

CRS Report for Congress

H.R. 1427: Reforming the Regulation of Government-Sponsored Enterprises

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**Prepared for Members and
Committees of Congress**

H.R. 1427: Reforming the Regulation of Government-Sponsored Enterprises

Summary

As government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac are hybrids: created and chartered by Congress for specific public policy purposes, they are nonetheless private, profit-seeking businesses whose shares are traded on the New York Stock Exchange. Their “government-sponsored” nature confers certain advantages over their purely private competitors. As a result, their operations have expanded rapidly over the years and they long ago assumed — and continue to play — critical roles in the residential mortgage market.

In 1992, Congress established the Office of Federal Housing Enterprise Oversight (OFHEO), an agency within the Department of Housing and Urban Development (HUD), to oversee the financial safety and soundness of the two firms. OFHEO is authorized to set capital requirements, conduct annual risk-based examinations, and generally enforce compliance with safety and soundness standards.

With the rapid subsequent growth of the GSEs, and major accounting scandals at both Fannie Mae and Freddie Mac, the effectiveness of current regulation has been widely questioned. Several legislative proposals considered in the 108th and 109th Congresses addressed GSE regulatory reform, but none was enacted. However, the adequacy of GSE regulation remains a prominent legislative issue.

Although improving supervision of Fannie Mae and Freddie Mac is the major focus, regulatory reform also involves the 12 Federal Home Loan Banks, which comprise one collective GSE. The Federal Home Loan Banks lend to lenders — their member banks — primarily for housing, but also for many other purposes. Under current reform proposals, they would be brought under a single regulatory umbrella with Fannie and Freddie.

H.R. 1427, introduced in the 110th Congress, would abolish OFHEO and establish an independent agency — the Federal Housing Finance Agency — to oversee the GSEs, with enhanced safety and soundness, disclosure, and enforcement tools. The bill would also enable the new agency to monitor and control the GSEs’ investment portfolios, establish a fund to support housing for low- and extremely-low income families, and raise the size limit on mortgages that Fannie and Freddie are allowed to purchase.

This report provides background on the GSE reform issue, summarizes the provisions of H.R. 1427, and compares them to legislation passed by the House in the 109th Congress. It will be updated as the bill moves through Congress, and as new legislation is introduced.

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Introduction

Fannie Mae and Freddie Mac are hybrids: created and chartered by Congress for specific public policy purposes, they are nonetheless private, profit-seeking businesses whose shares are traded on the New York Stock Exchange. Their “government-sponsored” nature confers certain advantages over their purely private competitors.¹ As a result, their operations have expanded rapidly over the years and they long ago assumed — and continue to play — critical roles in the residential mortgage market.

In exchange for government sponsorship, their statutory charters require Fannie and Freddie to meet a set of housing goals, whose general thrust is to promote and support home ownership among low- and moderate-income families, even where such activities may not be profit-maximizing.

Congress has been concerned that the safety and soundness of the government-sponsored enterprises (GSEs) be maintained in order that they meet their public policy mission and not pose risks to the housing finance system or to taxpayers. Prior to 1992, oversight was the responsibility of the Department of Housing and Urban Development (HUD) and the Federal Home Loan Bank Board. In 1992, in recognition of the two GSEs’ growing importance to the mortgage market, Congress established the Office of Federal Housing Enterprise Oversight (OFHEO), an independent agency within HUD, whose exclusive mission is to oversee the financial safety and soundness of the two firms. The office is authorized to set capital requirements, conduct annual risk-based examinations, and generally enforce compliance with safety and soundness standards.

Since Congress created OFHEO in 1992, Fannie Mae and Freddie Mac’s business has continued to expand. **Table 1** illustrates the expansion by comparing certain figures for 1992 and 2005. The principal business activity of the two firms is mortgage securitization. They buy mortgage loans from the original lenders, pool them, and repackage them as mortgage-backed bonds, which may be sold to investors

¹ The most significant advantage comes from an “implicit guarantee.” Although Fannie and Freddie bonds are not explicitly backed by the full faith and credit of the government, market participants behave as if they were, believing that the Treasury will never permit either firm to default. The implicit guarantee allows them to borrow at lower rates than private financial institutions, and to take on greater financial risk without a corresponding drop in their credit ratings or rise in their cost of capital. In addition, their charters include certain tax and regulatory exemptions and a line of credit with the U.S. Treasury.

or held in the GSEs' own investment portfolios. The two firms purchased \$442.7 billion in mortgage loans in 1992, and more than double that amount in 2005. As a percentage of all mortgages originated, however, the GSEs' share fell, an indication that other financial institutions are active in the mortgage securitization market.²

Table 1. Fannie Mae and Freddie Mac: Selected Combined Financial Statistics, 1992 and 2005
(all figures except percentages in billions of dollars)

	1992	2005	% Growth, 1992-2005
Mortgages Purchased	442.7	951.2	114.9
Purchases as Percent of All Mortgages Originated	49.5	35.8	
Mortgage-Backed Securities Issued	373.2	879.1	135.6
Percent of all MBS Issues	35.8	45.3	
Mortgage-Backed Securities Outstanding	962.0	3,454.5	259.1
Percent of all MBS Outstanding	63.4	63.1	
Retained Mortgage Portfolio	189.9	1,437.6	657.0
Financial Derivatives (Notional Amount Outstanding)	71.7	1,327.6	1,751.6

Sources: OFHEO *Report to Congress*, 2006, and Inside Mortgage Finance Publications, 2006 *Mortgage Market Statistical Annual*.

Note: "Retained Mortgage Portfolio" includes whole mortgage loans and mortgage-related securities. Derivatives total is for 1993; earlier figures are not available for Freddie Mac.

In terms of issues of new mortgage-backed securities (MBS), the figures in **Table 1** tell a similar story. The value of MBS issued by Fannie and Freddie in 2005 was more than double the 1992 figure, but their share of all MBS issued increased much more slowly. The value of all Fannie and Freddie MBS outstanding more than tripled over the period, but the percentage of MBS outstanding accounted for by the two firms' securities remained unchanged. Again, this suggests rapid growth in all segments of the mortgage securitization market, including those where the GSEs are not the major players.

² Fannie and Freddie's market share growth is constrained by two factors: they are not allowed to purchase mortgages over a certain value (so-called "jumbo" loans), and they have not been the leaders in securitization of subprime mortgages. The declining percentage shown in **Table 1** may suggest that jumbo and subprime lending has grown faster than the conventional or conforming mortgage sector where they are dominant (Fannie and Freddie securitized 80% of conforming mortgage loans made in 2005, up from 58% in 1992), but because of the many factors at play, a single year's figure does not necessarily indicate a long-term trend.

The figures in **Table 1** relating to purchase and securitization of mortgages and the value of MBS outstanding indicate that the GSEs have grown rapidly, but also suggest that most of the increase can be attributed to the general expansion of the home mortgage market. The fact that large increases in the volume of business occur without correspondingly large increases in the percentage of the market served is evidence that there are other major players in the marketplace, although these institutions generally do not compete head-to-head with Fannie and Freddie in the same market segments. The last two lines in **Table 1**, however, show a change in the nature of the GSEs' business, rather than a simple increase in scale.

The 657% increase in the GSEs' mortgage portfolios suggests that the GSEs' business model has changed significantly. They appear to be less focused on serving as a conduit between mortgage lenders and bond investors, and instead are placing more emphasis on earning interest income by holding mortgage loans and MBS directly. Fannie and Freddie's low cost of capital, derived from their GSE status, allows them to finance the purchase of mortgage assets by selling debt at interest rates below the yield on the acquired mortgages. The difference, or spread, between the rates is profit. As profit-seeking firms, the GSEs have an incentive to maximize the size of their portfolios. **Table 1** illustrates the magnitude of their response to this incentive.

Holders of mortgage loans and mortgage-backed bonds face a range of financial risks. Like any fixed-rate debt asset, a mortgage loses value if market interest rates rise. In addition, mortgage investors are at risk when interest rates fall, because home owners have the right to prepay or refinance their loans, and high interest mortgages — most desirable from the investor's point of view — are the first to be prepaid. To manage these risks, Fannie and Freddie turn to the derivatives markets, where contracts may be purchased that provide insurance against (or hedge the risks of) unfavorable changes in interest rates. **Table 1** shows that as their portfolios have grown, the GSEs' use of derivatives to manage risk has exploded. Financial management at Fannie and Freddie has become a more complex job, and safety and soundness regulation has become more challenging.

