COMPARISON OF COMMITTEE ADOPTED GSE BILLS AND BANKING REGULATION

PREPARED FOR THE COUNCIL OF FEDERAL HOME LOAN BANKS

BY

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Comparison of Banking Law and Committee Adopted GSE Bills

Subject	Banking Law	Committee Adopted S. 190	Committee Adopted H.R. 1461
Short Title		Federal Housing Enterprise Regulatory Reform Act of 2005 (FHERRA of 2005).	Federal Housing Finance Reform Act of 2005 (FHRA of 2005)
Definitions	Under the FDI Act, an "institution-affiliated party" includes any director, officer, employee, or controlling stockholder, or agent of a bank; any shareholder, consultant, joint venture partner or other person who participates in the conduct of the affairs of the bank; and certain independent contractors, such as attorneys, appraisers and accountants who meet the standards for inclusion. [12 USC § 1813(u)]. "Violation" is defined to include causing, aiding, participating in or abetting. [12 USC § 1813(v)]	Amends definitions used in the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 ("92 Act"). "*Agency*" is defined as the Federal Housing Enterprise Regulatory Agency or "FHERA." "*Enterprise*" means Fannie Mae or Freddie Mac. "*Regulated Entity*" means Fannie Mae, Freddie Mac and any FHLBank. "*Default"* and "*In Danger of Default*" are defined terms. "*Entity-Affiliated Party*" is defined to include directors, officers, employees, agents and shareholders that participate in the conduct of a regulated entity, except that a member of a FHLBank is not an "entity-affiliated party" solely by virtue of being a shareholder of and obtaining advances from that Bank. "*Violation*" includes causing, aiding, participating in or abetting a violation. [Sec. 2]	Same as S. 190 except: (i) The terms "affiliate" and "capital distribution" is defined only with respect to the "Enterprises" in S. 190. In the House bill, the terms "affiliate" and "capital distribution" are defined for purposes of all regulated entities; (ii) The term "New program" is not defined in S. 190. In the House bill, it is defined in the same manner as current law; (iii) "Regulated-entity affiliated party" does not include provision that a member of a FHLBank is not an affiliated party simply by virtue of being a shareholder in a FHLBank. Also, the House bill includes all independent contractors without a "participation" requirement; (iv) A "FHLBank" is defined as a bank established under the FHLB Act. The Senate bill has no definition of the term; and (iv) "Violation" not defined. [Sec. 2]
Establishment of New Agency	OCC is given general authority to prescribe regulations to carry out the responsibilities of the Office. [12 USC § 93a]	The "Federal Housing Enterprise Regulatory Agency" ("FHERA") is an independent agency with "general regulatory authority" over the regulated entities and the Finance Facility. [Sec. 101]	Same, except name of the agency is the "Federal Housing Finance Agency," ("FHFA") and the agency has "general *supervisory* and regulatory authority" over the regulated entities. The Finance Facility is not established in the House bill. [Sec. 101]

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Director of New Agency	Comptroller appointed by the President, with the advice and consent of the Senate (PAS), for a 5-year term. President may remove "upon reasons communicated to the Senate." [12 USC § 2]	Director to be appointed by the President with the advice and consent of the Senate (PAS) for a 6-year term. Removal only "for cause." [Sec. 101]	Same except: (i) Five-year term. [Sec. 101]
Deputy Directors	Four Deputy Comptrollers are specified by statute and others can be created by administrative action of the Comptroller. [12 USC § 4]	The agency has three Deputy Directors: (i) Enterprise Regulation; (ii) FHLBank Regulation; and (iii) Housing Mission and Goals. The Deputy for Housing Mission and Goals is responsible for the oversight of "the housing mission and goals of the regulated entities." [Sec. 101]	Same, except Deputy Director for Housing's responsibilities include "oversight of the housing mission and goals of the Enterprises, and ... the housing mission of the FHLBanks...." [Sec. 101]
Appointment Prior to the Effective Date	No similar provision.	No similar provision.	Notwithstanding any other provision of law, the President may, at any time after enactment, appoint an individual to serve as the Director. [Sec. 101]
Transitional Provision	No similar provision.	The person serving as Director of OFHEO on the effective date "shall act for all purposes as, and with the full powers of, the Director." [Sec. 101]	The Director of OFHEO shall serve as Director until a successor has been appointed and confirmed. [Sec. 101]
Acting Director	During a vacancy or during the death or disability of the Comptroller, the First Deputy Comptroller shall possess the power and perform the duties of the Comptroller. [12 USC § 4]	In the event of the death or disability or absence of the Director, the President is to designate one of the three Deputy Directors to serve as acting Director. [Sec. 101]	No specific provision for Acting Director. The Vacancies Act provides for an Acting Officer.
Principal Duties	No similar provision for the OCC. The Director of OTS "shall provide for the examination, safe and sound operation, and regulation of savings associations. The Director of OTS shall exercise all power so as to "encourage savings associations to provide credit for housing safely and soundly." [12 USC § 1463(a)]	The principal duties of the Director are to: (i) Oversee the *prudential* operations of each regulated entity; (ii) Ensure that each entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls; (iii) Ensure that the operations and activities of each entity foster liquid, efficient, competitive and resilient national	The principal duties of the Director are to: (i) Oversee the *operations* of each regulated entity. (ii) Same. (iii) Ensure that each entity fosters liquid, efficient, competitive and resilient national housing finance markets *that minimize the cost of housing finance.*

