

# CRS Report for Congress

## Government-Sponsored Enterprises (GSEs): Reform Legislation in the 109<sup>th</sup> Congress

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# Government-Sponsored Enterprises (GSEs): Reform Legislation in the 109<sup>th</sup> Congress

## Summary

Fannie Mae and Freddie Mac are government-sponsored enterprises (GSEs), chartered by Congress to establish a secondary mortgage market to improve the availability of capital for home mortgage financing. To help these privately-owned institutions accomplish this mission, Congress granted them several statutory benefits not available to other private companies. The advantages of GSE status have helped the enterprises to grow very large and dominate the secondary 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 enterprises. OFHEO is authorized to set capital requirements, conduct annual risk-based examinations, and generally enforce compliance with safety and soundness standards.

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

While 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 the proposed GSE reform, they would be brought under a single regulatory umbrella with Fannie and Freddie.

In the 109<sup>th</sup> Congress, H.R. 1461 and S. 190 proposed to restructure the GSE supervisor and enhance its regulatory powers. H.R. 1461 was marked up and reported by the Financial Services Committee on May 25, 2005, and passed the full House, with amendments, on October 26, 2005. Chairman Shelby put forward an amendment in the nature of a substitute for S. 190, which was marked up and approved by the Banking Committee on July 28, 2005. Neither bill was finally enacted.

Common provisions of S. 190 and H.R. 1461 would abolish OFHEO and establish an independent agency to oversee the housing GSEs and the Federal Home Loan Banks; enhance the safety and soundness, disclosure, and enforcement tools available to the new regulator; and increase the budget autonomy of the new agency by exempting its assessments from the annual appropriations process. S. 190 as reported takes the further step of limiting the type of assets that Fannie and Freddie could hold in their investment portfolios.

This report summarizes legislative proposals in the 109<sup>th</sup> Congress that aimed to strengthen the regulation of the GSEs, and it will no longer be updated.

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The author gratefully acknowledges the work of Loretta Nott, whose CRS Report RL32069, *Improving the Effectiveness of GSE Oversight: Legislative Proposals in the 108<sup>th</sup> Congress*, provides the basis for the introductory material in this report.

# Government Sponsored Enterprises: Reform Legislation in the 109<sup>th</sup> Congress

## Introduction

Government-sponsored enterprises (GSEs) are privately owned, congressionally chartered financial institutions created for specific public policy purposes. They benefit from certain exemptions and privileges, including an implied federal guarantee,<sup>1</sup> intended to enhance their ability to borrow money. Two of the largest GSEs are Fannie Mae and Freddie Mac (herein referred to as the enterprises or GSEs).<sup>2</sup> These institutions were created by Congress to establish and maintain a secondary mortgage market, increasing liquidity and improving the distribution of capital available for home mortgage financing.<sup>3</sup> To help these institutions accomplish this mission, Congress has provided them with several benefits not available to other financial institutions.<sup>4</sup> These statutory benefits provide the enterprises with lower funding costs, the ability to operate with less capital, and lower direct costs.<sup>5</sup> The advantages of GSE status have enabled the enterprises to grow rapidly and become dominant players in the secondary mortgage market.

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<sup>1</sup> Although GSE 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 a GSE to default. This implicit guarantee allows the GSEs to borrow at lower rates than private financial institutions, and to take on greater financial risk without a corresponding drop in their credit ratings.

<sup>2</sup> The other GSEs are the Federal Home Loan Bank System, the Farm Credit System, and Farmer Mac. Sallie Mae, a former GSE, has been fully privatized.

<sup>3</sup> For a detailed description of the development of the U.S. secondary mortgage market, see Office of Federal Housing Enterprise Oversight, *Report to Congress*, June 2003, at [<http://www.ofheo.gov/media/pdf/WEBSITEOFHEOREPTOCONGRESS03.pdf>].

<sup>4</sup> These statutory benefits include (1) exemption from state and local taxes, (2) a line of credit with the U.S. Treasury up to \$2.25 billion, (3) eligibility of their debt to serve as collateral for public deposits, (4) eligibility of their securities for Federal Reserve open market purchases, (5) eligibility for their corporate securities to be purchased without limit by federally regulated financial institutions, (6) assignment of mortgage-related securities they have issued or guaranteed to the second-lowest credit risk category at depository institutions, and (7) exemption from the registration requirements of the Securities and Exchange Commission.

<sup>5</sup> For more information on these advantages, see the following reports: U.S. Department of the Treasury, *Government Sponsorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation*, July 11, 1996; U.S. Congressional Budget Office, *Assessing the Public Costs and Benefits of Fannie Mae and Freddie Mac*, May 1996; and U.S. Congressional Budget Office, *Federal Subsidies and the Housing GSEs*, May 2001.

Congress has always been concerned that the safety and soundness of the enterprises be maintained so that they can meet their public policy mission and not pose risks 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, Congress established the Office of Federal Housing Enterprise Oversight (OFHEO), an independent agency within HUD, to oversee the financial safety and soundness of the enterprises. The office is authorized to set capital requirements, conduct annual risk-based examinations, and generally enforce compliance with safety and soundness standards.

After the creation of OFHEO, total assets at the GSEs grew by more than 820% to \$1.9 trillion at the end of 2003.<sup>6</sup> The GSEs have become two of the largest private debt issuers in the world. In 2003, outstanding debt securities of the enterprises totaled \$1.7 trillion — an amount equal to nearly half of all publicly held U.S. Treasury debt. In addition to enterprise debt, investors hold about \$1.6 trillion in mortgage-backed securities issued by Fannie Mae and Freddie Mac.<sup>7</sup>

As a result of the rapid growth of these institutions and their implied federal backing, there has been an increasing concern that the enterprises may pose a problem of systemic risk to the financial system.<sup>8</sup> Many financial institutions around the world hold large quantities of GSE debt and default by either GSE could have widespread, unpredictable, and potentially serious repercussions. Accordingly, questions have been raised about the effectiveness of the current regulatory environment.

Events of the past two years have brought a new urgency to the GSE reform issue. In 2003, Freddie Mac admitted that it had used improper accounting policies to create the appearance of steady earnings growth and issued a restatement of financial results, revising net income for 2000-2002 upwards by \$5 billion.<sup>9</sup> OFHEO

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<sup>6</sup> Based on 2003 annual reports, which — because of the accounting scandals — is the latest year for which annual financial statements are available for both GSEs. At the end of 2006, both enterprises had reached agreements with OFHEO to either freeze the size of their investment portfolios (Fannie) or limit growth to 2% per year (Freddie).

