts, and Subsidiaries</u> • The wind down action and procedures required under subsection (a): o Shall include the establishment and execution of plans to manage assets toward the liquidation of liabilities and provide for an equitable division, distribution, and liquidation of the assets and liabilities of a GSE,		with the Federal Reserve, that such deadline is posing significant risk to the housing market, the Director may, upon the written agreement of the Federal Reserve Chairman and the Treasury Secretary, and in consultation with the HUD Secretary, extend the deadline an additional year, and annually thereafter utilizing the same process until the Director makes a determination that such deadline does not pose a significant risk to the housing market. <u>Reports</u> If the Director extends any deadline, until the charters are repealed, the Director shall report monthly to Congress regarding the transition of the GSEs, the status of the business of the GSEs, and their market share.

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		including any infrastructure, property, including intellectual property, historic data, platforms, or any other thing or object of value, provided such plan complies with the requirements of this Act and any amendments made by this Act; ○ May provide for the establishment of— ▪ A holding corporation organized under the laws of any state for the purpose of winding down one GSE or both GSEs; ▪ 1 or more trusts to which to transfer— ♦ Outstanding debt obligations one GSE or both GSEs; or ♦ Outstanding mortgages held for the purpose of collateralizing MBS guaranteed by one GSE or both GSEs; and ▪ One or more subsidiaries or joint ventures with private entities for the purposes of facilitating an orderly wind down of one GSE or both GSEs and the transition to the new housing finance system; ○ May include the sale as a going concern of any holding company,		

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		trust, subsidiary, or joint venture with a private entity established by a GSE under this subsection; and o May provide that any holding company, trust, subsidiary, or joint venture sold as a going concern may be utilized to facilitate the formation of— ▪ A small lender mutual under § 315; ▪ An approved guarantor; ▪ An approved multifamily guarantor; ▪ An approved aggregator; or ▪ The Securitization Platform. • Any holding company, trust, subsidiary, or joint venture established by a GSE before or after the agency transfer date is eligible to be sold by the FHFA as a going concern for the purposes described in this section. <u>Recoupment by Senior Preferred Shareholders</u> • The wind down of each GSE shall be managed by the FMIC, to obtain resolutions that maximize the return for the senior preferred shareholders, to the extent that such resolutions— o Are consistent with the goals of facilitating— ▪ a deep, liquid, and resilient secondary mortgage market for		

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		single-family and multifamily MBS to support access to mortgage credit in the primary mortgage market; and ▪ an orderly transition from housing finance markets facilitated by the GSEs to housing finance markets facilitated by the FMIC with minimum disruption in the availability of loan credit; ○ Are consistent with applicable Federal and State law; ○ Comply with the requirements of this Act and the amendments made by this Act; and ○ Protect the taxpayer from having to absorb losses incurred in the secondary mortgage market. • If FHFA makes the determination below, the FHFA may conduct a sale, exchange, license, or other disposition for value of any line of business of a GSE, or any function, activity, assets, intellectual property, or service of a GSE, as a going concern. Such a sale is permitted if the FHFA determines that the sale, exchange, license, or other disposition for value — ○ Is consistent with the goal of an orderly transition from housing finance markets facilitated by the enterprises to efficient housing finance markets facilitated by the		

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		FMIC with minimum disruption in the availability of loan credit; ◦ Does not impede or otherwise interfere with the ability of the FHFA or the FMIC to carry out the functions and requirements of this Act; ◦ Does not transfer, convey, or authorize any guarantee or Federal support, assistance, or backing, implicit or explicit, related to any such business line, function, activity, or service; ◦ Will maximize the return for the senior preferred shareholders as required under this subsection; and ◦ Would not result in an uncompetitive primary or secondary mortgage market or otherwise limit competitiveness in the primary or secondary mortgage markets. • FHFA shall conduce a sale for value of each GSE's historic data, including loan-level historical performance data. FHFA may require that the purchaser: ◦ Is the FMIC or Securitization Platform; ◦ Makes the historic data available to the public in a searchable and easily accessible format as promptly as practicable; and ◦ Takes appropriate steps to ensure the privacy of consumers, minimizes the		

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		collection and storage of personally identifiable financial information, and considers statuses, rules, and regulations relating to the privacy of consumer credit information and personally identifiable financial information.		

Portfolio Caps	**§ 104(a) Limitations on GSE Authority**
	The 1992 Act is amended by adding § 1369E**:** No GSE shall own mortgage assets in portfolio in excess of—
	• As of December 31, 2013, \$550,000,000,000; or
	• As of December 31 of each year thereafter, 85% of the aggregate amount of mortgage assets the GSE was permitted to own as of December 31 of the immediately preceding calendar year.
	In no event shall a GSE be required to own less than \$250,000,000,000 in mortgage assets.
	
	Mortgage Assets means, with respect to a GSE, assets consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of REMICs and similar assets, in each case to the extent such assets would appear on the balance sheet of such GSE in accordance with GAAP in effect in the U.S. as of September 7, 2008, and
		§ 605 Portfolio Reduction
		• On December 31 of the year after the date of enactment, and on December 31 of each year thereafter, until each GSE reaches the allowable size of the retained single-family portfolio, each GSE shall not own single-family mortgage loan assets in excess of 85% of the aggregate amount of the single-family mortgage loan assets that the GSE was permitted to own as of December 31 of the immediately preceding calendar year. [*See also* the end of § 701, which excludes limited multifamily loans.]
		• Not later than the system certification date, the FMIC shall establish an allowable amount of GSE-owned single-family mortgage loan assets in an amount equal to the amount necessary to facilitate—
		  ○ The orderly wind down of the GSEs; and
		  ○ Appropriate loss mitigation on any legacy guarantees of the GSEs.
		• For purposes of this section, *mortgage*
			§ 505 Portfolio Reduction
			• Each GSE shall not own, as of any applicable date, mortgage assets in excess of—
			  ○ As of December 31, 2014, \$552,500,000,000; and
			  ○ On December 31 of each year thereafter until the NMFA certification date, 85% of the aggregate amount of the mortgage assets that the GSE was permitted to own as of December 31 of the immediately preceding calendar year.
			• On December 31 of the year in which the NMFA certification date occurs, the NMFA shall establish an allowable amount of GSE owned mortgage assets in an amount equal to the amount necessary to facilitate—
			  ○ The orderly wind down of the GSEs; and
			  ○ Appropriate loss mitigation on any legacy guarantees of the GSEs.
			• For purposes of this section, *mortgage assets* means, with respect to a GSE,	

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	without giving any effect to any change that may be made after that date, in respect of FAS 140 or any similar accounting standard.	*loan assets* means, with respect to a GSE, assets of such GSE consisting of mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage loan investment conduits, and similar assets, in each case to the extent that such assets would appear on the GSE's balance sheet in accordance with GAAP as in effect in the U.S. as of September 7, 2008 (as set forth in the opinions and pronouncements of the Accounting Principles Board and the AICPA and statements and pronouncements of FASB from time to time, and without giving any effect to any change that may be made after September 7, 2008, in respect of SFAS 140 or any similar accounting standard.	assets of such GSE consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of REMICs and similar assets, in each case to the extent such assets would appear on the balance sheet of such GSE in accordance with generally accepted accounting principles and held for the benefit of the GSEs.	
G-Fee Limits	**§ 104(b) Limitations on GSE Authority** The 1992 Act is amended by adding § 1327(f): • Notwithstanding any other provision of this section, the Director shall ensure, pursuant to an annual review, that each GSE charges a g-fee, in connection with any mortgage guaranteed after enactment, in an amount that the Director determines is equivalent to the amount that the GSE would charge if it were held to the same capital standards as private banks or financial institutions.			

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	• At least annually, the Director shall review each GSE's g-fees and determine how such fees compare to the amount determined by the Director as what it would charge if it were held to the capital standards of private banks or financial institutions. If the Director determines that a GSE charged lower g-fees, the Director shall, by order, require the GSE to increase such fees as the Director determines necessary to equal what the GSE would charge if it were held to the capital standards of private banks or financial institutions. • To determine the amount of any such increase, the Director shall establish a pricing mechanism as the Director considers appropriate, taking into consideration current market conditions, including the GSE's current market share, and any data collected pursuant to 12 U.S.C. § 4514a (FHFA's authority to require reports from the GSEs and FHLBs).			
Multifamily Findings			**§ 602 Findings** Congress finds the following: • Broad housing finance reform is necessary to provide stability and certainty to the housing market, and to protect taxpayers from future losses. • The multifamily housing businesses of Fannie Mae and Freddie Mac maintained	

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			appropriate underwriting standards during the recent housing bubble, and, as a result, did not incur significant losses during the financial crisis. • Due to the strong performance of their multifamily housing businesses, Fannie Mae and Freddie Mac were able to play an important countercyclical role in the multifamily housing market by increasing their financing for multifamily housing projects at the same time that private lenders were pulling back from the multifamily housing market. • The multifamily businesses of Fannie Mae and Freddie Mac have each developed successful risk-sharing programs that provide substantial protection for taxpayers by requiring private market entities to share losses with the GSEs. • Broad housing finance reform should strive to preserve the successful multifamily risk-sharing programs that Fannie Mae and Freddie Mac have developed. • In the context of broad housing finance reform that replaces Fannie Mae and Freddie Mac with a government-backed reinsurance program, the best way to ensure the continuation of the successful multifamily risk-sharing programs that Fannie Mae and Freddie Mac have	

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			developed is to— o Transfer Fannie Mae and Freddie Mac's multifamily housing businesses to the Issuer; o Subject the multifamily platform(s), as part of the Issuer, to supervision and oversight by the NMFA; and o Allow the multifamily platform(s), as part of the Issuer, to purchase catastrophic reinsurance from a government-backed agency, subject to minimum loss-sharing requirements that protect taxpayers from future bailouts. • The NMFA and the MIF should serve as the regulator and reinsurer for the multifamily platform(s) created by this Act as part of the Issuer.	
Multifamily Definitions			**§ 603 Definitions** For purposes of this Act, the following definitions shall apply: *Approved multifamily lender* means a lender that is approved by the Issuer under such rules as the NMFA provides. *Covered multifamily security* means a mortgage-backed security— • Collateralized by eligible multifamily mortgages; and • Which is eligible for insurance by the MIF pursuant to § 611.	

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			Eligible multifamily mortgage means a mortgage that— • Is secured by a property comprising five or more dwelling units; and • Is originated by an approved multifamily lender in accordance with the underwriting standards established by the NMFA under § 609(b)(2) of this Act. *Multifamily Platform* means the entity established in § 604 of this Act. *Multifamily Platform certification date* means the date on which the Issuer certifies that the Multifamily Platform is operational and able to perform the functions described in this Act, which date shall not be later than 5 years after enactment, except that Treasury may extend such 5-year period for not more than 12 additional months.	
Multifamily Subsidiaries		**TITLE VII--MULTIFAMILY** **§ 701 Establishment of Multifamily Subsidiaries** <u>Formation and Governance of Multifamily Subsidiaries</u> • The FHFA Director, in consultation with Treasury, shall direct the GSEs each to develop a plan, not later than 180 days after the date of enactment, to establish a multifamily subsidiary for purposes of expeditiously meeting the multifamily		**§ 401 Establishment of Multifamily Subsidiaries** <u>Formation and Governance</u> • The Ginnie Mae Director, in consultation with Treasury, shall direct the GSEs to develop a plan, within 180 days after enactment, to each establish a multifamily subsidiary to expeditiously— o Provide sufficient multifamily financing in the primary, secondary, and tertiary geographical markets,

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		market minimum criteria required under § 601. • Pursuant to § 604, FHFA shall direct each GSE to establish a multifamily subsidiary not later than 1 year after the date of enactment. <u>Transfer of Functions</u> • Notwithstanding title VI or any other provision of law, effective on the date on which the Fannie Mae multifamily subsidiary is established, all employees, functions, activities, infrastructure, property, including the DUS and Servicing Lender Program and other intellectual property, platforms, technology, or any other object or service of Fannie Mae necessary to the support, maintenance, and operation of its multifamily business shall be transferred and contributed, without cost, to the multifamily subsidiary. • In connection with such transfer, Fannie Mae shall contribute, in any form or manner the FHFA may determine, subject to the approval right of Treasury in the Senior Preferred Stock Purchase Agreement, any capital necessary to ensure that the multifamily subsidiary has, in the determination of the FHFA Director, sufficient capital to carry out its multifamily business, including the ability		including in rural markets and through a diversity of experienced multifamily lenders; and o Establish a competitive multifamily market for multifamily housing guarantors engaging in multifamily covered securities. • The Director shall direct the GSEs to establish the multifamily subsidiaries within 1 year of enactment. <u>Transfer of Functions</u> • Notwithstanding title III or VI or any other provision of law, effective when the multifamily subsidiary is established, all employees, functions, activities, infrastructure, property, including and intellectual property, platforms, technology, or any other object or service of the GSEs necessary to the support, maintenance, and operation of the GSEs' multifamily business shall be transferred and contributed, without cost, to each GSE's multifamily subsidiary. This includes transfer of: o The Delegated Underwriting and Servicing Lender Program (Fannie Mae); and o Capital Market Execution Program Series K Structured 2Pass-Through Certificates originated and offered under the Program Plus Lender

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		to obtain warehouse lines of credit. • In carrying out the transferred multifamily business, the multifamily subsidiary shall ensure that any such business continues to operate, as applicable, consistent with— o The DUS and Servicing Lender Program established by Fannie Mae; o Any other programs, activities, and contractual agreements of the GSEs that support the GSEs' provision of liquidity to the multifamily housing market; and o The provisions of this title. • Notwithstanding title VI or any other provision of law, effective on the date on which the Freddie Mac multifamily subsidiary is established, all employees, functions, activities, infrastructure, property, including the K Series Structured Pass-Through Certificates originated and offered under the Program Plus Lender Program and other intellectual property, platforms, technology, or any other object or service of Freddie Mac necessary to the support, maintenance, and operation of its multifamily business shall be transferred and contributed, without cost, to the multifamily subsidiary. • In connection with such transfer, Freddie Mac shall contribute, in any form or		Program (Freddie Mac). • In connection with the transfer, each GSE shall contribute, in any form or manner the Director may determine, subject to the approval right of Treasury in the Senior Preferred Stock Purchase Agreement, any capital necessary to ensure that each multifamily subsidiary has, in the determination of the Director, sufficient capital to carry out its multifamily business, including the ability to obtain warehouse lines of credit. • In carrying out the transferred multifamily business, each multifamily subsidiary shall ensure that any such business continues to operate, as applicable, consistent with— o The Delegated Underwriting and Servicing Lender Program established by Fannie Mae; o The Capital Market Execution Program Series K Structured 2Pass-Through Certificates originated and offered under the Program Plus Lender Program established by Freddie Mac; o Any other programs, activities, and contractual agreements of the GSEs that support their provision of liquidity to the multifamily housing market; and o The provisions of this title.

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		manner the FHFA may determine, subject to the approval right of Treasury in the Senior Preferred Stock Purchase Agreement, any capital necessary to ensure that the multifamily subsidiary has, in the determination of the FHFA Director, sufficient capital to carry out its multifamily business, including the ability to obtain warehouse lines of credit. • In carrying out the transferred multifamily business, the multifamily subsidiary shall ensure that any such business continues to operate, as applicable, consistent with— o The K Series Structured Pass-Through Certificates originated and offered under the Program Plus Lender Program established by Freddie Mac; o Any other programs, activities, and contractual agreements of the GSEs that support the GSEs' provision of liquidity to the multifamily housing market; and o The provisions of this title. <u>Multifamily Subsidiaries</u> • The multifamily subsidiaries established by the GSEs may retain a limited multifamily mortgage loan portfolio to— o Aggregate mortgage loans for pooled securities executions;		<u>Multifamily Subsidiaries</u> • The multifamily subsidiaries may retain a limited multifamily mortgage loan portfolio to— o Aggregate mortgage loans for pooled securities executions; o Implement pilot mortgage loan programs and other risk-sharing transactions and product modification testing; o Engage in the financing of properties with rent-regulatory restrictions, off-campus student housing, and senior and assisted living developments; and o Perform additional activities as may be established by the Director for facilitating the continuation of existing multifamily activities. • For purposes of expeditiously meeting the purposes of the subsidiaries, the multifamily subsidiaries shall not be subject to any portfolio reduction required under title III.

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		○ Implement pilot mortgage loan programs and other risk-sharing transactions and product modification testing; ○ Engage in the financing of properties with rent-regulatory restrictions, off-campus student housing, and senior and assisted living developments; and ○ Perform additional activities as may be established by the FMIC to facilitate the continuation of existing multifamily activities. • For purposes of expeditiously meeting the multifamily market minimum criteria required under § 601, the multifamily subsidiaries shall not be subject to the portfolio reduction required under § 605.		
Disposition of Multifamily Business		**§ 702 Disposition of Multifamily Businesses** <u>Authority to Manage Disposition of Multifamily Businesses</u> Notwithstanding any provision of title VI or any other provision of law, FHFA may, on or before the system certification date, manage the sale, transfer, or disposition for value of property, including intellectual property, technology, platforms, and legacy systems, infrastructure and processes of a GSE relating to the operation and maintenance of the multifamily business of a GSE. <u>Required Establishment of Well-Functioning</u>		**§ 402 Disposition of Multifamily Businesses** Notwithstanding any provision of title III or any other provision of law, the Director may, on or before the certification date, manage the sale, transfer, or disposition for value of property, including intellectual property, technology, platforms, and legacy systems, infrastructure and processes of a GSE relating to the operation and maintenance of its multifamily business. In exercising such authority, the Director shall manage any disposition of the multifamily business of a GSE in a manner consistent with— • The establishment of a well-functioning

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		Multifamily Covered Security Market In exercising such authority, FHFA shall manage any disposition of the multifamily business of a GSE in a manner consistent with— • The establishment of a well-functioning multifamily covered security market; • The provision of broad access to multifamily financing; and • Facilitating competition in the multifamily covered security market by— o Providing open access to performance information on the legacy multifamily business of a GSE; o Providing for reasonable licensing of the multifamily proprietary systems of a GSE; and o Setting market share limitations, fees, or additional capital standards on multifamily business assets that were sold, transferred, or disposed.		multifamily covered security market; • The provision of broad access to multifamily financing; and • Facilitating competition in the multifamily covered security market by— o Providing open access to performance information on the legacy multifamily business of a GSE; o Providing for reasonable licensing of the GSEs' multifamily proprietary systems; and o Setting market share limitations, fees, or additional capital standards on multifamily business assets that were sold, transferred, or disposed.
Approval of Multifamily Guarantors / Insurance		**§ 703 Approval and Supervision of Multifamily Guarantors** Standards for Approval • The FMIC shall develop, adopt, and publish standards for the approval by the FMIC of multifamily guarantors to— o Issue multifamily covered securities; and o Guarantee the timely payment of principal and interest on multifamily	**§ 610 Multifamily Mortgage Insurance** Insurance Authority Insurance for securities backed by multifamily loans shall be provided by the MIF. Deposits The MIF shall be credited with any— • Insurance fee amounts required to be deposited in the Fund by the NMFA; • G-fee amounts collected under subsection	

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		covered securities collateralized by eligible multifamily mortgage loans and insured by the FMIC. • The standards shall include— ○ The financial history and condition of the multifamily guarantor; ○ A requirement that the multifamily guarantor maintain capital levels as defined by the FMIC; ○ The capability of the multifamily guarantor's management; ○ The general character and fitness of the multifamily guarantor's officers and directors, including their compliance history with Federal and State laws and rules and regulations of self-regulatory organizations as defined in § 3(a)(26) of the Exchange Act as applicable; ○ The risk presented by the multifamily guarantor to the MIF; ○ The adequacy of insurance and fidelity coverage of the multifamily guarantor; ○ The ability of the multifamily guarantor to— ▪ Ensure that eligible multifamily mortgage loans that collateralize a multifamily covered security insured under this Act are originated in compliance with the requirements of this Act; ▪ Oversee multifamily servicers	(f) of this section [there is none; apparently means (d)]; and • Amounts earned on investments pursuant to subsection (g) of this section [there is none]. <u>Reserve Ratio Goals for MIF</u> The NMFA, consistent with its authority under § 203, shall endeavor to ensure that, with respect to multifamily lending and the capital dedicated to multifamily lending, the MIF attains a reserve balance— • Of 1.25% of the sum of the outstanding principal balance of the covered securities for which insurance is being provided under this title within 5 years of the Multifamily Platform certification date, and to strive to maintain such ratio thereafter, subject to the following; and • Of 2.25% of the sum of the outstanding principal balance of the covered securities for which insurance is being provided under this title within 12 years of the Multifamily Platform certification date, and to strive to maintain such ratio at all times thereafter. <u>Maintenance of Reserve Ratio; Establishment of Fees</u> • The MIF shall charge and collect a g-fee in connection with any insurance provided under this title, and the NMFA	

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		and special servicers conducting servicing activities on eligible multifamily mortgage loans, which may be governed under the terms of seller-servicer guides in effect at either of the GSEs on the date of enactment; and ▪ Oversee counterparties in credit risk-sharing transactions; ○ The capacity of the multifamily guarantor to take the first loss position, *pari passu* position, or transfer investment risk and credit risk to private market holders; ○ That the multifamily guarantor has the capacity to guarantee eligible multifamily mortgage loans in a manner that furthers the purposes of the FMIC as described in § 201(b)(5); ○ A requirement that the multifamily guarantor submit audited financial statements to the FMIC; ○ That the multifamily guarantor does not originate eligible multifamily mortgage loans and is not an affiliate of a person that actively engages in the business of originating eligible multifamily mortgage loans; and ○ A requirement that the multifamily guarantor has the capacity to meet the requirement of § 704.	may in its discretion increase or decrease such fee, to— ○ Achieve and maintain the reserve ratio goals; and ○ Fund the operations of the NMFA relating to multifamily lending. • In exercising such g-fee, the NMFA shall consider— ○ The expected operating expenses of the MIF relating to multifamily lending; ○ The risk of loss to the MIF in carrying out the requirements under this title; ○ The nature and level of the credit enhancement that private market entities are providing pursuant to the minimum loss-sharing requirement in § 611; ○ Economic conditions generally affecting the mortgage markets; ○ The extent to which the reserve ratio of the MIF relating to multifamily lending met— ▪ The reserve ratio set for the preceding 12-month period; or ▪ The reserve ratio goals; and ○ Any other factor that the NMFA determines appropriate. **§ 611 Catastrophic Insurance** <u>Authority</u> Subject to the minimum loss-sharing	

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		• To promote consistency and minimize regulatory conflict, the FMIC shall consult and coordinate with appropriate Federal and State regulators and officials when developing these standards.
		
		<u>Application and Approval</u>
		• The FMIC shall establish an application process, in such form and manner and requiring such information as the FMIC may require, for the approval of multifamily guarantors under this section.
		  ○ The FMIC shall establish internal timelines for its processing of applications under this section, including timelines for any action to approve or to deny an application under this section.
		  ○ Only a separately capitalized affiliate of an insured depository institution may be eligible to apply to become an approved multifamily guarantor. This shall not be construed to prohibit or otherwise restrict an entity that is not an insured depository institution from seeking to become an approved multifamily guarantor.
		  ○ The FMIC may establish an expedited application process for an applicant applying to become an approved multifamily guarantor,
			requirement below, the NMFA shall, upon application and in exchange for a fee in accordance with § 610, insure the timely payment of principal and interest on a covered multifamily security with respect to losses that may be incurred on such security.
			
			<u>Minimum Loss-Sharing Requirement</u>
			Prior to making any such commitment to provide insurance, the NMFA shall ensure that private market entities have agreed to take, in writing, in a form and manner acceptable to the NMFA—
			• The first at least 10% of losses on a pool of eligible multifamily mortgages collateralizing a covered multifamily security;
			• Losses on a covered multifamily security equal to at least 15% of the total losses on such security, subject to a *pari passu* loss-sharing agreement; or
			• At least a comparable amount of losses on a covered multifamily security, as determined by the NMFA.
			
			<u>Insurance in Severe Market Downturns</u>
			If the NMFA, in consultation with the Federal Reserve, Treasury, and HUD, determines that unusual and exigent circumstances have created or threatened to create an anomalous lack of mortgage credit availability within the housing markets that could materially and	

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		provided that any such applicant— ▪ Proposes to use a credit risk-sharing mechanism approved under subsection (c); and ▪ Otherwise meets the requirements of this section. • The FMIC may approve any application, provided the multifamily guarantor meets the established standards. • The FMIC shall have authority to deny any application if an officer or director of the multifamily guarantor has, at any time before approval been subject to a statutory disqualification pursuant to § 3(a)(39) of the Exchange Act or suspended, removed, or prohibited under FDIA § 8(g), prohibited pursuant to FDIA § 8(e)(6) or (7), subject to an action resulting in a written agreement or statement under FDIA § 8(u)(1), for which a violation may be enforced by an appropriate Federal banking agency, or subject to any final order issued under FDIA § 8. • The FMIC shall— ○ Provide prompt notice to a multifamily guarantor of the approval or denial of any application of the multifamily guarantor to become an approved multifamily guarantor under this section; ○ Publish a notice in the Federal	severely disrupt the functioning of the multifamily housing finance system of the U.S., the NMFA may provide insurance to any covered multifamily security regardless of whether such security has satisfied the minimum loss-sharing requirements, provided that the NMFA adjusts the g-fee paid to the MIF and capital requirements for the multifamily platform accordingly to protect taxpayers against the additional risk to the Fund, consistent with § 202. <u>Full Faith and Credit</u> The full faith and credit of the U.S. is pledged to the payment of all amounts which may be required to be paid under any insurance provided under this section. <u>Prohibition on Cross-Subsidization</u> Multifamily lenders shall not be required to recapitalize the Issuer as a result of a loss due to risks from single-family lending. Single-family lenders shall not be required to recapitalize the Issuer as a result of loses due to multi-family lending. **§ 612 Exemptions** • Consistent with § 205(c), the Multifamily Platform shall be exempt from all taxation imposed by the U.S., any territory, dependency, or possession of the U.S. or any State, county, municipality, or local taxing authority.	