The Need for Reform

Growth in business volume and the risks posed by growing portfolios (and the derivatives transactions needed to manage those risks) would likely have made GSE regulatory reform a priority in the 110th Congress (as it was in the 109th)³ even if that growth had been managed smoothly. But it has not been: serious problems with financial accounting came to light at Freddie Mac in 2003, then at Fannie Mae in

³ For a summary of 109th Congress GSE legislation, see CRS Report RL32795, *Government-Sponsored Enterprises: Reform Legislation in the 109th Congress*, by Mark Jickling.

2004. Both GSEs had to restate their earnings for several years,⁴ pay fines totaling hundreds of millions of dollars, and replace their top managers.

The accounting scandals revealed serious weaknesses in accounting policies and controls. In essence, both firms ignored generally-accepted accounting principles (GAAP) and chose their accounting policies to produce the financial results that management wanted. Particularly disturbing, beyond the basic willingness to manipulate financial results, was that many of the lapses involved accounting for financial derivatives contracts, upon which the GSEs depend to manage the financial risks they face.

The Reform Legislation

H.R. 1427, introduced by Chairman Frank and referred to the House Committee on Financial Services, takes a comprehensive approach to the reform of GSE regulation. It has many features in common with H.R. 1461, which passed the House in the 109th Congress, but also some important differences.

An Independent Regulator with Enhanced Authority

H.R. 1427, like its predecessor, proposes a restructuring of GSE regulation. It would replace OFHEO with an independent agency, called the Federal Housing Finance Agency, which would have enhanced safety and soundness powers, similar to those of federal banking regulators. Given the importance of the GSEs to the financial system, and the potential risks they pose, there is little support for keeping the GSE regulator inside HUD. Among the new powers would be the authority to set capital standards by order or regulation, to establish standards for the GSE portfolios, and to initiate receivership or liquidation proceedings for a failing GSE.

Also included under the new agency's regulatory umbrella would be the Federal Home Loan Banks (FHLBs), which comprise one collective GSE, but have not experienced the kinds of problems and business shifts seen at Fannie and Freddie in recent years. (The bill refers to all GSEs — the FHLBs and Fannie and Freddie — as “regulated entities.” In provisions that apply only to Fannie and Freddie, the term “enterprises” is used.)

Besides creating a new regulator, the bill would make several important and controversial changes to current law. These are briefly described below.

Affordable Housing Fund

Section 128 of H.R. 1427 requires Fannie and Freddie to contribute to an affordable housing fund to increase homeownership among very low- and extremely

⁴ When the restatements were completed, Freddie Mac was found to have understated its net income by \$5 billion, while Fannie Mae overstated earnings by \$6.3 billion. See CRS Report RS21949, *Accounting Problems at Fannie Mae*, and CRS Report RS21567, *Accounting and Management Problems at Freddie Mac*, by Mark Jickling.

low-income families, to increase investment in housing in low-income and economically distressed areas, and to increase and preserve the supply of rental and owner-occupied housing for very low- and extremely low-income families. Each enterprise would be required to allocate to the fund 1.2 basis points (0.012%) of its average total mortgage portfolio during the preceding year. Proponents of the affordable housing funds recognize that Fannie and Freddie receive a valuable subsidy in the form of their GSE status, which permits them to borrow at lower rates than other private financial firms. The affordable housing fund proposal can be viewed as a means of redirecting some of the value of this subsidy from private shareholders and corporate management to a policy objective consistent with the GSEs' charters.

H.R. 1461 (109th Congress) included a similar provision, which proved to be among the most controversial sections of the bill.⁵ Opponents argued that Fannie and Freddie would use the funds to reward political allies or for indirect lobbying purposes. During floor consideration of H.R. 1461, an amendment was adopted that prohibited the use of money disbursed by the affordable housing funds for political, lobbying, or advocacy purposes. Other amendments included a five-year sunset for the fund (with the director of the new regulator to recommend to Congress whether the fund should be extended) and established a priority for activities in areas affected by Hurricanes Katrina and Rita, and in other areas designated by the President as major disaster areas.

These amendments are incorporated into H.R. 1427 (with some modifications). Other changes include the allocation formula (in H.R. 1461, the enterprises were to contribute 5% of their profits to the fund) and the distribution mechanism — under H.R. 1427, the money would be paid to the new agency, which would pass it on to the states, who would select the ultimate recipients. Under H.R. 1461, Fannie and Freddie would have controlled the funds themselves, and dealt with recipients directly.

Portfolio Limits

As noted above, both Fannie and Freddie hold large portfolios of mortgages and mortgage-backed securities, leading some observers to describe them as the world's largest savings and loan institutions. The size of their portfolios represents a concentration of mortgage market risk that led former Federal Reserve Board Chairman Alan Greenspan and others to urge Congress to consider ways to shrink the size of the GSEs' asset portfolios.⁶

In the 109th Congress, Section 109 of S. 190 (which was marked up by the Banking Committee but never brought to the floor) included statutory provisions that would have limited Fannie and Freddie's ability to hold mortgage assets in portfolio. They would have been allowed to acquire mortgages and mortgage-backed securities

⁵ See CRS Report RS22336, *GSE Reform: A New Affordable Housing Fund*, by N. Eric Weiss.

⁶ See, e.g., testimony of Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, before the House Committee on Financial Services, Feb. 17, 2005.

only for purposes of securitization (with certain limited exceptions). Under this proposal, Fannie and Freddie's business models would have been considerably altered: instead of very large investment funds, they would be transformed into conduits, buying mortgages from the original lenders, pooling them, packaging them into mortgage-backed securities, and selling them to bond investors. This change would greatly reduce their portfolio earnings, currently one of the chief sources of their profits.

Proponents of portfolio limits argue that such a step is needed to reduce the cost of the GSE subsidy to taxpayers, which takes the form not of annual appropriations, but of the assumption of risk, that is, the potential cost to the Treasury of having to bail out either Fannie or Freddie to avoid the possibility of a systemic catastrophe in the financial markets should either firm encounter serious difficulties. Opponents argue that reducing the GSEs' interest earnings would mean less support for low- and moderate-income housing goals. The House bill in the 109th Congress, H.R. 1461, authorized the new agency to require an enterprise to dispose of or acquire any asset or liability, if the agency determined that such action was consistent with the safe and sound operation of the enterprise, but did not include any provision that would have mandated shrinkage of the portfolios. Differences on this point were key to the failure of the 109th Congress to enact GSE reform legislation.

H.R. 1427 represents a compromise position. The director of the new agency would be specifically directed to monitor portfolios, and would have the authority to direct an enterprise to acquire or dispose of any asset, without requiring a determination that such an action is consistent with the safe and sound operation of the enterprise.

Conforming Loan Limits

Current law sets a limit on the size of mortgages that Fannie and Freddie can buy. Mortgages above the limit, called jumbo loans, are less likely to be securitized than the conforming mortgages that Fannie and Freddie are allowed to purchase. Partly as a result, mortgage rates for nonconforming loans are slightly higher than conforming loan rates. Critics of the conforming loan limit argue that the limit has a disparate geographical effect: in some areas of the country the limit, which is \$417,000 for single-family homes in 2007, covers all but the high end of the market, while in other areas, such as San Francisco or New York City, virtually all real estate transactions take place over the limit.

H.R. 1427 would raise the conforming loan limit in metropolitan areas where the median home price exceeds the current limit. In those areas, the limit would be set at the median home price, up to a ceiling of 150% of the current limit. For more information on this proposal, see CRS Report RS22172, *Proposed Changes to the Conforming Loan Limit*, by Barbara Miles and Mark Jickling.

Like the affordable housing fund provision, the proposal to raise the loan limit in high-cost areas recognizes that GSE status confers a subsidy on Fannie and Freddie, and seeks to attain a more uniform distribution of the benefits of that subsidy. In the process, raising the limit increases the size of the subsidy: allowing

Fannie and Freddie to expand operations into the jumbo mortgage market enhances the value of the GSEs' funding advantage, which is dependent on their GSE status.