<sup>7</sup> For more information, see Office of Federal Housing Enterprise Oversight, *FY2003-2008 Strategic Plan*, Sept. 30, 2003, at [<http://www.ofheo.gov/media/pdf/0308stratplan93003a.pdf>].

<sup>8</sup> For a comprehensive analysis of these risks, see Office of Federal Housing Enterprise Oversight, *Systemic Risk: Fannie Mae, Freddie Mac, and the Role of OFHEO*, Feb. 2003, at [<http://www.ofheo.gov/media/archive/docs/reports/sysrisk.pdf>]. Furthermore, the International Monetary Fund (IMF) has stated that the GSE “regulators need to look closely at whether agencies’ capital adequacy is sufficient, especially bearing in mind the questions about internal controls that have emerged in Freddie Mac.... [I]t is unclear whether [the GSEs] have taken sufficient account of the risk that the market may not be deep enough to allow them to continuously hedge their growing portfolios in times of stress.” For more information, see IMF, *Global Financial Stability Report: Market Developments and Issues*, Sept. 2003, pp. 16-22, at [<http://www.imf.org/external/pubs/ft/gfsr/2003/02/index.htm>].

<sup>9</sup> For more information, see CRS Report RS21567, *Accounting and Management Problems* (continued...)

imposed a \$125 million fine and is pursuing civil actions against several former Freddie executives.

Following the special examination of Freddie Mac, OFHEO began to review the accounting policies and practices at Fannie Mae, and published its preliminary findings in September 2004.<sup>10</sup> OFHEO charged that Fannie Mae did not follow generally accepted accounting practices in two critical areas: (1) amortization of discounts, premiums, and fees involved in the purchase of home mortgages and (2) accounting for financial derivatives contracts. According to OFHEO, these deviations from standard accounting rules allowed Fannie Mae to reduce volatility in reported earnings, present investors with an artificial picture of steadily growing profits, and, in at least one case, to meet financial performance targets that triggered the payment of bonuses to company executives.<sup>11</sup> On December 15, 2004, the Securities and Exchange Commission (SEC) essentially endorsed OFHEO's report and directed Fannie Mae to restate its accounting results since 2001 after finding inadequacies in Fannie's accounting policies and methodologies. Fannie Mae's CEO and CFO stepped down soon thereafter.

While problems at Fannie Mae and Freddie Mac have provided the main impetus for reform, the regulation of the Federal Home Loan Banks (FHLBs) may also be affected by the GSE. The 12 FHLBs comprise one collective government-sponsored enterprise. Originally chartered by Congress to provide liquidity to the nation's predominant lenders for home mortgage loans — savings and loan associations and savings banks — the FHLBs have undergone a series of changes over the years as financial institutions have changed. Still a lender to lenders primarily for housing, the FHLBs can now lend for many other purposes as well, and have special responsibilities for low- and moderate-income housing, for debts incurred by the federal government in handling deposit insurance crises of the 1970s and 1980s, and for some community development projects.

Several bills were considered in the 108<sup>th</sup> Congress that would have restructured OFHEO. While the proposals took somewhat different approaches to regulatory reform, all appeared to

- abolish OFHEO and reconstitute the GSE regulator within the Department of the Treasury, or as an independent agency;<sup>12</sup>

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<sup>9</sup> (...continued)

at *Freddie Mac*, by Mark Jickling.

<sup>10</sup> Office of Federal Housing Enterprise Oversight, *Report of Findings to Date: Special Examination of Fannie Mae*, Sept. 17, 2004, available at [<http://www.ofheo.gov/media/pdf/FNMfindingsstodate17sept04.pdf>].

<sup>11</sup> For a discussion of OFHEO's findings, and its subsequent settlement with Fannie Mae, see CRS Report RS21949, *Accounting Problems at Fannie Mae*, by Mark Jickling.

<sup>12</sup> In some versions, the new regulator was to have authority over the FHLBs, as well as Fannie and Freddie.

- increase the budget autonomy of the new office by exempting its assessments from the annual appropriations process; and
- enhance the safety and soundness and enforcement tools available to the new regulator.

None of these bills, whose provisions are summarized in CRS Report RL32069, *Improving the Effectiveness of GSE Oversight: Legislative Proposals in the 108<sup>th</sup> Congress*, by Loretta Nott and Mark Jickling, were enacted.

Legislative proposals in the 109<sup>th</sup> Congress incorporated most of the features of the 108<sup>th</sup> Congress bills, but also include significant new provisions, as discussed below, and set out in **Table 1**.

The Bush Administration has generally supported GSE regulatory reform. Treasury Secretary John Snow issued a statement following the mark up of S. 190, praising the legislation, though noting that certain elements the Administration wanted were not present in the bill:

The legislation ... creates significantly enhanced market discipline and capital requirements for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. The legislation strikes a proper and prudent balance in ensuring that the activities undertaken by these entities do not engender systemic risk while providing broad access to housing finance.<sup>13</sup>

## Major Differences Between House and Senate Bills

The House and Senate bills take a common approach to the restructuring of the GSE regulator. There is a general consensus that OFHEO needs to be strengthened — given the importance of the GSEs to the financial system and the potential risks they pose, there is very little support for keeping the GSE regulator inside HUD. Both H.R. 1461 and S. 190 give the new agency tools and authorities that resemble those of federal bank regulators. Where the bills differ most significantly is in their approaches to the business operations of the GSEs, particularly Fannie and Freddie. The House bill seeks to increase GSE support for low-income housing and would permit Fannie and Freddie to buy larger mortgages than current law permits, while the Senate bill seeks to shrink the companies' portfolios by restricting the kinds of assets they can purchase.

## Affordable Housing Fund

Section 128 of H.R. 1461 (as passed the House) requires Fannie and Freddie to establish affordable housing funds to increase homeownership among very low and extremely low income families, to increase investment in housing in low income and

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<sup>13</sup> Statement of Secretary John W. Snow on Senate Banking Bill to Reform Housing Government-Sponsored Enterprises, July 28, 2005 (js-2657), available online at [<http://www.ustreas.gov/press/releases/js2657.htm>].

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 shall allocate to this fund 3.5% of its after-tax income during the first year after enactment, and 5% in subsequent years. (Had the 5% rate been in effect during the five years ending with 2003, the two firms' combined contributions to these funds would have averaged about \$620 million per year.) The Senate bill contains no comparable provision.

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 capturing some of the value of this subsidy and applying it to a worthy policy objective.

Opponents argue that Fannie and Freddie would likely use the funds to reward political allies. 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.

## 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.<sup>14</sup> Critics of the conforming loan limit argue that the limit has a disparate geographical effect: in some areas of the country the limit, which was \$417,000 for single-family homes (in 2006 and 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. 1461 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

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<sup>14</sup> The difference is in the range of 25-40 basis points, or hundredths of a percent. Some of the difference might persist even if the loan limits were abolished.



the value of the GSEs' funding advantage, which is dependent on their GSE status. The Senate bill has no comparable provision.