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		housing finance markets; (iv) Ensure that each entity complies with "this title" and the rules, guidelines and orders issued under the "authorizing statutes" [FHLB Act and the Charter Acts]; (v) Ensure that each entity carries out its statutory mission activities that are *authorized under and consistent* with this title and the authorizing Acts; (vi) Ensure that activities of each entity and manner of operation are consistent with public interest; (vii) Ensure that each entity remains adequately capitalized; and (viii) Ensure the FHLBanks provide funds to community financial institutions for small business, small farms, and small agricultural businesses and accept as collateral whole interests in such obligations. [Sec. 102]	(iv) Same (v) Ensure that each entity carries out its statutory mission activities that are *consistent* with this title and the authorizing Acts. (vi) Not listed. (vii) Not listed. (viii) Not listed. [Sec. 102]
Acquisitions and Transfers of Interest	A change in control of an insured bank requires the approval of the appropriate Federal banking agency. [12 USC § 1817(j)]	Review and, if warranted, reject acquisition or transfer of controlling interest in a *regulated entity*. [Sec. 102]	Review and, if warranted, reject acquisition or transfer of controlling interest in an *Enterprise*. [Sec. 102]
Delegation	Comptroller may delegate any function to an employee or representative. [12 USC § 4a]	Director may delegate any function to an officer or employee of the Agency. [Sec. 102]	Same. [Sec.102]
Litigation Authority	OCC has independent litigating authority. [12 USC § 93]	The Director has independent litigating authority. [Sec. 102]	Same. [Sec.102]
Congressional Testimony	OCC testimony does not have to be cleared. [12 USC § 250]	Same. [Sec. 102]	Same. [Sec.102 (b)]
Advisory Board	OCC has no formal advisory board. Federal Reserve Board has several advisory	"Federal Housing Enterprise Board" - Advisory board composed of four members: Secretaries of Treasury & HUD, Chairman of SEC, and the Director. Must meet at least once every three months. Annual testimony before	"Housing Finance Oversight Board" - Composed of five members: the Director, the Secretaries of Treasury & HUD, and two full-time members appointed for a 3-year term, and who may be removed by the President only for cause. Paid staff. Annual testimony before Congress. The Director's