Table 2 below provides brief summaries of the provisions of H.R. 1427 as introduced, and compares them side-by-side with the provisions of H.R. 1461, as passed by the House in the 109th Congress.

**Provisions of H.R. 1427 (as introduced in the 110th Congress)
and H.R. 1461 (as passed by the House in the 109th Congress)**

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Title I — Reform of Regulation of Enterprises and Federal Home Loan Banks		
Subtitle A — Improvement of Safety and Soundness		
Short Title	Federal Housing Finance Reform Act of 2007	Federal Housing Finance Reform Act of 2005
Definitions	<p>“Regulated Entity” refers to Fannie Mae and Freddie Mac and affiliates, and each Federal Home Loan Bank.</p> <p>“Regulated Entity-Affiliated Party” means (1) directors, officers, employees, or agents of a regulated entity, or a controlling shareholder; (2) shareholders, affiliates, consultants or joint venture partners, or any other person as determined by the director, that participates in the conduct of the affairs of the regulated entity (except that shareholders are not participants solely because they are members or customers of the regulated entity); (3) any independent contractor that knowingly or recklessly participates in violation of law, breach of fiduciary duty, or unsafe or unsound practice that may cause more than minimal loss to the regulated entity; and (4) any not-for profit that receives its principal funding from a regulated entity. (Sec. 2)</p>	<p>Same, except does not contain the category of “any other person, as determined by the director” in the definition of “regulated entity-affiliated party.”</p>
New Regulatory Agency	Federal Housing Finance Agency (Sec. 101)	Identical provisions.
Agency Status	Independent federal agency (Sec. 101)	Identical provisions.
Jurisdiction	General supervisory and regulatory authority over Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. (Sec. 101)	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Agency Officials	<p>A Director, appointed by the President, with advice and consent of the Senate for a five-year term. Should the office be vacant, a new Director shall be appointed to fill only the remainder of the term.</p> <p>Three Deputy Directors, appointed by the Director for the Divisions of Enterprise Regulation, Federal Home Loan Bank Regulation, and Housing.</p> <p>An Office of the Ombudsman to consider complaints and appeals from any regulated entity and any person with a business relationship with any regulated entity. (Sec. 101)</p>	Identical provisions.
Qualifications of Officials	<p>The Director and Deputies must be U.S. citizens, who have a demonstrated understanding of financial management, with specialized knowledge and experience required for deputy Directors relevant to the offices they head. (Sec. 101)</p>	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Duties and Authorities of the Director	<p>Principal duties are to oversee the operations of each regulated entity and to ensure that each entity: (1) operates in a safe and sound manner, and maintains adequate capital and internal controls; (2) fosters liquid, efficient, competitive, and resilient national housing finance markets that minimize the cost of housing finance (including for housing for low- and moderate-income families); (3) complies with applicable rules, guidelines, orders and regulations pursuant to applicable law; (4) carries out its statutory mission only through activities consistent with applicable law.</p> <p>The Director may review and reject acquisition or transfer of a controlling interest in a regulated entity; may exercise any necessary or appropriate incidental powers to fulfill agency's duties of supervision and regulation; may enforce actions it takes, or administer conservatorship or receivership through litigation either independently (in consultation with the Attorney General) or through the Attorney General. (Sec. 102)</p>	Identical provisions.
Prudential Management and Operations Standards	<p>The Director shall establish standards for each regulated entity for (1) internal controls and information systems, (2) internal audit systems, (3) credit and counterparty risk, (4) interest rate risk management, (5) monitoring and management of market risk, (6) adequacy and maintenance of liquidity and reserves, (7) asset and portfolio management, (8) investments and acquisitions, (9) record keeping, (10) issuance of subordinated debt, as the Director considers necessary, (11) overall risk management, including reputational risk and maintenance of remote facilities to protect against disruption, and (12) other standards the Director finds appropriate. (Sec. 102)</p>	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Failure to Meet Prudential Standards	If the Director finds that a regulated entity has failed to meet any prudential standard, the entity must submit a plan within 30 days to correct the deficiency, and the Director may prohibit any increase in total assets of the entity, require an increase in regulatory capital, or take other actions until the deficiency is corrected. The Director shall take one or more of these actions if the entity fails to meet prescribed standards, if the deficiency is not corrected, and if the entity underwent extraordinary growth in the 18 months prior to the date when it first failed to meet the standard. (Sec. 102)	Identical provisions.
Federal Housing Enterprise Board	Creates the Federal Housing Enterprise Board to advise the Director on overall strategies and policies. The Board is to have three members including the Secretaries of the Treasury and Housing and Urban Development and the Director, who chairs the Board. The Board meets at least once every three months and shall testify annually before Congress on the safety and soundness of the regulated entities, any material deficiencies in the conduct of the entities' operations, the overall operational status of the entities, an evaluation of how the entities are carrying out their missions, the operations, resources and performance of the Agency, and other matters the Board deems appropriate. (Sec. 103)	Creates the Housing Finance Oversight Board (made up of the Director, the Secretaries of the Treasury and HUD, or their designees, and two individuals with relevant experience appointed by the President to three-year terms, with the advice and consent of the Senate) to advise the Director on overall strategies and policies. The two appointees are full-time employees of the Board and may not have a financial interest in the regulated entities. Staff of the Oversight Board are to be federal employees subject to Title 5. Provisions regarding meetings and annual testimony are identical.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Annual Report of the Director	The annual report of the Director is expanded to include an assessment of the Board or any of its members with respect to (1) safety and soundness of the regulated entities; (2) material deficiencies in conduct of the operations or the entities; (3) overall operational status of the regulated entities; and (4) evaluation of the performance of the entities in carrying out their missions; (5) operations, resources, and performance of the Agency; and (6) other matters relating to the Agency and its fulfillment of its mission. (Sec. 103)	Identical provisions.
Authority to Require Reports by Regulated Entities	Adds reports on “management, activities, or operations as the Director considers appropriate” to regular reports the Director may require. Adds a requirement to report in a timely manner on discovery by or suspicion of a regulated entity of any fraudulent financial transactions it may have participated in. The Director is to require the entities to establish and maintain procedures to discover such transactions. (Sec. 104)	Identical provisions.
Charitable Contributions	The Director shall require each enterprise to submit an annual report on the total value of contributions to non-profit organizations; including the name of the organization and value of contributions (for contributions exceeding an amount determined by the Director); and for contributions above the designated amount to any nonprofit of which a director, officer, or controlling person of the enterprise, or a spouse, was a director or trustee, the name of the nonprofit and value of the contribution. Such information is to be publicly available. (Sec. 105)	Identical provisions.

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Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Assessments	<p>The Director shall establish and collect annual assessments from the regulated entities to provide for reasonable costs and expenses of the Agency, including (1) costs of examinations, reviews, and credit assessments, and (2) amounts in excess of actual expenses to maintain necessary working capital. Assessments may be increased to cover costs of enforcement activities or if an entity is inadequately capitalized. Salaries and other expenses shall be paid from assessments, which shall not be construed to be government funds or appropriated monies. The Agency shall provide OMB with financial plans and forecasts, prepare annual financial statements (including an assertion of the effectiveness of internal accounting controls), and be audited annually by the Government Accountability Office (GAO) at the Agency's expense. (Sec. 106)</p>	Identical provisions.
Examiners and Accountants — Special Hiring Authority	<p>The Director may hire examiners, accountants, specialists in technology or financial markets, and economists in accordance with rules governing the excepted service, notwithstanding any rules governing the competitive service. (Sec. 107)</p>	Identical provisions.
Executive Compensation	<p>The prohibition (in current law) of executive compensation that is not reasonable or comparable is amended by permitting the Director to take into account wrongdoing on the part of the executive, and to hold pay in escrow while a determination is made. (Sec. 108)</p>	Identical provisions.
Regulations and Orders	<p>The Director is authorized to issue any regulations, guidelines, or orders that are necessary to carry out the authorizing statutes. (Sec. 110)</p>	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Risk-Based Capital Requirements	<p>The Director shall, by regulation, establish risk-based capital requirements for the enterprises to ensure safe and sound operation and maintenance of sufficient capital and reserves to support risk exposure. The Director shall establish risk-based capital requirements for the FHLBs. Confidentiality of information enabling risk-based capital standards shall be maintained. (Sec. 111)</p>	Identical provisions.
Minimum Capital Requirements	<p>The Director may by regulation establish minimum capital levels for regulated entities that are higher than the statutory levels. The Director may, by order, increase minimum capital levels on a temporary basis if the regulated entity has violated prudential standards or if an unsafe or unsound condition exists. The Director may, by order or regulation, establish additional capital or reserve requirements with respect to any particular program or activity.</p> <p>The Director shall, by regulation, set critical capital levels for the Federal Home Loan Banks. (Sec. 112)</p>	<p>Identical, except (1) there is no reference to “unsafe or unsound conditions” as a justification for a temporary increase in capital levels, and (2) H.R. 1461 directs the Director to periodically review amounts of core capital held by enterprises, the amount of capital held by FHLBs, and the minimum capital standards for regulated entities.</p>