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		Register upon approval of any multifamily guarantor; and o Maintain an updated list of approved multifamily guarantors on its website. <u>Credit Risk-Sharing Mechanisms</u> • The FMIC shall— o Consider and approve credit risk-sharing mechanisms that may be employed by an approved multifamily guarantor to manage the credit risk related to guarantees provided for multifamily covered securities; and o Approve any credit risk-sharing mechanism undertaken by a GSE as of the date of enactment of this Act, including— ▪ The Delegated Underwriting and Servicing Lender Program established by Fannie Mae; ▪ The K Series Structured Pass-Through Certificates originated and offered under the Program Plus Lender Program established by Freddie Mac; ▪ Any other program, activity, or contractual agreement of a GSE that supports the GSE's provision of liquidity to the multifamily housing market; and ▪ Any credit risk-sharing	All covered multifamily securities insured or guaranteed by the NMFA shall, to the same extent as securities that are direct obligations of or obligations guaranteed as to principal or interest by the U.S., be deemed to be exempt securities within the meaning of the laws administered by the SEC.	

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		mechanism based on such credit risk-sharing mechanisms undertaken by a GSE as of enactment, with modifications approved by the FMIC; • This shall not be construed to— o Prevent private market holders from taking a first loss position on multifamily covered securities guaranteed by an approved multifamily guarantor; or o Limit an approved multifamily guarantor from engaging in other forms of risk sharing using mechanisms that have not been considered or approved by the FMIC. • Each report required by § 302(b)(5) shall include a description of each credit risk-sharing mechanism approved by the FMIC pursuant to this subsection. • The FMIC shall— o Provide prompt notice to any person seeking approval for a credit risk-sharing mechanism of the approval or denial of that credit risk-sharing mechanism under this section; and o Make available on the FMIC's website updated information regarding approved credit risk-sharing mechanisms. • No counterparty that enters into a swap, as defined by § 1a of the Commodity		

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		Exchange Act, for purposes of structuring any credit risk-sharing mechanism that is approved by the FMIC pursuant to this section, which credit risk-sharing mechanism is designed to be used or is used by a private market holder to assume losses and to reduce the specific risks arising from losses realized under such credit risk-sharing mechanism associated with any multifamily covered security insured in accordance with §§ 303 or 305, shall be deemed, by reason of such swap transaction, to be a commodity pool, as defined in § 1a of the CEA. Before approving any credit risk-sharing mechanism that would be exempt from the CEA, the FMIC shall consult with the CFTC. • Any credit risk-sharing mechanism that is approved by the FMIC pursuant to this section, which credit risk-sharing mechanism is designed to be used or is used by a private market holder to assume losses and to reduce the specific risks arising from losses realized under such credit risk-sharing mechanism associated with any multifamily covered security insured in accordance with § 303 or § 305, shall be exempt from § 27B of the Securities Act of 1933. Before approving any credit risk-sharing mechanism that would be exempt from § 27B, the FMIC shall consult with the SEC.		

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		Requirement to Maintain Approval Status
		• If the FMIC determines that an approved multifamily guarantor approved under this section no longer meets the standards for such approval or violates the requirements under this Act, including any standards, regulations, or orders promulgated in accordance with this Act, the FMIC may—
		  ○ Suspend or revoke the approved status of the approved multifamily guarantor; or
		  ○ Take any other action with respect to such approved multifamily guarantor as may be authorized under this Act.
		• The suspension or revocation of the approved status of an approved multifamily guarantor shall have no effect on the status as a multifamily covered security of any multifamily covered security collateralized by eligible multifamily mortgage loans with which the approved multifamily guarantor contracted before the suspension or revocation.
		• The FMIC shall—
		  ○ Promptly publish a notice in the Federal Register upon suspension or revocation of the approval of any approved multifamily guarantor; and
		  ○ Maintain an updated list of such		

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		approved multifamily guarantors on the website of the FMIC.
		• In this subsection, the term "violate" includes any action, taken alone or with others, for or toward causing, bringing about, participating in, counseling, or aiding or abetting, a violation of the requirements under this Act.
		
		<u>Prudential Standards for Supervision</u>
		The FMIC shall prescribe prudential standards for approved multifamily guarantors in order to—
		• Ensure—
		  ○ The safety and soundness of approved multifamily guarantors; and
		  ○ The maintenance of approval standards by approved multifamily guarantors; and
		• Minimize the risk presented to the MIF.
		
		<u>Reports and Examinations</u>
		For purposes of determining whether an approved multifamily guarantor is fulfilling the requirements under this Act, the FMIC shall have the authority to require reports from and examine approved multifamily guarantors, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under FDIA§ 9(a).		

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		<u>Enforcement</u>
		The FMIC shall have the authority to enforce the provisions of this Act with respect to approved multifamily guarantors, in the same manner and to the same extent as the FDIC has with respect to insured depository institutions under FDIA § 8(b) through (n).
		
		<u>Capital Standards</u>
		• Pursuant to the requirement to establish capital and related solvency standards under § 309(b), the FMIC shall establish standards for approved multifamily guarantors as follows—
		  ○ The capital standard for eligible multifamily mortgage loans that collateralize FMIC-insured multifamily covered securities shall require an approved multifamily guarantor to hold 10% capital.
		  ○ An approved multifamily guarantor shall hold capital in an amount comparable to that required to be held by insured depository institutions and their affiliates with respect to their applicable aggregating activities.
		  ○ An approved multifamily guarantor shall maintain solvency levels adequate for it to withstand losses that it might incur in a period of economic stress, including national		

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		and regional multifamily housing price declines, such as those observed during moderate to severe recessions in the U.S. • For the purpose of the 10% requirement, the FMIC shall consider the extent, amount, and form of risk-sharing and risk mitigation through the use by approved multifamily guarantors of credit risk-sharing mechanisms approved pursuant to § 703(c). The FMIC shall allow such risk sharing and risk mitigation to fulfill required amounts of capital to be held while maintaining an appropriate structure of capital as determined by the FMIC. • For purposes of the 10% requirement, the FMIC shall seek to ensure equivalent capital treatment between approved credit risk-sharing mechanisms with similar performance histories. • To reflect the differences between single-family and multifamily businesses, the capital standards may differ from the capital standards established under § 311 for approved guarantors. • The FMIC shall conduct appropriate stress tests of approved multifamily guarantors that have total assets of more than $10,000,000,000, provided that such stress tests shall be— o Specifically tailored to the business		

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		model of the approved multifamily guarantor; and o Utilized to— o Ensure the safety and soundness of the approved multifamily guarantor; and o Minimize the risk the approved multifamily guarantor may present to the MIF. <u>Resolution Authority for Failing Multifamily Guarantors</u> • Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the FMIC shall— o Have the authority to act, in the same manner and to the same extent, with respect to an approved multifamily guarantor as the FDIC has with respect to insured depository institutions under 12 U.S.C. §§ 1821(c) through (s), 1822, and 1823 [conservatorship and receivership authority], while tailoring such actions to the specific business model of the approved guarantor, as may be necessary to properly exercise such authority under this subsection; o In carrying out any such authority, act, in the same manner and to the same extent, with respect to the MIF		

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		as the FDIC may act with respect to the Deposit Insurance Fund under such FDIA authorities; ○ Prescribe regulations governing the applicable rights, duties, and obligations of an approved multifamily guarantor placed into resolution under this section, its creditors, counterparties, and other persons, as FMIC deems necessary to properly exercise its conservatorship and receivership authority; ○ Consistent with such FDIA authorities provided to the FMIC, immediately place an insolvent approved multifamily guarantor into receivership; and ○ Upon placing an approved multifamily guarantor into receivership, treat FMIC-insured multifamily covered securities in the same manner as the FDIC treats deposit liabilities under FDIA § 11(d)(11)(A)(ii) and insured deposits under § 11(f), where the FMIC shall have the same right of subrogation as the FDIC has under § 11(g). • The FMIC may not exercise any such authority with respect to any approved multifamily guarantor unless the total amount of the expenditures by the FMIC and obligations incurred by the FMIC in		

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		connection with the exercise of any such authority with respect to such approved multifamily guarantor is the least costly to the MIF, consistent with the least cost approach specified in the FDIA, of all possible methods for meeting the FMIC's obligations under this Act and expeditiously concluding its resolution activities, subject to FDIA § 13 where the FMIC and Board of Directors have the same authority as the FDIC and its board. • The FMIC, in carrying out any authority provided in this subsection, shall prescribe regulations to ensure that any amounts owed to the U.S., unless the U.S. agrees or consents otherwise, shall have priority following administrative expenses of the receiver when satisfying unsecured claims against an approved multifamily guarantor, or the receiver therefor, that are proven to the satisfaction of the receiver. <u>Hearing</u> Upon notice of denial of an application for approval or upon a notice of suspension or revocation of the approved status of an approved multifamily guarantor, the applicant or approved multifamily guarantor shall be afforded a hearing under FDIA § 8(h) in the same manner and to the same extent as if the FMIC were the appropriate Federal banking agency, provided that the approved		

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		multifamily guarantor submits a request to the FMIC for a hearing not later than 10 days after the date on which the notice of denial, suspension, or revocation is published. <u>Prohibited Activity</u> An approved multifamily guarantor may not: • Originate eligible multifamily mortgage loans; or • Be an affiliate of a person that actively engages in the business of originating eligible multifamily mortgage loans. <u>Guarantors Required to Pay Claims</u> Subject to such standards as the FMIC may provide, an approved multifamily guarantor may not for any reason withhold payment of funds that would ensure holders of multifamily covered securities receive timely payment of principal and interest on multifamily covered securities. The FMIC shall by regulation develop a process for the mediation and resolution of disputed payment amounts.		
Multifamily Housing Requirement		**§ 704 Multifamily Housing Requirement** <u>In General</u> Each approved multifamily guarantor shall ensure, during each calendar year, that at least 60% of the rental housing units which are contained in the eligible multifamily mortgage loans that collateralize all multifamily covered securities guaranteed by each such approved		

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		multifamily guarantor during the previous 24-month period were, at the time of origination, affordable to low-income families.
		
		<u>Determination of Affordability of Rental Housing Units</u>
		For these purposes, the affordability of rental housing units contained in an eligible multifamily mortgage loan shall be determined at the time of loan commitment by using—
		• The most recent rent roll for an occupied property; or
		• In the case of rental housing units that are newly constructed or substantially rehabilitated, a final *pro-forma* rent roll.
		
		<u>Determination of Compliance</u>
		• The FMIC shall determine, during each calendar year, whether each approved multifamily guarantor has complied with the affordability requirement.
		• The FMIC may suspend or adjust the affordability requirement for an approved multifamily guarantor or guarantors—
		  ○ During a period of unusual and exigent market conditions in the multifamily housing market as determined pursuant to § 305; or
		  ○ Either—
		    ▪ Pursuant to information available to the FMIC		

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		demonstrating adverse market conditions in the multifamily housing market; or ▪ Pursuant to a written request to suspend or adjust the requirement made by an approved multifamily guarantor, which the FMIC may grant in whole or in part. • The FMIC may suspend or adjust the affordability requirement only if— o Market and economic conditions require such an action; or o Efforts to meet the requirement would result in— ▪ The constraint of liquidity in certain market segments; ▪ Over-investment in certain market segments; or ▪ Other consequences contrary to the intent of this section. The FMIC shall narrowly tailor any such suspension or adjustment to address the market conditions that prompted the suspension or adjustment. • The FMIC shall, promptly upon a decision to pursue a suspension or adjustment or upon receipt of a suspension or adjustment request, seek public comment for a period of 30 days. The FMIC shall make a determination regarding any proposed suspension or		

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		adjustment within 30 days after the public comment period. The FMIC may extend the determination period for a single additional 15-day period, but only if the FMIC requests additional information from the regulated entity or approved multifamily guarantor.
		• The FMIC shall review any suspension or adjustment at least annually to determine whether it satisfies the suspension or adjustment criteria.
		• The FMIC shall not less than annually, publish a list of all suspensions and adjustments, and seek public comment as to the continued necessity of such suspensions or adjustments.
		
		<u>Mixed Income Liquidity Study and Review</u>
		• Not later than 2 years after enactment, and periodically or as market conditions warrant thereafter, the FMIC shall conduct a study of liquidity in the market for financing the new construction or substantial rehabilitation of mixed-income properties containing multifamily units that—
		    o Otherwise qualify under the affordability requirement under § 704(a); and
		    o Are financed by tax-exempt bonds that are issued by a State or local housing finance agency.		

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		• The FMIC may adjust the affordability requirement under § 704(a), subject to the procedures provided under § 704(d)(2) through (5) for suspension or adjustment, if the FMIC finds based on a such study that—
		  ○ Liquidity is constrained in the market for eligible multifamily mortgage loans for such mixed-income properties; and
		  ○ It is necessary to foster liquidity in that market.
		
		<u>Rule of Construction</u>
		Nothing in this section shall be construed to authorize the FMIC to require an approved multifamily guarantor to exceed the 60% requirement of § 704(a).
		
		<u>Definitions; Applicability to GSEs</u>
		In this section—
		• *Approved multifamily guarantor* includes an enterprise or any multifamily subsidiary established pursuant to § 701;
		• *Multifamily covered security* includes a multifamily MBS guaranteed by a GSE or any multifamily subsidiary established pursuant to § 701; and
		• *Eligible multifamily mortgage loan* includes a multifamily mortgage loan collateralizing a security guaranteed by a GSE or any multifamily subsidiary		

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		established pursuant to § 701.		
Small Multifamily Properties		**§ 705 Establishment of Small Multifamily Property Program** <u>Pilot Program</u> The FMIC shall establish at least 1 pilot program, to be administered by the Office of Multifamily Housing, in consultation with the Office of Consumer and Market Access, to test and assess methods or products designed to increase secondary mortgage market access for multifamily properties comprised of not more than 50 units or with mortgages not exceeding $3 million (adjusted for inflation). <u>Activities</u> In administering the pilot program, the FMIC shall— • Review, and may approve, proposals from regulated entities or approved multifamily guarantors, including proposals focused on lending by small business lenders, to participate in the pilot program by carrying out activities to decrease barriers to secondary mortgage market access for multifamily properties comprised of not more than 50 units or with mortgages not exceeding $3 million (adjusted for inflation) through new risk-sharing, partnerships, or other mechanisms or incentives; and • Establish requirements governing the activities of the pilot program, including		

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		requirements with respect to— o Any mid-course alterations of activities permitted under the pilot program, information sharing, reporting, and evaluation of the results of a pilot program; and o The tracking of any allocations of amounts from the Market Access Fund. <u>Use of Market Access Fund</u> A regulated entity or approved multifamily guarantor that submits a proposal may request, as part of the proposal, allocations from the Market Access Fund as necessary to support its proposed activities. <u>Amendments to Pilot Program</u> The FMIC may amend such a pilot program as needed to accommodate the multifamily mortgage market. <u>Publication</u> The FMIC shall make publicly available the results of such a pilot program. <u>Requirement</u> The FMIC shall consider the results of such a pilot program for purposes of expanding and implementing new mechanisms to decrease barriers to secondary mortgage market access for multifamily properties comprised of not more than 50 units or with mortgages not		

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		exceeding $3 million (adjusted for inflation). <u>Limitation on Funding</u> The FMIC may not use funds from the MIF to fund any pilot program activities conducted by a regulated entity or approved multifamily guarantor under this section.		
Multifamily Housing Study		**§ 706 Multifamily Housing Study** The Office of Multifamily Housing established shall conduct a study on the expansion of the FHLBs Acquired Member Assets programs to eligible multifamily mortgage loans.		
Multifamily Housing Platform		**§ 707 Multifamily Platform Study** <u>In General</u> Not later than 18 months after the system certification date, the FMIC shall conduct a study on the need, feasibility, costs, and merits of creating a cooperatively-owned, nonprofit multifamily issuance platform to securitize eligible multifamily mortgage loans. <u>Content of Study</u> The study shall address— • Competition between existing approved multifamily guarantors; • The barriers to entry for new multifamily guarantors; • The costs associated with developing a new platform; • The funding of smaller-balance multifamily mortgage loans, including	**§ 604 Establishment of Multifamily Platform** <u>In General</u> The Issuer shall establish a separate group or entity within the Issuer to be known as the Multifamily Platform. <u>Purposes</u> The purpose of the Multifamily Platform is to— • Foster liquid, efficient, competitive, and resilient national multifamily housing finance markets; • Purchase, pool, and securitize eligible multifamily mortgages from approved multifamily lenders, and otherwise facilitate the issuance of covered multifamily securities; • Ensure equitable access to the secondary	

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		mortgage loans originated by credit unions and community and mid-size banks and other small-volume lenders in rural and other underserved communities; • Standardized definitions and reporting and payment requirements; • Stability in the multifamily lending market in times of stress; and • Such other information as the FMIC determines appropriate to further the purpose of the study. <u>Consideration</u> In conducting the study, the FMIC shall consider whether any identified need to establish a multifamily securitization platform can and will be met by the Platform established under § 321, or any subsidiary or affiliate thereof. <u>Report To Congress</u> Not later than 18 months after the system certification date, the FMIC shall submit the study to the Senate Banking and House Financial Services Committees.	mortgage market for all markets, including rural and underserved markets; • Facilitate credit loss mitigation on eligible multifamily mortgages; • Collect a g-fee in connection with any guarantee of timely payment of principal and interest on covered multifamily securities under this title; and • Provide a stable source of liquidity for the national multifamily housing markets in severe market downturns. <u>Authorized Activities</u> The Multifamily Platform is authorized to— • Purchase, service, sell, lend on the security of, and otherwise deal in eligible multifamily mortgages and covered multifamily securities, pursuant to commitments or otherwise; • Purchase insurance on a covered multifamily security from the NMFA under § 611; • Purchase, sell, receive, hold, and use real and personal property, and other assets necessary for the conduct of its operations; • Create, accept, execute, and otherwise administer in all respects such trusts as may be necessary to conduct the business of the Multifamily Platform; • Through the Issuer, issue covered multifamily securities; and	

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			• Perform all other functions and services as are necessary or incidental to the proper conduct of its business under this Act. Authority to Delegate Certain Functions to Members The Multifamily Platform may, in accordance with regulations promulgated by the NMFA, delegate underwriting and servicing functions that the Multifamily Platform is authorized to perform under this title, to approved multifamily lenders. Multiple Forms of Loss-Sharing Deals Required to be Completed Each Year The NMFA may require the Multifamily Platform to issue minimum amount, as determined by the NMFA, of covered multifamily securities each year which satisfy the minimum loss-sharing requirement under § 611(b). Affordability In any year, to the maximum extent practicable, at least 60% of the total dwelling units financed by mortgages purchased by the Multifamily Platform must be affordable to households earning not in excess of 80% of area median income, with adjustments for smaller and larger households as determined by the NMFA. The NMFA shall promulgate regulations to implement the requirements of	

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			this section. **§ 605 Transition** In General In accordance with the transition schedule established below, the NMFA shall transfer the appropriate functions, activities, infrastructure, property, including intellectual property, platforms, or any other object or service of a GSE relating to the multifamily guarantee business of a GSE, to the Multifamily Platform. Transition Schedule Not later than 12 months after the date of enactment of this Act, the NMFA shall develop and publish a schedule for transferring the systems, personnel, and assets of the GSEs' multifamily businesses to the Multifamily Platform. In developing the transition schedule, the NMFA shall seek, to the maximum extent possible, to minimize disruptions to the multifamily housing finance markets, and to preserve the going concern value of the GSEs' multifamily businesses. The transition schedule developed under this subsection shall establish a Multifamily Platform certification date. Initial Capitalization Amount Not later than 15 months after the date of enactment, the NMFA shall publish an Initial Capitalization Amount, which shall represent	

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			the capitalization that the NMFA determines the portion of the Issuer or such separate entity as the Issuer shall establish relating to the Multifamily Platform will require to begin operations, in accordance with the transition schedule, on the Multifamily Platform certification date. <u>Initial Capitalization Fund</u> Not later than 3 months after the NMFA publishes the Initial Capitalization Amount, the NMFA shall establish a segregated fund, to be known as the Initial Capitalization Fund. Beginning in the next calendar quarter after the Initial Capitalization Fund is established, the NMFA shall direct the GSEs to set aside and transfer, on a quarterly basis, the total net income attributable to each GSE's multifamily business to the Initial Capitalization Fund, until the GSEs have collectively transferred to the Initial Capitalization Fund an amount equal to the Initial Capitalization Amount. On the Multifamily Platform certification date, the NMFA shall transfer the funds held in the Initial Capitalization Fund to the Issuer. **§ 606 Membership** <u>Eligibility</u> Eligibility to participate as a member in the Multifamily Platform shall be limited to insured depository institutions and non-depository mortgage originators that— • Are, on the Multifamily Platform	

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			certification date, eligible to participate in either Freddie Mac's Program Plus Lender Program or Fannie Mae's Delegated Underwriting and Servicing Lender Program; or • Meet the standards established by the NMFA below. Standards for Approved Multifamily Lenders The NMFA shall develop, adopt, and publish standards for the approval by the Multifamily Platform of lenders to participate as members of the Multifamily Platform, which shall include standards with respect to— • The underwriting practices, procedures, and controls of the lender; • The financial history and condition of the lender; • The lender's ability to originate loans in different geographical markets, as well as the lender's ability to originate small multifamily loans; • The general character and fitness of the lender's management; and • Any other standard the NMFA determines necessary or appropriate. Review, Suspension or Revocation of Approved Status • The Issuer, or the NMFA, shall have the authority to review the status of any approved multifamily lender.	

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			• If the Issuer or the NMFA determines, in such a review, that an approved multifamily lender no longer meets the standards for approval, the NMFA may suspend or revoke the approved status of such lender. • The suspension or revocation of an approved multifamily lender's approved status shall have no effect on the status of any covered multifamily security. • An approved multifamily lender may appeal a decision of the Issuer or NMFA suspending or revoking the approved status of such servicer. <u>Nationwide Network of Multifamily Mortgage Lenders; Small Multifamily Mortgage Loans</u> The Multifamily Platform shall, to the maximum extent practicable, ensure that its membership provides the Multifamily Platform with access to a broad, nationwide network of multifamily mortgage lenders, which shall include a substantial number of approved multifamily lenders that— • Predominantly originate multifamily mortgage loans with a maximum original principal obligation amount that does not exceed $3 million, or $5 million in an area that is subject to a high cost area mortgage limit under title II of the National Housing Act (12 U.S.C. 1707 et seq.); or	

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			• Make a significant volume of such loans, as determined by the NMFA.
			
			§ 607 Governance of Multifamily Platform
			Board of Directors
			The management of the Multifamily Platform shall be vested in the board of directors of the Issuer, which shall include directors that represent Multifamily Platform members, as determined by the NMFA.
			
			Advisory Board
			There is established an Advisory Board for the Multifamily Platform, which shall be comprised of—
			• Members elected by the approved multifamily lenders, and who shall comprise at least the majority of the members of the Advisory Board; and
			• Independent members, appointed by the NMFA, who shall comprise not fewer than 1/5 of the members of the Advisory Board, of which—
			  o Not less than one member shall have professional or academic experience in low-income or very low-income multifamily housing;
			  o Not less than one member shall have professional or academic experience in rural multifamily housing; and
			  o Not less than one member shall have professional or academic experience	

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			in the financing of small multifamily housing loans. <u>No Preferences for Size</u> Approved multifamily lenders shall have equal voting rights on Advisory Board members and Issuer board members that represent the Multifamily Platform, regardless of the size of the individual approved multifamily lender. <u>Impartial Administration</u> The board of directors of the Issuer shall administer the affairs of the Multifamily Platform fairly and impartially and without discrimination. **§ 608 Capitalization; Funding** <u>Capital Structure Plan</u> Not later than 2 years after enactment, the NMFA shall, by regulation, establish a capital structure plan for the Multifamily Platform, which shall include— • A requirement that each member maintain a minimum capital contribution to the Multifamily Platform, the amount of which shall be determined by the NMFA, taking into account the minimum capital requirements under subsection (b); • A requirement that each member contribute an amount of capital to the Multifamily Platform based on either—	

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			- The volume of eligible multifamily mortgages that such member sells or submits for a guarantee through to the Multifamily Platform; or - The percentage of the unpaid principal balance of the Multifamily Platform's total new business purchases for which the member is responsible; and • A requirement that each member maintain a minimum capital contribution to the Multifamily Platform. <u>Minimum Capital Requirements</u> The NMFA shall, by regulation, establish risk-based capital requirements for the Multifamily Platform that ensure that the Multifamily Platform operates in a safe and sound manner, and maintains sufficient capital and reserves to support the operations of the Multifamily Platform during severe market downturns, as defined in § 611(c). <u>Authority to Establish Membership Fees</u> The Issuer shall have the authority to establish, charge, and collect fees, and in its discretion increase or decrease such fees, on members of the Multifamily Platform, in order to cover the costs of the continued operation of the Multifamily Platform. **§ 609 Oversight of Multifamily Platform** <u>Deputy Director</u>	

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			There is established within the NMFA the position of Deputy Director, who shall—
			• Be responsible for the Division of Multifamily Lending;
			• Be designated by the Director of NMFA; and
			• Have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of the multifamily housing finance system.
			