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	councils.	Congress. The Director's annual report must include the Board's assessments of the safety and soundness of the regulated entities and their performance in carrying out their respective missions. The Board is not to exercise executive authority. [Sec. 103]	annual report must include the Board's assessments of the safety and soundness of the regulated entities and their performance in carrying out their missions including the Enterprises' compliance with housing goals and FHLBanks' compliance with community investment and affordable housing programs. The Board is exempt from the Sunshine Act. [Sec. 103]
Authority to Require Reports	OCC may obtain reports and special reports containing such information as may be prescribed. [12 USC § 161]	The Director may require regular and special reports, including financial statements *determined on a fair value basis*. Reports can cover condition, management, activities, and operations, as the Director considers appropriate. Failure to make any required report, or to submit or publish false or misleading reports, is subject to a civil money penalty of up to $2 million per day. If the entity proves that error was "inadvertent" or "minimally late," the penalty is capped at $2,000 per day. [Sec. 104]	Same, except: Does not require financial reports to be on a *fair value basis*. No special civil money penalty provision. [Sec. 104]
Disclosure of Charitable Contributions	Certain CRA agreements made by a bank with non-governmental entities must be publicly disclosed. [12 USC § 1831y]	No similar provision.	The Director must require each Enterprise to publicly disclose in an annual report the total value of contributions to non-profit corporations and the amount and recipient of "substantial" contributions. [Sec. 105]
Examiners and Accountants: Authority to Contract; Inspector General	Banking agencies are required to conduct annual on-site examinations of institutions with $250 million or more in assets. [12 USC § 1820(d)]. OCC may hire examiners and other specialists without regard to the civil service laws. [12 USC § 482]	This section requires the Director to conduct at least annual on-site examinations of each regulated entity to determine its condition *for purposes of safety and soundness*. It also authorizes special examinations when necessary for *safety and soundness purposes*. It authorizes the Director to hire certain specialists to examine the regulated entities without complying with competitive service rules. It provides that the Director can use bank examiners for both the Enterprises and FHLBanks on a reimbursable basis. It establishes an Inspector General for the new Agency. [Sec. 105]	Same as S.190, except: (i) the special examination is for any purpose the Director deems necessary or appropriate, not just safety and soundness. (ii) The annual examination must include a review of the procedures established to identify and report on the purchase or sale of fraudulent loans. [Secs. 107]
Authority to Contract with Rating Agencies	OCC may enter into contracts with third parties, but such third parties probably could not examine banks. [18 USC § 1905]	Deletes the words, "By rating organization" from heading of section 1319 of the '92 Act, but does not change substantive language. [Sec. 104]	Authorizes the Director to contract with *any entity*, including nationally recognized statistical rating agencies, to review the Enterprises. [Sec. 109]
Assessments	OCC charges assessments based on the asset size and condition of the national bank. [12 CFR part 8]. Assessments are not appropriated or Government funds are not subject to	The Director is to establish and collect assessments from each regulated entity. Assessments are to pay for expenses and for "working capital." The assessment base for all regulated entities defined in the same manner, except MBS	The Director is to establish and collect assessments from each regulated entity. Assessments are to pay for expenses and to establish and maintain a "working capital fund." For *Enterprises*, the base is: (i) on-balance sheet assets; (ii) outstanding MBS issued or guaranteed by the Enterprise; and (iii)

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	apportionment. Excess assessments are retained by the Agency. [12 USC §§ 481, 482]	are included in the total assets of the Enterprises only.	other off-balance sheet assets. For the FHLBanks, total assets are to be determined by the Director in accordance with GAAP.
		Assessments may be increased on any entity: (i) that is not adequately capitalized to cover the additional supervisory expenses; and (ii) to ensure that the costs of a capital-based action or other enforcement action is borne only by the entity subject to such action.	Same.
		Assessments are not Government funds, appropriated funds, and are not subject to apportionment.	Same.
		No similar provision.	Assessments may be deposited in any Government depository, or state or national bank, but uninsured amounts must be collateralized..
		No similar provision.	The Director must provide OMB financial plans and forecasts, and reports of financial condition. Annual financial reports are required. Financial management systems that comply with Federal requirements and accounting standards are required. The Director must provide GAO with an assertion as to internal controls. No OMB approval is required.
		No similar provision.	Amounts left in the Federal Housing Enterprises Oversight Fund or from previous assessments are treated as assessments under this Act.
		No similar provision. [Sec. 106]	Annual GAO audit of the Agency. [Sec. 106]
Regulations and Orders	Comptroller may issue regulations to carry out his responsibilities. Regulations are not subject to prior Congressional review. [12 USC § 93a]	Director may issue any regulations, guidelines, *directives* or orders necessary to carry out his duties. [Sec. 107]	Same, except: (i) does not specifically authorize "directives," and (ii) specifically requires that regulations must comply with notice and comment rulemaking procedures. [Sec. 110]
Review of New Programs and Activities	National banks may engage in activities authorized by statute, primarily the National Bank Act. Under 12 USC § 24, national banks may engage in activities that are part of the business of banking or incidental thereto.	The Director must require each Enterprise to obtain prior approval before initially offering any "*product*." The Director must determine that the product is statutorily authorized, in the public interest, consistent with safety and soundness and the mortgage finance system, and does not impair the	An Enterprise must submit an application to the Director prior to engaging in a new "*program*," and the Director must publish notice of the application in the Federal Register and solicit comment for 30 days. Director must consider comments and determine that the program does not contravene and is not inconsistent with the purposes of the '92 Act and the relevant