## Portfolio Limits

While the two House bill provisions discussed above seek to redistribute the fruits of the GSE subsidy, the Senate bill contains a provision that could dramatically reduce the value of that subsidy. Both Fannie and Freddie hold large portfolios of mortgages and mortgage-backed securities, which generate interest income. They pay for those mortgage assets by issuing debt securities at rates below what the mortgages and mortgage-backed bonds pay. The difference between the yield on mortgage-related assets and the GSEs' cost of funds is profit. Thus, the GSEs have a strong incentive to pursue portfolio growth: the two firms together have nearly \$1.5 trillion in portfolio assets, 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.<sup>15</sup>

Section 109 of S. 190 as reported enumerates the types of "permissible assets" that Fannie and Freddie would be permitted to purchase. They would only be allowed to acquire mortgages and mortgage-backed securities for purposes of securitization, and for certain other limited purposes. Under this proposal, Fannie and Freddie's business models would be 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 would greatly reduce their portfolio earnings, currently one of the chief sources of their profits. Proponents of portfolio limits argue that this step is necessary to reduce the cost of the GSE subsidy to taxpayers, which takes the form not of annual appropriations, but of the assumption of risk — 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 GSE's interest earnings would mean less support for low- and moderate-income housing goals. The House bill contains no similar provision.

Under H.R. 1461, the new regulator would have authority to cap the size of the GSE portfolios, as part of its general safety-and-soundness authority. However, the House bill would not impose a statutory requirement that the portfolios be shrunk.

The table below provides a side-by-side summary of legislative proposals introduced in the 109<sup>th</sup> Congress that aim to reform the regulation of the GSEs. The version of H.R. 1461 that is set out is the one reported by the Financial Services Committee and later passed by the House. For ease of reference, amendments to the reported version that were adopted on the House floor are set out in a separate column.

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<sup>15</sup> 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.

**Table 1. Provisions of GSE Reform Legislation**

<b>Provision</b>	<b>H.R. 1461 (amendments adopted during House passage)</b>	<b>H.R. 1461 (as reported)</b>	<b>S. 190 (as reported)</b>	<b>S. 190 (as introduced)</b>
Short Title		Federal Housing Finance Reform Act of 2005	Federal Housing Enterprise Regulatory Act of 2005	Federal Housing Enterprise Regulatory Act of 2005
<b>Subtitle A: Improvement of Safety and Soundness Regulation.</b>				
Name of New Regulatory Agency		Federal Housing Finance Agency (Sec. 101)	Federal Housing Enterprise Regulatory Agency (Sec. 101)	Federal Housing Enterprise Regulatory Agency (Sec. 101)
Agency Status		Independent federal agency (Sec. 101)	Independent federal agency (Sec. 101)	Independent federal agency (Sec. 101)
Jurisdiction		General supervisory and regulatory authority over Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. (Sec. 101)	General regulatory authority over Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Federal Home Loan Bank Finance Facility. (Sec. 101)	General regulatory authority over Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Federal Home Loan Bank Finance Corporation. (Sec. 101)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Key Definitions	Removes the category of “any other person, as determined by the Director” from the definition of “regulated entity-affiliated party.”	Fannie Mae, Freddie Mac, their affiliates, and the Federal Home Loan Banks are defined as “regulated entities.” The term “enterprise” — used frequently in H.R. 1461 — is defined in current law to mean Fannie Mae and Freddie Mac. “Regulated entity-affiliated party” includes (1) directors, officers, employees, agents, and controlling shareholders of regulated entities; (2) any shareholder, consultant, joint venture partner, or other person (as determined by the Director) that participates in the affairs of a regulated entity; (3) independent contractors (including attorneys, appraisers, or accountants) and (4) non-profits that receive principal funding, on an ongoing basis, from any regulated entity. (Sec. 101)	Fannie Mae, Freddie Mac, their affiliates, and the Federal Home Loan Banks are defined as “regulated entities.” (Current law defines Fannie and Freddie as “enterprises” — many provisions of S. 190 refer only to them.) “Entity-affiliated party” refers to directors, officers, employees, share holders, consultants, partners, and other persons (determined by the Director) affiliated with regulated entities. The definition also encompasses non-profits that receive principal, ongoing funding from a regulated entity. Independent contractors (such as attorneys or accountants) also meet the definition of “entity-affiliated party” if they participate in violations of law or regulation, breaches of fiduciary duty, or unsafe and unsound practices that have a significant adverse impact on a regulated entity. Defines “violation” to include	Fannie Mae, Freddie Mac, their affiliates, and the Federal Home Loan Banks are defined as “regulated entities.” (Under current law, Fannie Mae and Freddie Mac are defined as “enterprises” — many provisions of S. 190 refer only to them.) “Enterprise-affiliated party,” however, refers to directors, officers, employees, shareholders, consultants, partners, and other persons (as determined by the Director) affiliated with Fannie, Freddie, or the Federal Home Loan Banks. Independent contractors (such as attorneys or accountants) also meet the definition of “enterprise-affiliated party” if they participate in violations of law or regulation, breaches of fiduciary duty, or unsafe and unsound practices that have a