			<u>Prudential Supervision of Multifamily Platform</u>
			The NMFA shall establish, by regulation or guideline, prudential standards for the Multifamily Platform relating to—
			• The safe and sound operation of the Multifamily Platform, including—
			  o Risk-based capital requirements;
			  o Management of the Multifamily Platform's risk exposures, including market, credit, interest rate, liquidity, and operational risk exposures; and
			  o Adequate and well-tested disaster recovery and business resumption plans for all major systems;
			• Minimum underwriting criteria for eligible multifamily mortgages, which may include criteria based on—
			  o The LTV of a multifamily mortgage; and
			  o The applicable debt service coverage	

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			ratio of a multifamily mortgage; • The adequacy and independence of internal controls, including processes and policies to identify, monitor, and control credit and counterparty risk, including concentrations of counterparty risk; • The adequacy and maintenance of liquidity reserves, which shall include a requirement that the Multifamily Platform maintain an adequate reserve of unencumbered, high quality liquid assets, which reserve shall be sufficient to support— o The Multifamily Platform's portfolio investments in eligible multifamily mortgages and covered multifamily securities; and o The continued operation of the Multifamily Platform in the event that the NMFA orders a recapitalization of the Multifamily Platform; • Procedures for recapitalization, including the exercise of the right to require additional capital from approved multifamily lenders; • Investments and acquisitions of assets by the Multifamily Platform; and • Maintenance of adequate records. <u>Reports by and Examinations of Multifamily Platform</u>	

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			• The NMFA may require, by general or specific orders, the Multifamily Platform to submit reports, including financial statements, to keep the NMFA informed as to—
			  ○ The condition (including financial condition), management, activities, or operations of the Multifamily Platform, any approved multifamily lender, approved servicer, or any other regulated entity, as the NMFA considers appropriate; and
			  ○ Compliance by the Multifamily Platform, any approved multifamily lender, approved servicer, or any other regulated entity, with the requirements of this title.
			• The NMFA may also require, by general or specific orders, the Multifamily Platform, any approved multifamily lender, approved servicer, or any other regulated entity, to submit special reports on any of such report topics or any other relevant topics, if, in the judgment of the NMFA, such reports are necessary to carry out the purposes of this title.
			• The NMFA may conduct examinations of the Multifamily Platform or any subsidiary whenever the NMFA determines that an examination is necessary or appropriate, to keep the NMFA informed as to—	

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			o The nature of the operations and financial condition of the Multifamily Platform or any subsidiary; o The financial, operational, and other risks of the Multifamily Platform that may disrupt the liquid, efficient, competitive, and resilient national multifamily housing finance markets; and o Compliance by the Multifamily Platform with the requirements of this title. <u>Delegated Functions</u> • When the Multifamily Platform delegates to an approved multifamily lender the performance of any functions or services authorized to be performed by the Multifamily Platform under this title— o Such performance shall be subject to regulation and examination by the NMFA to the same extent as if such services were being performed by the Multifamily Platform; and o The Multifamily Platform shall promptly notify the NMFA of such delegation of functions or services to an approved multifamily lender. • The NMFA is authorized to issue such regulations and orders as may be necessary to enable the NMFA to	

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			administer and to carry out the purposes of this section and to prevent evasions thereof. <u>Authority to Require Recapitalization</u> If the NMFA determines that the Multifamily Platform is in danger of depleting the capital dedicated to the Multifamily Platform due to defaults on multifamily lending, the NMFA shall order the Multifamily Platform to submit a plan for rebuilding the capital dedicated to multifamily lending. <u>Responsibility to Ensure Broad Market Access</u> The NMFA shall develop and enforce standards which ensure that the Multifamily Platform is serving, to the maximum extent practicable and consistent with the safe and sound operation of the Multifamily Platform, broad market access, consistent with section 215, including access for underserved markets, including public, federally assisted, and tax credit funded housing, and rural areas. In developing and enforcing such standards, the NMFA may not impose on the Multifamily Platform numerical quotas of specific multifamily mortgage originations. <u>Limitations on Portfolio of Multifamily Platform</u> Subject to § 214, the NMFA shall establish limitations on the Multifamily Platform's	

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			ability to hold eligible multifamily mortgages and covered multifamily securities on its balance sheet, which shall take into account the need for the Multifamily Platform to— • Aggregate eligible multifamily mortgages to be securitized in a covered multifamily security; • Engage in appropriate credit loss mitigation with respect to an eligible multifamily mortgage that is collateralizing a covered multifamily security; • Facilitate a reasonably liquid and orderly market for covered multifamily securities; and • Facilitate transactions involving affordable housing and the introduction of new multifamily mortgage products.	
General Provisions	**§ 107 Limitation of GSE Mortgage Purchases to QMs** Each GSE charter is amended by adding: Effective for mortgages with application dates on or after January 10, 2014, the GSE may only purchase, make commitments to purchase, service, sell, lend on the security of, or otherwise deal in a mortgage that is a QM. **§ 108 Prohibition Relating to Eminent Domain** Each GSE charter is amended by adding: Notwithstanding any other provision of law,	**§ 609 GAO Report on Full Privatization of Secondary Mortgage Market** Not later than 8 years after enactment, GAO shall submit a report to the Senate Banking and House Financial Services Committees on the feasibility of transitioning to and creating a fully privatized secondary mortgage market, including recommendations on how to best carry out any displacement of the insurance model established under this Act, and an assessment of the cost of mortgage credit and the impact on the economy if the secondary mortgage market is fully privatized.	**§ 802 Accounting Method** In any evaluation, oversight, audit, or analysis by the NMFA of the cost of the MIF, the insurance or guarantee activities of the NMFA required under this Act, including any fee or charge in connection with the provision of such insurance guarantee, or the financial transactions of the NMFA, the NMFA shall conduct any such evaluation, oversight, audit, or analysis based on the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.). **§ 803 Rule of Construction**	**§ 601 Rule of Construction for Senior Preferred Stock Purchase Agreements** Nothing in this Act shall be construed to alter, supersede, or interfere with the final ruling of a court of competent jurisdiction with respect to any provision of the Senior Preferred Stock Purchase Agreement or amendments thereof of a GSE. **§ 602 Treatment of CDFIs** Effective on the certification date, FHLB Act § 10(a) (12 U.S.C. 1430(a)) is amended— • To add, as a permissible purpose for long-

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	the GSE may not purchase or guarantee any mortgage that is secured by a structure or dwelling unit that is located within a county that contains any structure or dwelling unit that secures or secured a residential mortgage loan which mortgage loan was obtained by the State during the preceding 120 months by exercise of the power of eminent domain. For these purposes: • *Residential mortgage loan* means a mortgage loan that is evidenced by a promissory note and secured by a mortgage, deed of trust, or other security instrument on a residential structure or a dwelling unit in a residential structure, including a first or subordinate mortgage loan. • *State* includes D.C., Puerto Rico, and any U.S. territory or possession, and includes any agency or political subdivision of a State. **§ 323 Liability for Misleading Statements** • Any person who shall make or cause to be made any statement in any application, report, or document filed with the Agency or Utility pursuant to any provisions of this subtitle, or any rule, regulation, or order thereunder, which statement was at the time and in light of the circumstances under which it was made false or misleading with respect to any material	Not later than 6 months after that report, the FMIC shall submit to the Senate Banking and House Financial Services Committees a description of the legislative, administrative, and regulatory actions necessary to implement the recommendations of the report. **§ 801 Rule of Construction** Nothing in this Act shall be construed to alter, supersede, or interfere with the final ruling of a court of competent jurisdiction with respect to any provision of a GSE's Senior Preferred Stock Purchase Agreement or amendments thereof. **§ 802 Severability** If any provision of this Act or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby. **§ 803 Loan Transfer Notice** <u>In General</u> • TILA § 131(g)(2) (definitions for notice of new creditor, owner, or assignee) is amended by adding: ○ *Securitized residential mortgage* means any residential mortgage loan that serves as collateral for a fixed-income or other security that allows the security holder to receive	Nothing in this Act shall be construed to prohibit or otherwise restrict the ability of a holder of any loss position in any covered security insured under this Act from restructuring, retranching, or resecuritizing such position. **§ 804 Severability** If any provision of this Act or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.	term advances, funding CDFIs. • To permit advances to CDFIs to be collateralized by securities representing a whole interest in secured loans for small business, agriculture, or community development activities.

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	fact, or who shall omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall be liable to any person (not knowing that such statement was false or misleading or of such omission) who, in reliance upon such statement or omission, shall have purchased or sold a qualified security issued under the indenture to which such application, report, or document relates, for damages caused by such reliance, unless the person sued shall prove that such person acted in good faith and had no knowledge that such statement was false or misleading or of such omission. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit and assess reasonable costs, including reasonable attorneys' fees, against either party litigant, having due regard for the merits and good faith of the suit or defense. No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued. • The rights and remedies provided by this	payments dependent on the cash flow from the mortgage loans; ○ *Servicer* has the meaning in § 129A except that it includes a person who receives any payments from a mortgagor, including any amounts for escrow accounts, and makes payments to the owner or other third parties, including payments made after default, pursuant to the terms of the relevant contracts, and excludes State and local housing agencies. • RESPA § 5(c)(3) [meaning 6(c)(3)] (notice of mortgage servicing transfers) is amended to require transferee servicers to notify borrowers within 15 days of the transfer effective date: ○ The application of all payments and charges, including the date received, as allocated to principal, interest, escrow, and other charges; ○ The status of the loan as of the transfer date, including whether the loan is in default and whether any loss mitigation application the borrower submitted is pending; and ○ An itemization and explanation for all arrearages claimed to be due as of the transfer date. <u>Safe Harbor for Mistaken Payments; Fees</u> TILA § 131 is amended by adding: (g) *Treatment of Mistaken Loan Payments*		

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	part shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933 or the Securities Exchange Act of 1934 or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this subtitle shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of the person's actual damages on account of the act complained of. **§ 324 Unlawful Representations** It shall be unlawful for any person in offering, selling, or issuing any qualified security pursuant to this subtitle to represent or imply in any manner whatsoever that any action or failure to act by the Agency or Utility in the administration of this subtitle means that the Agency or Utility has in any way passed upon the merits of, or given approval to, any trustee, indenture, or security, or any transaction or transactions therein, or that any such action or failure to act with regard to any statement or report files or examined by the Agency or Utility pursuant to §§ 301 – 344 or any rule, regulation, or order thereunder, has the effect of a finding by the Agency or Utility that such statement or report is true and accurate on its face or that it is not false or misleading.	*After Transfer* During the 60-day period beginning on the effective date of transfer of the servicing of any securitized residential mortgage loan, a late fee may not be imposed on the consumer with respect to any payment on such loan, and no such payment may be treated as late for any other purpose, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) on or before the applicable due date, including any grace period allowed under the loan documents. (h) *Fee Waive upon Transfer* (1) In General. The creditor, new owner, or assignee of the mortgage loan, by itself or through its servicer, may not impose or collect— (A) Any fee that is not listed as having been incurred in the notice to the consumer of the transfer of servicing of a securitized residential mortgage loan; or (B) Any fee incurred prior to the effective date of servicing transfer that is not disclosed on a periodic statement provided to the consumer prior to the effective date of servicing transfer of a securitized residential mortgage loan. (2) Definitions. For purposes of this subsection: • *Securitized residential mortgage* means any residential mortgage loan that serves as collateral for a fixed-income or other		

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	§ 325 Contrary Stipulations Void Any condition, stipulation, or provision binding any person to waive compliance with any provision of §§ 301 – 344 or with any rule, regulation, or order thereunder shall be void. **§ 341 Conforming Amendment to FHLB Act** Section 11 of the FHLB Act (12 U.S.C. 1431) is amended by adding authority for the FHLBs to aggregate for securitization through the common securitization platform residential mortgage loans originated by any member of the FHLB, pursuant to regulations issued by the Director. **§ 342 Conforming Amendments to Dodd-Frank** Section 803(8)(A) of the Dodd-Frank Act (12 U.S.C. 5462(8)(A)) is amended to define FHFA as the "Supervisory Agency" with respect to a designated financial market utility that is subject to FHFA's exclusive supervision. **§ 343 Conforming Amendments to Securities Act of 1933** • Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended to define as exempt any qualified security, as defined in § 321.	security that allows the security holder to receive payments dependent on the cash flow from the mortgage loan; and • *Servicer* has the meaning in § 129A except that it includes a person who receives any payments from a mortgagor, including any amounts for escrow accounts, and makes payments to the owner or other third parties, including payments made after default, pursuant to the terms of the relevant contracts, and excludes State and local housing agencies. **§ 804 Determination of Budgetary Effects** The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage. **§ 805 Investment Authority to Support Rural Infrastructure** The following is added to the FHLB Act § 11: In furtherance of its mission under § 5, each FHLB is authorized to purchase investment grade securities from nonmember cooperative lenders that have received financing from the		

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	• Section 27B of the Securities Act of 1933 (15 U.S.C. 77z–2a) is amended by striking subsection (d). [The section, Dodd-Frank § 621(b), prohibits ABS underwriters, placement agents, initial purchasers, sponsors, or their affiliates, within one year of the first sale of the ABS, from having conflicts of interest with investors. Its subsection (d) provides that the section does not limit the application of the Dodd-Frank risk retention requirement.] **§ 344 Conforming Amendments to Title 18** • Section 709 is amended by adding: Whoever uses the words "National Mortgage Data Repository" or such other name as the FHFA Director may establish in the charter of the repository or any combination of words that appears to indicate that such use of the term conflicts with the exclusive operation of the repository created by §§ 331 – 335 of the National Mortgage Market Utility Act of 2013 as a business name or any part of a business name, or falsely publishes, advertises, or represents by any device or symbol or other means reasonably calculated to convey the impression that he or it is the repository created by §§ 331 – 335. • There is a new § 1041:	Federal Financing Bank and that possess demonstrated experience in making loans to rural cooperatives. Such securities shall be secured investments collateralized by loans of the cooperative lender. The purchase of such securities shall be at the sole discretion of the FHLB, consistent with any Board regulations, restrictions, and limitations. **§ 806 Consolidation of Similar Housing Assistance Programs** Report Within two years of enactment, the FMIC, HUD, Treasury, Agriculture, VA, Labor, and Interior shall jointly submit to Congress, and post online, a report to: • Identify and evaluate, based on need and appropriateness, specific opportunities to consolidate similar housing assistance programs, which may include the programs identified in the August 2013 GAO report; • Provide recommendations for legislative action to appropriately streamline, consolidate, or eliminate similar housing assistance programs; and • Identify opportunities for cross-agency collaboration of housing assistance efforts. Use of Administrative Authority • OMB shall coordinate with HUD,		

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	Whoever, with regard to any mortgage-related document (as defined in § 303 of the National Mortgage Market Utility Act of 2013) or the registration of any document or any interest in any such document pursuant to that Act, makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up or fails to disclose any material fact the disclosure of which is required by such Act or regulation, shall be fined under this title, or imprisoned not more than five years, or both.	Treasury, Agriculture, VA, Labor, and Interior to consider and evaluate opportunities to eliminate, consolidate, or streamline housing assistance programs. • OMB, in coordination with HUD, Treasury, Agriculture, VA, Labor, and Interior, shall eliminate, consolidate, or streamline any identified programs they find appropriate. • Any administrative cost savings resulting from such consolidation, elimination, or streamlining shall be transferred 50% to the Housing Trust Fund and 50% to the Treasury's general fund for deficit reduction. • OMB shall report to Congress annually any actions taken to streamline similar housing assistance programs, and the resulting cost savings. • Nothing in this section shall be construed to grant OMB, HUD, Treasury, Agriculture, VA, Labor, or Interior any additional authority to eliminate, consolidate, or streamline housing assistance programs that they did not have before enactment of this Act. **§ 807 CFPB Review; GAO Report** CFPB Review • Within 3 months of enactment, the CFPB shall, after reviewing relevant data and consulting with stakeholders, including		

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		representatives of the manufactured housing industry and of consumers and homeowners, consider and review the application of TILA § 103(bb) and (cc) (high-cost mortgage definition and mortgage originator definitions) to manufactured housing loans, including: o The APR coverage test for high-cost mortgages; o The total points and fees coverage test for high-cost mortgages; and o The definition of mortgage originator. • The CFPB shall not be required to conduct the review if it does not receive relevant data that was not submitted by January 31, 2013. • This shall not be construed to require the CFPB to engage in rulemaking, including rulemaking to modify any rule related to § 103(bb) or (cc). • Within 10 months of enactment, GAO shall report to Congress on the manufactured housing loan market, which shall analyze: o The loan products available in such market and the performance of those products, and shall include a review of the underwriting standards and portfolios of creditors that originate manufactured housing loans, such as depository institutions and finance		

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		companies; ○ The characteristics of borrowers that participate in the manufactured housing loan market, including: ▪ The borrower's creditworthiness; ▪ The borrower's usage pattern; and ▪ The process for evaluating and comparing loan products prior to purchase; and ○ The potential impact on access to mortgage credit for manufactured housing loans if § 103(bb) and (cc) were applied to manufactured housing loans, including: ▪ The APR coverage test for high-cost mortgages; ▪ The total points and fees coverage test for high-cost mortgages; and ▪ The definition of mortgage originator. ▪ Delinquency and default in the manufactured housing loan market; and ▪ Competition in the manufactured housing loan market.		

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Reforming the U.S. Housing Finance System

An Evaluation of the Prospects for Reforming Fannie Mae and Freddie Mac

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Introduction

Reforming Fannie Mae and Freddie Mac is a significant element of the administration's broader reform efforts to reengineer the U.S. housing finance system, which comprises more than 15% of the country's gross domestic product. The administration's reform proposals will likely touch on a broad number of participants in the housing system, ranging from Fannie Mae, Freddie Mac, the Federal Housing Administration (FHA), Ginnie Mae, the Federal Home Loan Bank (FHLB) System, the Rural Housing System (RHS), and Community Development Financial Institutions (CDFIs), to the housing processes and systems, which drive the mortgage origination, underwriting, securitization and after-market support of mortgages.

Background

The Housing System Landscape

Fannie Mae and Freddie Mac

Together, Fannie Mae and Freddie Mac have lost $224.7 billion since the onset of the financial crisis, which has triggered the injection of more than $150.3 billion of taxpayer funds to preserve the enterprises' solvency. The Congressional Budget Office projects that the taxpayers' losses on the GSEs will ultimately exceed $380 billion, making this the largest federal bailout ever. Other analysts suggest the losses on Fannie Mae and Freddie Mac could approach $1 trillion, if default and foreclosure rates remain high and property values continue to fall. These estimates vary largely because of the three different kinds of losses generated by the enterprises, including those (i) linked to the GSEs' $5 trillion of mortgage-backed securities (MBS) and loan guarantees; (ii) resulting from regular, ongoing operations in a declining housing market; and (iii) related to the GSEs' operating as de facto government agencies, subsidizing foreclosure-prevention efforts.

The GSEs' losses are destined to increase, as the enterprises dispose of growing levels of real estate owned. Fannie Mae's and Freddie Mac's losses on real estate owned (REO) are exacerbated by their geographic concentration in the hardest hit markets in the economic downturn—specifically Arizona, California, Florida, and Nevada. More than 42% of Freddie Mac's REO portfolio consists of properties in these four states, with a heavy concentration in California (20%). Similarly, Fannie Mae's REO portfolio is heavily concentrated in these four states (32.4%), with 12.9% of their portfolio located in California.

	Fannie Mae	Freddie Mac
Non-performing Assets on 06/30/10	$217.2 billion	$118.7 billion
% Total mortgage loans	7.29%	6.30%
Serious Delinquencies on 6/30/10		
Single-Family Mortgages	4.99%	3.96%
Multi-Family Mortgages	0.80%	0.28%
Real Estate Owned on 06/30/10		
Number of properties	129,310	62,190
Carrying value of REO	$13.0 billion	$11.3 billion
Disposal severity ratio	34.3%	38.0%
Fair Market Value on 6/30/10	($138.0 billion)	($46.3 billion)

Sources: Fannie Mae 2010 Second Quarter Credit Supplement, 08/06/10;
Freddie Mac 2010 Second Quarter Financial Results Supplement, 08/09/10

Federal government agencies—Fannie Mae, Freddie Mac, and HUD—own in aggregate more than 46% of the nation's REO inventory, totaling 478,000 units, according to a June analysis by Radar Logic, prior to the release of second quarter results. In an analysis of mortgage delinquencies, Radar Logic projects the government's REO holdings may ultimately exceed 3.0 million units, as serious mortgage delinquencies (5 million homeowners) and 30 to 90 day delinquencies (2.3 million homeowners) move through the resolution process (and assuming a 35% cure rate). Zillow estimates that the federal government's losses on the foreclosure pipeline could exceed $300 billion, which would be borne by Fannie Mae, Freddie Mac, and FHA, unless commercial banks are compelled to take the losses through forced loan buybacks.

The U.S. Government's Potential REO Inventory	
30-90 Days Delinquent	1,032,000
90 Days Delinquent or in Foreclosure Process	1,820,000
REO	219,000
Total	3,071,000
Average Loan Value	$200,000
Total Loan Value of REO and Foreclosure Pipeline	$614 Billion
Average Discount in REO Sale Price Relative to Loan Value	40%
Loss to Tax Payer from REO Sales	$246 Billion
Short Sales (25% of Foreclosure Pipeline)	1,097,000
Total Loan Value of Homes Sold in Short Sales	$219 Billion
Average Discount in Short Sale Price Relative to Loan Value	40%
Loss to Tax Payer from Short Sales	$88 Billion
Total Losses to Taxpayer From Short and REO Sales	$333 Billion

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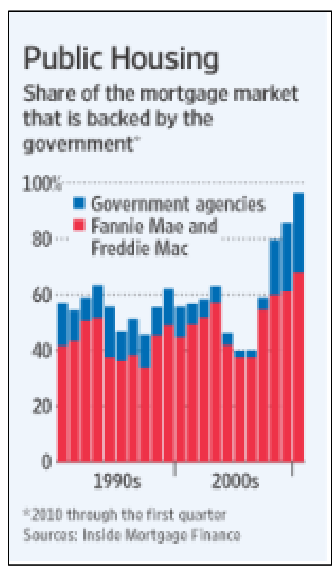
Although loan servicers and the GSEs have expended great efforts to help mitigate foreclosures through the Home Affordable Modification Program and Home Affordable Refinance Programs, only 341,000 permanent loan modifications have been completed with an additional 468,000 active trial modifications pending. According to Fannie Mae's March 31st disclosure, the re-default rate for the company's modified loans averaged 54%, six months after modification. As a result of loan modification efforts, the average time it takes for a homeowner who defaults on their mortgage to lose their property to foreclosure has increased 75%—from 251 days in January 2008 to 438 days in April 2010—further increasing the GSEs' losses on foreclosures, which averaged 44% (of the unpaid principal balance of REO properties sold) and 39% for Fannie and Freddie, respectively in the first quarter of 2010.

According to Zillow, the current median US home price is $204,900 is down 6.82% year-over-year on March 31st, while 23.3% of borrowers were underwater. The Zillow survey identifies 12 metro-markets in which 50% of area homeowners are underwater with heavy concentrations in California (5 metro markets), Florida (3), Nevada (2) and Arizona (1). Barring some unforeseen exogenous boost to housing, the price stability in the single-family real estate market will likely come to an end during the second half of 2010, as the unprecedented number of homes go into default and move through the foreclosure process.

FHA

Since 2006, FHA has expanded dramatically its presence in the mortgage market, increasing its originations from 3% to 30% of all mortgages in the first quarter of 2010. For the first time ever, FHA's mortgage originations in the first quarter, totaling $52.5 billion of home-purchase mortgages, exceeded that of Fannie and Freddie combined by more than 14%. FHA Commissioner David Stevens noted, "This is a market purely on life support, sustained by the federal government. Having FHA do this much volume is a sign of a very sick system."

On March 31, FHA insured nearly 6.2 million loans totaling $820 billion—of which 8.8% (536,858 loans) were severely delinquent and 12.23% were delinquent 30 days or more. Assuming the average FHA-insured loan balance of $132,300, FHA delinquent loan balances were an estimated $71.0 billion on March 31, 2010.



Federal Home Loan Banks

For nearly 80 years, the 12 FHLBs have served as a part of the U.S. housing finance infrastructure, providing a primary source of funding for its members. On June 30, these government-sponsored entities reported total assets of $937 billion and advances to members of $540 billion (collateralized largely by loan assets). In addition, the FHLB System has 7% of its assets ($67 billion) invested in mortgages that it acquired from member institutions. Approximately 80% of U.S. lending institutions relies on the FHLBs as a source of liquidity.

Over the past 20 years, the FHLB System has provided $3.7 billion of affordable housing grants to provide housing opportunities to underserved communities. For every $1 million that a FHLB lends, $14.3 million of additional housing units are built or rehabilitated, 158 jobs are created, and $24.6 million of general economic development is generated, wrote FHLB-Atlanta interim president Jill Spencer, in a comment letter to Treasury on reforming the housing finance system.