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Review of, and Authority Over, Enterprise Assets and Liabilities (Portfolio Limits)	The Director shall, by regulation, establish standards by which the portfolio holdings, or rate of growth of the portfolio holdings, of the enterprises will be consistent with the mission and safe and sound operations. In developing standards, the Director shall consider (1) the size or growth of the mortgage market; (2) the need for the portfolio in maintaining liquidity or stability of the secondary mortgage market; (3) the need for an inventory of mortgages in connection with securitizations; (4) the need for the portfolio to directly support the affordable housing mission of the enterprises; (5) the liquidity needs of the enterprises; (6) any potential risks posed by the nature of the portfolio holdings; and (7) any additional factors the Director determines to be appropriate. The Director may, by order, make temporary adjustments to the standards during market stress or disruption. The standards shall be issued within 180 days of the effective date of this legislation. (Sec. 113)	The Director shall periodically review the on-balance sheet and off-balance sheet assets and liabilities of the enterprises.
Authority to Require Disposition or Acquisition of Assets	The Director shall monitor the portfolio of each enterprise. Pursuant to subsection (a) and notwithstanding the capital classifications of the enterprises, the Director may, by order, require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset. (Sec. 113)	Pursuant to such a review and notwithstanding the capital classifications of the enterprises, the Director may by order require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset or liability, if the Director determines that such action is consistent with the safe and sound operation of the enterprise or with the purposes of this act.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Corporate Governance of Enterprises	Requires a majority of the board to be independent directors, as defined by the NYSE. Requires boards to meet at least eight times a year, and requires non-management directors to meet regularly in executive session without management participation. Boards shall include audit, compensation, and nominating committees, to be composed and empowered according to SEC and NYSE rules. (Sec. 114)	Identical provisions.
Compensation by Enterprises	Compensation of Directors, executives, and employees shall not exceed what is reasonable and appropriate, shall be commensurate with duties and responsibilities, consistent with the long-term goals of the enterprise, and shall not focus solely on earnings performance. Enterprises are made subject to Section 304 of the Sarbanes-Oxley Act, which requires CEOs and CFOs to reimburse the company under certain circumstances after an accounting restatement involving misconduct. (Sec. 114)	Identical provisions.
Code of Conduct and Ethics	An enterprise shall establish and enforce a written code of conduct designed to ensure that Directors, officers, and employees act in an impartial and objective manner, including standards under Section 406 of the Sarbanes-Oxley Act. The code shall be reviewed at least once every three years. (Sec. 114)	Identical provision.
Responsibilities of the Board of Directors	The board of an enterprise shall oversee (1) corporate strategy, risk policy, and compliance programs, (2) hiring and retention of qualified executives, (3) compensation programs, (4) the integrity of accounting and financial reporting systems, (5) disclosures to shareholders and investors, (6) extensions of credit to officers and directors, and (7) responsiveness in reporting to federal regulators. (Sec. 114)	Identical provisions.