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	If an activity has not been previously approved by the OCC, the Comptroller may determine at any time that the activity is impermissible either because it is not part of or incidental to the business of banking, or because it constitutes an unsafe or unsound practice. [12 USC §§ 24 & 1818]	stability or competitiveness of the mortgage finance system.[Sec. 122] The Director is to publish notice of a proposed new product r in the Federal Register and solicit public comment for 30 days. Within 30 days after the comment period closes, the Director must approve or deny the product. If the Director does not act, the Enterprise may offer the product. [Sec. 122] If an Enterprise determines that a new activity, service, or undertaking is not a "product," the Enterprise must provide written notice to the Director prior to commencement of the activity.	Chartering Act, taking into consideration the definition of the terms "mortgage loan origination" and "secondary mortgage market," and that the program is not otherwise inconsistent with the safety and soundness of the Enterprise, and is in the public interest. An Enterprise must notify the Director of any new business activity, and the Director is to review the notice to determine if it consists of or relates to or involves any new "program. If so, it must be reviewed as a new program, described above. If it is not reviewed as a new program, the Enterprise may begin the new activity unless the Director issues a written denial within 30 days after receipt of the notice. [Sec. 122]
Activity Deemed to be a New Activity or New Product		If the Director determines that a new activity, service or undertaking or offering consists of or relates to or involves a "product," the Enterprise must follow the new product approval process. [Sec. 122]	If the Director determines that any activity of an Enterprise consists of, relates to, or involves any new business activity the Director shall prohibit the activity except to the extent it is approved by the Director. [Sec. 122]
Approval and Conditional Approval	The OCC may conditionally approve any approval or notice.	The Director may conditionally approve the offering of any product, and may establish terms, conditions or limitations on the product. [Sec. 122]	The Director may at any time conditionally approve the undertaking of a particular new program or new business activity by an Enterprise. Such approval may, in the discretion of the Director, take the form of an enforceable written agreement. [Sec. 122]
Automated Underwriting and Education and Counseling Activities		A "product" does not include the automated loan underwriting system in existence as of the date of enactment, including any upgrade to the technology or software. Modifications to the product terms or underwriting criteria are permissible if the changes do not alter the underlying transaction so as to include non-residential mortgage financing, or create significant new exposure to risk to the Enterprise or holder of the mortgage. [Sec. 122]	The Director may not prohibit an Enterprise from continuing to offer the automated loan underwriting system or engage in counseling and education activities. [Sec. 122]
New Business Activity Defined		The term "product" is not defined, other than to exclude the automated loan underwriting system. [Sec. 122]	A "business activity" is any offering, undertaking, transacting, conducting, or engaging in any conduct. A "new business activity" is defined as a business activity that is materially changed or materially different from any of the

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			business activity that the Enterprise was engaging in on the effective date and has not been approved under these provisions. [Sec. 122]
Report on Programs and Activities		No similar provision.	Within 180 days of the effective date of the FHRA of 2005 (18 months after enactment), the Enterprises must submit a report identifying each program and business activity engaged in as of the date of the report. [Sec. 122]
Savings Clause		New product provisions do not restrict the safety and soundness authority of the Director over all products and activities, or authority to review products or activities for consistency with the statutory mission of the Enterprises. [Sec. 122]	No similar provision.
Prudential Management and Operations Standards	The banking agencies are required to promulgate standards relating to internal controls, information systems, internal audit, loan documentation, credit underwriting, interest rate exposure, asset growth, excessive compensation and benefits, and any other operational and managerial standards determined to be appropriate. If a bank fails to meet a standard prescribed by the agency, the agency may require the bank to submit a safety and soundness compliance plan. If the bank fails to submit a plan, or fails to implement an approved plan, the agency may issue a safety and soundness order and in addition, may limit the bank's growth, require additional capital, restrict interest rates paid on deposits, or take any other action. Under appropriate circumstances, the order may be issued ex parte and will be immediately effective. [12 USC §1831p-1].	The Director may establish standards by regulation, order or guideline for each regulated entity relating to: (i) Adequacy of internal controls and IT systems; (ii) Independence and adequacy of internal audit systems; (iii) Management of interest rate risk; (iv) Management of market risk; (v) Adequacy and maintenance of liquidity and reserves; (vi) Management of asset and investment portfolio *growth*; (vii) Investments and acquisitions of assets to ensure consistency with the purposes of the relevant laws; (viii) Overall risk management process; and (ix) Such other operations and management standards as the Director determines appropriate. [Sec.108].	Same, except standards must be issued, and if an entity is not in compliance with the standard, it must submit a remedial plan. If an entity does not comply with plan, or fails to submit plan, the Director, by order, may prohibit growth of assets or take other actions. The standards are essentially the same, except that the House bill does not specify a standard on portfolio "growth." Also, the House bill contains these three additional standards not found in the Senate bill: (i) Management of credit and counterparty risk, including limits to restrict exposure to a particular counterparty or related counterparties; (ii) Maintenance of adequate records that enable the Director to determine the financial condition of the entity; and (iii) Issuance of subordinated debt by a particular entity, as the Director considers necessary. [Sec. 102]