Challenges to Housing Reform

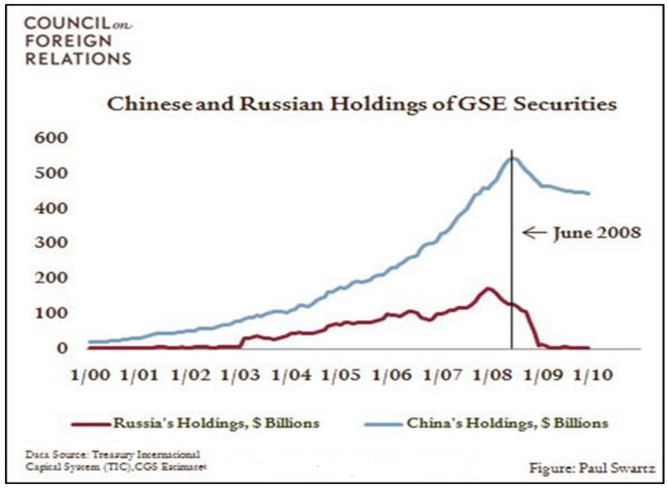
Market Dominance of GSEs

Complicating the policy options for reforming Fannie Mae and Freddie Mac is the mortgage market's heavy reliance on explicit government support of mortgages through the housing GSEs. Collectively, Fannie Mae, Freddie Mac, and FHA backed 96.5% of home mortgage originations during the first quarter of 2010, up from 90% a year ago. (The remaining non-government part of the origination market consisted of banks' portfolio lending, consisting largely of jumbo mortgages.) In aggregate, Fannie Mae and Freddie Mac's combined balance sheets of $1.6 trillion and mortgage guarantees comprise 53% of all outstanding U.S. mortgage debt today. Moreover, FHA's $820 billion of insured mortgages expands the government's mortgage guarantee to nearly 68% of all outstanding mortgages. Together, Fannie Mae, Freddie Mac, and FHA have become the mortgage industry's wastebasket for toxic mortgage debt. Simply put, the U.S. mortgage market would not function without the federal government's active involvement at this time.

Foreign Ownership of GSE debt and MBS

Foreign ownership of GSE debt and mortgage securities—not to mention that of the Federal Reserve Bank and Treasury—further complicate and likely limit the options for GSE reform. Prior to the 2008 financial crisis, Fannie Mae and Freddie Mac served as convenient off-budget tools for policymakers to subsidize housing through implicit guarantees of the GSEs. In September 2008, the government's implicit guarantee became explicit with the failure of Fannie Mae and Freddie Mac.

In his recently published memoir, former Treasury Secretary Henry Paulson recounted how Russian officials approached Chinese officials in the summer of 2008, suggesting that both countries sell large blocks of GSE debt as a means of forcing the U.S. to explicitly back the GSEs' issuances.



Although Paulson claimed that China opted not to collaborate with Russia, both countries reduced their investments in GSE debt by some $220 billion during the last six months of 2008 ($170 billion by Russia and $50 billion by China). This fire sale, in turn, drove spreads between agency debt and U.S. Treasury debt higher, which forced U.S. banks to quickly provide more collateral to support their borrowings in the repo market, as the value of their collateral (GSE debt) declined. This episode, which clearly illustrates the political risk that the U.S. government faces in its heavy dependence on foreign borrowing, also has implications on GSE reform. What policy options will the owners of agency debt determine are acceptable? When, if ever, will foreign investors accept implicit guarantees, when investing in U.S. mortgage products?

Impact of the Dodd-Frank Act

To address some of the excesses in the mortgage securitization market that contributed to the financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act attempts to remove incentives embedded in the "originate-to-distribute" securitization model by requiring MBS sponsors to retain 5% of credit risk inherent in the collateral assets. However, provisions in the bill carve out exemptions for assets issued or guaranteed by the U.S. government, any state, or agency—such as FHA, VA, and Farm Credit—which consist of qualified residential mortgage loans that conform to parameters to be established by regulation. (While Fannie Mae and Freddie Mac are not considered U.S. agencies, analysts expect the GSEs' conforming loans to be deemed qualified residential mortgages under the Dodd-Frank Act regulations that are to be written, and exempted from the 5% retention provision.) These "skin-in-the-game" provisions are expected to result in the predominance of "plain vanilla" mortgages, insured by FHA, Fannie Mae, and Freddie Mac, in the mortgage market, and further expand the role and dominance of these agencies, as the sole conduits for residential mortgage credit for the foreseeable future.

The Mortgage Interest Deduction

As Congress turns its attention to GSE reform, several other larger policy issues will take center stage—starting with housing subsidies and their impact on the federal budget. In a July 21st commentary, John E. Silvia, chief economist for Wells Fargo, wrote:

> "For some time, at least since the 1960s, public policy in the United States has been criticized as over-subsidizing housing relative to other forms of investment and saving by households and for society at large. For housing, there are special tax deductions and home improvement credits. In 1998, a special capital gains break was given to housing. Special lending agencies, the Government Sponsored Enterprises (GSEs), were set up, along with the Federal Housing Administration (FHA), to subsidize the secondary home mortgage market. Housing and housing credit has been mispriced so much and for so long that it is impossible to truly gauge the extent of the public subsidy of housing. What we do know is that there is very little true guidance of what housing is really worth, and therefore we remain very concerned that the scale of all public and private institutions that are committed to housing is a function of public subsidies as much as private demand. This is a risky proposition given the financial breakdown of the GSEs and the scale of federal debt today."

The country's growing budget deficits have triggered a policy debate over the cost of home mortgage interest deduction, which is expected to cost $637 billion over the five year period ending 2015, according to OMB. In addition, the exclusion of capital gains on primary residences is expected to cost $215 billion over the next five years with the deductibility of state and local property taxes for primary residences adding an additional $151 billion five-year cost to the federal government. Collectively, these subsidies will reduce federal revenue by over $1 trillion over a decade, representing more than 10% of the federal government's projected $9 trillion deficit. The administration's National Commission on Fiscal Responsibility and Reform will address this issue in its recommendations to Congress to address the country's fiscal challenges.

An indication of the Obama administration's position on the mortgage interest deduction is reflected in its 2010 budget, which proposed cutting the interest deduction for wealthy homeowners to generate a savings of $208 billion over a ten year period. According to the *Washington Post* reporter Zachary A. Goldfarb:

> "The administration's narrower view of who should own a home and what the government should to do to support them could have major implications for the economy as well as borrowers. Broadly, the administration may wind down some government backing for home loans, but increase the focus on affordable rentals."

Sustainability of Home Ownership

Congress will likely debate the sustainability of home ownership. Homeownership levels, which ranged from 63% to 65% from 1965 to 1995, peaked in late 2004 at 69% (entirely through debt financing). Federal Deposit Insurance Corporation (FDIC) Chairman Shelia Bair recently argued that homeownership levels were pushed to unsustainable levels during the housing boom and urged policymakers to revisit the unintended consequences of the nation's housing policy. If policymakers conclude that higher homeownership rates simply are not sustainable, then lawmakers may consider shifting subsidies from homeownership to the multifamily rental-housing sector.

The 30-Year Fixed-Rate Mortgage

As lawmakers consider GSE reform, both Democrat and Republican Members of Congress remain committed to the 30-year fixed-rate mortgage product. This mortgage product, argues former HUD economist Susan Woodward, is something Americans view "as a part of their civil rights." If so, the federal government's role in the mortgage market will remain, as federal subsidies are essential to preserving this mortgage product. No country—other than the U.S.—makes the 30-year fixed-rate mortgage product available to its citizens. Other related issues for policymakers to consider regarding the 30-year fixed-rate loan product include (i) who is targeted to receive the subsidy; (ii) the subsidy's cost; and (iii) how to deliver the subsidy efficiently and at no cost to the taxpayer.

TBA Market

Participants in the securitization market will urge policymakers to preserve the "To Be Announced" (TBA) trading market, which serves as the link between the primary and secondary markets and allows borrowers to lock rates for up to 90 days prior to closing (but exposes lenders to interest rate risk). Specifically, in the TBA market, lenders contract to sell loans that do not yet exist (the loans are to be announced) for securitization into a GSE MBS on a future, specified date up to 90 days before the loans settle. At the time of this trade, neither the eact pool, number of pools, or loans comprising the pool are known. Instead, the trade – in fact the entire market – is made possible only because of the fundamental assumption of the homogeneity and fungibility of the loans.

Importantly, the TBA market's homogeneity is made possible by (i) the conforming (Fannie Mae and Freddie Mac eligible) loan product, which is standardized with established and uniform underwriting guidelines and uniform loan documents; and (ii) the GSE guarantee, which equalizes the MBS in terms of credit risk. Market participants contend that any GSE "reform" which doefs not accommodate or provide a suitable replacement for the TBA market will undoubtedly reduce the mortgage originators' options to "rate lock" and likely increase mortgage costs to the end consumer.

Affordable Housing

The role and structure of the GSEs'—Fannie Mae, Freddie Mac, and the FHLBs—affordable housing goals will also be a contentious issue in the reform debate. Currently, 10% of the FHLBs' income is committed to an affordable housing fund that is then reinvested in affordable housing projects. The FHLB program is generally considered to be a success. Fannie Mae's and Freddie Mac's affordable housing goals are more complex and are set by their regulator annually. The GSE reform legislation passed in 2008 established an Affordable Housing Trust Fund and Capital Magnet Fund. While in conservatorship the GSEs' affordable housing commitments have been suspended, but the affordable housing issue will be a major point of contention, which will be debated along partisan lines in any reform effort. Republicans blame the affordable housing goals for "forcing" Fannie Mae and Freddie Mac to lower their underwriting standards and engage in funding risky loans, which they believe caused their massive losses.

Democrats and consumer advocates, who hotly contest this assertion, will work to ensure that the Affordable Housing Trust Fund survives in any final reform bill. Moreover, the Democrats will work to ensure that the reformed mortgage system generates fees dedicated to the Affordable Housing Trust Fund. Undoubtedly, the upcoming November elections will have an impact on the outcome of this issue. It is unclear, however, that the banking industry will engage on this issue, potentially opting instead to accept affordable housing as a cost of doing business, which will then be passed along to consumers.

Strengths and Weaknesses of the GSE Hybrid Model

Fannie Mae's and Freddie Mac's missions have been threefold: (i) facilitate the securitization of mortgages into MBS; (ii) stabilize and assist the secondary market for MBS; and (iii) support affordable housing, a responsibility assigned to the GSEs in the 1992 Federal Housing Enterprises Financial Safety and Soundness Act.

Historically, Fannie Mae and Freddie Mac have enjoyed a number of privileges under their federal charters and regulatory framework, including:

- Lower capital requirements than other financial institutions, which allowed the GSEs to maximize their use of leverage. (The 2008 GSE reform bill directed the regulator to eventually increase their capital requirements, but left the timing and level of capital that would eventually be required to the discretion of their regulator, the Federal Housing Finance Agecny (FHFA).

- Lower cost of capital, either through direct access to the Treasury, or in the debt markets, where the GSEs were perceived to have implied government backing. The GSEs' implied [and now explicit] federal guarantee of their debt allowed the GSEs to issue bonds whenever they needed for funds, regardless of market conditions, at interest rates lower than those granted to the best fully-private companies.

- Lower perceived level of risk borne by GSEs in the "eyes" of the market. With an explicit federal guarantee of GSE debt, investors did not judge Fannie Mae and Freddie Mac with the same risk standard that was applied to private companies, providing a benefit to both their debt and their stock. In turn, the GSEs' high leverage provided the enterprises exceptional returns on equity during prosperous times.

- Advantages in the capital market that gave the GSEs added operating flexibilities. Federal support allowed the GSEs to increase their financial flexibility by issuing callable long-term debt. The GSEs' debt securities were eligible for open-market transactions by the Federal Reserve Board, and for investment by insured banks and thrifts. The GSEs' debt securities were eligible for collateral for the federal government's deposits of tax revenues in banks.

- Favorable treatment of GSEs' MBS under Basel II. Historically, the GSEs' securities held by banks and thrifts required only a 20% risk weighting, as compared to the 50% risk weighting assigned to prudently underwritten private MBS under the Basel Accord. To date, no changes have been proposed to risk-weighting for agency MBS under Basel III.

- Line of credit with the Treasury. The Secretary of the Treasury is authorized to purchase up to $2.25 billion of their securities, effectively providing each GSE a $2.25 billion line of credit to the U.S. Treasury. The amount is not large, but the federal backing is unique.

- Exemption from state and local taxes.

- Exemption from filing with the SEC for purposes of the 1933 and 1934 Acts for debt offerings, saving both the expense of filing and the time needed to compile and write SEC disclosures. (The 2008 GSE reform bill repealed their exemption from the 1934 Act, but the exemption from 1933 Act remains.)

- Exclusive charters, which are a barrier to creation of new competitors and which ensure the GSEs' duopsony status cannot expire without direct Congressional action.

To evaluate GSE reform proposals, it is important to identify not only what changes need to be made to the enterprise models, but also what elements should be preserved. As government-sponsored entities that are publicly owned, the enterprises have successfully provided liquidity for the U.S. mortgage market, making possible the 30-year fixed-rate mortgage product. The GSEs implemented the standardization of the mortgage origination and of automated underwriting, created the credit scoring process, standardized the underwriting and securitization process, facilitated the TBA market, and established the standard for determining "acceptable" levels of credit risk. Fannie Mae and Freddie Mac have provided access to mortgage credit during economic downturns with the support of the Federal Reserve Board and Treasury. Prior to entering conservatorship, the GSEs were the largest players in the market for purchasing and securitizing multifamily loans, responsible for nearly one third of all multifamily debt, and they accounted for nearly 40% of the Low Income Housing Tax Credit projects across the country. The GSEs have also been large purchasers of state housing finance bonds; have partnered with non-profits to expand the secondary market for loans to low- and moderate-income buyers, and have made significant contributions to the low-income population, particularly in the metropolitan D.C. area, through their philanthropic activities.

The key disadvantage of the current GSE model is the moral hazard of the government's implicit guarantee of the enterprises. Specifically, the privately owned enterprises sought to expand their market share and profits through lower underwriting standards and distorted portfolio investments to maximize short-term profits. Ultimately, the taxpayers have borne the cost of the GSEs' moral hazard—$147.2 billion and growing. Some argue that the GSEs' implicit subsidy was not well-targeted to underserved borrowers, instead enriching select stakeholders, such as the GSEs' executives, GSE stockholders, realtors, and homebuilders. The GSEs' political power allowed the companies to avoid proper regulatory oversight, which permitted their rapid growth into "too big to fail" enterprises which resulted in cataclysmic losses.

In addition, despite the benefits that the GSEs brought to the mortgage market place, the GSEs, in their later years, stymied, rather than facilitated, advances in the mortgage system unless those advances specifically benefitted their bottom line.

On balance, the inherent weaknesses of the current GSE model to be addressed in reforming Fannie and Freddie include: (i) moral hazard arising from the government's implicit guarantee; (ii) concentration of risk, making the enterprises too big to fail (TBTF); (iii) the duopsony structure of Fannie and Freddie, which inhibited competition and innovation; (iv) inadequate capital; (v) weak regulatory oversight; (vi) lack of

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transparency of the loan underwriting process through the GSEs' automated underwriting system; (viii) GSEs' 37 broad patents, covering the loan underwriting process, automated underwriting systems, and cap-and-trade electronic systems, which have contributed to the enterprises' market dominance and have limited competition; and (vii) the enterprises' enormous political influence.

Fannie Mae and Freddie Mac Under Conservatorship

The GSE Agreements with Treasury

On September 6, 2008, Fannie Mae and Freddie Mac went into conservatorship and entered into agreements with Treasury (the Agreements) under which Treasury agreed to provide funding of up to $100 billion for each GSE, in exchange for dividends and other compensation to Treasury.[1]

On May 6, 2009, the Agreements were amended to increase amount of capital Treasury could supply, from $100 billion for each GSE to $200 billion for each.

On December 24, 2009, the Agreements were amended to remove the cap on possible Treasury funding. That cap now reads, for each GSE (emphasis added):

"Maximum Amount" means, as of any date of determination, the greater of (a) $200,000,000,000 (two hundred billion dollars), or (b) $200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012, and in the case of either (a) or (b), less the aggregate amount of funding under the Commitment prior to such date.[2]

The cap is $200 billion per GSE, or $400 billion in total, plus their Deficiency Amounts for 2010 through 2012, less amount of funding under Treasury's commitment, which began in 2008, through 2012. The amount Treasury funded under its commitment from inception through 2009 is $125 billion for both GSEs combined. While the amount of funding provided by Treasury for FY2010 through FY2012 is unknown, these funds are added to the cap and then backed out, so they may be ignored for this calculation.

The combined cap for both GSEs is $400 billion less $125 billion funded before 2010, for a total of $275 billion.[3] There is no sunset date by which Treasury must fund the GSEs. If a GSE were liquidated, Treasury's commitment would expire for that GSE. While Treasury is committed to preventing a GSE from having negative equity, there is no other requirement that it must commit all of its $275 billion by December 31, 2012.

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[1] www.ustreas.gov/press/releases/reports/seniorpreferredstockpurchaseagreementfnm1.pdf
[2] http://financialstability.gov/docs/HAMP/12242009/Fannie.pdf
[3] See this link for Treasury advances made prior to 2010: www.fhfa.gov/webfiles/15747/1Q10CapitalDisclosure52010.pdf

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Conservatorship vs. Receivership

The powers of a conservator and of a receiver are similar in that each has power to operate the GSE. A conservator for Fannie Mae or Freddie Mac is permitted to take necessary actions to put the GSE in a sound and solvent condition.

A receiver, but not a conservator, "shall" place the GSE in liquidation and "realize upon its assets" including through asset sales or through transferring assets to a limited-life regulated entity. If a receiver were to use a limited-life regulated entity, that entity would succeed to the GSE's charter. FHFA would be required to wind down the affairs of the limited-life regulated entity, although only Congress may revoke the charter.

A receivership may wind down a GSE, while a conservator is designed to restore a GSE and keep its charter intact. This difference will make the conservatorship route more attractive to policymakers and other stakeholders interested in the survival of one or both GSE charters.

Divesting Toxic Assets

Both a conservator and a receiver have authority to transfer or sell any asset or liability of the GSE "without any approval, assignment, or consent[.]"

The Agreements restrict the GSEs' ability to sell assets if they are not in receivership. There are two significant exceptions:

They may sell assets "in the ordinary course of business consistent, with past practice[.]" These are not defined terms. Relevant here is that there may not be anyone challenging whether an asset sale is permissible. They may also sell assets to shrink their portfolios as the Agreements require. The Agreements set a maximum portfolio size, but not a minimum. It is possible that asset sales in any amount would be permissible under this exception.

FHFA's actions as a conservator, such as selling GSE assets, "shall not be subject to the direction or supervision of any other agency of the United States or any State[.]" These existing authorities provide flexibility to deal with the GSEs' assets in a number of ways.

Treasury's Preferred Stock Dividends

The Agreements currently require the GSEs to pay 10% dividends to Treasury on the amount of the Treasury funding (plus ten percent of an initial $1 billion "liquidation preference" fee, although Treasury did not fund this amount). The dividend payments are costly to the GSEs, currently $1.9 billion and $1.3 billion quarterly for Fannie Mae and Freddie Mac, respectively. Recently, the National Association of Realtors called upon the Obama administration to eliminate the GSEs' dividend payments, arguing such a move would provide support the housing market.

The GSEs' dividend payments could be lowered or eliminated by simply amending the Agreements. Given the history of amending the Agreements to the GSEs' benefit, this would not be unprecedented. Further, the September 2008 Agreements required the GSEs to pay Treasury a quarterly "periodic commitment fee" beginning in March 31, 2010, in an amount to be "mutually agreed" by Treasury and the GSEs, in consultation with the Federal Reserve. That Agreement provides that the Treasury may waive the fee for up to a year at a time, "in its sole discretion, based on adverse conditions in the United States mortgage market." The December 24, 2009 amendments to the Agreement did just that. It remains to be seen whether Treasury will ever require a periodic commitment fee.

Cost of the Government's "Implicit" Guarantee of Fannie Mae and Freddie Mac

In the Federal Reserve Bank of Atlanta's Economics Quarterly [First Quarter 2002], economists W. Scott Frame and Larry D. Wall wrote, "A subsidy in the form of an implicit guarantee creates the appearance of something for nothing: a lower-cost funding for the housing GSEs at no cost to the taxpayers. However, as with co-signing a loan, a seemingly costless guarantee can turn out to be very costly. Moreover, providing an implicit guarantee to cover debt obligations may increase risk-taking incentives if the GSE becomes financially distressed."

The authors' warning was clearly prescient—given the GSEs' failure six years later and subsequent financial crisis. With the benefit of hindsight, it is clear that the government's implicit guarantee of Fannie Mae and Freddie Mac has cost taxpayers some $150 billion today (and growing); the largest federal bailout in U.S. history. Many argue that the government's indirect support of homeownership through the GSEs were at the heart of the financial crisis—fueling demand for homes, driving up the cost of homeownership, and putting pressure on the marketplace to provide "affordable" mortgages by lowering underwriting standards. Ultimately, the mortgage finance system imploded and real estate values fell nearly 20% from their peak, triggering more than $885 billion of losses for U.S. banks and approximately $2.28 trillion of asset write-downs globally, according to an April 2010 estimate by the International Monetary Fund.

On balance, household wealth in the U.S. fell by approximately $17 trillion between 2007 and 2009. According to Pew Briefing Paper #18 by Phillip Swager, the economic and fiscal impact of the financial crisis has resulted in a loss of more than $105,000 per household in the U.S.

	Total impact of the crisis	Per Household Loss
GDP (total lost income)	$650 billion	$5,800
Employment (lost jobs)	5.5 million jobs	
Wages (total lost wages)	$360 billion	$3,250
Real estate wealth (July 08-March 09)	$3.4 trillion	$30,300
Stock wealth (July 08-March 09)	$7.4 trillion	$66,200
Fiscal cost (losses on TARP + GSEs)	$230 billion	$2,050

Source: Pew Briefing Paper #18, Cost of the Financial Crisis, Phillip Swagel, March 18, 2010

Reform Proposals

Appendix A provides a description of the proposals that various stakeholders have made concerning the reform of the housing financial system in general and GSEs specifically. In some cases, the stakeholders have set forth a list of reform principals or other commentary, which is noted accordingly. Table 1 provides a summary the stakeholders' proposals, which reflects a general coalescing around a privatization of Fannie Mae and Freddie Mac, operating either as co-operatives or privately-owned entities that operate under the utility model. In general, most stakeholders believe that some form of government subsidy, generally in the form an explicit guarantee of MBS for catastrophic losses, is needed to ensure the viability of the 30-year fixed-rate mortgage and other fixed rate products.

GSE Reform Issues

The stakeholders identified the following issues that need to be addressed in reforming Fannie Mae and Freddie Mac:

- Survival of the 30-year and 15-year fixed-rate mortgages;
- Government guarantee—form (explicit, implicit, or none) and element covered (MBS only and GSE debt);
- GSE debt and degree of allowable leverage;
- Retained mortgage portfolio;
- Support of affordable housing;
- Conforming loan limits;
- Affordable housing goals;
- Taxpayer protection, including loan buybacks and pursuit of fraud;
- Higher mortgage down payment requirement;
- Number of GSEs to resolve TBTF;
- How to raise capital for the new entities;
- GSE charter provisions;
- GSE patents and automated underwriting and information systems; and
- Names of these entities ("actually very critical component" of reforming the GSEs, according to a Wall Street analyst).

Table 1: GSE Reform Proposals

Stakeholder	Business model	Government Guarantee	Retained Portfolio	Regulator	Affordable Housing
Federal Reserve	Cooperative	Explicit-Tail Risk	De minimis	--	--
Trade Groups					
American Bankers Association	--	--	--	"Strong"	None
Housing Policy Council	Private Ins.	Explicit[1]	De minimis	FHFA	Fees to NHTF
Independent Community Bankers of America	--	Implicit	--	--	From Earnings
Mortgage Bankers Association	Utility	Explicit[1]	--	--	None
National Association of Home Builders	Private	Explicit[1]	--	--	--
National Association of Realtors	Cooperative	Explicit	--	--	Mission
National Low Income Housing Coalition	--	--	--	--	First Priority
Securities Industry and Financial Markets Assn.	--	Explicit[1]	--	"Strong"	--
Commercial Banks and Wall Street					
Bank of America	Multiple Models	(Based on Model)	Covered Bonds	--	--
Credit Suisse	Co-op or Utility	Explicit[1]	Smaller	FHFA	--
Wells Fargo	--	Explicit[1]	De minimis	"Strong"	--
Andrew Davidson & Co.	Cooperative	Explicit Sr. Bonds	--	--	--
Keefe Bruyette & Woods	Cooperative	Explicit (MBSs)	De minimis	(phase out)	--
Redwood Trust	Cooperative	Explicit (MBSs)	None	"Strong"	--
Foundations					
American Enterprise Institute	Private	--	--	--	None
Cato Foundation	Co-op	None	None	"Strong"	--
Center for American Progress	Utility/Co-op	Explicit (MBS)	De minimis	"Strict"	Fee on MBSs
Economic Policies for 21st Century	Private	Explicit[1]	None	--	--
Reason Foundation	Eliminate GSEs	None	--	--	FHA

[1]Explicit government guarantee on MBSs to cover catastrophic losses

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GSE Transition Issues

The critical transition issues identified by stakeholders include:

- Good bank/bad bank structure with the 2005-2007 legacy assets largely comprising the bad bank;
    - Impact of FAS 166 and 167;
- Continued explicit guarantee of GSE debt and MBS;
- Retained portfolio run-off; and
- TBA market.