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
			“causing, bringing about, participating in, counseling, or aiding and abetting.” (Sec. 2)	significant adverse impact on a regulated entity. (Sec. 2)
Agency Officials	Requires the Director to establish an Office of the Ombudsman, to hear complaints from regulated entities or persons with business relationships to the entities.	A Director, appointed by the President, with the advice and consent of the Senate, to a five-year term; and 3 deputy directors (appointed by the Director), for the Divisions of (1) Enterprise Regulation; (2) Home Loan Bank Regulation; and (3) Housing. (Sec. 101)	A Director, appointed by the President, with the advice and consent of the Senate, to a six-year term, and 3 deputy directors, appointed by the Director, for the Divisions of Enterprise Regulation; Home Loan Bank Regulation; and Housing Mission and Goals. (Sec. 101) An Inspector General of the Agency. (Sec. 105)	A Director, appointed by the President, with the advice and consent of the Senate, to a six-year term, and 3 deputy directors, appointed by the Director, for the Divisions of Enterprise Regulation; Home Loan Bank Supervision; and Housing Mission and Goals. (Sec. 101) An Inspector General of the Agency. (Sec. 105)
Qualifications of Agency Officials		U.S. citizens, with a demonstrated understanding of financial management or oversight and housing finance, with additional specialized experience and knowledge requirements for the deputy director positions. (Sec. 101)	U.S. citizens, with a demonstrated understanding of financial management or oversight and housing finance, with additional specialized experience requirements for the deputy director positions. (Sec. 101)	U.S. citizens, with a demonstrated understanding of financial management or oversight and housing finance, with additional specialized experience requirements for the deputy director positions. (Sec. 101)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Duties and Authorities of the Director		<p>To oversee the prudential operations of regulated entities and to ensure that each entity (1) operates in a safe and sound manner and maintains adequate capital and internal controls, (2) fosters well-functioning housing finance markets (including low- and moderate-income housing), (3) complies with applicable laws and regulations, and (4) engages only in activities authorized by statute. The Director may review and reject attempts to acquire a controlling interest in a regulated entity. The Director may exercise necessary and appropriate incidental powers to fulfill the agency’s duties and responsibilities. The Director shall be a member of the Federal Financial Institutions Examination Council. (Sec. 102)</p>	<p>To oversee the prudential operations of regulated entities and to ensure that each entity (1) operates in a safe and sound manner and maintains adequate capital and internal controls, (2) fosters well-functioning housing finance markets (including low- and moderate-income housing), (3) complies with applicable laws and regulations, (4) engages only in activities authorized by statute, (5) serves the public interest, (6) remains adequately capitalized, and (7) in the case of the FHLBs, that they provide funds through their members for small businesses and farms. The Director may review and reject attempts to acquire a controlling interest in a regulated entity. The Director may exercise necessary and appropriate incidental powers to fulfill the agency’s duties and responsibilities. (Sec. 102)</p>	<p>To oversee the prudential operations of regulated entities and to ensure that each entity (1) operates in a safe and sound manner and maintains adequate capital and internal controls, (2) fosters well-functioning housing finance markets (including low- and moderate-income housing), (3) complies with applicable laws and regulations, (4) engages only in activities authorized by statute, (5) serves the public interest, and (6) remains adequately capitalized, after consideration of the risk to such entity. The Director may review and reject attempts to acquire a controlling interest in a regulated entity. The Director may exercise necessary and appropriate incidental powers to fulfill the agency’s duties and responsibilities. (Sec. 102)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Prudential Management and Operations Standards		<p>The Director shall establish standards for each regulated entity regarding (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 backup facilities to protect against disruptive events, and (12) other standards the Director determines to be appropriate. (Sec. 102)</p>	<p>The Director may establish standards for the enterprises regarding (1) internal controls and information systems, (2) internal audit systems, (3) interest rate risk management, (4) monitoring and management of market risk, (5) adequacy and maintenance of liquidity and reserves, (7) asset and portfolio growth, (8) overall risk management, including backup facilities to protect against disruptive events, and (9) other standards deemed to be appropriate. (Sec. 108)</p>	<p>The Director may establish standards for the enterprises regarding (1) internal controls and information systems, (2) internal audit systems, (3) interest rate risk management, (4) monitoring and management of market risk, (5) adequacy and maintenance of liquidity and reserves, (7) asset and portfolio growth, (8) overall risk management, including backup facilities to protect against disruptive events, and (9) other standards deemed to be appropriate. (Sec. 108)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Failure to Meet Prudential Standards		If the Director finds that a regulated entity has failed to meet one of the above standards, the entity shall (within 30 days) submit a plan to correct the deficiency. If the deficiency is not corrected, the Director may prohibit the entity from increasing its total assets, may require an increase in regulatory capital, or take other measures. (Sec. 102)	No comparable provision.	No comparable provision.
Authority to Require Reporting by Regulated Entities		The Director is authorized to require regulated entities to submit regular reports on their operations and financial condition. Regulated entities would be required to report in a timely manner the discovery of a purchase or sale of a fraudulent loan. (Sec. 104)	The Director is authorized to require regulated entities to submit regular reports, including financial statements determined on a fair value basis. Establishes penalties for failure to make reports. (Sec. 104) Regulated entities would be required to report in a timely manner the discovery of a purchase or sale of a fraudulent loan. (Sec. 113)	The Director is authorized to require regulated entities to submit regular reports, including financial statements determined on a fair value basis. (Sec. 104) Regulated entities would be required to report in a timely manner the discovery of a purchase or sale of a fraudulent loan. (Sec. 112)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Advisory Board		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 board is to meet at least every three months, and testify to Congress annually on the safety and soundness, operational status, and mission performance of the regulated entities, and the operations and performance of the agency and board. (Sec. 103)	Creates the Federal Housing Enterprise Board (made up of the Director, the Secretaries of the Treasury and HUD, and the Chairman of the SEC) to advise the Director on overall strategies and policies. The board is to meet at least every three months, and testify to Congress annually on the safety and soundness of the regulated entities and the performance of the agency. (Sec. 103)	Creates the Federal Housing Enterprise Board (made up of the Director, the Secretaries of the Treasury and HUD, and the Chairman of the SEC) to advise the Director on overall strategies and policies. The board is to meet at least every three months, and testify to Congress annually on the safety and soundness of the regulated entities and the performance of the agency. (Sec. 103)



Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Assessments and Appropriations		<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 GAO (at the agency's expense). (Sec. 105)</p>	<p>Removes the Agency from the appropriations process. The Director would establish and collect annual assessments from the regulated entities, in amounts sufficient 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. Salaries and other expenses of the agency shall be paid from assessments, which shall not be construed to be government funds or appropriated monies. (Sec. 106)</p>	<p>Removes the Agency from the appropriations process. The Director shall establish and collect annual assessments from the regulated entities, in amounts sufficient 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. Salaries and other expenses of the agency shall be paid from assessments, which shall not be construed to be government funds or appropriated monies. (Sec. 106)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Direct Hire Authority		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. 106)	Director may hire examiners, accountants, economists, and specialists in financial markets and technology in accordance with rules governing the excepted service, notwithstanding any rules governing the competitive service. (Sec. 105)	Director may hire examiners, accountants, economists, and specialists in financial markets and technology in accordance with rules governing the excepted service, notwithstanding any rules governing the competitive service. (Sec. 105)
Prohibition and Withholding of Executive Compensation		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. 107)	No comparable provision	No comparable provision
Regulations and Orders		The Director is authorized to issue any regulations, guidelines, or orders that are necessary to carry out the authorizing statutes. (Sec. 109)	The Director is authorized to issue any regulations, directives, guidelines, or orders that are necessary to carry out the authorizing statutes. (Sec. 107)	The Director is authorized to issue any regulations, directives, guidelines, or orders that are necessary to carry out the authorizing statutes. (Sec. 107)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Control over Enterprise Assets, Portfolios, and Obligations		<p>The Director shall periodically review the on-balance sheet assets liabilities of the enterprises, and may order the disposition or acquisition of any asset or obligation, if the Director determines that such action is consistent with safe and sound operation. (Sec. 112)</p>	<p>Director shall, by regulation, establish criteria regarding the assets that an enterprise may hold, considering safety and soundness of the enterprises and systemic risk. “Permissible assets” are to include only the following: (1) mortgages and mortgage-backed securities acquired for purposes of securitization, (2) mortgages related to affordable housing goals that cannot be readily securitized, (3) a limited inventory of mortgages to support the guarantee business, (4) cash, (5) real estate acquired through foreclosure, (6) U.S. Treasury securities, and (7) real estate, equipment, and intellectual property related to the enterprise’s operations. (Sec. 109)</p>	<p>Authorizes the Director to determine the type and amount of nonmission-related assets that an enterprise may hold at any time. Any regulation issued for this purpose shall include a definition of “nonmission-related asset.” (Sec. 109)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Risk-Based and Minimum Capital Levels		<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 Federal Home Loan Banks. Confidentiality of information enabling risk-based capital standards shall be maintained. (Sec. 110)</p>	<p>The Director shall, by regulation, establish risk-based capital requirements for each regulated entity, to ensure safe and sound operation and maintenance of sufficient capital and reserves to support risk exposure. (Sec. 110)</p>	<p>The Director shall, by regulation, establish risk-based capital requirements for each regulated entity, to ensure safe and sound operation and maintenance of sufficient capital and reserves to support risk exposure. (Sec. 110)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Minimum and Critical Capital Levels		<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 or regulation, establish a capital or reserve requirement with respect to a particular program or activity, to ensure that the entity operates in a safe and sound manner. The Director shall, by regulation, establish a critical capital level for the Home Loan Banks. (Sec. 111)</p>	<p>The Director is authorized to establish minimum capital levels for regulated entities that are higher than those specified in statute. (Sec. 110)</p> <p>Authorizes the Director to establish critical capital levels for the enterprises that are different from the levels specified in statute, and to establish critical capital levels for the FHLBs. (Sec. 141)</p>	<p>With regard to the enterprises (Fannie and Freddie), the Director may establish minimum capital levels that are higher than those specified in the statute. (Sec. 110)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
SEC Registration Requirements		Requires each regulated entity to register at least one class of capital stock with the SEC, and requires enterprises (Fannie and Freddie) 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). Enterprises whose stock is not registered or is deregistered remain subject to certain provisions of the Securities Exchange Act. (Sec. 114)	Requires each regulated entity to register at least one class of capital stock with the SEC, and requires enterprises (Fannie and Freddie) 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. 111)	Requires each regulated entity to register at least one class of capital stock with the SEC, and requires enterprises (Fannie and Freddie) 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. 110) Sec. 205 (see below) exempts the Federal Home Loan Banks from several provisions of securities law.
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. (Sec. 113)	No comparable provision	No comparable provision

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
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, 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. (Sec. 113)	No comparable provision	No comparable provision
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. (Sec. 113)	No comparable provision	No comparable provision

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
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. 113)	No comparable provision	No comparable provision
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. 113)	No comparable provision	No comparable provision



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Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
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. 113)	No comparable provision	No comparable provision
Change of Audit Partner		Requires that the lead partner of the external auditor of an enterprise be changed every five years. (Sec. 113)	No comparable provision	No comparable provision
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. 113)	No comparable provision	No comparable provision

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Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
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. 113)	No comparable provision	No comparable provision
Restrictions on Certain Golden Parachute Payments		No comparable provision, but such payments could be subject to the “reasonable and appropriate” tests in Section 113(c).	The Agency may prohibit or limit, by regulation or order, any golden parachute or indemnification payment. Sets out criteria that the Agency may consider in deciding whether to prohibit a payment. (Sec. 112)	The Agency may prohibit or limit, by regulation or order, any golden parachute or indemnification payment that would be received by any enterprise-affiliated party after an enterprise became insolvent, was determined to be in a troubled condition, or following the appointment of a conservator or receiver. (Sec. 111)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Reporting of Fraudulent Loans		Regulated entities would be required to report in a timely manner the discovery of a purchase or sale of a fraudulent loan. (Sec. 104)	The Director shall, by regulation, require enterprises to timely disclose the discovery of the purchase or sale of a fraudulent loan. Regulated entities must have procedures designed to discover fraudulent loans. (Sec. 113)	The Director shall, by regulation, require enterprises to timely disclose the discovery of the purchase or sale of a fraudulent loan. (Sec. 112)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
<b>Subtitle B: Improvement of Mission Supervision.</b>				
Oversight of Affordable Housing Goals		Program and housing goal oversight is transferred from HUD to the Agency. (Sec. 121)	Oversight of affordable housing goals is transferred from Secretary of HUD to the Director. HUD retains fair housing responsibilities. (Secs. 121, 123 and 124) The Inspector General of the Agency shall conduct an annual audit of affordable housing programs. (Sec. 402) Incorporates into statute (and modifies) several regulatory provisions dealing with definitions and oversight of housing goals. (Sec. 127)	Oversight of affordable housing goals is transferred from Secretary of HUD to the Director. HUD retains fair housing responsibilities. (Secs. 121 and 124-126) The Inspector General of the Agency shall conduct an annual audit of affordable housing programs. (Sec. 402)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
<p>Prior Approval of New Business Activities by Enterprises</p>		<p>Enterprises may not undertake new programs or business activities without the Director’s prior approval. Approval is contingent upon consistency with statutory authority, safety and soundness, and the public interest. The Director may prohibit any activity that is inconsistent with the law, otherwise inconsistent with safety and soundness, or not in the public interest. Requires enterprises to submit a report to the director describing each program and business activity within 180 days of enactment. (Sec. 122)</p>	<p>Prior approval authority is transferred from HUD to the Director. (Sec. 121) The Director shall consider whether proposed new products are (1) consistent with the GSEs’ authorizing statutes, (2) in the public interest, (3) consistent with safety and soundness of the enterprise and the mortgage finance system, and (4) not harmful to the stability or competitiveness of the mortgage finance system. Requests for approval of new products would trigger a 30-day public comment period, after which the Agency would have 30 days to act on the request. (Sec. 122)</p>	<p>Prior approval authority is transferred from HUD to the Director. (Sec. 121) Authorizes the Director to review any enterprise activities, to determine their conformance with the purposes of the statutes, and to protect the safety and soundness of the enterprises. The Director may prohibit or limit any activities found to be impermissible or inappropriate. (Sec. 122)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Mission Clarification		Within six months of the effective date of this legislation, the Director shall, by regulation, define “mortgage loan origination” and “secondary mortgage market.” (Sec. 122)	No comparable provision, but the Director could consider the distinction between primary and secondary markets when deciding whether to approve new products. (Sec. 122)	The Director shall define by regulation “loan origination,” establishing thereby which activities are impermissible for the enterprises. The Director shall define the boundary between the secondary mortgage market (where the enterprises are allowed to operate) and the primary mortgage market (where they are not). Grandfathering of enterprise activities that do not accord with these definitions is not automatically presumed, but may be permitted by the Director. (Sec. 107)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Conforming Loan Limits		Sets conforming loan limits and requires the agency to make annual adjustments to the limits based on increases or decreases in a housing price index maintained by the agency. The accuracy of the housing price index is to be audited by GAO. For high-cost metropolitan statistical areas, the conforming loan limit is raised to the lesser of 150% of the statutory limit or the median home price in that area. (Sec. 123)	Provides for annual adjustments to the conforming loan limit based on changes in a housing price index to be established and maintained by the Director. (Sec. 126)	No comparable provision