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Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Prohibition of Extensions of Credit	An enterprise may not (directly, indirectly, or through a subsidiary) make any personal loan to a board member or executive officer. (Sec. 114)	Identical provision.
Certification of Disclosures	The CEO and CFO of an enterprise shall review annual and quarterly reports and shall make the certifications required by Section 302 of the Sarbanes-Oxley Act. (Sec. 114)	Identical provisions.
Change of Audit Partner	Requires that the lead partner of the external auditor of an enterprise be changed every five years. (Sec. 114)	Identical provisions.
Compliance Program	Each enterprise shall establish a compliance program reasonably designed to ensure that the enterprise complies with applicable laws, regulations, and internal controls. The program shall be headed by a compliance officer, who reports directly to the CEO and regularly to the board. (Sec. 114)	Identical provisions.
Risk Management Program	Each enterprise shall establish a risk management program reasonably designed to manage the risks of operation. The program shall be headed by a risk management officer, who reports directly to the CEO and regularly to the board. (Sec. 114)	Identical provisions.
Sec Registration Requirements	Requires each regulated entity to register at least one class of capital stock with the SEC, and requires enterprises (Fannie Mae and Freddie Mac) to comply with Sections 14 and 16 of the Securities Exchange Act of 1934 (which deal with proxy reporting and disclosure of insider transactions in company stock). (Sec. 115) Enterprises whose stock is not registered or deregistered remain subject to certain provisions of the Securities Exchange Act. (Sec. 114)	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Federal Financial Institutions Examination Council (FFIEC)	The FHFA shall be a member of the FFIEC. (Sec. 116)	Identical provision.
Guarantee Fee Study	The GAO, in consultation with the heads of the federal banking agencies and the OFHEO, shall, not later than one year after the date of the enactment, submit to Congress a study of the pricing, transparency and reporting of the regulated entities with regard to guarantee fees and analogous practices, transparency and reporting requirements of other participants in the business of mortgage purchases and securitization. The study shall examine various factors such as credit risk, counterparty risk, and economic value considerations. (Sec. 117)	Identical provision.
Subtitle B — Improvement of Mission Supervision		
Transfer of Product Approval and Housing Goal Oversight	This section transfers HUD’s authority for new product approval and housing goals to the FHFA. (Sec. 121)	Identical, except “program and activities approval” is used where “product approval” appears in H.R. 1427.
New Product Approval	The enterprises must obtain approval from the Director before offering any new products. (Sec. 122)	An enterprise may not undertake any new program, including a pilot program, or any new business activity except in accordance with the procedures set forth in this section and orders and regulations issued under this section.
Standard for Approval	The Director shall determine that a new product is consistent with the enterprise’s charter, is in the public interest, is consistent with the safety and soundness of the enterprise or the mortgage finance system, and does not materially impair the efficiency of the mortgage finance system. (Sec. 122)	The Director may approve, or conditionally approve, a new program based on the same criteria, except that “material impairment of the efficiency of the mortgage finance system” does not appear in this bill.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Procedure for Approval	The enterprises make a written request to the Director, who shall publish the request in the <i>Federal Register</i> with a 30-day public comment period. The Director will have 30 days after the close of the comment period to approve or deny the request. (Sec. 122)	Immediately upon receipt of a written application for a new program, the Director shall publish in the <i>Federal Register</i> a description of the proposed new program, with a 30-day public comment period. Not less than 15 days, but not more than 30 days after the conclusion of the comment period, the Director shall approve, conditionally approve, or reject, such program, in writing. (Sec. 122)
Expedited Review	If an enterprise determines that any new activity, service, undertaking, or offering is not a product, it shall notify the Director. The Director shall immediately make a determination whether or not the activity, service, undertaking, or offering is a product. If it is determined to be a new product, the enterprise shall submit a new product approval request. (Sec. 122)	No provision.
Definition of Product or New Business Activity	The term “product” does not include the enterprises’ automated loan underwriting systems in existence on the date of enactment of this legislation, or any modifications or upgrades to such systems that do not (1) include services or financing other than residential mortgage financing, or (2) create significant new exposure to risk for the enterprise or the holder of the mortgage. (Sec. 122)	A “new business activity” is one that is materially changed or materially different from the businesses the enterprises were engaged in on the date of enactment.
No Limitation	Nothing in this section shall restrict the Director’s safety and soundness authority over all new and existing products or activities, or the Director’s authority to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of the enterprise. (Sec. 122)	The Director shall have authority to prohibit any new business activity by an enterprise that (1) is inconsistent with the enterprises’ charters or (2) is inconsistent with the safety and soundness of the enterprise; or (3) is not in the public interest.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Conforming Loan Limit — Indexation	The conforming loan limit will increase or decrease to reflect the annual change in a housing price index maintained by the Director. (Sec. 123)	Identical provision.
Increase in Conforming Loan Limit for High-Cost Areas	The conforming loan limit shall be increased in areas where the median price exceeds the general limitation to the lesser of (1) 150% of such general limitation or (2) the median price in the area. The Director may limit such an increase to mortgages which are securitized and sold by the enterprise. (Sec. 123)	Identical provision.
House Price Index	The Director shall maintain an index of national average single family house prices for use for adjusting the conforming loan limitations of the enterprises. GAO shall audit this index within 180 days of the creation of the index and after any modification to the index. (Sec. 123)	Identical provision.
Conditions on Conforming Loan Limit Increases for High-Cost Areas	The Director shall conduct a study to determine (1) the effects of restricting the higher conforming loan limits only to mortgages securitized and sold by the enterprises on the availability of mortgages for housing in high-cost areas and, (2) the extent to which the enterprises will be able to sell securities based on mortgages for housing located in such high-cost areas. If the Director determines that costs to borrowers in such high-cost areas will be increased by such restrictions, the Director may issue an order terminating such restrictions. (Sec. 123)	Identical provision. (Sec. 123)
Annual Reports	After receiving the annual reports from the regulated entities, the Director shall submit an annual report to Congress. (Sec. 124)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Contents of Annual Report to Congress	The report shall (1) discuss the extent to which the regulated entity is meeting (or could better meet) its statutory purposes, including housing goals, community investment, and affordable housing programs; (2) analyze data on income, race, and gender, and discuss violations of fair lending procedures by lenders; (3) examine credit conditions in the multifamily housing mortgage markets and the status of efforts to provide standard credit terms and underwriting guidelines for multifamily housing and securitize such mortgage products; (4) examine the use of alternative credit scoring and other means to expand opportunities for first-time home buyers; (5) analyze existing trends in pricing and other conditions in the housing markets and mortgage markets; and (6) identify the extent to which each enterprise is involved in the subprime mortgage market, and compare the characteristics of subprime loans purchased and securitized by the enterprises to other loans purchased and securitized by the enterprises. (Sec. 124)	Identical provision. (Sec. 123)
Standards for Subprime Loans	Within one year of the effective date of this legislation the Director shall issue standards by which mortgages purchased shall be considered subprime for the purpose of complying with the reporting requirement in Housing and Community Development Act of 1992. (Sec. 124)	Identical provision.
Housing Goals Authority	The authority to establish and monitor housing goals for the enterprises is moved to the Director from HUD. (Sec. 125)	Identical provision.
Housing Goals, General	There are three single-family housing goals and one multifamily housing goal. In addition, the enterprises are required to provide the Director with sufficient information to determine if minorities are charged a different interest rate than non-minorities are charged. (Sec. 125)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Single-Family Housing Goals	The Director shall establish annual goals for the purchase by each enterprise of conventional, conforming, single-family, owner-occupied, purchase money mortgages financing housing for (1) low-income families, (2) very low-income families, and (3) families that reside in low-income areas. The Director shall establish a separate low-income goal for mortgages used to refinance existing mortgages. (Sec. 125)	Identical provision, except that there was no refinance goal.
Establishment of Single-family Housing Goals	The target for the single-family housing goals (and subgoal) for a year shall be the average percentage, for the three most recently available years of data collected under the Home Mortgage Disclosure Act of 1975, of the number of conventional, conforming, single-family, owner-occupied, home-purchase mortgages originated in such year that serves such type of family, as determined by the Director. (Sec. 125)	Identical provision.
Authority to Increase Targets	The Director may by regulation increase the single-family goals set out previously to reflect expected changes in market performance related to such information under the Home Mortgage Disclosure Act of 1975. In establishing such targets, the Director shall consider (1) national housing needs, (2) economic, housing, and demographic conditions, (3) the performance and effort of the enterprises toward achieving the housing goals in previous years, (4) the size of the conventional mortgage market serving each of the types of families relative to the size of the overall conventional mortgage market, and (5) the need to maintain the sound financial condition of the enterprises. (Sec. 125)	Identical provision.

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Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Notice of Determination and Enterprise Comment	Within 30 days of making a determination regarding housing goal compliance of an enterprise and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison of the performance of the enterprise for the year and the targets for the year under this subsection. The Director shall provide each enterprise an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice. (Sec. 125)	Identical provision.
Multifamily Special Affordable Housing Goal	The Director shall establish, by regulation, an annual goal for the purchase by each enterprise of each of the following types of mortgages on multifamily housing: (1) mortgages that finance dwelling units for low-income families, (2) mortgages that finance dwelling units for very low-income families, and (3) mortgages that finance dwelling units assisted by the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986. (Sec. 125)	Identical provisions.
Additional Requirements for Smaller Projects	The Director shall establish, within the multifamily special affordable housing goal, additional requirements for the purchase by each enterprise of mortgages for multifamily housing projects of a smaller or limited size, which may be based on the number of dwelling units in the project or the amount of the mortgage, or both, and shall include multifamily housing projects of such smaller sizes as are typical among such projects that serve rural areas. (Sec. 125)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Establishment of Multifamily Special Affordable Housing Goal	In establishing the special multifamily affordable housing goal for an enterprise for a year, the Director shall consider: (1) national multifamily mortgage credit needs; (2) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years; (3) the size of the multifamily mortgage market; (4) the ability of the enterprise to lead the industry in making mortgage credit available, especially for underserved markets, such as for small multifamily projects of 5 to 50 units, multifamily properties in need of rehabilitation, and multifamily properties located in rural areas; and (5) the need to maintain the sound financial condition of the enterprise. (Sec. 125)	Identical provision.
Units Financed by Housing Finance Agency Bonds	The Director shall give credit toward the achievement of the multifamily special affordable housing goal to dwelling units in multifamily housing that is financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, but only if such bonds are secured by a guarantee of the enterprise, or are not investment grade and are purchased by the enterprise. (Sec. 125)	Identical provision.
Use of Tenant Income or Rent	The Director shall monitor the performance of each enterprise in meeting housing goals and shall evaluate such performance based on the income of the prospective or actual tenants of the property, where such data are available; or where the data are not available, rent levels affordable to low-income and very low-income families. A rent level shall be considered to be affordable if it does not exceed 30% of the maximum income level of the income category, with appropriate adjustments for unit size as measured by the number of bedrooms. (Sec. 125)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Discretionary Adjustment of Housing Goals	The Director may reduce the level for a goal pursuant to such a petition by one of the enterprises only if (1) market and economic conditions or the financial condition of the enterprise require such action; or (2) efforts to meet the goal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the law.	Identical provision.
Determination	The Director shall make a determination regarding any proposed reduction within 30 days of receipt of the petition regarding the reduction. The Director may extend such period for a single additional 15-day period, but only if the Director requests additional information from the enterprise. A denial by the Director to reduce the level of any goal under this section may be appealed to a U.S. District Court. (Sec. 125)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Definitions	<p><i>Very low-income:</i> in the case of owner-occupied units, income not in excess of 50% of area median income; and in the case of rental units, income not in excess of 50% of area median income, adjusted for family size.</p> <p><i>Low-income area:</i> census tract or block numbering area in which the median income does not exceed 80% of the median income for the area in which such census tract or block numbering area is located, and shall include families having incomes not greater than 100% of the area median income who reside in minority census tracts.</p> <p><i>Extremely low-income:</i> in the case of owner-occupied units, income not in excess of 30% of the area median income; and (B) in the case of rental units, income not in excess of 30% of the area median income, with adjustments for family size.</p> <p><i>Conforming mortgage:</i> a conventional mortgage having an original principal obligation that does not exceed the dollar limitation, in effect at the time of such origination, specified in the enterprise's charter.</p> <p><i>"Rural" and "rural area"</i> as currently defined are revised to include micropolitan areas and tribal trust lands. (Sec. 127)</p>	<p>Identical provisions.</p> <p>Identical provision, except for technical change.</p>
Duty to Serve Underserved Markets	<p>The enterprises shall (1) purchase mortgages on housing for very low-, low-, and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities; and (2) have the duty to improve the liquidity of and the distribution of capital available for mortgage financing for underserved markets. (Sec. 126)</p>	<p>Identical provisions.</p>