It is unclear which structural options Treasury will use for the GSEs during a transition to a reformed state. The structural options for the transition period include:

- ***Creation of a "Bad Bank."*** Under this scenario, an entity (the "Bad Bank") would be created to aggregate the toxic and perhaps most if not all of their portfolio assets, particularly the low-yielding assets of both GSEs. The aggregator institution could be supported by the GSEs (Treasury) and, private investors, or both. Treasury adopted a similar structure in the bailout and reorganization of Citigroup. If implemented before December 31, 2012, Treasury can advance an unlimited amount to the Bad Bank to cover its current and future losses. Under this framework, it may be possible for both GSE charters to survive.

- ***Creation of the "Good GSE(s)."*** Once freed of their troubled assets and with access to approximately $275 billion from the Treasury even after the end of 2012, one or both of the GSEs would be sufficiently capitalized to continue their guaranty business and potentially fund a small portfolio to support multi-family lending. Especially when the $275 equity infusion is combined with the GSEs' market dominance, the "Good GSE(s)" may be able to raise private capital through an initial public offering, similar to the General Motors ongoing public offering, the proceeds of which will be used toward the partial repayment of the taxpayers' bailout of the auto company.

- ***Implementation of a HERA tax on the GSEs to support affordable housing.*** Congress imposed a tax on Fannie Mae and Freddie Mac MBS issuances to support low-income housing. It was enacted in the Housing and Economic Recovery Act of 2008 (HERA), but FHFA suspended it when the agency placed Fannie Mae and Freddie Mac into conservatorship. GSE survival could activate this tax. Further, the 27% low- and very low-income home purchase mandates in HERA and in FHFA regulations, which were also weakened by the conservatorships, would also become fully applicable. The affordable housing groups and their policymaker allies can be expected to support such reinstituting these requirements on the "Good GSE(s)."

One potential impediment to this “Good GSE(s)” / “Bad Bank” structure is that the GSEs’ guaranty will continue even if the assets are sold to a “Bad Bank.” Under FAS 166 and 167, the GSEs will not be able to “cleanse” their balance sheet of this liability even by selling the assets. However, Fannie Mae, Freddie Mac, Treasury, and the Federal Reserve Board own much of the outstanding MBS, so the government might waive and absolve the GSEs of their guaranty obligations for the government-owned MBS. For privately-held MBS, though, the guaranty and the subsequently liability would continue. Under GAAP, the GSEs would need to continue to reflect this liability on their balance sheets.

To address this problem, FHFA could potentially treat one of the GSEs as a “Bad Bank” to absorb the toxic and low-yielding assets of both GSEs and potentially place the “”Bad Bank” into receivership. The other GSE would have a clean balance sheet, possibly receive a Treasury capital infusion, retain its charter, and make a clean start. Although unusual, the assets in the “Bad Bank” would continue to retain a guaranty by a GSE, albeit a different one for the assets transferred over from the “good” GSEs.

Whether these or other options are considered, it is possible that one or both GSEs could be returned to health without Congressional action or substantive reform. While the GSEs would eventually face increased capital requirements that would likely be phased in over time, the Good GSE(s) would continue with the implied backing of the Federal Government, as well as the other advantages the enterprises are provided under such a scenario.

Prospects For Reform

The prospects for GSE reform in the 112th Congress (2011-2012) are considered by many to be “highly likely.” On Capitol Hill, insiders say that the administration’s goal is to pass reform of the housing finance system, including Fannie Mae and Freddie Mac, before the 2012 presidential election— a move that would reframe the GSE bailout on the president’s terms and take the issue off the table for the election cycle. Given the administration’s legislative actions in health care and financial reform in the 111th Congress, “bold” action on housing policy and GSE reform by President Obama would not surprise observers, particularly if framed in the context of impact on the federal budget.

That said, the administration will likely be dealing with a very different Congress in the 112th session. Current polling trends could translate to significant Republican gains, which may threaten the Democrat’s control of the House and severely reduce their Senate majority.

However, others argue that the administration will hold public relations events—listening sessions, participating in Congressional hearings—but will defer actual reform efforts until after the 2012 presidential election. Some argue this “discuss and delay” strategy

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affords the White House a number of advantages such as (i) providing additional time for the housing markets to stabilize and for private capital to return to the markets; (ii) resolving the issue of the mortgage deduction and any reduction—or elimination—as a means of dealing with growing deficits; and (iii) engaging in the reform debate with the 113th Congress having perhaps more Democratic members. Under this scenario, observers argue that pressure to reform the GSEs will have subsided and that only limited changes to Fannie Mae and Freddie Mac would be necessary.

Many are under the impression that the government's backing of the GSEs ends on December 31, 2012 and, as a result, a resolution of the GSEs status needs to be accomplished well before that date. We found that this is not correct. On a combined basis, the Treasury Department may advance approximately $275 billion to the GSEs after 2012.

Therefore, the only real driver to reform will be the political environment, which will be impacted by both public opinions and general economic conditions in an upcoming presidential election year.

There is also an emerging view that the way to transition the existing GSEs to a reformed system is to set up a “Good Bank” / “Bad Bank”, whereby the toxic assets could be bled off into a “Bad Bank” where they could be restructured or liquidated. The thought was that one or both of the GSEs could take advantage of their Treasury backing, divest toxic assets, receive a Treasury recapitalization, and emerge from conservatorship with the GSE charter act intact. In the event of political gridlock over GSE reform, Treasury has the financial resources available to restructure Fannie Mae and Freddie Mac in conservatorship. Under this scenario, no further Congressional action would be needed for GSEs reform.

As noted earlier, though, FAS 166 and 167, which became effective on January 1, 2010, however, might mask the benefits of creating a “Bad Bank.”

Treasury Begins the Reform Process

In testimony before Congress, Treasury Secretary Timothy Geithner told lawmakers that his agency plans to provide Congress a plan for GSE reform in early 2011—roughly six months after enactment of the Dodd-Frank Act. Treasury has engaged a team of Wall Street investment bankers to help the administration address the reengineering of the housing finance system, including the reform of the Fannie Mae and Freddie Mac post conservatorship. The consultants are expected to issue a “McKinsey-like” report analyzing the housing sector and the government’s housing support programs (including the mortgage interest deduction), and making reform recommendations. The administration also announced that reform should potentially alter the current policies promoting homeownership in favor of rental housing.

On April 17, the Treasury Department requested public input (by July 23) on seven fundamental questions that would drive the reengineering of the mortgage system and reform of Fannie Mae and Freddie Mac. Treasury and HUD received 571 comment letters from a wide array of banks, trade groups, construction firms, state housing agencies, and affordable housing advocates, concerning the future of housing finance and reform of Fannie Mae and Freddie Mac. A summary of the major reform proposals is provided in Appendix A.

On August 17, Treasury held the Conference on the Future of Housing Finance in which administration and industry representatives, academics, and consumer advocates began the debate on GSE reform. A video of the Conference is available from CSPAN at http://www.c-spanvideo.org/program/295074-1. At the Conference, Treasury Secretary Geithner said: "[T]his Administration will side with those who want fundamental change. It is not tenable to leave in place the system we have today. We will not support returning Fannie and Freddie to the role they played before conservatorship, where they fought to take market share from private competitors while enjoying the privilege of government support. We will not support a return to the system where private gains are subsidized by taxpayer losses." Geithner believes that there's a "strong case to be made for a carefully designed [government] guarantee program in a reformed system"—with the challenge being to make certain that the any government guarantee is priced to cover the risk of losses and structured to minimize taxpayer exposure.

At the Conference, the banking community (and the Center for American Progress) appeared to coalesce around the GSE reform proposal by the Financial Services Roundtable. Under this proposal, the functions of Fannie Mae and Freddie Mac would be transferred to private entities owned by the top tier banks, which control roughly 80% of mortgage originations and securitizations. Substantively, this proposal could further expand the market penetration and role of these too-big-to-fail banks and ultimately transform these banks into new government-sponsored entities.

In a speech to the National Association of Real Estate Brokers, HUD Secretary Sean Donovan cautioned against taking "extreme measures" in reforming Fannie Mae and Freddie Mac, noting that the agencies "legacy assets are what's causing the problem today," not the profitable loans they are making today. The Secretary further stated: "In fact . . . [we] would see significantly more trouble in the housing market if we were to withdraw credit completely. A lot of those proposals just don't make sense when you think through exactly what's causing the problem, which are these legacy loans."

Treasury seems to be leaning towards a private industry solution, rather than a nationalization effort. Such an approach would put private capital at risk—through private equity in the GSEs' successor and through private mortgage insurance—ahead of the government, which would provide a catastrophic loss guarantee for mortgages. It is still early in the process, so the administration's final proposal is far from certain at this time.

House Financial Services Committee Moves Ahead with Reform

In an August 17 interview with Neill Cavuto on Fox Business, House Financial Services Committee Chairman Barney Frank said, "[Fannie Mae and Freddie Mac] should be abolished. The only question is what do you put in their place. . . . There is no more hybrid private-public. If we want to subsidize housing then we could do it upfront and let the budget be clear about that." FHA should be fully self-financing and Fannie Mae and Freddie Mac should be replaced with a new mechanism to help subsidize housing, Frank added.

Frank said his Committee will resume hearings on revamping the housing finance system when Congress returns from its August recess. He intends to move legislation next year, adding: "Look, you know, it depends on who wins the House." According to Committee staff, the Chairman plans to release a white paper outlining his plans to reform the reform of the housing finance system based upon the Financial Services Roundtable's reform proposal, in early October, before the November elections and in advance of any proposal being introduced by the administration and Treasury.

House Republicans' Views

Republicans on the House Financial Services Committee have outlined ten principles for GSE reform, which call for (i) winding down of Fannie Mae and Freddie Mac within four years; (ii) phasing out the elevated conforming loan limit over a two-year period; (iii) reducing the GSEs' retained mortgage portfolios by 25% over four years; (iv) phasing in higher capital requirements for the GSEs to reduce their leverage; (v) creating a regulatory framework for covered bonds in the U.S.; (vi) creating a regulatory safe-harbor for mortgages that meet underwriting standards consistent with the Federal Reserve's final HOEPA (high-cost mortgage loan) rule; (vii) eliminating the maturity mismatch that allows the GSEs to use very short-term borrowings to fund long-term assets; (viii) creating an Inspector General for FHFA and requiring the Inspector General to submit regular reports to Congress on the agency's GSE conservatorship activities; (ix) placing the GSEs' operations "on budget" and subjecting the enterprises' debt issuance to the national debt limit; and (x) immediately suspending the compensation packages for the GSEs' senior management and establishing a compensation system in accordance with the federal government's rates of pay for executive and senior level employees. "House Republicans support establishing a framework to reinvigorate housing finance that does not rely on government guarantees," said Representative Spencer Bachus (R-AL), the panel's ranking member.

In the event the Republicans win control of the House of Representatives, Representative Scott Garrett (R-NJ) would serve as chairman of the House Financial Services (HFS) Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprise. Thus, he will be in a position to advance the Equal Treatment for Covered Bonds Act, a

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bill he sponsored. Covered bonds are debt securities backed by cash flows from loans. Unlike with MBS, with covered bonds, the assets remain on the issuer's balance sheet. Specifically, his bill calls for (i) an amendment to the Federal Deposit Insurance Act to provide the same treatment for covered bonds as for other qualified financial contracts; (ii) defining a covered bond as a non-deposit recourse debt obligation of an insured depository institution; (iii) creating a minimum term of maturity for a covered bond of at least one year with no maximum term of maturity; (iv) allowing for a wide variety of asset classes to be eligible as collateral in the cover pool; (v) ensuring that a bank failure will not impair the value of the covered bonds; and (vi) establishing joint rulemaking authority for the Secretary of the Treasury, the Federal Reserve, Office of the Comptroller of the Currency, and the FDIC for new regulations affecting covered bonds.

During the Conference Committee negotiations on the Dodd-Frank Act, Garrett proposed that the covered bond provisions be added to the reform legislation—a proposal supported by House Financial Services Committee Chairman Barney Frank (D-MA) but successfully blocked by the Treasury Department. (Republican lawmakers view covered bonds as a securitization vehicle for the private sector, which would be viable only in a non-Fannie Mae and Freddie Mac world.) On July 28, 2010, however, Garrett's covered bond bill was separately marked-up and passed out of the House Financial Services Committee.[4] While it is doubtful that his bill will be enacted this year, it is a clear sign that it will be part of the overall reform debate.

The Taxpayers' Views

Another wildcard in this debate is public reaction to GSE reform, which will be driven by how the issues are packaged and sold to the American public. As noted by Robert Stowe England in the May issue of *Mortgage Banking*, "[A]ny proposal that emerges from Congress needs not just the support of the 'stakeholders' in mortgage finance, but the broad support of the public, too. Ultimately, both the fate of Fannie and Freddie, as well as reform of the mortgage finance market, will likely need to respond to the considerable public backlash against government over-reaching, rising deficits and debt, and wariness—if not weariness—about markets, companies and arrangements that involve government guarantees." The most important stakeholder of all with the largest financial stake in this issue—the U.S. taxpayer—may also play a role in the outcome of this political debate, particularly in a more Republican Congress.

[4] H.R. 5823, legislation sponsored by Rep. Scott Garrett (R-NJ), was passed by the House Financial Services Committee on July 28, 2010. Click here for information on the bill: http://www.thomas.gov/cgi-bin/bdquery/D?d111:1:./temp/~bdAbb7:@@@L&summ2=m&|/home/LegislativeData.php . Click here for the text of the bill: http://www.thomas.gov/cgi-bin/query/z?c111:H.R.5823 .

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Summary

The debate over the reform of the nation's housing finance system, which has just begun, could prove to be as significant as the deliberations over the reforms to the nation's health care and financial services systems, which just concluded with the enactment of legislation this year.

Given the political controversy surrounding the GSEs, it seems likely that elected officials will want to enact some type of reform before the 2012 elections. The complexities involved, however, are significant. Sorting through the issues and designing a new system will be challenging and critically important, given that housing constitutes 15% of the country's GDP.

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Appendix A: GSE Reform Proposals

Government Reform Proposals

Government Accountability Office (GAO)

In an October 2009 report, the GAO outlined the various options for structuring Fannie Mae and Freddie Mac post-conservatorship. Specifically, GAO proposed three structural frameworks for the reforming the GSEs:

Government agency

The housing GSEs could be transformed into a government entity that would (i) eliminate the enterprises' retained mortgage portfolios over time; (ii) establish sound underwriting standards and risk-sharing arrangements with the private sector; (iii) establish financial and accountability requirements for lenders; (iv) institute consumer protection standards for borrowers; and (v) eliminate responsibility for the affordable housing goals (instead, FHA's mortgage insurance programs would be expanded to address this objective).

A government entity, with access to Treasury-issued debt, may be ideally positioned to provide liquidity to the mortgage market during normal economic periods. However, a government entity that does not have a retained portfolio may face challenges supporting mortgage markets during time of financial stress and would require the support of Treasury or the Federal Reserve to purchase mortgage assets under such circumstances. A government entity would be expected to pursue housing opportunity programs for targeted groups given its public status. However, the agency may face challenges in managing a housing goal program, since some types of affordable loans, like multifamily loans, may be difficult to securitize and often have to be held in portfolio. Alternatively, fees could be assessed on the government entity's activities to support housing opportunities for targeted groups or FHA's mortgage insurance programs could be expanded.

The entity structure may represent less risk than the hybrid GSE structure because MBS issuance is less complicated and risky than managing a retained mortgage portfolio. However, this structure would be more complicated than that of Ginnie Mae's and could result in substantial taxpayer losses if mismanaged. A government entity could face greater challenges than private-sector entities in securing human and technological resources to manage complex processes or it might lack the operational flexibility to do so.

Key elements for regulatory oversight of a government agency structure would include (i) certain operational flexibilities to obtain appropriate staff and information technology to carry out responsibilities, (ii) risk-sharing agreements with private lenders or mortgage insurers, (iii) appropriate disclosures in the federal budget of risks and liabilities to ensure financial transparency, and (iv) robust Congressional oversight of operations.

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Supporters of a government agency structure argue the implied federal guarantee and the enterprises' need to respond to shareholder demands to maximize profitability encouraged excessive risk-taking and ultimately resulted in their failures. In contrast, a government entity, which would not be concerned about maximizing shareholder value, would best ensure the availability of mortgage credit for primary lenders while minimizing risks associated with a hybrid GSE structure. Establishing a government agency also would help ensure transparency through appropriate disclosures of risks and costs in the federal budget.

Reconstituted GSEs

Fannie Mae and Freddie Mac could be reconstituted under a utility-business model by (i) reducing or perhaps eliminating retained mortgage portfolios as deemed appropriate depending on prioritization of numeric housing and safety and soundness objectives; (ii) establishing capital standards commensurate with relevant risks; (iii) developing additional regulations such as executive compensation limits; (iv) requiring appropriate financial disclosures in the federal budget to enhance transparency; and (v) ensuring strong congressional oversight of the enterprises' and FHFA's performance.

While the reconstituted GSEs may provide liquidity and other benefits to mortgage finance during normal economic times, the enterprises' ability to provide such support during stressful economic periods is questionable given current experience. With significantly smaller (or eliminated) retained mortgage portfolios, the capacity of reconstituted enterprises to provide support to mortgage markets during periods of economic distress also may be limited.

Reconstituted GSEs, with their responsibility to maximize profits for their shareholders, might find it difficult to support some public policy housing initiatives. Moreover, without a retained mortgage portfolio, the reconstituted GSEs may face challenges in implementing an affordable housing goal program. Alternatively, a reconstituted GSE could be permitted to maintain a relatively small portfolio to support affordable housing goals or by supporting housing opportunities for targeted groups through assessments on its activities.

The financial crisis highlighted problems with the hybrid GSE structure, including incentives to increase leverage and maximize portfolios. Reconstituting the GSEs would reestablish and might strengthen the incentive problems, which could lead to even greater moral hazard and safety and soundness concerns and increase systemic risks. Proposals to regulate GSEs like public utilities in principle could constrain excessive risk-taking, but the applicability of this model to the enterprises has not been established. Further, FHFA has not been tested as an independent safety and soundness and housing mission regulator, as the agency has largely acted as a conservator since its creation in July 2008.

Supporters of this proposal believe that reconstituting the enterprises would help ensure that they would remain responsive to market developments, continue to produce innovations in mortgage finance, and would be less bureaucratic than a government

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agency or corporation. They also advocate a variety of additional regulations and ownership restrictions to help offset the financial risks inherent in the for-profit GSE structure, including (i) eliminating or substantially downsizing the enterprises' mortgage portfolios; (ii) breaking up the enterprises into multiple GSEs to mitigate safety and soundness and financial stability risks; (iii) establishing public utility-type regulation for the enterprises that would establish limits on their profitability; and (iv) converting the enterprises into lender-owned associations to create incentives for mortgage lenders to engage in more prudent underwriting practices.

Privatization or termination

Privatizing or terminating the enterprises would eliminate many problems with the hybrid GSE model, including the conflict between public policy and private shareholders. Supporters of this proposal argue that privatized entities would align mortgage decisions more closely with market factors and that the resultant dispersal of credit and interest rate risk would reduce safety and soundness risks. Federal Reserve Chairman Ben Bernanke has suggested that privatized entities may be more innovative and efficient than government entities, and operate with less interference from political interests.

Under this structure, a transition period would mitigate any potential market disruptions and facilitate the development of a new mortgage finance system. A federal entity would be created to provide catastrophic mortgage insurance for lenders and help ensure that mortgage markets would continue functioning during stressful economic periods.

If key enterprise activities such as mortgage purchases and MBS issuances are provided by financial institutions, liquid mortgage markets could be reestablished in normal economic times. However, the capacity of private banks to support mortgage markets in times of financial distress without government support is questionable, given the failure or near failure of key financial institutions and the absence of private-label securitization during the current financial crisis. A federal mortgage insurer could help private lenders provide liquidity and other benefits in times of financial stress.

Privatization or termination would remove the traditional legislative basis, government sponsorship, for the enterprises to implement programs to serve the mortgage credit needs of targeted groups. However, the basis for such programs may remain if a government insurer for mortgage debt is established and the federal government guarantees its financial obligations. Furthermore, Congress might justify the programs on the grounds that large lenders that assume responsibility for key enterprise activities or purchase their assets are viewed as "too big to fail" and benefit from implied federal guarantees of their financial obligations.

Termination and reliance on private-sector firms would leave market discipline and regulators of financial institutions with responsibility for promoting safety and soundness. Moral hazard concerns would remain if some mortgage lenders were deemed "too big to fail." These concerns may be heightened because the current financial regulatory system already faces challenges in overseeing such organizations.

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Additionally, safety and soundness concerns may remain if a federal entity were established to insure mortgage debt and did not charge appropriate premiums to offset the risks it incurred. FHA and the FHLB System may become more prominent if the enterprises were privatized or terminated.

The need for a new financial regulatory system, due to concerns about the current fragmented system, may be heightened to the extent that terminating or privatizing the enterprises results in larger and more complex financial institutions. In considering a new system, Congress should consider the need to mitigate taxpayer risks and consider establishing clear regulatory goals and a system-wide risk focus. If a new federal mortgage insurer is established, there should be an appropriate oversight structure for such an entity. This structure might include appropriate regulations and capital standards, the disclosure of risks and liabilities in the federal budget, and congressional oversight.

In a white paper, *Key Considerations for the Future of the Secondary Market and Government Sponsored Entities*, the Mortgage Bankers Association outlined nine possible models that could serve as potential redesign of Fannie Mae and Freddie Mac. Chart 1 provides a summary of these models and the types of investment products they could bring to the market.

Chart 1. High-level Menu of GSE-like Models

	Fully privatized	Covered bond	Hybrid covered bond	Co-op	Open charter	Limited charter	Improved GSE	Utility	FHA-Ginne-Type
Private Ownership	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Government guarantee	No	No	No	Govt backstop	Insurance fund	Insurance fund	Govt backstop	Govt backstop	Explicit
Regulator	Bank/other regulators	Bank regulators	Bank regulators	FHFA-type	FDIC-type	FHFA-type	FHFA	FHFA-type	n.a.
Required portfolio	Market-driven	Yes	Yes	*de minimus*	*de minimus*	*de minimus*	Safety & soundness	*de minimus*	No
Investment vehicles brought to market									
Whole loans	Yes	No	No	No	No	No	No	No	No
Pass-thru MBS	Yes	No	No	Backstop	Govt	Govt	Backstop	Backstop	Govt
Structured MBS	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
(Re-)REMIC/CDO	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No
Mortgage REIT	Yes	No	No	No	No	No	No	No	No
Corporate debt	Yes	No	No	n.a.	n.a.	n.a.	Yes	n.a.	n.a.
Secured debt	Yes	Yes	Yes	n.a.	n.a.	n.a.	No	n.a.	n.a.
Shareholder equity	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

Federal Reserve

In *The Regional Economist*, James Bullard, president and CEO of the Federal Reserve Bank of St. Louis, wrote, "At a minimum, we need to break up these GSEs—perhaps into regional companies—to open up the market to private players and restructure the incentives under which they operate."

On May 13 at the Federal Reserve Bank of Philadelphia's Reinventing Older Communities conference, Joseph Tracy, Executive Vice President (EVP) and senior advisor to the president of the Federal Reserve Bank of New York, presented a proposal to reform Fannie Mae and Freddie Mac using a lender cooperative model. Tracy's design principles for the lender cooperative model included (i) preserving what has what has worked well in the past—specifically standardized underwriting and the TBA market; (ii) incorporating economies of scale and scope; (iii) providing transparent and on-balance sheet subsidies with new entities focused on the "core" housing market and having FHA focused on affordable housing goals and mission; (iv) tasking fiscal authorities to conduct fiscal policy with Treasury being the "buyer of last resort"; and (v) assigning the "tail-risk" in housing to government through explicit government insurance that has a transparent price.

Tracy urges policymakers to preserve the TBA trading market, which serves as the link between the primary and secondary markets and allows borrowers to lock rates for up to 60 days prior to closing (but exposes lenders to interest rate risk). Under Tracy's proposal, lenders would hedge this risk efficiently by selling mortgages one to three months forwards, while lenders would have to stockpile these loans in a conduit for private label securitizations. Liquidity would be provided through standardized underwriting, diversification through pooling of loans, and the assumption of homogeneity through guarantees and forward trading. The benefits of the TBA market include enhanced liquidity and reduced hedging costs.

According to Tracy, the requirements for TBAs would include (i) a small number of issuers (since privatization and fragmentation are not compatible); (ii) some actual homogeneity of mortgages through standardized underwriting criteria and procedures, along with the government guarantee; and (iii) significant back-office operations and creditworthy counterparties. Under the lender cooperative model, mutually-owned co-ops—akin to the Federal Home Bank System structure—would engage only in residential lending. Only member institutions with an equity stake in the organization could sell mortgages to the co-op to be securitized. Guarantee fees would be assessed to pay for the government's tail risk premiums and to contribute to the cooperative's credit loss pool. In designing this cooperative structure, policymakers would have to address a number of design issues, including (i) triggers for government's tail risk insurance, such as MBS level, vintage level or size of mutual loss pool; (ii) the types of mortgage products the co-op could securitize, with a focus on standardized products with sufficient history to price tail insurance; and (iii) the number of cooperatives to form, recognizing that a small number preserves economies of scale.

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Tracy argued that the co-operative model offers a number of advantages. First, this structure preserves the TBA market and would encourage loan standardization. The business model would have little incentive for "mission creep" or to create a concentration of power over lenders, since profits would flow back to the members. The co-op's mutual credit loss pool would provide financial incentives for members to monitor risk. Moreover, the structure reduces moral hazard, since the co-op would absorb loan losses ahead of the government. The disadvantages of the co-operative model include (i) limited access to capital markets; (ii) weaker incentives to innovate than the private model; and (iii) potential for weaker governance relative to other models.