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Systemic Risk and Limitations on Assets or Liabilities	Banking agency could order a bank to dispose of assets or acquire an asset or obligation under the agency's cease-and-desist authority, if the grounds for a cease-and-desist order exist. [12 USC § 1818(b)]	The Director must issue a regulation that establishes criteria regarding the assets that an Enterprise may hold. The criteria must consider safety and soundness and the systemic risk posed by the holdings of an Enterprise. An Enterprise may not hold mortgages or MBS except for certain specified purposes. The Enterprises must submit a plan to the Director for the disposition of assets no longer permissible for the Enterprise to hold. [Sec. 109]	The Director is to conduct periodic reviews of the assets and liabilities of each Enterprise. Director may order an Enterprise to dispose of or acquire any asset or obligation, if consistent with safety and soundness or with the purposes of the '92 Act or authorizing statutes. [Sec.113]
Risk-Based Capital	By statute, the banking agencies are to establish a risk- adjusted capital standard. The agencies currently require banks to meet an 8 percent ratio of total capital to risk-adjusted assets, and a tier 1 capital to risk-adjusted ratio of at least 4 percent.[1] [12 USC § 1831o; 12 CFR parts 3 (OCC)]	The Director is to establish risk-based capital requirements for each *Enterprise* entity to ensure that they operate in a safe and sound manner with sufficient capital to support the risks that arise in the operations and management of each Enterprise. No change is made to the risk based capital statutory requirements for the FHLBanks. [Sec. 110]	The Director is to establish risk based capital standards for the regulated entities to ensure that they operate in a safe and sound manner with sufficient capital to support the risks that arise in the operations and management of each Enterprise. Any person that receives information from the Director to enable the risk-based capital requirements to be applied must maintain the confidentiality of the information. [Sec. 111]
SEC Registration	Publicly traded bank holding companies are required to register with the SEC. Publicly traded national banks are required to register with the OCC rather than the SEC.[2]	Each regulated entity must register at least one class of capital stock under the Securities Exchange Act of 1934. Each *Enterprise* must comply with Sections 14 and 16 of that Act. [Sec. 111]	Same. [Sec.115]
Study on Registration Under the Securities Act of 1933		The Agency, SEC, and the Secretary of the Treasury are to conduct a joint study of the feasibility of registering the debt securities of the regulated entities under the Securities Act of 1933. The study is to include a cost/benefit analysis. A report is to be issued 18 months after the date of enactment.	No similar provision.
Minimum Capital Levels	By statute, the banking agencies are to establish a risk- adjusted capital standard. The agencies currently require banks meet an 8 percent ratio of	The Director may set (by regulation or order) a minimum capital requirement for the Enterprises or a minimum leverage ratio for the FHLBanks that is higher than the	Same, except (i) the Director must act by regulation;

Tier 1 capital consists of stockholders equity, noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries.

Banks with 500 or more shareholders and assets of $1 million or more.