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Underserved Markets	Each enterprise shall lead the industry in developing loan products and flexible underwriting guidelines for: (1) manufactured housing purchased by very low-, low-, and moderate-income families; (2) Affordable housing preservation; (C) housing for very low-, low-, and moderate-income families in rural areas, and for any other underserved market for very low-, low-, and moderate-income families that the Secretary identifies as lacking adequate credit through conventional lending sources. Such underserved markets may be identified by borrower type, market segment, or geographic area. (Sec. 126)	Identical provision.
Evaluation and Reporting of Compliance	Not later than six months after the effective date, the Director shall establish a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty to serve underserved markets and for rating the extent of such compliance. The Director shall annually evaluate the compliance and rate the performance of each enterprise. (Sec. 126)	Identical provision.
Enforcement of Duty to Provide Mortgage Credit to Underserved Markets	The duty to serve underserved markets shall be enforceable to the same extent and under the same provisions that the housing goals are enforceable. (Sec. 126)	Identical provision.
Housing Goal Enforcement	If the Director preliminarily determines that an enterprise has failed, or is likely to fail to meet any housing goal, the Director shall provide written notice including the reasons for such determination. (Sec. 127)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Cease and Desist Orders, Civil Money Penalties, and Remedies Including Housing Plans	If the Director finds that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, fails to comply with the plan or the Director finds that the enterprise has failed to meet any housing goal, in addition to requiring an enterprise to submit a housing plan, the Director may issue a cease and desist order, impose civil money penalties, or order other remedies as set forth in this subsection. (Sec. 127)	Identical provision.
Review of Housing Plan	The Director shall review any submission by an enterprise, including a housing plan, 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. (Sec. 127)	Identical provision.
Additional Remedies for Failure to Meet Goals	The Director also may seek other actions when an enterprise fails to meet a goal, and exercise appropriate enforcement authority available to the Director under this act to prohibit the enterprise from initially offering any product or engaging in any new activities, services, undertakings, and offerings and to order the enterprise to suspend products and activities, services, undertakings, and offerings pending its achievement of the goal. (Sec. 127)	The Director may seek other actions when an enterprise fails to meet a goal, and exercise appropriate enforcement authority available to the Director under this act to prohibit the enterprise from entering into new programs and new business activities and to order the enterprise to suspend programs and business activities pending its achievement of the goal.
Establishment of an Affordable Housing Fund	The Director of the Federal Housing Finance Agency (in consultation with HUD Secretary) shall establish and manage an affordable housing fund. (Sec. 128)	Each enterprise (Fannie Mae and Freddie Mac) shall establish and manage an affordable housing fund.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Purpose of the Fund	To increase homeownership and the supply of rental housing among very low-income families, to increase investment in public infrastructure, to increase investment in low-income areas. (Sec. 128)	Identical provision.
Allocation of Amounts by Enterprises	For fiscal years 2007 through 2011, each enterprise shall allocate to the fund 1.2 basis points (0.012%) of its average total mortgage portfolio during the preceding year. (Sec. 128)	Each enterprise shall allocate to the fund 3.5% of its after-tax income during the first two years following enactment, and 5% for the three following years.
Definition of “Total Mortgage Portfolio”	The term “total mortgage portfolio” means, with respect to a year, the sum of the dollar amount of the unpaid outstanding principal balances on all mortgages outstanding during that year in any form, including whole loans, mortgage-backed securities, participation certificates, or other structured securities backed by mortgages. This includes all such mortgages or securitized obligations, whether retained in portfolio or sold in any form. The Director is authorized to promulgate rules further defining such terms as necessary to implement this section and to address market developments. (Sec. 128)	No provision.
Limitation on Contributions	No comparable provision.	No contribution required for any year during which an enterprise did not earn an after-tax profit. (Sec. 128)
Suspension of Contributions	The Director shall temporarily suspend the allocation by an enterprise to the affordable housing fund upon a finding by the Director that such allocations would contribute to the financial instability of the enterprise, would cause the enterprise to be classified as undercapitalized, or would prevent the enterprise from successfully completing a capital restoration plan under Section 1369C. (Sec. 128)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Five-Year Sunset and Report	The enterprises shall not be required to make allocations to the affordable housing fund in 2012 or in any year thereafter. Not later than June 30, 2011, the Director shall submit to Congress a report making recommendations on whether the fund should be extended or modified. (Sec. 128)	Identical provision, except that sunset would occur five years after enactment.
Affordable Housing Needs Formulas: Allocations for 2007	For 2007, 75% of allocations shall go to the Louisiana Housing Finance Agency; 25% to the Mississippi Development Authority. (Sec. 128)	Additional weight shall be given to applications for victims of Hurricanes Rita and Katrina for the first two years.
Affordable Housing Needs Formulas: Allocations for Later Years	HUD Secretary shall establish a formula to allocate funds to states and Indian tribes based on specified factors, including population, housing affordability, percentage of extremely low- and very low-income families, and the extent of substandard housing. If such a formula is not established by the time the Director is to make allocations, the allocations will be distributed to states based on HOME allocations to states and participant jurisdictions. (Sec. 128)	Priority in funding shall be based upon (1) disaster-related needs, (2) greatest impact, (3) geographic diversity, (4) ability to timely undertake activities, and (5) affordability in rental projects.
Allocation of Formula Amounts	The Director shall determine the formula amount for each grantee (states and Indian tribes) and publish in the <i>Federal Register</i> the available amounts. (Sec. 128)	The enterprises could make grants to any organization (including for-profit, non-profit, or faith-based entities, or Indian tribes) with a demonstrated capacity for carrying out permitted housing activities.
Recipients of Allocations	Each grantee may designate a state housing finance agency, housing and community development entity, tribally designated housing entity, or other qualified instrumentality of the grantee to receive grants. (Sec. 128)	No comparable provision (but see above for list of eligible recipients).
Reduction for Failure to Return Misused Funds	An annual allocation to a grantee shall be reduced by the amount of misused funds that were not returned or reimbursed in the preceding year. (Sec. 128)	Misuse of funds could lead to a recipient being permanently barred from the program.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Grantee Allocation Plans	Each grantee shall establish and publish a plan for distribution of grant amounts each year. The plan shall set forth requirements for applications to receive assistance. (Sec. 128)	Affordable Housing Board shall advise the Director with respect to establishment of selection criteria to provide for appropriate use of funds.
Eligible Activities	Grant amounts shall be used only for (1) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in Section 1335(a)(2)(B), except that such grant amounts may be used for the benefit only of extremely and very low-income families; (2) the production, preservation, and rehabilitation of housing for homeownership (including such forms as downpayment assistance, closing cost assistance, and assistance for interest-rate buy-downs) for extremely and very low-income first-time home buyers; and (3) public infrastructure development activities in connection with housing activities funded under paragraph (1) or (2). (Sec. 128)	Identical provisions.
Eligible Recipients	Funds may be provided only to organizations, agencies, or entities (including for-profit, non-profit, or faith-based entities) (1) with a demonstrated capacity for carrying out eligible housing activities, and (2) that make assurances to the grantee (as required by the Director) that they will comply with the requirements of the program. (Sec. 128)	Similar provisions, except that grants would be received directly from the enterprises. Other provisions (not included in H.R. 1427) excluded not-for-profit entities which engaged in certain Federal election activities, electioneering communication, lobbying activities, or were affiliated with entities engaged in such activities.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Limitations on Use	Of aggregate amounts allocated each year, 25% shall be used by Refcorp, as provided in Section 21B(f)(2)(E) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(E)); not less than 10% shall be for homeownership activities; and, not more than 12.5% shall go to public infrastructure projects. All funds must be used or committed within two years of the grant date, or be subject to recapture. (Sec. 128)	Identical provisions.