Trade Groups

American Bankers Association (ABA)

In a July 21 comment letter on the reform of housing finance, the ABA did not endorse a specific model for reforming Fannie Mae and Freddie Mac. Instead, the trade group outlined 11 guiding principles to govern reform of the housing finance system, including: The primary goal of any government-sponsored enterprise in the area of mortgage finance should be to provide stability and liquidity to facilitate the ability of the primary mortgage market to provide credit for borrowers who have the credit and skill sets required to maintain homeownership.

In return for the GSE status and any benefits conveyed by that status, these entities must agree to maintain their mission in all economic environments.

Strong regulation, examination, and authority for prompt corrective action of any future GSE must be a key element of reform. Regulation also must include review and control for systemic risk.

Any GSE involved in the mortgage markets must be strictly confined to a well-defined and regulated secondary market role and should not be allowed to compete with the private, primary market.

Any reform of the secondary mortgage market must recognize the vital role the FHLBs play and must in no way harm the traditional advance businesses of FHLBs or access to advances by their members, particularly for community banks which play a vital role in providing mortgage finance and economic development.

GSEs must be allowed to pursue reasonable risks and rewards, but the risk/reward equation must be transparent and more rigorously defined and regulated.
GSEs must operate within a framework of market procedures and regulation governing the securitization of all mortgage assets.

Strong minimum regulatory standards are necessary to ensure sound underwriting for all mortgages. Insured depositories already comply with strong underwriting standards and

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are subject to vigorous examination. Comparable standards should be established for all loan originators with comparable levels of effective regulatory oversight.
True sales treatment and regulatory capital charges should appropriately reflect the reality of true risk-shifting activities, as well as balance sheet exposures. Accounting and regulatory changes should reflect and align the risks of mortgage securities and their underlying assets.

Affordable housing goals or efforts undertaken to broaden housing affordability are more suited to other programs and entities than the GSEs—whose principal focus should be on providing stability and liquidity to the primary market. Any affordable housing goals required of the GSEs should be in furtherance of their primary goals of promoting primary market stability and liquidity and should be delivered through and driven by the primary market, and should be structured in the form of affordable housing funds available to provide subsidies for affordable projects. GSEs must provide for fair and equitable access to all primary market lenders selling into the secondary market through the GSEs.

American Securitization Forum (ASF)

In a July 21 comment letter on reform of the Housing Finance System, the ASF urged policymakers to carefully consider and evaluate how reforms of the housing finance system will impact the securitization market, specifically with regard to the TBA Market. Tom Deutsch, Executive Director of ASF, wrote, "Any GSE 'reform' which does not accommodate, or suitably replace, the existing GSE MBS TBA market will undoubtedly impact mortgage originators both severely and negatively by reducing the originators' options to "rate lock" and thus satisfy consumer needs. As is always the case, these impacts will surely disproportionately fall on the nation's smaller finance companies as well as the community bank sector." Deutsch also cautioned that any hard and fast policy that would prohibit the maintenance of GSE portfolios would narrow the universe of available options to the government in times of crisis. Deutsch also points out to policymakers, "[T]he best solution [for minimizing real estate bubbles] is probably a structural one, to encourage borrowers and lenders to focus relatively more on personal credit, and relatively less on real estate values, thus helping to re-order the housing finance system, at least as regards securitization, more strongly to a proper fixed-income market."

Given the current legislative, regulatory and legal pending actions that currently cloud the mortgage securitization market for "at least" the next two years, "ASF strongly believes that federal housing finance policy should work to restart the non-agency residential secondary market in a rational and coordinated way," wrote Deutsch. " We believe that a single, national standard arising out of the Dodd-Frank Act, and implemented by joint interagency regulatory rulemaking will best achieve the housing finance policy goals of promoting responsible underwriting and market transparency, while addressing the need of industry participants to have a clear, practical and efficient approach. A fragmented approach to regulating these markets, in which various regulatory bodies (and, indeed, all three branches of government) develop slightly different rules governing the exact same

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subject matter, is unlikely to produce efficient results and prove to be a drag on the mortgage market. Risk retention mandates associated with residential mortgage credit risk need to be practical and flexible, and need to recognize that there are many paths to the mountaintop. … Responsible, user-friendly non-agency securitization markets should be viewed as a tool to help gradually reduce concentrations of these risks in …[FHA and Ginnie Mae], as well as transferring these risks outside of the banking system."

Financial Services Roundtable (FSR)

On April 14, Anthony Reed, VP of Capital Markets for SunTrust Mortgage, testified before the House Financial Services Committee on behalf of The Housing Policy Council of the Financial Services Roundtable (HPC) regarding reform of the housing finance system.

Reed set forth three goals for reforming the secondary market, including (i) ensuring the steady flow of capital to the housing market to support the 30-year, fixed-rate mortgage; (ii) minimize losses to taxpayers by eliminating the government's implicit and explicit guarantees to the GSEs' successors; and (iii) a mechanism to ensure adequate funding for affordable housing.

Specifically, the HPC proposes the creation of four to eight federally-chartered, privately-owned Mortgage Securities Insurance Companies (MSICs) to provide the credit enhancement function and the establishment of a (single) Mortgage-Backed Security Issuance Facility to create and administer MBS that are guaranteed by MSICs. The MSICs would support affordable housing initiatives through the contribution of revenue that would be distributed to state and local housing finance agencies. Any successors to the GSEs would NOT be required or permitted to maintain large mortgage portfolios for investment purposes. Instead, the MSICs could maintain small portfolios to facilitate the development of new products and to support certain types of mortgages, such as multifamily loans, that have limited markets. The MSICs would be chartered and regulated by the FHFA, which would establish strong capital and liquidity requirements, set underwriting standards, and establish loan limits. The federal government would be called on to provide an "explicit" back-up guarantee—in the form of catastrophic re-insurance—directly to MBS issuances, but not to the MSICs themselves. Losses would be incurred by the borrower (the down payment), PMI, MSIC's equity, and the MSIC's reserve fees—ahead of the government's guarantee on MBS losses.

Independent Community Bankers of America (ICBA)

On April 14, Jack E. Hopkins, testified on behalf of the ICBA before the House Financial Services Committee regarding reform of the housing finance system. Instead of submitting a proposal for GSE reform, the Hopkins outlined ICBA's key reform principles that should guide reform of the secondary market and the GSEs' successor(s). The group's principles call for the creation of a strong and reliable secondary market that is impartial, and secondary market entities (GSEs' successors) with a limited mission focused on supporting residential and multifamily housing in all U.S. communities.

Reform efforts should result in the creation of multiple secondary market entities that have operational flexibility to hold mortgages in portfolio when market conditions dictate. The reform efforts should eliminate the conflicting requirements of a public mission with private ownership and dedicate a portion of the secondary market entities' earnings to support affordable housing programs. Government "ties" should continue with the GSEs' successor to ensure "continued and steady access to the capital markets."

Mortgage Bankers Association (MBA)

In an August 2009 white paper, MBA outlined a GSE reform proposal, calling for the creation of a new line of MBS, which would have a security-level, federal government guaranteed "wrap" (the "GG") and private, loan-level guarantees from privately-owned, government-chartered and regulated mortgage credit-guarantor entities (MCGEs). The GG, modeled after Ginnie Mae, would explicitly carry the full faith and credit of the U.S. government, supported by risk-based fees charged on the securities at issuance and on an on-going basis. MCGEs would manage credit risk through (i) risk-based pricing; (ii) originator retention of risk through representations and warranties; and (iii) private mortgage insurance. Through the GG and MCGEs, the credit risk from the mortgages would be "removed" from the MBS, while the security investor would bear the interest rate risk. The GG is not intended to support the entire mortgage market, but only those mortgage products needed to keep the secondary market for core mortgage products liquid and functioning in all environments.

Initially, two or three MCGEs private-owned, mono-line institutions would to be chartered to focus solely on the mortgage credit guarantee and securitization business. These entities would be overseen by a strong regulator, who would grant charters, determine underwriting guidelines, approve new products, and assure capital adequacy. The regulatory regime would be similar to that of a public utility with the MCGEs earning a conservative return on equity. While the MCGEs would have standard corporate powers to raise debt and equity, none of the entities' issuances would be guaranteed—either implicitly or explicitly—by the federal government.

MBA contends that any federal mortgage securitization and guarantee program must not be distorted by any additional public or social housing policy goals. Instead, these policy goals should be implemented through FHA, VA, RHS, and Ginnie Mae, which provide government credit support for affordable housing.

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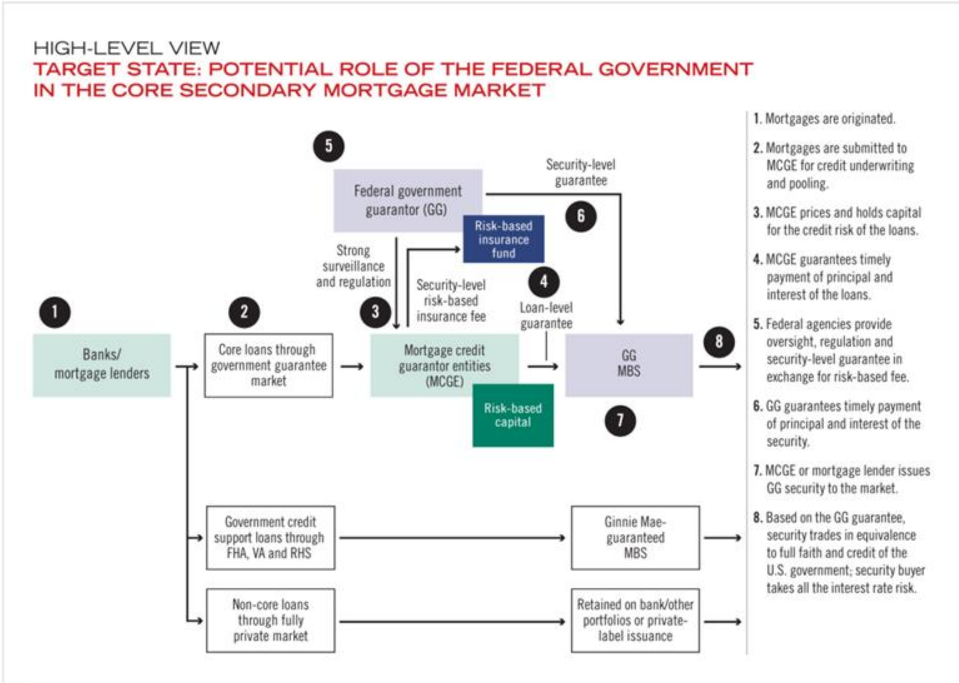


Mortgage Insurance Companies of America (MICA)

In a July 21 comment letter on reform of the housing finance system, Suzanne Hutchinson, EVP of the Mortgage Insurance Companies of America, urged the administration to continue the role of private mortgage insurance in the housing finance system, as a means of placing private capital at risk to defray mortgage losses in the housing market. Hutchinson noted that PMI companies are well positioned to help expand affordable housing opportunities in a responsible manner. "MICA strongly recommends that [private] mortgage insurance remain a required and structurally integrated component of the housing finance system," wrote Hutchinson. MICA also recommends that automated underwriting programs of new securitizers be carefully reviewed by their regulators with input made available by all parties related to the underwriting and insurance of loans. Further, MICA urges the regulator to consider allowing all parties to comment on the desirability of proposed changes to the automated underwriting systems, specifically related to the underwriting terms and major changes to the securitizing entities' internal models concerning default probability and depth of losses for high risk loans. MICA recommends that the regulator give serious consideration to requiring mortgage insurance on all loans with combined LTV ratios of 75% or more.

National Association of Home Builders (NAHB)

On April 14, Rich Judson testified on behalf of NAHB before the House Financial Services Committee regarding reform of the housing finance system. Judson told lawmakers that NAHB supports the creation of private companies, called conforming mortgage conduits (CMCs) to purchase mortgages from approved institutions—banks, savings institutions, and credit unions—and to securitize these assets in MBS. While the CMCs would guarantee the timely payment of the collateral that securitizes its MBS, the federal government would not provide an implicit or explicit guarantee of these payments. Instead, the entities would pay an insurance fee for mortgage securities that receive a federal guarantee, which would support the conventional mortgage market (using conforming loan limits) under catastrophic conditions. CMCs' reserves, the federal guarantee, and private mortgage insurance would cover loss exposure in CMCs' MBS. The CMCs would have to maintain adequate capital and loan loss reserves appropriate for their risk exposure.

National Association of Realtors (NAR)

In a July 21 comment letter on reform of the housing finance system, the NAR advocated using the co-operative model for the creation of two non-profit, government-chartered market authorities ("market authorities"), which function as self-sustaining organizations. These entities would ensure strong, robust financing environment for homeownership and multifamily housing with a mission of promoting housing affordability for the under-served segment of the population. The market authorities "excess" revenues would be used to accumulate a strong capital base to support the secondary market, to withstand countercyclical downturns, and to support innovation. Under this proposal, the federal government would clearly and explicitly guarantee the business of the market authorities, which would be off-set by mortgage insurance (for loan-to-value (LTV) ratios greater than 80%) and MBS guarantee fees. The entity, governed by a chief executive officer and board of directors comprised of industry participants and consumer representatives, would be supervised by a strong regulator, FHFA, with the entities' political independence "mandatory." The market authorities would ensure that sound and sensible underwriting standards are established for loans purchased and securitized with transparency and verifiability for MBS collateral. NAR noted, however, that reform of the credit rating agency sector is also necessary to address the inherent conflict of the current system.

National Low Income Housing Coalition (NLIHC)

On April 14, Shelia Crowley, President of the NLIHC, testified before the House Financial Services Committee regarding reform of the housing finance system. Crowley outlined six principles to guide reforming the U.S. housing finance system, which included:

- Federal subsidies to the housing sector should be directed to meeting the needs of those with the most serious housing problems first.
- All segments of the housing finance sector have a duty to contribute to solving the most serious housing problems.
- Federal policy should not favor one form of tenure over another; rather, federal policy should incentivize balance in the housing market and the full range of housing choices in every community.

- Federal policy should reward housing forms that are of reasonable size and are earth friendly, that is, policy should reward moderation, not excess.
- Federal policy should make sure the housing finance system has enough liquidity to assure a robust single-family and multifamily housing market at affordable interest rates.
- Federal policy should maximize the capacity of mission driven, public or non-profit housing providers to achieve tangible results in solving the nation's housing woes.

Crowley recommended that lawmakers immediately provide $1.065 billion of capital to fund the National Housing Trust Fund. Moreover, the National Housing Trust Fund campaign recommends that Congress provide at least $15 billion annually over the next decade to meet affordable housing needs. Crowley recommended that this funding level be accomplished through a five basis point annual fee on financial institutions' borrowings from the Federal Reserve Bank and the FHLB System. In addition, Congress could levy a fee on mortgage securitizations by any capital market participant. Crowley also suggested that Congress reform the mortgage interest deduction and enact a federal rent credit to provide low-income renters a subsidy similar to that received by homeowners.

Securities Industry and Financial Markets Association (SIFMA)

In a July 20 comment letter to Treasury regarding reform of the housing finance system, SIFMA wrote, "[I]f some form of a GSE exists in the future, it should be established with a limited specific charter that outlines a limited and specific mission, along with a strong regulator empowered to regulate and manage the activities of the entity in all appropriate ways, but acts in coordination with entities such as Treasury and [the] Federal Reserve to ensure the safety and soundness of the broader financial system. Changes to this charter and mission should be solely within the purview of Congress." SIFMA urged policymakers (i) to determine what they want from mortgage market before addressing what to do with the GSEs; (ii) to foster the forward market for MBS (the TBA market), which is key to a successful, liquid, affordable and national mortgage market; (iii) to provide some form of explicit government guarantee on MBS to maintain liquidity in the TBA market, possibly through a government insurance wrap that stands behind any private sector or other corporate guarantee; and (iv) to avoid bifurcating the market into pre- and post-reform markets, as the administration addresses GSE legacy issues.

Commercial Banks

Bank of America

In a July 21 comment letter, Bank of America's General Counsel Gregory Baer said GSE reform could consist of multiple reform models, each dealing with a different type of mortgage. For example, a government guarantee could be provided for low-income loans, while an FDIC model could be applied to loan balances up to a conforming loan limit and a purely private sector model could apply to loans above the conforming loan limit. Specifically, securitization of low-dollar balance mortgages to underserved communities could be managed by a government run or guaranteed entity, which is exclusively charged with an affordable housing mandate. FHA or a new entity would serve as a pure government instrumentality and appear “on-balance sheet” to ensure transparency. This entity could also focus on increasing rental availability and promote first time homebuyer assistance.

With regard to restarting the non-agency residential mortgage secondary market, Baer suggested that a single, national standard arising from the Dodd-Frank Act and implemented by a joint interagency regulatory rulemaking will “best achieve the housing finance policy goals of promoting responsible underwriting and market transparency, while addressing the need of industry participants to have a clear, practical and efficient approach.”

Baer wrote, “The government should attempt to encourage the growth of the covered bond market, which allows banks to make and hold mortgage loans at relatively lower cost, but subject to capital requirements and proper underwriting incentives. This model has proven effective around the world but never developed in this country because of the presence of Fannie Mae and Freddie Mac.” Baer also noted that a public or public-private solution will be required to address the GSEs’ legacy assets and obligations.

Credit Suisse

In an October 2009 white paper, Credit Suisse set forth five key objectives for GSE reform, which include (i) preserving TBA market liquidity; (ii) minimizing disruption to the market and maximizing continuity, (iii) improving the GSEs’ control and risk management, (iv) minimizing operational involvement by government, and (v) continuing operations even in the event of a catastrophic credit event. Credit Suisse’s proposal focuses on preserving the GSEs in order to avoid disrupting the housing finance market.

Under this proposal, the GSEs would be broken up into “good GSEs,” called primary mortgage guarantors (PMGs) that retain healthy guarantee and portfolio assets, and “bad” GSEs that house and run off toxic assets, bearing the “full faith and credit” government insurance wrap for catastrophic losses. The PMGs would run scaled-backed portfolios, roughly half their current size, to smooth out market distortions and maintain their role as counter-cyclical buyers of mortgages. To avoid mission creep, both FHFA and Congress would review the PMGs’ product proposals. The PMGs would have a line of credit with the Federal Reserve, which would be collateralized with MBS purchased with credit. The PMGs would be restricted to basic mortgage products with known risk profiles and prohibited from buying non-prime mortgages, such as Alt-A and subprime loans. They would be strictly regulated by FHFA and have their capital requirement doubled immediately and then doubled again over the next couple of decades. The new GSEs would have affordable housing goals only for the multifamily market.

Wells Fargo

In a July 21 comment letter, John Gibbons, EVP of Wells Fargo's Home Mortgage Capital Markets, endorsed the framework for GSE reform proposed by the HPC and MBA. Specifically, Wells Fargo suggested that Fannie and Freddie be replaced by a small number of federally-chartered, privately-capitalized mortgage conduits that would have exclusive access to the government's explicit guarantee of mortgages for catastrophic losses. Wells Fargo wrote,

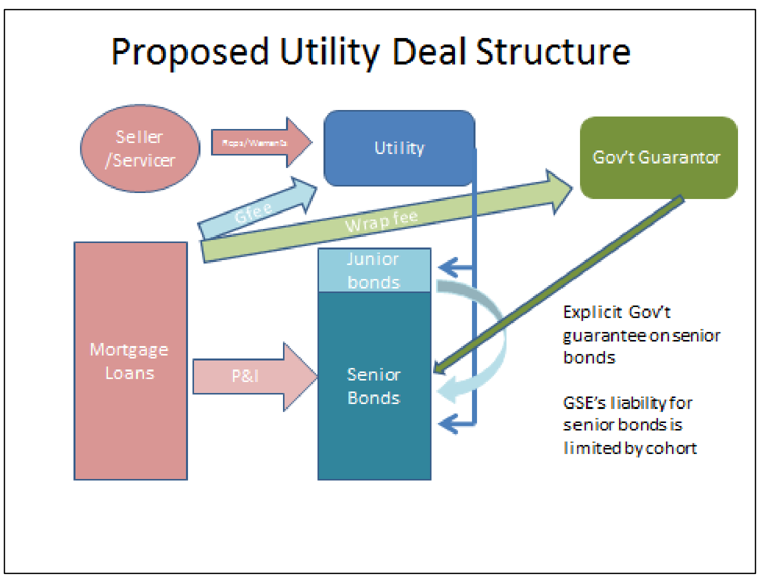
> "Assuming a private sector solution is desired, one can either adopt a regulated utility model or rely on competition and lower barriers to entry to limit monopolistic returns."

These single-purpose entities charter would restrict their activities to mortgage securitization, which would be allowed to hold a limited mortgage portfolio for operational and other specified purposes. The conduits would have limited charter privileges, which are limited to support of the liquidity of new securities, and exclude current GSE privileges such as exemptions from state and local taxes, use of the Federal Reserve as a fiscal agent, and a direct line of credit from Treasury. A strong regulator, who would serve as the chartering authority, would (i) ensure that the entities maintained high capital levels; (ii) approve the conduits' products and underwriting guidelines; (iii) establish portfolio limits; and (iv) serve as receiver in the event of impending failure.

Wells Fargo estimates that this proposed structure would be "tolerable" with conduits charging an estimated 72 basis points to guarantee a loan, which would increase mortgage rates about 50 basis points above current levels.

Wall Street

Andrew Davidson & Co.



In the spring of 2009, Andrew Davidson & Co., a leading provider of risk analytics and consulting for the mortgage and asset-backed securities industry, proposed that the GSEs be reconstituted as securitization-only vehicles, called Federal Securitization Co-operatives (FSC). These entities would create MBS with senior bonds, explicitly guaranteed by the federal government, and junior bonds, guaranteed by the utility. Andrew Davidson argues that allowing the FSCs to sell junior

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bonds in the marketplace will provide more efficient pricing of MBS and, if implemented appropriately, would create market discipline for mortgage credit. Moreover, the use of junior bonds would allow the government to increase its protection from losses without significantly increasing mortgage rates. Andrew Davidson recommends that these entities—two to five in number—be based upon the utility model with ownership structured as co-operatives, owned by the mortgage originators.

Keefe Bruyette & Woods (KBW)

In a July 10 comment letter to Treasury regarding reform of the housing finance system, KBW's Chairman and Chief Executive Officer John G. Duffy outlined a co-operative framework for reforming the GSEs, using the FHLB System template as a model.

Specifically, Duffy recommended a phasing out of the GSEs' portfolio retention activities, which would involve segregating the enterprises' legacy assets into a Bad GSE (a vehicle with no equity, used only to run off assets) and Good GSE with a "meaningful" minimum capital requirement of 5% for mortgages on which the entity retains credit risk. Under the cooperative model, any bank that originates an agency conforming loan for sale to the GSE would be required to retain 5% of the loan balance as an equity investment in the GSE. For the industry as a whole, a 5% capital requirement would approximate $43 billion of which $2.2 billion would be Tier One capital, representing approximately 25 basis points of total capital. Given banks' ability to leverage, non-banks would be at a disadvantage under this proposed structure and may require a special capital structure to ensure they are able to compete effectively with banks in the mortgage origination market. Similar to the FHLBs, the cooperatives would have board of directors representing their institution's ownership capital in the entities.

KBW estimates that the transition of mortgage assets to the Good GSE would take five to seven years—at which point the entity would have capital of approximately $250 billion. This level of capital would allow the entity the ability to maintain "moderate" investment portfolios needed to guarantee mortgages with little, if any, leverage needed. KBW believes that the new entity would need to hold some mortgages in portfolio in order to facilitate securitizations and improve the market's liquidity.

KBW's proposed GSE structure would likely result in higher rates for 30-year fixed-rate mortgages, which would likely move borrowers towards adjustable rate hybrid ARMs with shorter term resets of 5 to 7 years. Borrowers would clearly bear more interest rate risk, which KBW argues is a reasonable price to pay for financial stability. KBW believes that the issue of explicit government guarantees is moot in today's environment. That said, the explicit government guarantee would have a budgetary impact only to the extent that the new entity's capital and revenue are insufficient to cover potential losses, similar to FHA. Thus, KBW believes that the GSE successor entities should be set up to issue MBS with an explicit government guarantee.