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	total capital to risk-adjusted assets, and a tier 1 capital to risk-adjusted ratio of at least 4 percent. A bank that is rated 1 under the CAMELS rating system currently must have a leverage ratio of at least 3 percent, otherwise a 4 percent ratio applies. [12 USC 3907; 12 CRF part 3 (OCC)]	statutory minimums. [Sec. 110]	(ii) the increased capital requirement must be "needed to ensure that the regulated entities operate in a safe and sound manner;" and (iii) the Director may order a temporary increase in minimum capital for a particular entity, if the entity is engaging in certain unsafe practices or is in an unsafe condition, or violates a safety and soundness standard. [Sec. 112]
Capital for Programs or Activities	The OCC may increase the minimum capital requirements for a particular institution or class of institutions. [12 USC 3907; 12 CFR §§ 3.4 & 3.6]	No similar provision.	Director may, by regulation, require additional capital or reserves for any program or activity of a regulated entity. [Sec. 112]
Periodic Review		No similar provision.	Director must periodically review the amount of core capital maintained by the Enterprises and the amount of capital retained by the FHLBanks, and minimum capital requirements for all of the regulated entities.. The Director, by regulation, may adjust the minimum capital as necessary. [Sec. 112]]
Critical Capital Levels			The Director is to establish, by regulation issued within 6 months of the effective date, the critical capital level for each FHLBank. The Director is to consider the critical capital levels for the Enterprises. [Sec. 112]
Golden Parachutes and Withholding Compensation Excessive Compensation	By statute, golden parachute payments and indemnification payments are subject to prohibition or regulation by the FDIC. [12 USC 1828(k)] Excessive compensation is an unsafe or unsound banking practice and banks must comply with interagency guidelines on excessive compensation found at 12 CFR part 30, Appendix A (III).	The new Agency may limit or prohibit "golden parachute" payments and certain indemnification payments. The agency must issue regulations setting out the factors it will use in making this determination. Certain payments are prohibited, such as prepayment of salary in contemplation of insolvency. "Indemnification payments" defined as payment of legal fees or fines to a party who is assessed a civil money penalty, is removed, or is subject to an order to take affirmative remedial actions. [Secs.112]	No golden parachute section, but the bill provides that the Director shall prohibit the payment of compensation that is not "reasonable" or "comparable" with compensation of similar private and public companies, after considering any other factors the Director considers relevant (including any wrongdoing such as fraud, breach of trust or fiduciary duty, violation of a law or regulation, and insider abuse). The Director may require an entity to withhold payment to an executive officer even if the Director previously approved the employment contract. The entities need approval to compensate during the Director's review of that executive's compensation package. [Sec. 108]
Reporting Fraudulent Loans	Banks are required to file suspicious activity reports when they suspect a violation of Federal law, money laundering or BSA. [12 CFR § 21.11]	The Director must require the regulated entities to file a report when the entity discovers it has purchased or sold a fraudulent loan or financial instrument. Any regulated entity or affiliated party that makes a good faith report is granted	The Director must require the regulated entities to file a report when the entity discovers it has purchased or sold a fraudulent loan. A regulated entity or affiliated party that files a report in good faith is granted immunity from civil liability under State and Federal law. [Sec.105]

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		immunity from liability. [Sec. 113]	
FFIEC	FFIEC composed of heads of the Federal banking agencies and NCUA.		Adds the Director to the FFIEC. [Sec. 116]
Guarantee Fee Study	No similar provision.	GAO is to study and report to Congress on the pricing and transparency of the guarantee fees that are charged by the regulated entities, or analogous fees, such as fees for advances. [Sec. 406]	Same. [Sec. 117]
Conforming Loan Limits	No similar provision.	Adjusts the limits on conforming loans. Limit for single family mortgages set at $359,650, adjusted on Jan. 1 of each year by the change in the housing price index. [Sec. 124].	Same. [Sec. 123]
High Cost Area Limit		No similar provision.	In areas in which the median price of a home exceeds the conforming loan limit, a new limit is established equal to the lesser of 150 percent of the conforming loan limit, or the median price. Unless otherwise provided by the Director, mortgages purchased under this authority must be securitized. [Sec. 123]
Housing Price Index		Establishes a new index for adjusting loan limits under which the Director can determine methodology for determining the change in average cost. [Sec. 125]	Same, except bill also provides for GAO audit of the methodology. [Sec. 123]
Regular Adjustments to Conforming Loan Limit		No similar provision.	Conforming loan limits are to be adjusted on the effective date, and new limits are to be immediately effective. [Sec. 124]
Monitoring and Enforcing Housing Goals	Banks are subject to CRA and examined for compliance by the banking agencies. Separate CRA rating is assigned to each bank. [12 USC §§ 2901 – 2902; 12 CFR part 25]	The Director is given the responsibilities of the Secretary of HUD to monitor and enforce compliance with the Enterprises' housing goals. The Secretary of HUD retains responsibility for fair housing compliance. [Secs. 124-125]	Same, except responsibility for fair lending is transferred to the Director. [Sec. 127]
Mortgage Data	Banks are subject to the Home Mortgage Disclosure Act (HMDA) that requires depository institutions to disclose data on mortgage loans the institution originated or purchased, broken down by census tract, income level, racial characteristics and gender. [12 USC §§ 2801 et. seq.]	The Enterprises shall make public reports on the same information as required for depository institutions under HMDA, with respect to single-family home mortgages. [Sec. 127]	No similar provision.
		S. 190 retains current law requiring an annual housing	Same, except:

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Annual Housing Report	No similar provision.	report. Under current law, the report is on the extent to which the Enterprises have achieved their housing goals. Among other things, the report must aggregate and analyze census tract data to assess compliance with the various goals, examine actions that each Enterprise has or could take to promote or expand goals and promote first time home ownership. [Secs. 1324 of the '92 Act]	(i) The report is to include the extent to which each FHLBank is meeting its contribution requirement for the AHP and the extent to which all the entities are achieving their purposes; and (ii) The Director must conduct a monthly survey of mortgage data, including the characteristics of individual mortgages, including those not eligible for purchase by the Enterprises, and sales price of the houses, LTV ratios, mortgage terms, and creditworthiness of the borrower. Data to be made publicly available. [Sec. 124]
Identification of Subprime Loans			Within one year of enactment, the Director shall formulate standards for determining if a mortgage purchased is "subprime," and identify the extent to which each Enterprise is involved in subprime mortgages. The Director is to compare the characteristics of subprime loans to other loans purchased and securitized by the Enterprises. [Sec. 124]
Housing Goals	Banks are subject to CRA and examined for compliance by the banking agencies. Separate CRA rating is assigned to each bank. [12 USC §§ 2901 – 2902; 12 CFR part 25]	The Director may, by regulation, establish additional housing goals or modify existing housing goals to address national housing needs. [Sec. 129]	Director is to establish additional annual housing goals for the Enterprises regarding: (i) single family housing; and (ii) multi-family housing. [Sec. 125]
Home Purchase Goal		The Director is to establish an annual home purchase goal that will require each Enterprise to purchase housing finance for single-family owner-occupied dwellings. Components may include first-time homebuyers, low- and moderate-income homebuyers, and homebuyers in central cities. [Sec. 129]	No similar provision.
Eliminating Interest Rate Differential		No similar provision.	Enterprises must disclose information to allow the Director to assess disparities in rates charged to minority customers compared to non-minority customers of similar creditworthiness. If the Director determines a pattern of disparity exists, he is to forward a report to Congress and require the Enterprise to take action to remedy the disparity. [Sec. 125]
Single Family		No similar provision.	The Director is to establish a goal for each Enterprise to purchase

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Housing Goal			conventional, conforming, single family mortgage made by: (i) low-income families; (ii) families that reside in low-income areas or minority census tracts; and (iii) very low income families. If the Director determines an If an Enterprise is not in compliance with the target, the Director is to provide notification to the Enterprise and permit it to comment, prior to making his determination public. [Sec.125]
Multi-Family Special Affordable Goad		No similar provision.	The Director is to establish annual goals for the purchase of: (i) mortgages that finance dwelling units for very low-income families; and (ii) mortgages that finance dwelling units assisted by the low-income hosing tax credit. In meeting these goals, credit must be given to dwelling units in multi-family housing that is financed by state or municipal bonds. [Sec. 125]
Definition of Low-income, Extremely low income.	The CRA regulations define "low-income" as less than 50 percent of the area median. "Moderate-income is defined as between 50 percent but less than 80 percent of area median.	The term "low-income" is defined as income that is less than 50 percent of area mean; "moderate-income" as income between 50 and 80 percent of area median; and "upper-income" as income that is 120 percent or greater than area median. [Sec. 127]	The term "low-income area" is defined as a census tract or block in which the median income does not exceed 80 percent of the area median. The term "very low-income" is defined as 50 percent or less of area median. "Extremely low-income" is defined as 30 percent or less of area median. [Sec. 125]
Adjustments		The Director may, by regulation, establish additional housing goals or modify existing housing goals to address national housing needs. [Sec. 129]	An Enterprise may petition the Director to reduce the level of any goal based on the market and economic condition of the Enterprise, or the condition of housing finance markets. A determination must be made within 45 days. A denial by the Director may be appealed to the U.S. District Court.
Duty to Serve Underserved Markets		Each Enterprise must "lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages: (i) secured by manufactured homes for very low, low and moderate-income families; (ii) to preserve the housing affordable to very low, low, and moderate-income families, including housing projects; (iii) housing for very low, low and moderate-income families in rural areas and other areas the Secretary identifies as lacking adequate credit. The Director is to develop a method for evaluating compliance with these goals, and rate the Enterprises for each goal and for: (i) the development of loan products and flexible underwriting guidelines; (ii) outreach; and (ii) volume of loans purchased. The duties are enforceable to the same extent as other housing goals. [Sec.	Same. [Sec. 126]