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Annual Housing Report		The Director shall report annually to the House Financial Services and Senate Banking Committees on the achievement of housing goals, actions to promote or expand goals, to expand opportunities for first-time home buyers, fair housing issues, and conditions in housing markets. To assist in the preparation of this report, the Director shall conduct a monthly survey of housing markets. (Sec. 124)	No comparable provision	No comparable provision



Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Establishment of Housing Goals and Home Purchase Goal		<p>The Director shall establish goals, with annual targets, for the purchases of mortgage loans made to low and very low income families, or families in low income areas. Annual goals shall also be established for purchases of mortgages on multifamily housing units serving very low income families, or units assisted by the low-income housing tax credit. (Sec. 125)</p> <p>Creates a duty to serve underserved markets, by undertaking activities related to mortgages on housing for low, very low, and moderate income families, including manufactured housing. (Sec. 126)</p>	No comparable provision	No comparable provisions

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Monitoring and Enforcing Housing Goal Compliance		Upon a written finding that an enterprise has failed to meet a housing goal, the Director is authorized to take any of several steps to enforce compliance, including cease-and-desist orders, refusal to authorize new programs, and civil money penalties not to exceed \$50,000 per day. Other sanctions may include a prohibition on new activities or programs. (Sec. 127)	No comparable provision	No comparable provision

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Affordable Housing Fund	Expands the mission of the fund to include increasing investment in public infrastructure and leveraging investments from other sources in connection with low- and extremely-low income housing. Adds a five-year sunset to the affordable housing fund, and requires the Director to report to Congress with recommendations as to whether the fund should be extended or modified. Prohibits use of fund disbursements for political purposes, and requires the enterprises to track the use of funds by recipients.	Each enterprise shall establish an affordable housing fund to increase homeownership among very- and extremely-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- and extremely-low income families. Each enterprise shall allocate to this fund 3.5% of its after-tax income during the first year after enactment, and 5% in subsequent years. No allocation would be required when an enterprise was less than adequately capitalized. (Sec. 128)	No comparable provision	No comparable provision

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Affordable Housing Board	Requires the Board to establish a priority for funding activities in areas affected by Hurricanes Katrina and Rita, or any area declared a major disaster area.	The Director shall appoint an affordable housing board, whose members shall include the Secretaries of HUD and Agriculture (or their designees), and 2 persons each from (1) businesses and (2) non-profits actively engaged in promoting or providing housing for very- or extremely-low income households. The board shall determine very- and extremely-low income housing needs and advise the director on priorities for the use of the affordable housing funds. (Sec. 128)	No comparable provision	No comparable provision

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
<b>Subtitle C: Prompt Corrective Action.</b>				
Capital Classifications		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, or (2) which is determined (after notice and opportunity for a hearing) to be in an unsafe or unsound condition. (Sec. 141)	The Director may reclassify a regulated entity whose conduct could rapidly deplete core capital, or whose mortgage assets have declined significantly in value, or which is determined (after notice and opportunity for a hearing) to be in an unsafe or unsound condition. (Sec. 142)	The Director may reclassify a regulated entity whose conduct could rapidly deplete core capital, or whose mortgage assets have declined significantly in value, or which is determined (after notice and opportunity for a hearing) to be in an unsafe or unsound condition. (Sec. 141)
Restriction on Capital Distributions		A regulated entity shall make no capital distribution that would cause it to become undercapitalized, except as permitted by the Director under certain circumstances. (Sec. 141)	A regulated entity shall make no capital distribution that would cause it to become undercapitalized, except as permitted by the Director under certain circumstances. (Sec. 142)	A regulated entity shall make no capital distribution that would cause it to become undercapitalized, except as permitted by the Director under certain circumstances. (Sec. 141)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Supervisory Actions Applicable to Undercapitalized Regulated Entities		<p>The Director must monitor the 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 the director has accepted the GSE’s capital restoration plan, an increase in assets is consistent with the plan, and the ratio of tangible equity to assets is increasing. No new activities or acquisitions permitted 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. (Sec. 142)</p>	<p>The Director must monitor the 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 the director has accepted the GSE’s capital restoration plan, an increase in assets is consistent with the plan, and the ratio of tangible equity to assets is increasing. No new activities or acquisitions permitted 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. (Sec. 142)</p>	<p>The Director must monitor the 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 the director has accepted the GSE’s capital restoration plan, an increase in assets is consistent with the plan, and the ratio of tangible equity to assets is increasing. No new activities or acquisitions permitted 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. (Sec. 142)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Supervisory Actions Applicable to Significantly Undercapitalized Regulated Entities		Supervisory actions that the regulator <i>may</i> take under current law <i>must</i> be taken, including one or more of the following: new election of directors, dismissal of directors and/or executives, and hiring of qualified executive officers, or other actions. Without prior written approval of the Director, executives of a significantly undercapitalized GSE may not receive bonuses or pay raises. (Sec. 143)	Supervisory actions that the regulator <i>may</i> take under current law <i>must</i> be taken, including one or more of the following: new election of directors, dismissal of directors and/or executives, and hiring of qualified executive officers, or other actions. Without prior written approval of the Director, executives of a significantly undercapitalized GSE may not receive bonuses or pay raises. (Sec. 143)	Supervisory actions that the regulator <i>may</i> take under current law <i>must</i> be taken, including one or more of the following: new election of directors, dismissal of directors and/or executives, and hiring of qualified executive officers, or other actions. Without prior written approval of the Director, executives of a significantly undercapitalized GSE may not receive bonuses or pay raises. (Sec. 143)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Authority Over Critically Undercapitalized Enterprises (Liquidation Authority)		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 and other aspects of liquidation. Authorizes the Director to appoint a limited-life enterprise to deal with the affairs of an enterprise in default. Prohibits a receiver from terminating or revoking the charter of an enterprise. (Sec. 144)	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 and other aspects of liquidation. Authorizes the Director to appoint a limited-life enterprise to deal with the affairs of an enterprise in default. Prohibits a receiver from terminating or revoking the charter of an enterprise. (Sec. 144)	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 and other aspects of liquidation. Authorizes the Director to appoint a limited-life enterprise to deal with the affairs of an enterprise in default. Prohibits a receiver from terminating or revoking the charter of an enterprise. (Sec. 144)



Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
<b>Subtitle D: Enforcement Actions.</b>				
Cease-and-Desist Orders		<p>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 less-than-satisfactory rating where the identified deficiency is not corrected. (Sec. 161)</p> <p>Temporary cease-and-desist orders may be issued if actions taken (or not taken) by the regulated entity are likely to cause insolvency or weaken its financial condition prior to the conclusion of a cease-and-desist proceeding. (Sec. 162)</p>	<p>The Director may issue cease-and-desist orders against a regulated entity, an 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 less-than-satisfactory rating where the identified deficiency is not corrected. (Sec. 151)</p> <p>Temporary cease-and-desist orders may be issued if actions taken (or not taken) by the regulated entity are likely to cause insolvency or weaken its financial condition prior to the conclusion of a cease-and-desist proceeding. (Sec. 152)</p>	<p>The Director may issue cease-and-desist orders against a regulated entity, an 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 less-than-satisfactory rating where the identified deficiency is not corrected. (Sec. 151)</p> <p>Temporary cease-and-desist orders may be issued if actions taken (or not taken) by the regulated entity are likely to cause insolvency or weaken its financial condition prior to the conclusion of a cease-and-desist proceeding. (Sec. 152)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Removal and Prohibition Authority		<p>After written notice and opportunity for a hearing, the Director may suspend or remove regulated entity-affiliated parties who have (1) violated a law or 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 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)</p>	<p>The Director may issue cease-and-desist orders against a regulated entity, an entity-affiliated party, or the Federal Home Loan Bank Finance Facility (created by Sec. 204) for unsafe or unsound practices (actual or imminent), violations of laws and regulations, or for a less-than-satisfactory rating where the identified deficiency is not corrected. (Sec. 151)</p> <p>Temporary cease-and-desist orders may be issued if actions taken (or not taken) by the regulated entity are likely to cause insolvency or weaken its financial condition prior to the conclusion of a cease-and-desist proceeding. (Sec. 152)</p>	<p>The Director may issue cease-and-desist orders against a regulated entity, an 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 less-than-satisfactory rating where the identified deficiency is not corrected. (Sec. 151)</p> <p>Temporary cease-and-desist orders may be issued if actions taken (or not taken) by the regulated entity are likely to cause insolvency or weaken its financial condition prior to the conclusion of a cease-and-desist proceeding. (Sec. 152)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Enforcement and Jurisdiction		Authorizes the Director to apply to Federal District Court for enforcement of outstanding notice or order, and to request the Attorney General to bring actions for that purpose. (Sec. 164)	Authorizes the Director to apply to Federal District Court for enforcement of outstanding orders or subpoenas, and to request the Attorney General to bring actions for that purpose. (Sec. 154)	Authorizes the Director to apply to Federal District Court for enforcement of outstanding orders or subpoenas, and to request the Attorney General to bring actions for that purpose. (Sec. 154)
Civil Money Penalties		Establishes three tiers of fines: (1) \$10,000 per day for violations of orders, etc., (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)	Establishes three tiers of fines: (1) \$10,000 per day for violations of orders, etc., (2) \$50,000 per day for 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 for knowingly engaging in violations, breaches of fiduciary duties, or unsafe or unsound practices that cause substantial losses to a regulated entity. (Sec. 155)	Establishes three tiers of fines: (1) \$10,000 per day for violations of orders, etc., (2) \$50,000 per day for 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 for knowingly engaging in violations, breaches of fiduciary duties, or unsafe or unsound practices that cause substantial losses to a regulated entity. (Sec. 155)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Criminal Penalties		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)	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. 156)	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. 156)
Studies and Reports Required		In addition to the study in Section 182 (described to the right), the reported bill calls for (1) a study by the Director of the effect that restrictions on conforming loan limits have on mortgage markets; (2) a study on guarantee fees by the Comptroller General in consultation with the federal banking agencies and the new director of the FHFA; (3) a review by the GSEs of disparities in interest rates charged on mortgages for minority borrowers; (4) an affordable housing study related to long-term-care facilities; and (5) a study of alternative secondary	(1) The Federal Reserve shall study and report to Congress on the effects of the Basel II Capital Accord on regulated entities. (Sec. 401) (2) The Director and federal bank regulators shall report to Congress on holdings of GSE debt by insured depository institutions and whether such holdings are a source of systemic risk. (Sec 403) (3) The Director shall submit a quarterly report to Congress on the risk-based capital levels for the enterprises. (Sec. 404) (4) The GAO shall submit an annual report to Congress, with recommendations, on the allocation of resources within the	(1) The Director and federal bank regulators shall report to Congress on holdings of GSE debt by insured depository institutions and whether such holdings are a source of systemic risk. (2) The Director, in consultation with GAO, shall report to Congress on GSE portfolio operations, risk management, and mission. (3) The Director shall report to Congress on the appropriate level of debt issuance by GSEs. (4) The Director shall submit a quarterly report to Congress on the risk-based