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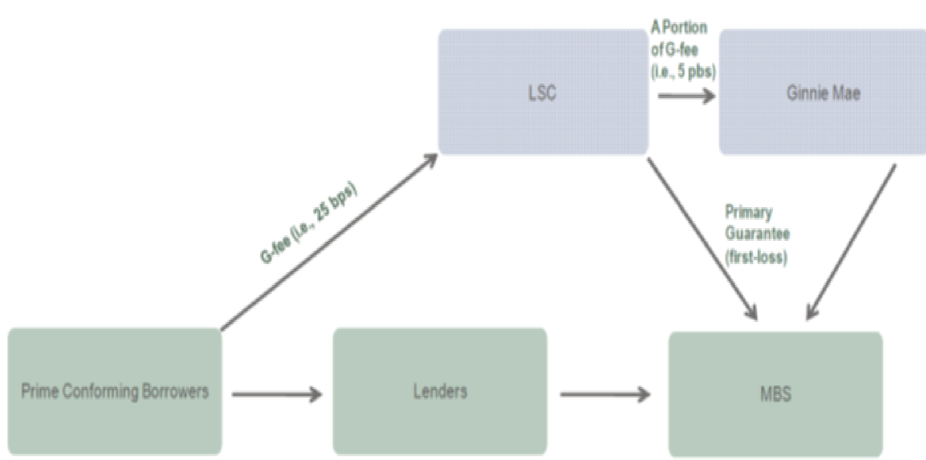
[REIT](#)

Redwood Trust

In a July 25 comment letter on the reform of the housing finance system, Martin S. Hughes CEO of Redwood Trust [a Mill Valley, CA-based REIT], said the long-term objective of reform should be a mortgage market divided into two segments—one public, one private, both robust and with private capital filling the majority of the market's needs. However, given the complexities of the U.S.'s $11 trillion mortgage market, Hughes cautioned it will take years to transform the market into a structure that achieves that objective. Thus, a "credible, actionable transition plan" is needed, which provides an uninterrupted flow of mortgage credit to borrowers, while significantly reducing excessive reliance on government financing and the resulting burden on taxpayers. Specifically, Hughes proposes the creation of a Lender Sponsored Cooperative (LSC) to serve as a transition entity, which would continue to serve the liquidity needs of the prime conforming segment of the residential mortgage market by guaranteeing prime conforming MBS. The LSC, which would function similar to FHA with no leverage or portfolio activity, would be lender-owned to ensure that the lenders maintain appropriate levels of "skin in the game."

Figure 1. The LSC Concept



Similar to Fannie Mae and Freddie Mac, the LSC would collect a guarantee fee from mortgage remittances to cover the costs of the cooperative's guarantee. Ginnie Mae, or some other government entity, would also provide a backup guarantee on the MBS for which it would receive a portion of the guarantee fee. A LSC transition structure would have several benefits, including (i) taking the government out of the first-loss position on new mortgage debt and putting private capital at risk ahead of the government, except for a limited part of the market; (ii) preserving the TBA market and the 30-year fixed rate mortgage; (iii) providing a relatively simple plan that uses the existing platforms of the GSEs through a merger and transfer of the enterprises' infrastructures to the LSCs; (iv) utilizing the self-policing structure of a cooperative; and (v) facilitating a restart of the private securitization market as the conforming loan limit is phased down to $325,000 and limits for high cost areas are adjusted, as appropriate.

The Redwood Trust plan calls for a sunset provision to help ensure that this structure is used only for a transitionary period. Hughes calls for a strong regulator for the LSC, who would require at least double the 45 basis points capital requirement previously mandated for Fannie Mae and Freddie Mac. The multiple layers of credit enhancement under the Redwood Trust plan would include (i) strict, safe loan underwriting standards; (ii) substantial down payment requirements, ranging from 10% to 20% depending on the borrower's credit profile.; (iii) the LSC's strong capital and reserve levels; (iv) representations and warranties from creditworthy lenders with appropriate enforcement mechanisms; (vi) provision of a capital call for LSC members under certain circumstances; (vii) a strict safety and soundness regulator for the LSC; (viii) the LSC guarantee; and (ix) the government back-up guarantee.

Foundations

American Enterprise Institute (AEI)

In April 14 testimony before Congress, AEI resident fellow Alex J. Pollock proposed seven steps toward a sound mortgage finance system in the U.S., which included (i) creation of a private secondary market for prime conforming mortgages in which private capital is at risk; (ii) transition to a "no" GSE world with subsidies merged into HUD structures and subject to the budgetary process and on budget, using fair and transparent accounting; (iii) facilitation of credit risk retention by the loan originators; (iv) the development of countercyclical strategies, such as falling LTV ratios as asset prices inflate and higher loan loss reserves during "good' times; (v) development of clear, straightforward disclosures of key information to borrowers; (vi) the reintroduction of savings as an explicit goal of mortgage finance; and (vii) in the event GSEs survive, avoid the use of government-insured banks to promote the enterprises' finances.

Aspen Institute

In a July 20 comment letter to Treasury regarding reform of the housing finance system, the Aspen Institute proposes to transform the U.S. housing policy through a dedicated down payment savings vehicle, called Home Savings Accounts (HSA), with government incentives for low- and middle-income Americans. The Institute argues that HSAs are a pragmatic way to give these groups a safer and more secure path to homeownership. Under the proposal, savers with incomes under $50,000 ($100,000 for married couples) would get a 50% match on their contributions, up to a lifetime cap of $5,000. HSAs could only be withdrawn for down payment and closing costs, when buying a home, but could be converted into retirement accounts without penalty. These interest-bearing accounts would be FDIC-insured. The Aspen Institute projects that approximately 4.5

million HSAs would be opened over a five year period for an estimated cost to the federal government of $10 billion. While not trivial, this program's cost would be inconsequential relative to cost of the federal government's current housing policies, projected to total $850 billion from 2009 to 2013 by the Joint Committee on Taxation.

The Cato Institution

In March 23 testimony before Congress, Mark Calabria, director of Cato's Financial Regulation studies, recommended privatizing Fannie Mae and Freddie Mac and perhaps using the FHLBs' co-operative model. Whether public or private, Calabria suggested breaking up Fannie Mae and Freddie Mac into a dozen equal sized entities that are not too big to fail. The new entities' securities should be subjected to the 1933 Securities Act and 1934 Securities Exchange Act, and statutory treatment of GSEs' debt as "government debt" should be eliminated. These new entities should (i) be chartered by the regulator, not Congress; (ii) be subject to the bankruptcy code; (iii) be allowed to issue only MBS; (iv) be prohibited from participating in the guarantee business; (v) require cash down payments of 5% for mortgages they purchase, which would increase to 10% over several years, with piggy-back loans prohibited; (vi) eliminate loan limits and housing goals by setting loan sizes based upon income for a given geographic area, such as three times the state's median income; and (vii) be prohibited from issuing unsecured debt; (viii) limit or bar foreign central banks from holding GSE debt; and (ix) be prohibited from retaining mortgage portfolios. Additionally, bank regulators should be required to treat GSE debt as non-government corporate debt.

Center for American Progress (CAP)

In a December 2009 white paper, CAP published a white paper on GSE reform, calling for the creation of a limited number of charter mortgage issuers (CMIs) to issue government-guaranteed MBS for both single-family and multifamily mortgages in exchange for a small fee, used to create an actuarially sound Taxpayer Protection Insurance Fund. While the CMIs' MBS would be explicitly guaranteed by the federal government, the entities debt and equity would explicitly NOT be guaranteed.
CAP recommends that the GSEs' affordable housing goals be eliminated. Instead, all MBS issuers would be called upon to support underserved communities through a fee charged on each MBS issuance that would support the Affordable Housing Trust Fund, the Capital Magnet Fund (for CDFIs) and perhaps other vehicles for financing affordable housing. In addition, CAP calls for the CMIs to maintain a limited retained mortgage portfolio to the extent that it serves certain public purposes, such as providing countercyclical liquidity and liquidity for affordable multifamily housing for both fixed-income and mixed use development and small multifamily. (The roles of FHA, VA, Ginnie Mae, and RHS would continue.)

The CMIs would also be subject to the general duty to serve underserved communities. CAP suggests measuring the CMIs' securitization activities in underserved markets by examining the percentage of the issuer's overall securitization, based upon the number of loans securitized (not the dollar amount), that fall into underserved markets relative to

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that for all other non-CMI issuers. CAP suggests also factoring in whether the issuer is enhancing access to credit in underserved markets in other ways, such as through participation in deals, investments and grants with other organizations, such as CDFIs, that effectively serve these markets. If an issuer fails to meet this evaluation, it would be penalized with heightened requirements to serve underserved communities, which might include grants, volunteering, counseling and/or payment of substantial additional fees to the Affordable Housing Trust Fund or Capital Magnet Funds.

Under this proposal, the CMIs would be structured under the utility model (with the co-operative model considered as an alternative), as privately-owned entities whose profits are subject to regulation. CAP notes that the success of this framework hinges on the ability of new CMIs to attract sufficient levels of private capital, which the authors fear may be problematic due to profit constraints, higher capital requirements, and a stricter regulatory structure.

CAP proposes a stringent regulatory regime for the CMIs to address product approval, capitalization requirements, reserve requirements, and operational and credit risks. CAP proposes reducing the size of the CMIs' retained mortgage portfolios, by allowing (only) investments for certain purposes, such as mixed-income and mixed-use development and small multifamily, providing capacity for crises and financial downturns, and testing new products.

The CMIs' primary regulator would (i) determine the specific characteristics of the mortgages eligible for securitization; (ii) set the conforming loan limits; (iii) require adequate capital levels to cover mortgage risk and ensure adequacy of the taxpayer protection insurance fund to protect against catastrophic loss; (iv) set managed returns to ensure durable capital investment to support the housing market without encouraging risky behavior or "undu[e] capture" of the value provided by a government guarantee; (vi) have the authority to place CMIs into conservatorship; and (vii) ensure that the CMIs serve all markets at all times in a fair and equitable manner.

CAP also recommends uniform comprehensive regulation of any institution seeking to securitize any U.S. mortgage. This regulatory system should (i) set strict limits on the types of MBS that could be issued for all loan collateral types and amounts; (ii) require approval to issue all MBS, including those collateralized by jumbo mortgages, to level the playing field and eliminate competition from unregulated entities; (iii) establish a strong prudential risk oversight regime, including rigorous capital and risk standards; (iv) require some form of "skin in the game" risk retention for all mortgage originators; (v) set standards for acceptable underwriting and mortgage characteristics; and (vi) set a small fee to support the Affordable Housing Trust Fund and Capital Magnet Funds (funds that Congress created in 2008 for Fannie Mae and Freddie Mac).

The CAP proposal leaves open a number of issues, including (i) how many CMIs would be formed; (ii) which model—the utility or cooperative structure—should be used; (iii) how to make certain the entities can raise adequate capital; and (iv) how the structure would promote innovation.

Economic Policies for the 21st Century

In a May 24 white paper issued by Economic Policies for the 21st Century, authors Donald Marron and Phillip Swagel argue that the reformed GSEs should be private companies, with a narrow focus on buying and securitizing conforming mortgages, and that qualify for government backing. These fully private entities, with no remaining linkage—implicitly or explicitly—to the federal government, would be subject to rigorous regulatory oversight. These new entities would have no retained mortgage portfolios, other than a warehouse line, and have no associated debt. They would compensate the government for its explicit backing of MBS by paying actuarially-sound fees to pay taxpayers for the insurance. The government's backstop for MBS would be triggered only after a firm's shareholders are wiped out.

Under this model, all special government benefits for Fannie Mae and Freddie Mac would be repealed and their lines of credit with Treasury would be terminated. Over time, the authors believe that Fannie Mae and Freddie Mac would evolve into either specialized firms focused on securitization or would become part of a vertically integrated financial services firm that both originates and securitizes mortgages. Support for affordable housing could be structured through a fee on mortgage securitizations or tax on the entities themselves, but carried out transparently through regular appropriations channels.

The authors believe that securitization of conforming loans should be opened to competition and the government should encourage other firms, also subject to regulatory oversight, to participate in this market. These private firms may also purchase from the government the MBS-level guarantee. Competition in the securitization market helps ensure that the subsidy embedded in the government guarantee is passed along to homeowners and homebuyers. Following a long transition period for competition in the securitization space to evolve, operating restrictions on the new Fannie and Freddie could be allowed to roll off over time. Eventually, these entities could be allowed to have retained portfolios, along with their competitors. Eventually, these new entities could become vertically integrated or acquired by banks.

Reason Foundation

In April 14 testimony before Congress, Anthony Randazzo, Reason's director of economic research, urged policymakers to begin taking steps now to phase out Fannie Mae's and Freddie Mac's operations through (i) a four to five year divesture of the GSEs' mortgage portfolios and liabilities, liquidation of assets, and winding down of their purchasing and securitization operations; (ii) shifting the GSEs' bad assets into a bad bank holding company entity, preferably serviced by a private sector asset manager; and (iii) shifting the GSEs' affordable housing mission to FHA. Randazzo argues that reform efforts should begin now, by reducing conforming loan limits to restrict the GSEs' operations the jumbo market and limit the timeframe in which the GSEs can hold individual mortgages and MBS in their portfolio. He urges Congress to provide a framework that identifies ways the private sector can assume the GSEs' current role in the market.

Urban Institute

In a May 2010 white paper issued on behalf of the Urban Institute, the New York University's Furman Center for Real Estate evaluated the major reform proposals for Fannie Mae and Freddie Mac proposed by the Center for American Progress, Credit Suisse, the Mortgage Bankers Association, and the HPC. The authors, Ingrid Gould Ellen, John Napier Tye and Mark A. Willis, noted that few, if any, proposals explicitly address multifamily housing finance and suggested it may be possible to create mortgage insurance funds at the state and local levels, similar to those run by the State of New York Mortgage Agency (SONYMA). The SONYMA works with pre-approved lenders to develop loan programs tailored to meet local needs, and with government subsidies, in the form of 100% credit insurance on loans sold to pension plans and 75% first-loss insurance for loans sold to private investors. As a result of its own revenue stream from the mortgage transfer tax and limited losses, SONYMA has been able to achieve an AA rating. The authors question if this success could be replicated and expanded over a broader geographic region through a federal government MBS wrap and prudent creation of criteria for structuring the insurance funds (e.g., addressing the level of top loss provided on individual transactions, the ratio of reserves to risk, the mechanisms for claims payment, and criteria for selecting originators). The explicit government guarantee would provide an investment grade rating, which could be used to help create a secondary market for these locally-underwritten and locally-tailored loans. The goal of such a system would be to standardize origination of the loans and their subsequent purchase by institutional investors.

The authors also note that covered bonds are another vehicle that could expand the amount of funds available for a bank to lend, and would have three distinct advantages over MBS as a method of mortgage finance. These include (i) the potential of reducing principal-agent problems, because the banks themselves hold the mortgages securing the covered bonds; (ii) the banks can modify these mortgages if necessary, because the mortgages remain on their balance sheet; and (iii) these bonds also have the potential—depending on their structure—of improving the options for homeowners who find themselves underwater. The authors note that there is uncertainty regarding the level of liquidity that covered bonds can provide relative to MBS. Moreover, it may be difficult for covered bonds to achieve "the minimum efficient scale" to compete with the GSEs' MBS, wrote the authors. There are also important questions about whether covered bonds could be cost-competitive with existing mortgage finance options that are available today, in light of their economies of scale and the government subsidies that are in place. Instead of replacing existing mortgage products, covered bonds may be a useful vehicle to increase market liquidity for non-conventional mortgage products, such as jumbo mortgages.

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Freddie Mac Patents:

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[i] Click on document name to access on the Internet

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Staff Reports

A Private Lender Cooperative Model for Residential Mortgage Finance

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A Private Lender Cooperative Model for Residential Mortgage Finance

Toni Dechario, Patricia Mosser, Joseph Tracy, James Vickery, and Joshua Wright

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JEL classification: G21, E02, G28, G01

Abstract

We describe a set of six design principles for the reorganization of the U.S. housing finance system and apply them to one model for replacing Fannie Mae and Freddie Mac that has so far received frequent mention but little sustained analysis – the lender cooperative utility. We discuss the pros and cons of such a model and propose a method for organizing participation in a mutual loss pool and an explicit, priced government insurance mechanism. We also discuss how these principles and this model are consistent with preserving the "to-be-announced," or TBA, market – particularly if the fixed-rate mortgage remains a focus of public policy.

Key words: GSE, MBS, mortgage

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For the past several decades Freddie Mac and Fannie Mae ("the housing GSEs")[1]have played a central role in U.S. residential mortgage finance. The design of what replaces the GSEs, which are currently in conservatorship, is of enormous consequence to the performance of the U.S. housing market going forward. In our opinion, the goals of the efforts to reorganize Freddie and Fannie should be to promote the availability and stability of mortgage finance for the core of the housing market while minimizing systemic risk and costs to taxpayers. Any new structure should be designed to be resilient over the business cycle so that mortgage financing neither dries up during periods of market stress nor expands excessively during periods of market ebullience.

The recent financial crisis demonstrated how the implicit government guarantee and unique market structure of agency MBS can support the availability of mortgage credit during times of severe market stress. Figures 1 and 2 show the relative stability of the supply of mortgages eligible for securitization through Fannie and Freddie ("conforming mortgages"), compared to jumbo mortgages, which are of similar credit quality to conforming loans but are not eligible for agency securitization because of their larger size.[2]

Prior to the onset of the financial crisis, the jumbo segment accounted for around one-quarter of the value of mortgage originations (Figure 2), and the interest rate spread between jumbo and conforming loans was small and declining (Figure 1). However, as the crisis unfolded after August 2007, spreads between jumbo rates and conforming loan rates widened sharply from about 25 basis points to over 100 basis points, and the share of jumbo mortgage originations fell from 30 percent to only 10 percent. This sharp decline in jumbo mortgage supply reflected a collapse in non-agency MBS issuance after mid-2007, and the effect of increasing credit risk premia given the lack of a government credit guarantee on jumbo loans.

In response to this trend, and to provide additional support for the mortgage market, the conforming loan limit was increased in high housing-cost areas in February 2008, from $417,000 to as much as $729,750.[3] For loans that fell between the old and new conforming loan limits ("high-balance conforming loans"), which now became eligible for agency securitization, interest rates

[1] While the FHLB system also comprises GSEs, we will use this term to refer only to Fannie Mae and Freddie Mac for simplicity's sake.
[2] The conforming loan limit is set each year by the GSEs' regulator (the Federal Housing Finance Agency (FHFA), formerly the Office of Federal Housing Enterprise Oversight, or OFHEO) based on its home price index. The GSEs are forbidden by their charters to purchase loans above that limit.
[3] The $729,750 limit was established on a temporary basis and renewed several times, even after a permanent higher limit of $625,500 was set in August 2008. See Vickery and Wright (2010) forthcoming, for a more detailed discussion.

quickly returned to levels very close to those for standard conforming loans, and the quantity of lending expanded significantly. However, the supply of mortgage finance above the new higher conforming loan limits remained low, reflecting the inability of originators to securitize or hedge the credit risk on those loans.

Figure 1. Mortgage Rates and Treasury Yield Spread

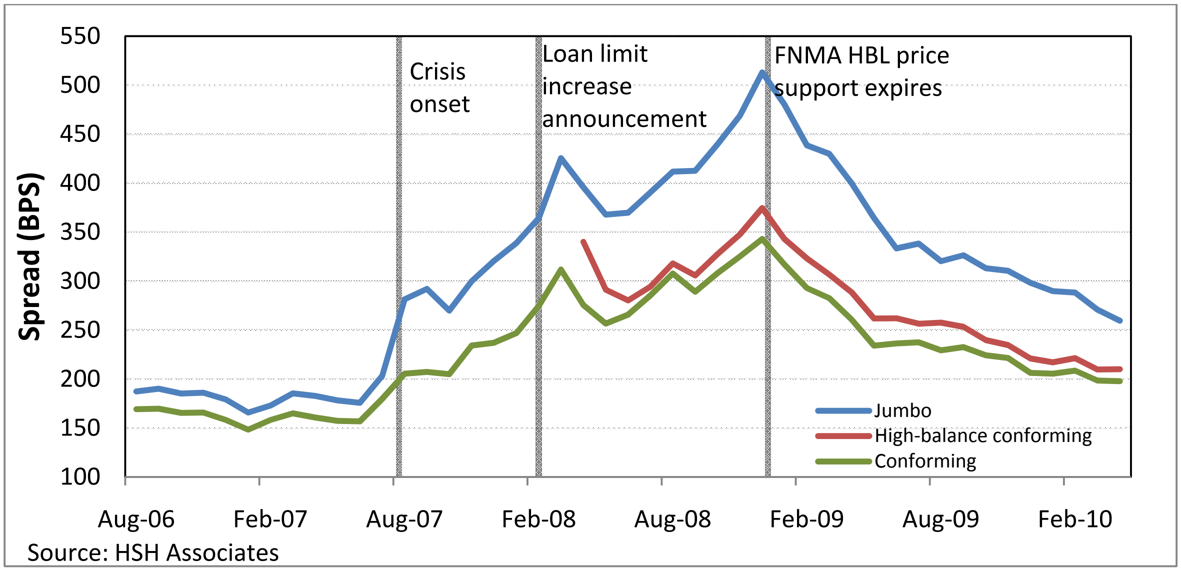
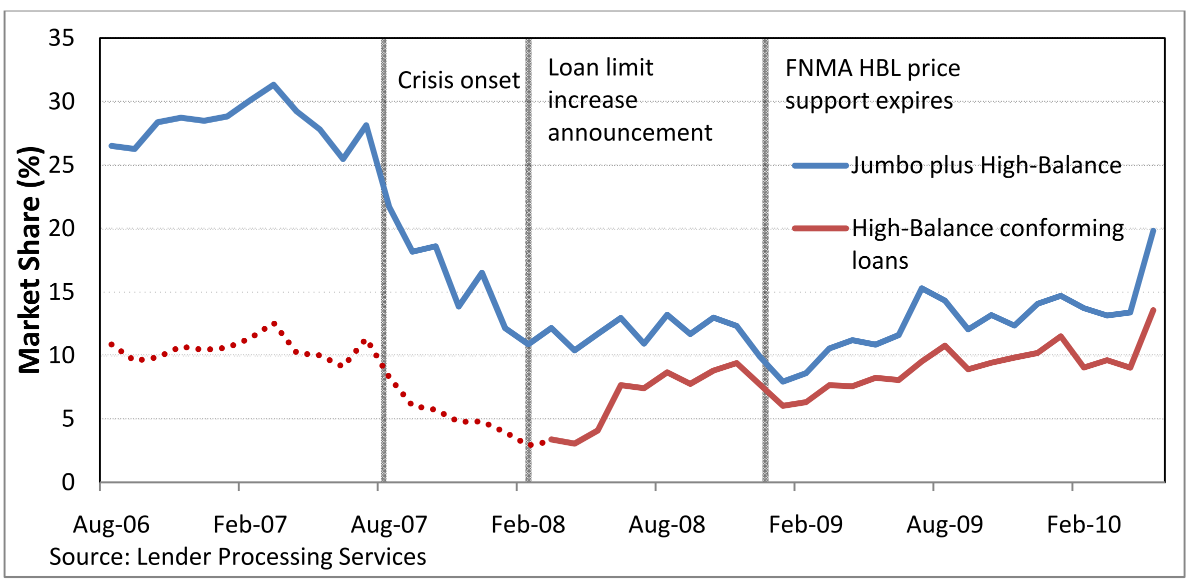


Figure 2. Market Share of Jumbo and High-Balance Conforming Loans



Principles for Reform

The paper by Ellen, Tye and Willis (2010) provides a good background on U.S. housing finance and the basic options for reorganizing the GSEs. There are six principles that we believe should guide the selection among these various options.

1. If possible we should preserve what worked well with the GSEs, in particular standardization of mortgage underwriting and the "to-be-announced" (TBA) market. Both are important for providing liquidity to the market.
2. Economies of scale and scope are important design considerations. Scale economies in securitizing mortgages suggest that any mortgage securitizer-insurers should be relatively few in number so long as the design can address how this choice impacts competition in the market. While the GSEs were active in providing lending to the multi-family sector, these loans proved to be difficult to securitize and generally remained within the GSEs' portfolios as whole loans. This suggests that there are few economies of scope here and consideration should be given to separating the support mechanisms for single- and multi-family lending.
3. Government housing subsidies should be transparent and accounted for on the government's balance sheet. Affordable housing goals will likely be more effective if the mandate is focused in one government agency such as the FHA. In contrast, the new entities replacing the GSEs should be given the mandate to focus on the "core" of the housing market and not be taxed with affordable housing targets.[4]
4. In periods of market stress, it may be necessary to have a liquidity provider or perhaps even a "buyer of last resort" for mortgage securities, but this should not be carried out by the new entities unless they are explicitly a part of the federal government. If a private model is selected, the new entities should not be allowed to have a large portfolio either for investment purposes or to perform a buyer of last resort role, since this creates incentives to emphasize the profitability of the portfolio over policy objectives.
5. A lesson from the recent financial crisis is that the government ineluctably owns the catastrophe or "tail" risk in housing credit, and if it cannot avoid providing the insurance, then it should make that insurance explicit and fairly priced so that there is no expected long-run cost to the government.

[4] The "core" of the housing market would exclude the subprime sector. The new entities should be required to meet all fair lending standards and to promote non-discriminatory access to mortgage credit.

6. The design of any successor to the GSEs must take a stand on whether the 30-year fixed rate amortizing mortgage with no prepayment penalty is going to remain a key mortgage product. We assume that U.S. households and policymakers will continue to have a preference for the fixed rate mortgage as a staple of housing finance because it insulates homeowners from fluctuations in interest rates. As a result, securitization will remain an attractive alternative for mortgage originators (because they do not wish to hold such assets on balance sheet against their short-term liabilities or devote capital and liquidity resources to supporting them) and so an active secondary market will be needed to support it.

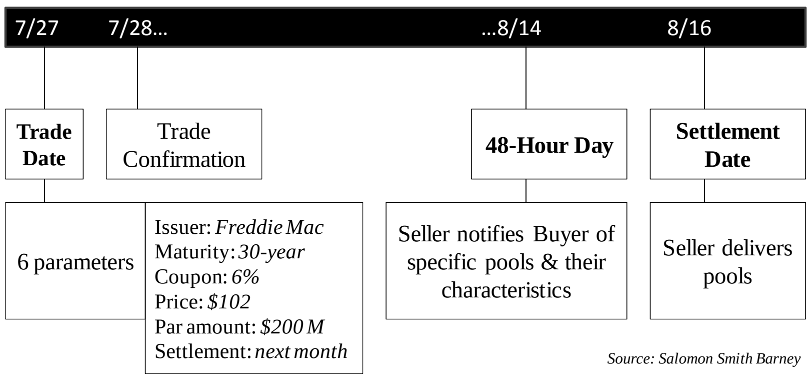
The TBA Market

With respect to the first principle, a great legacy of Freddie and Fannie is that they helped to create a deep and liquid market for residential mortgage finance in the United States. The implicit government credit guarantee and the liquidity of the agency MBS market have lowered and stabilized mortgage rates paid by households. Crucially, this liquidity relies not only on the implicit guarantee and the size of the market, but also on certain technical features of the way agency MBS are traded – a factor whose importance has been underappreciated by most commentators.