Prohibited Uses	The Director shall by regulation, set forth prohibited uses of grant amounts, which shall include use for (1) political activities; (2) advocacy; (3) lobbying, whether directly or through other parties; (4) counseling services; (5) travel expenses; and (6) preparing or providing advice on tax returns. The Director shall provide by regulation that grant amounts may not be used for administrative, outreach, or other costs of the grantee or any recipient of such grant amounts, except that grant amounts may be used for administrative costs of the grantee of carrying out the program required under this section. (Sec. 128)	Identical provision, except for a reference to the administrative costs of the enterprises.
Housing Goals	Amounts contributed by the enterprises to the affordable housing fund shall not count toward meeting housing goals or duty to serve. (Sec. 128)	Identical provision.
Accountability of Recipients and Grantees	The Director shall require each grantee to develop and maintain a system to ensure that all recipients of funds use those funds in accordance with this section, and any applicable regulations, requirements, or conditions. The Director shall establish minimum requirements for grantees and recipients, which shall include appropriate financial reporting, record retention, and audit requirements. (Sec. 128)	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Misuse of Funds by Recipients	If the Director or a grantee (subject to the Director's review) determines that any recipient of assistance has used any amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the grantee shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the grantee for misused amounts and return to the grantee any amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law. (Sec. 128)	If an enterprise determines that any recipient of assistance has used any amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the enterprise shall notify the Director of the amounts and actions taken. Such recipients shall be in perpetuity ineligible to receive any further funding and shall be required to reimburse the enterprise any amounts that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.
Reports by Grantees	The Director shall require each grantee receiving affordable housing fund grant amounts for a year to submit an annual report to the Director that describes the activities funded under this section and the manner in which the grantee complied with the allocation plan established for the grantee. The Director shall make these reports publicly available. (Sec. 128)	Each enterprise shall submit a quarterly report to the Director describing activities funded. The Director shall make these reports publicly available.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Misuse of Funds by Grantees	If the Director determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Director is satisfied that there is no longer any such failure to comply, the Director shall reduce the amount of assistance under this section to the grantee by an amount equal to the amount of the affordable housing fund grant amounts that were not used in accordance with this section; require the grantee to repay an amount equal to the amount of the affordable housing fund grant amounts which were not used in accordance with this section; limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or terminate any assistance under this section to the grantee. (Sec. 128)	No comparable provision.
Capital Requirements	The utilization or commitment of amounts from the affordable housing fund shall not be subject to the risk-based capital requirements established pursuant to Section 1361(a). (Sec. 128)	Identical provision.
Affordable Housing Board	No provision.	Creates an Affordable Housing Board to determine extremely and very low-income housing needs, and to advise the Director with respect to selection criteria and the operation of the program. The Board shall also review the quarterly reports submitted by the enterprises.
Consistency with Mission	The housing goals and the affordable housing fund do not authorize an enterprise to engage in any program or activity that contravenes or is inconsistent its charter. (Sec. 129)	Identical provision.
Cease-and-Desist Orders	The Director is authorized to issue cease-and-desist orders under certain circumstances. (Sec. 130)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Grounds for Issuance	The Director may issue a notice of charges if the Director determines the enterprise has failed to meet requirements under Sections 1336, 1314, or their charters. (Sec. 130)	Identical provision.
Enforcement	The Director may apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for the enforcement of any effective and outstanding notice or order issued under section 1341 or 1345, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order. (Sec. 130)	Identical provision.
Civil Money Penalties	The Director may impose a civil money penalty, on any enterprise that has failed to (1) meet any housing goal, following a written notice and determination; (2) submit a report following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director; (3) submit its charters; (4) comply with any provision of this part or any order, rule or regulation under this part; (5) submit a housing plan within the required period; or (6) comply with a housing plan for the enterprise. (Sec. 130)	Identical provision.
Amount of Penalty	The amount of the penalty, as determined by the Director, may not exceed (1) for any failure described in paragraph (1), (5), or (6) of subsection (a), \$50,000 for each day that the failure occurs; and (2) for any failure described in paragraph (2), (3), or (4) of subsection (a), \$20,000 for each day that the failure occurs. In determining the penalty, the Director shall give consideration to the length of time the enterprise should reasonably take to achieve the goal. (Sec. 130)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Enforcement of Subpoenas	Section 1348(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4588(c)) is amended by striking “request the Attorney General of the United States to” and inserting “, in the discretion of the Director,” and by inserting “or request that the Attorney General of the United States bring such an action,” after “District of Columbia..” (Sec. 130)	Identical provision.
Subtitle C — Prompt Corrective Action		
Capital Classifications	<p>The Director shall establish capital classifications for the FHLBs, reflecting differences in operations between the banks and the enterprises. (Sec. 141(a)) These regulations are to be issued within 180 days of the effective date of this legislation. (Sec. 141(b))</p> <p>The Director may reclassify a regulated entity (1) whose conduct could rapidly deplete core or total capital, or (in the case of an enterprise) whose mortgage assets have declined significantly in value, (2) which is determined (after notice and opportunity for a hearing) to be in an unsafe or unsound condition, or (3) which is engaging in an unsafe or unsound practice. (Sec. 141(a))</p>	Identical provisions.
Restriction on Capital Distributions	A regulated entity shall make no capital distribution that would cause it to become undercapitalized, except that certain capital restructuring transactions may be permitted by the Director if they improve the financial condition of the entity. (Sec. 141(a))	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Supervisory Actions Applicable to Undercapitalized Regulated Entities	<p>The Director must monitor an undercapitalized entity's condition, its compliance with its capital restoration plan, and the efficacy of the plan. No growth in total assets is permitted for an undercapitalized GSE, unless (1) the Director has accepted the GSE's capital restoration plan, (2) an increase in assets is consistent with the plan, and (3) the ratio of total capital to assets is increasing. An undercapitalized entity shall not, directly or indirectly, acquire any interest in any entity or initially offer any new product (as such term is defined in section 1321(f)) or engage in any new activity, service, undertaking, or offering without the Director's prior approval and determination that such activities would be consistent with the capital restoration plan. Actions that may be taken under current law with regard to significantly undercapitalized GSEs may be taken with regard to undercapitalized GSEs, if the Director finds it necessary. (Sec. 142)</p>	<p>Identical provisions, except that the prohibition on new activities without prior approval extends only to acquisition of "interest in any entity" or engaging in any "new program or new business activity."</p>
Supervisory Actions Applicable to Significantly Undercapitalized Regulated Entities	<p>Of the supervisory actions that the regulator <i>may</i> take under current law, one or more of the following <i>must</i> be taken: new election of Directors, dismissal of Directors and/or executives, and hiring of qualified executive officers, or other actions.</p> <p>Without prior written approval of the Director, executives of a significantly undercapitalized regulated entity may not receive bonuses or pay raises. (Sec. 143)</p>	<p>Identical provisions.</p>