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
		<p>mortgage markets systems, such as privatization or competition from new GSEs.</p>	<p>Agency and the level of assessments collected from the regulated entities. (Sec. 405) (5) The Director shall conduct an ongoing study of guarantee fees, and collect data regarding such fees. The Director shall submit an annual report to Congress regarding the amount of such fees and the way they are set. (Sec. 406) (6) The Agency, the SEC, and the Treasury shall study and report to Congress on registration of debt securities of regulated entities under the Securities Act of 1933. (Sec. 407)</p> <p>All reports required by this title shall include recommendations regarding legislation, regulations, or other actions to deal effectively and appropriately with the issues raised. (Sec. 408)</p>	<p>capital levels for the enterprises. (5) The GAO shall submit an annual report to Congress, with recommendations, on the allocation of resources within the Agency and the level of assessments collected from the regulated entities. (Sec. 161) (6) The Federal Reserve shall study and report to Congress on the effects of the Basel II Capital Accord. (Sec. 401)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
End of Presidential Appointment of Enterprise 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)	Abolishes the requirement that five directors on the boards of Fannie Mae and Freddie Mac be appointed by the President. (Sec. 172)	Abolishes the requirement that five directors on the boards of Fannie Mae and Freddie Mac be appointed by the President. (Sec. 172)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
<b>Title II: Federal Home Loan Bank Provisions.</b>				
Boards of Directors		<p>Provides that boards of FHLBs shall contain 13 members, or such number as the Director determines, all elected by the membership (none appointed). A majority of each board shall consist of member directors — officers or directors of member banks located in the FHLB district. At least 1/3 of the members shall be independent directors: bona fide residents of the bank district, at least two of whom represent consumer or community interests. Other independent directors shall have financial or management expertise. Independent directors may not serve as officers of a FHLB or member bank. Terms of service are set at four (rather than three) years. The cap on director pay is lifted, but compensation must be reasonable and appropriate. (Sec. 202)</p>	<p>Provides that all directors of Federal Home Loan Banks shall be elected by the membership. The 13-member boards shall include (1) member directors — officers or directors of member banks located in the bank district — and (2) at least five non-member directors (at least 1/3 of the board), who shall be residents of the bank district, and who shall include at least two representatives of consumer or community interests. Directors' terms are extended from three to four years. (Sec. 201)</p>	<p>Provides that all directors of Federal Home Loan Banks shall be elected by the membership. The 13-member boards shall include (1) member directors — officers or directors of member banks located in the bank district — and (2) at least five nonmember directors, who shall be residents of the bank district, and who shall include at least two representatives of consumer or community interests. Directors' terms are extended from three to four years. (Sec. 201)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Debt Issuing Facility		No directly comparable provision, but permits two or more FHLBs to establish a joint office to provide services to banks on a common or collective basis. The FHLBs may require the Office of Finance to provide such services as the banks are authorized to perform or provide individually. (Sec. 204)	Establishes a Federal Home Loan Bank Finance facility to issue and service debt obligations, to act as fiscal agent, and to perform other functions now performed by the Office of Finance. Provides for a governing Board of Directors, comprising the presidents of the Federal Home Loan Banks, and sets out the Board's duties and powers. (Sec. 204)	Establishes a Federal Home Loan Bank Finance Corporation (as a jointly owned subsidiary of the Federal Home Loan Banks) to issue and service debt obligations, to act as fiscal agent, and to perform other functions now performed by the Office of Finance. Provides for a governing Board of Directors, comprising the presidents of the Federal Home Loan Banks, and sets out the Board's duties and powers. (Sec. 204)
FHLB Mergers and Reorganization		Permits voluntary mergers between FHLBs, subject to the approval and regulation of the Director. (Sec. 206)	No comparable provision	No comparable provision
Community Financial Institution Members		Insured depository institutions with less than \$1 billion in assets may use Federal Home Loan Bank advances for lending to community development activities, and use such secured loans as collateral for advances generally. (Sec. 208)	No comparable provision	No comparable provision



Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Exemption from Certain SEC Reporting Requirements		<p>Exempts the Federal Home Loan Banks from certain disclosure requirements with regard to transactions involving capital stock of the banks. Shares of Federal Home Loan Bank capital stock are defined as “exempted securities.” Debentures, bonds, and other FHLB debt obligations are defined as “exempted securities” and “government securities.” A person that effects transactions in Federal Home Loan Bank capital stock or other obligations is excluded from the definition of “government securities dealer.” The Federal Home Loan Banks shall be exempt from reporting requirements regarding related party transactions and sale of unregistered securities. Tender offer rules shall not apply to transactions in Federal Home Loan Bank capital stock. (Sec. 207)</p>	<p>Exempts the Federal Home Loan Banks from certain disclosure requirements with regard to transactions involving capital stock of the banks. Shares of Federal Home Loan Bank capital stock are defined as “exempted securities.” Debentures, bonds, and other debt obligations are defined as “exempted securities” and “government securities.” A person that effects transactions in Federal Home Loan Bank capital stock or other obligations is excluded from the definition of “government securities dealer.” The Federal Home Loan Banks shall be exempt from reporting requirements regarding related party transactions and sale of unregistered securities. Tender offer rules shall not apply to transactions in Federal Home Loan Bank capital stock. (Sec. 205)</p>	<p>Exempts the Federal Home Loan Banks from certain disclosure requirements with regard to transactions involving capital stock of the banks. Shares of Federal Home Loan Bank capital stock are defined as “exempted securities.” Debentures, bonds, and other debt obligations are defined as “exempted securities” and “government securities.” A person that effects transactions in Federal Home Loan Bank capital stock or other obligations is excluded from the definition of “government securities dealer.” The Federal Home Loan Banks shall be exempt from reporting requirements regarding related party transactions and sale of unregistered securities. Tender offer rules shall not apply to transactions in Federal Home Loan Bank capital stock. (Sec. 205)</p>

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
Limitations on Golden Parachutes		No comparable provision	The Agency may prohibit or limit, by regulation or order, any golden parachute or indemnification payment. Sets out criteria that the Agency may consider in deciding whether to prohibit a payment. (These provisions apply to all regulated entities.) (Sec. 112)	The agency may prohibit or limit, by regulation or order, any golden parachute or indemnification payment that would be received by any affiliated party when there is a reasonable basis to believe that the party may have committed fraud or breach of fiduciary duty that had a material impact on the bank's financial condition, or where there is a reasonable basis to believe that the party was substantially responsible for the bank's insolvency, troubled condition, or for the appointment of a conservator or receiver, and other factors. (As in Sec. 111, "golden parachute" is defined as a post-employment payment that would be received by any enterprise-affiliated party after an enterprise had become insolvent, had been determined to be in a troubled condition, or following the appointment of a conservator or receiver.) (Sec. 206)

Provision	H.R. 1461 (amendments adopted during House passage)	H.R. 1461 (as reported)	S. 190 (as reported)	S. 190 (as introduced)
<b>Transition Provisions.</b>				
Abolishment of OFHEO and the Federal Housing Finance Board		Various provisions dealing with abolition of OFHEO and the FHFB, transfer of certain HUD employees to the agency, continuation of certain regulations, transfer of property and facilities, employee rights and benefits, etc. (Title III)	Various provisions dealing with abolition of OFHEO and the FHFB, continuation of certain regulations, transfer of property and facilities, employee rights and benefits, etc. (Title III)	Various provisions dealing with abolition of OFHEO and the FHFB, continuation of certain regulations, transfer of property and facilities, employee rights and benefits, etc. (Title III)
Effective Date	Six months after the date of enactment, unless otherwise specified.	One year after the date of enactment, unless otherwise specified. (Secs. 184 and 210)	The date of enactment, except as specifically provided otherwise. (Sec. 163)	The date of enactment, except as specifically provided otherwise. (Sec. 173)