The vast majority of agency MBS trading occurs in what is known as the TBA ("to-be-announced") forward market. In a TBA trade, participants agree on a price to transact a given volume of agency MBS at a specified future date (the settlement date). As the name suggests, the defining feature of a TBA trade is that the actual identity of the securities to be delivered at settlement is not specified on the trade date. Instead, participants agree only on 6 general parameters of the securities to be delivered. A timeline for a typical TBA trade is shown in Figure 2, including three key dates. On the day of the trade, the buyer and the seller establish the 6 general parameters, including the date the corresponding cash and security will actually be exchanged, which may be anywhere from 3 to 90 days later.

This process is enabled by the GSEs' exemptions from the Securities Act of 1933 and by the standardization and automation of the mortgage underwriting process promoted by the GSEs, which have also significantly lowered the transaction costs associated with originating, servicing, and refinancing a mortgage. The TBA market allows mortgage lenders to sell mortgages forward before they are even originated, reducing the length of time needed to "warehouse" the loans on balance sheet before issuing an MBS. In addition, the TBA market provides a cheap way for lenders to hedge the interest rate risk involved in offering borrowers the ability to lock-in a rate for 30 days while closing on a mortgage. TBA trading is thus a key link between the primary and secondary mortgage market and constitutes a major difference from non-agency or "private-label" MBS – in addition to the credit guarantee of the GSEs.

Figure 2. Example TBA Timeline



Similar to Treasury futures, TBAs trade on a "cheapest to deliver" basis: traders assume they will receive the collateral with the most disadvantageous characteristics and trade every TBA at the corresponding price. This convention is much more counterintuitive when applied to mortgages than Treasuries, since there are so many more features by which mortgage pools can differ from one another. The assumption of homogeneity helps take what is a fundamentally heterogeneous set of individual underlying mortgages and transform them into a very large set of fungible – and therefore liquid – fixed-income instruments.

This assumption of homogeneity is of course also supported by the perceived government backing of the GSEs, which has traditionally assuaged concerns about the underlying mortgage credit risk. However, other factors contribute meaningfully to TBA fungibility as well. At the loan level, the standardization of lending criteria for loans eligible for agency MBS (despite some variation over the years[5]) constrains the variation among the borrowers and properties underlying the MBS. At the security level, homogenizing factors include the geographic diversification

[5] Fannie and Freddie did venture into guaranteeing and securitizing some low-quality Alt-A loans in the last decade, but this was arguably due to competitive pressure from the private-label securitizers, long after the GSEs succeeded in establishing the conforming loan standards.

incorporated into the pooling process, the limited number of issuers, and the simple structure of pass-through security features[6].

Despite the standardization of the securities, the delayed disclosure inherent in the TBA trading process runs contrary to the underlying philosophy of securities law regarding disclosure and transparency. In fact, TBAs are only legal because the GSEs are exempt from the Securities Act of 1933, which requires issuers to file detailed registration documents at the SEC and to list the specific assets underlying any asset-backed securitization before it is issued. Without this exemption, the GSEs couldn't issue TBAs since at the time of issuance, only the limited set of security parameters and the conforming loan underwriting standards are laid out, rather than specific collateral. In a TBA, the underlying mortgage loans have not been identified and may not even have been originated yet (which is essential to the ratelock-hedging function described below). That is, the TBA trade date can precede the origination date of the underlying loans. This contrasts sharply with private-label MBS, whose loans must be originated before trading because they require many more disclosures with the SEC. Since they are ineligible for TBA trading, non-agency MBS are much less liquid than agency MBS and while it might be possible to make them eligible, this would require significant amendment of current securities law. More generally, TBA trading can probably be sustained with a variety of organizational structures, but fits most easily with institutions that receive some level of government support.

TBA trading thus greatly simplifies the analytical problem confronting participants in agency MBS markets, restricting its scope to the more tractable set of risks associated with the parameters of the TBA contract. Importantly, this has attracted a number of investors who are unwilling to perform credit analysis – notably foreign central banks, and a variety of mutual funds and hedge funds who specialize in interest-rate analysis. That translates into more capital for financing mortgages and thus lower rates for homeowners. Some economists have proposed formal models for how the temporary restriction of information in TBAs decreases information asymmetries and enhances liquidity[7].

TBAs also facilitate hedging and funding by allowing lenders to pre-arrange prices for mortgages that they are still in the process of originating. This effectively allows them to hedge their exposure to interest-rate risk after a borrower locks in a rate. This exposure occurs when borrowers

[6] TBAs are only possible for "pass-through" securities, whereby the underlying mortgage principal and interest payments are forwarded to security-holders on a *pro rata* basis, with no tranching or structuring of cash flows.

[7] See Glaeser & Kallal (1997).

exercise an option that lenders frequently give successful mortgage applicants to lock in a mortgage rate (usually the primary mortgage rate prevailing on the date of the application's approval) for a period of 60 to 90 days. Lenders face the risk that interest rates rise – and mortgage valuations fall – after having promised a rate to borrowers but before the loan closes and they get to sell the loan to the secondary market. Lenders can eliminate this risk by selling a TBA forward and manage their hedges dynamically with options or a hedging mechanism unique to TBAs known as the "dollar roll". (Dollar rolls provide an additional financing vehicle, drawing in market participants whose financing and risk management needs are better suited to the idiosyncrasies of this instrument[8]).

It is important to note that not all agency MBS are traded as TBAs. Some loans that the GSEs are authorized to purchase are not eligible for delivery as part of a TBA contract, because the criteria for TBA eligibility are set by a private industry trade group – that excludes the GSEs – rather than any governmental authority. These loans trade at significant discounts relative to TBAs due to differences in various prepayment characteristics and, crucially, liquidity[9]. The lack of direct government influence over the TBA trading conventions is all the more notable in light of the repeated failures of private mortgage futures contracts, which in part reflect the challenges of coordinating action among market participants.

Structure of Cooperative Utility Model

One model for replacing Fannie Mae and Freddie Mac that has so far received frequent mention but little sustained analysis is the lender cooperative utility. Yet while each different model for a successor to the GSEs has its own strengths and weaknesses, a private lender cooperative utility may provide the best overall solution based on the design principles listed earlier. Under this model, securitization would be carried out by a mortgage securitization cooperative that would be mutually owned by a membership consisting of financial institutions engaged in residential mortgage lending. Cooperative or mutual structures have existed for more than a century in the U.S. financial system, ranging from clearing houses (e.g. CME until 2000, DTC, CLS, ICE Trust), banking (e.g. mutual savings banks, credit unions and the FHLB system) and agricultural finance (e.g. the Farm Credit System). The main goal of a cooperative is to provide services to its members and because

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[8] The alternative is MBS repo (repurchase transactions), which is a somewhat more expensive means of financing agency MBS and differs in a variety of features – see Vickery & Wright (2010), forthcoming.
[9] Vickery & Wright (2010) provide a detailed comparison between TBAs and one of these ineligible loan-types.

those members are also the cooperative's owners, any excess profits generated by the cooperative are returned to the members. Similarly, losses are shared on a pro-rata basis based on each member's equity stake.

Basic Structure and Governance

Only members would be eligible to sell mortgages to the securitization cooperative, and each member would also hold an equity stake in the cooperative entity. Membership should include a broad range of institutions, including large and small lenders, as well as both banks and nonbanks. All these members would be able to directly securitize loans through the cooperative and provide correspondent services for non-member access. Such correspondent relationships are a common practice already, due to larger firms' ability to negotiate more favorable guarantee fees with the GSEs, and provide large banks a substantial portion of the mortgages they sell to the GSEs for securitization. Key decision-making authority would be delegated to a Board of Directors made up primarily of cooperative members, but also including independent directors. Since the bulk of mortgage lending tends to be concentrated amongst a small group of financial institutions (currently over 60% of origination is performed by only 4 institutions[10]), the cooperative's charter should include provisions to protect small institutions and ensure that they have equal access to the cooperative's services.[11]

Capital and Guarantee Fees

Each member would be required to provide equity capital to the cooperative. The capital structure would include initial ownership shares of paid in equity and a mutualized loss pool. Members' contributions to the mutualized loss pool would depend on the volume of mortgages securitized (i.e. the intensity of the institution's use of the cooperative, analogous to the approach used within the FHLB system). The mutualized loss pool would, over time, build up to provide the bulk of the capital base and serve as a reserve against credit-related mortgage losses.

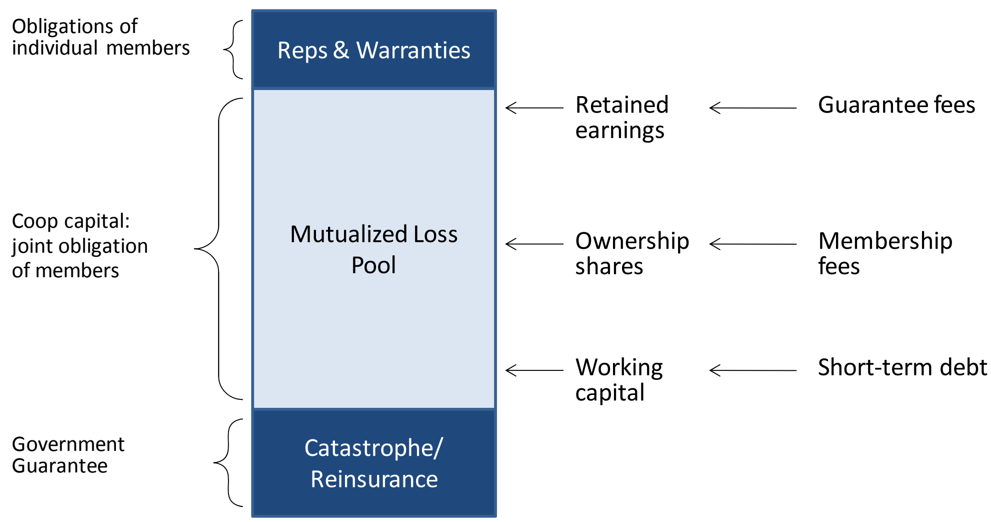
As with Freddie and Fannie, the cooperative would receive MBS guarantee fees up front and on a flow basis. These fees would be split among several uses: 1) payments of the required

[10] See http://www.mortgagestats.com/residential_lending/.

[11] Consistent with this principle, the FHLB system limits the voting rights of any individual institution, and places geographic restrictions on the composition of the Board of Directors in each district, that limits the influence of the largest shareholders. If anything, the FHLB system has been accused of tilting too strongly towards smaller institutions.

reinsurance fee to the government for tail risk insurance; 2) payments into the general revenue of the cooperative to cover operating and non-credit-related expenses; and 3) payments to the mutualized reserve pool used to cover credit losses. An example of a capital waterfall for the cooperative is shown in Figure 3.

Figure 3. Capital Waterfall for a Private Lender Cooperative Utility



The lender cooperative would focus on the "core" of the housing market, letting the FHA take the lead on programs for first-time homebuyers as well as mortgage products to make homeownership more affordable for low-income households. We anticipate that this core market would contain only a few standard mortgage products such as the 30-year fixed rate mortgage and plain vanilla adjustable rate mortgages. Innovation in mortgage products would occur in the periphery of the market outside of the cooperative. Products could be considered to be added to the core product set only after sufficient history on these products has been accumulated to be able to estimate the government's tail risk premium. Since the tail risk is explicitly priced by the government, there is a good argument for the government to avoid "taxing" the lender cooperative to support any specific housing initiatives or assigning it any housing subsidy mandates. The possibility that the tail-risk insurance may be underpriced does not in our opinion make a good case for placing affordable housing mandates on the cooperative. A better response would be to adjust the price for the insurance and to focus the mandates in a government entity such as the FHA. However, even a tax is better than quotas or other targets that would distort the cooperative's business decisions.

An important design issue is how to structure the government tail risk insurance for the lender cooperative. The choice involves a tradeoff between increased pooling on the one hand, which implies that the government insurance would pay out infrequently and in response to systemic events, and on the other hand the degree to which the lender cooperative is still a "going concern" at the time of the payout. At one extreme, the tail risk insurance could be provided to each specific mortgage (like FHA insurance). At the loan level, the insurance is likely to be triggered by idiosyncratic factors such as health shocks and divorce that impact a borrower's ability to pay. Alternatively, the insurance could also be specified at the MBS security level (as in GNMA pool insurance). By pooling across mortgages, insurance payouts would be less likely to be triggered by idiosyncratic factors affecting individual borrowers, but would still be susceptible to idiosyncratic and more regional shocks as opposed to macro shocks[12]. This could be addressed by pooling across MBS securities in a specific "vintage" which could be defined by a particular time period in which the securities were created. Finally, the trigger for the insurance could be defined at the level of the cooperative's mutualized insurance fund. That is, the insurance pays out when credit losses have eroded the cooperative's mutualized loss pool below some minimum threshold.

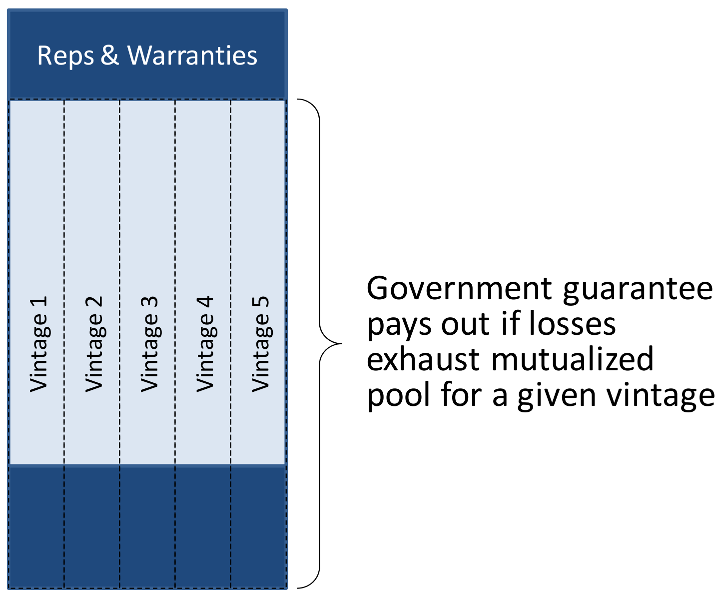
This last triggering mechanism insures that payouts would only occur in response to systemic events, yet may leave the lender cooperative in a weak position to maintain lending even after the government support is provided. A goal of the new entity is to enable the provision of mortgage lending even in periods of stress in credit markets through a robust securitization mechanism that facilitates mortgage liquidity. This suggests that the best tradeoff for the trigger point in the government tail risk insurance would be applying it to whole vintages of MBS. In doing so, the vintage should be defined in such a way that clear information regarding the performance of the vintage is only available after the vintage is closed for new issuance. This would prevent adverse selection whereby lenders know that a vintage is performing poorly enough to likely trigger government payouts and therefore those lenders with low-quality loans to opt into the vintage and those lenders with higher-quality mortgages to opt out.

The other advantage of the vintage-based trigger is that problems with any given vintage or set of vintages will be less likely to inhibit the ability of the lending cooperative to continue to perform its securitization function going forward. As a result, the cooperative remains a going concern even in periods when the insurance is triggered. This in combination with lending standards

[12] Even in normal times with rising house prices and a growing economy, the GSEs had to pay out for losses on individual MBS every year.

and insurance pricing that are constant over the credit cycle should help to limit the pro-cyclicality of the provision of residential mortgage credit. The government tail risk insurance provides a "fire break" between existing vintages and new lending, and helps to insure that the mutualized insurance fund is never depleted to the point where market participants question the viability of the cooperative and the market it supports. This is illustrated in Figure 4.

Figure 4. Vintage-Level Insurance for a Private Lender Cooperative Utility



Limiting moral hazard is always a concern whenever the government is providing tail risk insurance. Lending standards have to be maintained to insure that the insurance is only paying out in the case of true tail events. Otherwise, a race to the bottom could occur among lenders, implying that the "tail" is growing in size over time. Two factors will help to limit moral hazard for the lender cooperative. The first factor is putting borrowers in the first-loss position ahead of the government. Minimum down payment requirements should be enforced for all mortgage products that the government provides insurance on. These down payment requirements should not vary over the cycle.[13] In addition, borrowers should not be able to purchase private mortgage insurance as an alternative to making the required down payment unless they pay a higher mortgage rate to the

[13] Maintaining minimum down payment requirements would help to mitigate the pro-cyclicality of leverage over the cycle which can exacerbate asset price cycles. It may also be helpful to redesign the mortgage contract to prohibit the borrower from taking on subsequent 2nd-liens that push the combined LTV above the allowed maximum. This would still allow a borrower to borrow against gains in house prices but would maintain the collateral buffer for the cooperative.

cooperative and therefore to the government. The second factor is that the cooperative would absorb losses on the securities in each vintage ahead of the government. These losses are shared across the members of the cooperative, but weighted toward those that participated most heavily in each vintage, which provides incentives for the members to maintain high credit standards, and importantly, to monitor one another.[14] The cooperative may choose to reinsure some of the credit loss exposure to the mutual insurance fund through a private mortgage insurer, subject to regulatory approval.

Regulation and oversight

While the first loss positions of the borrower and the cooperative are important safeguards against moral hazard, the government would still need to provide regulatory oversight of the cooperative. The FHFA (or a successor agency) would be responsible for regulatory oversight and management of the government's tail risk insurance fund. The FHFA would need enhanced regulatory powers including 1) approval of all new mortgage products and lines of business that can be conducted by the cooperative; 2) direct oversight of the risk-based pricing framework for guaranteeing principal and interest; 3) oversight of the cooperative's risk management systems, such as stress testing; and 4) the ability to veto any changes in guarantee fees or dividends.

Higher minimum capital standards, as well as more stringent risk-based capital standards would be required to protect the government's insurance fund. In addition, the regulator should be removed from the annual appropriations process in order to minimize political influence. The regulator could also determine, establish, and manage the government's tail risk insurance fund. One option is that tail risk premia could be paid into a reserve account which builds up over time, analogous to the reserve funds of the FDIC or FHA. If this reinsurance fund is depleted due to significant mortgage credit losses, it must be replenished by charging higher tail risk insurance premia. An alternative approach is "true" insurance, where tail-risk premia are set at some fixed level, and any excess losses are simply charged to general government revenue.

[14] The performance of each member's mortgages can also be tracked by the cooperative as a discipline device. If a particular member's mortgages are performing consistently below standard, that member can be prohibited from issuing new mortgages into the cooperative until its underwriting problems have been corrected to the satisfaction of the cooperative.

A disadvantage of FDIC-style insurance is that it could exacerbate cycles in mortgage lending, because reinsurance premia would be raised exactly when the mortgage and housing market are under stress. Conversely, there would be pressure to reduce tail insurance premia during periods when defaults are low and the reserve account is large, potentially fuelling excessive credit booms during such periods. An intermediate solution may be charging the government reinsurer to recoup losses on tail risk reinsurance, but only over a longer period (e.g. 10 years). This should reduce the effect on mortgage rates in the short run, since the recoupment is smoothed over a long period of time. Regulation could also stipulate that the fund not seek to recoup past losses during periods of market stress, to further reduce pro-cyclicality.

Advantages and disadvantages of the cooperative model

There are several potential advantages associated with the private lender cooperative model as a successor to the GSEs.

- *Low costs, narrow mission.* Cooperatives have incentives to minimize costs, and to maintain a narrow mission to avoid cannibalizing members' other profitable business activities. For instance, DTC provides clearing and settlement for its members but not custodial services, which is provided by several of its members. We envision that several members of the cooperative would also be active participants in lending in the peripheral mortgage market outside of the "core" products securitized by the cooperative.
- *May help limit monopoly power.* A mutual organization may have fewer incentives to exercise market power over mortgage originators than a for-profit enterprise. A for-profit firm has incentives to exercise monopoly power to increase profits, as Freddie and Fannie have arguably done in the past. Under a cooperative structure, excess profits are simply returned to members (i.e. to the lenders themselves) on a pro rata basis, proportional to securitization activity. Assuming competition amongst lenders in the primary market is high, any increase in fees charged by the cooperative would be at least partially competed away in the primary markets, since originators would be aware they could increase their share of the cooperative's profits by originating more mortgages. An important caveat, however, is that this argument assumes mortgage originators do not collude, either implicitly or explicitly. In a range of industries, trade organizations have acted as a coordinating device for enforcing

collusive arrangements, particularly when they allow participants to monitor the output and pricing of their competitors, and to punish behavior that undermines the market power of the cartel.[15]

- *Low risk-taking*. Mutualization of credit losses should provide incentives for members to monitor the activities of the cooperative, and to be conservative when setting criteria for membership, eligible mortgages, and the sensitivity of guarantee fees to mortgage risk. Consistent with this view, research on thrifts and insurance companies has found that mutuals engage in less risk than otherwise similar stock-owned firms.[16]
- *Inside monitors*. Equity holders that are also mortgage bankers could in principle be more effective monitors of the securitizer's activities than a dispersed group of outside shareholders.
- *Maintains standardization benefits*. The cooperative model could be used to maintain the key standardization benefits of the current system, including the TBA market, and leverages existing credit guarantee pricing and evaluation platforms established by Freddie and Fannie.
- *Minimize government involvement*. In this approach, government's role is limited to providing tail risk insurance and regulating the cooperative. This limits the potential for political pressures to influence the operation of the cooperative, at least relative to a public option.
- *Simplifies pricing*. The lender cooperative simplifies pricing of tail risk compared to the government bond insurer option. Guarantee fees are paid to the cooperative and the government only needs to price and charge the tail risk to the cooperative.

There are several potential disadvantages associated with the private lender cooperative model as a successor to the GSEs.

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[15] Genesove and Mullin (2001) show how communication through a trade association facilitated collusion in the sugar industry. McAndrews and Rob (1996) theoretically analyzes the competitive benefits of a cooperative compared to a for-profit structure in the case of a natural monopoly (e.g. a wholesale switch in an ATM network). Their model structure assumes the cooperative enables competitors in the downstream market to collude. Under this assumption, there is no clear benefit of a cooperative structure in terms of promoting competition.

[16] Esty (1997) presents evidence from the 1980s that mutual savings banks held less risky portfolios than otherwise similar stock-owned savings banks. Lamm-Tenant and Starks (1993) presents similar evidence for insurance firms. See these papers and Flannery and Frame (2006) for more references. One caveat in applying the lessons of these studies to the current setting is that members of mutual thrifts and insurers hold both debt and equity claims, which limits risk-shifting problems, contributing to the conservative approach taken by mutually owned firms. But in this case, the securitization cooperative would issue outside debt, so risk-shifting incentives would still be present, especially if the cooperative is highly leveraged.

- *Governance may be weaker.* Historically, cooperatives often have weak governance over management, because of their dispersed membership, and lack of market discipline or threat of takeover. For example, Cole and Mehran (1998) present evidence that firm performance of mutual thrifts increases after conversion to stock firms; also associated with an increase in the share of inside equity. Given the government reinsurance of tail risk, limiting risk taking and upside returns may be a desirable outcome. In addition, the concentrated nature of mortgage lending may mitigate weak monitoring incentives (e.g. in the first half of 2009, Freddie's top 10 sellers provided 71 percent of securitization volume).
- *Limited access to capital markets.* Access to equity capital is limited to members of the cooperative. Greater access to capital markets to fund growth is often cited as a key reason for demutualization by thrifts and insurers (see evidence in Viswinathan and Cummings (2003)). However, in a tail risk event, experience has shown that all financial firms lose access to capital markets, so the advantages of a shareholder structure in this respect may be limited.
- *Broad participation may be difficult.* Relatedly, an initial capital infusion would be required to set up the de novo cooperative. Small or poorly capitalized mortgage lenders may be unwilling to supply this capital. The Government Accountability Office (2009) cites comments from an unnamed community bank trade group that small institutions may be unwilling to supply sufficient capital to the mutual entity, in light of previous losses on preferred stock investments in Fannie and Freddie.
- *Investment and innovation would be more limited.* Focus on cost minimization could result in insufficient resources devoted to necessary activities, such as hiring strong management and technical staff, investing in risk management and operational systems, and so on. Lack of a strong profit motive also reduces incentives for the cooperative to innovate.

Conclusion

The Treasury Department has declared its intention to foster a broad-based debate on the future of the U.S. housing finance system. Given this mandate and the clear failure of a variety of institutions across the U.S. housing system, it is important to proceed from an accurate diagnosis of what went wrong. Together, the Ellen et al. and Levitin & Wachter papers lay out many of the key failures and many of the potential solutions. In this paper, we laid out six design principles and explored one model that has so far received frequent mention but little sustained analysis – the lender cooperative utility. We have also discussed the importance of the TBA market and how a cooperative model could accommodate and sustain this product's remarkable success. While cooperative structures face significant challenges, particularly in their governance, we believe these problems are tractable and outweighed by the advantages a cooperative has in addressing some of the central incentive problems evident in Fannie Mae and Freddie Mac.

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