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
<p>Authority over Critically Undercapitalized Enterprises (Liquidation Authority)</p>	<p>The Director may appoint (or the Agency may serve as) a receiver or conservator for several specified causes related to financial difficulty and/or violations of law or regulation. Sets out powers of conservators or receivers, and procedures for settlement of claims, disposal of assets, and other aspects of liquidation, including judicial review. Authorizes the Director to appoint a limited-life regulated entity to deal with the affairs of an entity in default. Prohibits a receiver from terminating, revoking, or annulling the charter of a regulated entity.</p> <p>Mandatory receivership: requires the Director to appoint the Agency as a receiver if a regulated entity's assets are (and have been for 30 days) less than its obligations to its creditors, or if the regulated entity has (for 30 days) not been generally paying its debts as they come due. (Sec. 144)</p>	<p>Similar provisions, but does not include the mandatory receivership requirement.</p>

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Subtitle D — Enforcement Actions		
Cease-and-Desist Proceedings	The Director may issue cease-and-desist orders against a regulated entity, a regulated entity-affiliated party, or the Federal Home Loan Bank Finance Corporation (created by Sec. 204) for unsafe or unsound practices (actual or imminent), violations of laws and regulations, or for a receiving a less-than-satisfactory rating for asset quality, earnings, management, or liquidity, where the identified deficiency is not corrected. This authority may not be used to enforce compliance with housing goals. (Sec. 161)	Identical provisions.
Temporary Cease-and-Desist Proceedings	If a violation (or threatened violation) or an unsafe or unsound practice is likely to cause insolvency or significant dissipation of assets or earnings of a regulated entity, or is likely to weaken the condition of the regulated entity prior to the completion of cease-and-desist proceedings, the Director may issue a temporary order requiring the regulated entity to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. The Director may apply to the U.S. District Court for an injunction to enforce such temporary order. (Sec. 162)	Identical provisions.
Prejudgment Attachment	Permits the courts to freeze assets, funds, or other property of persons subject to civil or administrative actions for violations. (Sec. 163)	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Enforcement and Jurisdiction	The Director may apply to the U.S. District Court for the District of Columbia, or the U.S. district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued, or request that the Attorney General bring such an action. The court shall have jurisdiction and power to require compliance with such notice or order. (Sec. 164)	Identical provision.
Civil Money Penalties	Establishes three tiers of fines: (1) \$10,000 per day for violations of orders, (2) \$50,000 per day for recklessly engaging in an unsafe or unsound practice, or a pattern of misconduct or material breach of fiduciary duty with financial gain to the entity or individual, and (3) up to a maximum of \$2 million per day for knowingly engaging in violations, breaches of fiduciary duties, or unsafe or unsound practices that cause substantial losses to a regulated entity. (Sec. 165)	Identical provisions.
Removal and Prohibition Authority	After written notice and opportunity for a hearing, the Director may suspend or remove regulated entity-affiliated parties who have (1) violated a law, a cease-and-desist, or other written order, (2) engaged in an unsafe or unsound practice, or (3) breached fiduciary duty, such that (1) the regulated entity is likely to suffer loss (or the enterprise-affiliated party receive financial gain), and (2) the unsafe or unsound practice involves personal dishonesty or demonstrates willful and continuing disregard for the safety and soundness of the regulated entity. Also provides for industry-wide suspensions under certain circumstances. Provides for judicial review of such orders or suspensions. (Sec. 166)	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Criminal Penalty	Anyone who participates, directly or indirectly, in the affairs of a regulated entity while under suspension or order of removal shall be liable for a fine of up to \$1 million, or five years' imprisonment. (Sec. 167)	Identical provision.
Subpoena Authority	Authorizes the Director to issue subpoenas. (Sec. 168)	Identical provision.
Subtitle E — General Provisions		
Enterprise Boards of Directors	Eliminates the requirement that five Directors on the boards of Fannie Mae and Freddie Mac be appointed by the President. Reduces the size of enterprise boards from 18 to between 7 and 15. (Sec. 181)	Identical provision.
Report on Enterprise Portfolios	The Director shall report to Congress, within 12 months of enactment, on the portfolio holdings of the enterprises, the risk implications for the enterprises of such holdings and the consequent risk management undertaken by the enterprises (including the use of derivatives for hedging purposes), whether portfolio holdings serve safety and soundness purposes, whether portfolio holdings fulfill the mission of the enterprises, and the potential systemic risk implications for the enterprises, the housing and capital markets, and the financial system of portfolio holdings, and whether such holdings should be limited or reduced over time. (Sec. 182)	Identical provision.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Study of Alternative Secondary Market Systems	The Director, in consultation with the Federal Reserve, the Treasury, and HUD, shall conduct a study of the effects on financial and housing finance markets of alternatives to the current secondary market system for housing finance, taking into consideration changes in the structure of financial and housing finance markets and institutions since the creation of the enterprises. This study is to be completed within 12 months of the effective date of this legislation. (Sec. 184)	
Title II — Federal Home Loan Banks		
Directors, Number	Each FHLB will be managed by a Board of 13 Directors, or other number as the Director of FHFA determines. (Sec. 202)	Identical provisions.
Directors, Citizenship	Board Directors must be U.S. citizens. (Sec. 202)	Identical provisions.
Directors, Members	Majority of Directors of each FHLB must be officers of member banks of that FHLB. (Sec. 202) Member Directors shall be elected by the members. Election does not include independent directors. (Sec. 202)	Identical provisions. All Directors shall be elected by the members. (Sec. 202)
Directors, Independent	At least 2/5 of each Bank's Directors must be independent. (Sec. 202) Independent Directors shall be appointed by the Director of the FHFA. (Sec. 202) Independent Directors will residents of the District of the Bank. (Sec. 202)	At least 1/3 of each Bank's Directors must be independent. (Sec. 202) No distinction between election of member Directors above and election of Independent Directors Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Directors, Independent, Public Interest	At least two of the independent Directors for each Bank shall be chosen from consumer/community organizations with more than a two year history. (Sec. 202)	Identical provisions.
Directors, Independent, Other	Independent Directors who are not public interest Directors shall have financial expertise. (Sec. 202)	Identical provisions.
Directors, Independent, Conflicts of Interest	An Independent Director may not serve as an officer of a FHLB or member bank during Directorship. (Sec. 202)	Identical provisions.
Directors, Terms	Terms increased from three to four years. Terms will be staggered so that 1/4 are completing each year rather than 1/3. The change in term length does not apply to current Directors. (Sec. 202)	Identical with technical changes.
Expiration of Independent Director Terms	An appointive Director (Independent Director) may continue to serve until a successor is appointed. (Sec. 202)	Directors are elected, not appointed. Vacancies are filled by a vote of a majority of remaining board members.
FHFA Oversight	The FHFA replaces the Finance Board. (Sec. 203)	Identical provisions.
Joint Activities of Banks	FHLBs may jointly provide bank services or require the Office of Finance to provide bank services if the FHLBs may perform the services individually. (Sec. 204)	Identical provisions.
Information Sharing	A FHLB may have access to information needed to determine extent of its joint and several liability. Information sharing pursuant to liability does not waive any privilege. (Sec. 205)	Identical provisions.
FHLB Reorganization and Voluntary Merger	FHLBs may merge with other FHLBs with the approval of the FHFA Director. (Sec. 206)	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Sec Disclosures	<p>FHLBs are exempt from some SEC reporting regulations, including ownership of capital stock in the FHLB, tender offers related to FHLB capital stock, and reporting related party transactions in the FHLB system.</p> <p>Shares of FHLB capital stock are defined as “exempted securities” for the purposes of defining a government securities broker or a government securities dealer. (Sec. 207)</p>	Identical provisions.
Community Financial Institution Members	Raises the Total Asset Requirement from \$500 million to \$1 billion. (Sec. 208)	Identical provisions.
Study on Affordable Housing	The Comptroller of the Currency will conduct a study of the FHLB affordable housing programs and submit the report within one year.	Identical provisions.
Effective Date	Six months from enactment. (Sec. 211)	One year from enactment.
Title III — Transition Provisions		
Abolishment of OFHEO	Sets the abolishment of OFHEO six months after enactment. Provides for continuity of employee status, use of property, and agency services. Suits and other actions in progress against OFHEO will be transferred to the new agency. (Sec. 301)	Identical provisions.
Continuation of Regulations and Orders	All regulations, orders, resolutions, and determinations made by OFHEO or a court will remain in force, and become enforceable by the new agency. (Sec. 302)	Identical provisions.
Transfer of Employees from OFHEO	Governs the transfer of OFHEO employees to FHFA employment and provides for continuity in benefit programs. (Sec. 303)	Identical provisions.

Provision	H.R. 1427 (110 th Congress)	H.R. 1461 (109 th Congress)
Abolishment of the Federal Housing Finance Board	Provides for the transition from FHFB to FHFA with provisions similar to Sections 301-303. (Secs. 321-324)	Identical provisions.
Termination of Enterprise-Related Functions at HUD	<p>Directs the Secretary of HUD to determine, within three months of enactment, which employees to transfer to the FHFA to maintain oversight of the enterprises. Six months from enactment, all such oversight functions are to be transferred to the new agency. (Sec. 341)</p> <p>Provides for continuity of employee status, regulations, use of property, and agency services. Provides for transfer from HUD of related appropriations, property, and facilities. (Secs. 342-344)</p>	Identical provisions.