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		128]	
Enforcement of Housing Goals	CRA compliance is considered when a bank or bank holding company applies to establish a branch, merge with another institution, acquire another institution, or obtain similar regulatory approvals. [12 USC §§ 2901 – 2902; 12 CFR part 25]	Authority to monitor and enforce housing goals is transferred to the Director. If the Director determines that an Enterprise has failed to meet a housing goal, or that there is a substantial probability of failure, the Director is to provide a written notice to the Enterprise. The Enterprise may respond in writing regarding whether the failure has occurred or is probable, and the feasibility of the goal. The Director then makes a final determination whether there is a substantial probability of failure, or failure has occurred, and if the goal was feasible. The Director must provide Congress with its final determination and reasons therefore. [Sec. 129] If the Director finds that the Enterprise failed, or a substantial probability of failure, and that the goal was feasible, the Director may require the submission of a remedial plan. If the Enterprise fails to submit or comply with a plan, or if the Director finds that the Enterprise failed to meet a goal, the Director may issue a cease-and-desist order or impose civil money penalties. [Sec. 129]	Same, but in *addition,* the Director may issue a cease-and-desist order, impose civil money penalties, or take other actions, such as a prohibition on engaging in new programs or business activities. The Director must find a failure or probable failure to meet a goal and that the goal was feasible. [Secs. 127 and 130]
Affordable Housing Fund		No similar provision.	The Enterprises are to establish an affordable housing fund to: (i) increase home ownership for extremely low- and very low-income families; (ii) increase investment in housing in low-income areas or areas of chronic economic distress; (iii) increase and preserve the supply of rental and owner-occupied housing for these families; and (iv) increase investment in economic and community development in economically underserved areas. Each Enterprise must allocate 5 percent of after-tax income, unless the Enterprise is undercapitalized. Amounts from the fund may be used to assist the production, preservation and rehabilitation of rental housing to benefit these families, and for homeownership, including down payment and closing cost assistance.

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			The Enterprises are required to make leveraged grants on behalf of a sponsor such as a low-income housing fund, a State housing agency, or a non-profit affordable housing organization. Leveraged grants may be used, for such purposes as to provide loan loss reserves, capitalize a revolving fund, capitalize an affordable housing fund, and for risk sharing loans. [Sec. 128]
Affordable Housing Board		No similar provision.	The Director is to appoint an affordable housing board of between 7 and 11 members, including the Director, and the Secretaries of HUD and Agriculture. The board is to determine extremely low- and very low-income housing needs, advise the Director, and review reports submitted by the Enterprises. [Sec. 128]
Consistency with Mission		No similar provision.	The housing goals and housing fund provisions do not permit the Enterprises to engage in any program or activity that contravenes or is inconsistent with the Chartering Acts. [Sec. 129]
Protection of Proprietary Information	Exam information is treated as confidential and protected by the banking agencies. Information relating to proprietary business plans is protected under the Trade Secrets Act. [18 USC § 1905, 12 CFR part 4]	S. 190 transfers to the Director the authority to determine that certain information shall be treated as proprietary and not disclosed. [Sec. 124]	Same, except specifically includes information provided by the FHLBanks under Section 10(j)(12) of the FHLB Act. [Sec. 130]
Prompt Corrective Action - Capital Classifications	The PCA statute requires the agencies to define, by regulation, five capital categories: (i) well capitalized; (ii) adequately capitalized; (iii) undercapitalized; (iv) significantly undercapitalized; and (v) critically undercapitalized.[3] The PCA statute provides that the agencies may not set the level for a critically undercapitalized below 2 percent of total assets.	There are four capital classes for the Enterprises: (i) adequately capitalized; (ii) undercapitalized; (iii) significantly undercapitalized; and (iv) critically undercapitalized. No statutory classifications are established for FHLBanks. [Sec.142]	Same for Enterprises. Provides that the Director is to establish, by regulation, four capital classes for the FHLBanks, taking due regard of the classifications and criteria established for the Enterprises, but with such modifications as the Director determines appropriate. (The names of the four classes are the same as for the Enterprises, but the criteria may be different. [Sec. 141]

[3] The banking agencies define "well capitalized" as total risk-based capital of 10 percent, and leverage ratio capital of 5 percent. Adequately capitalized as total risk-based capital ratio of at least 8 percent and a leverage ratio of at least 4 percent (or if the bank is rated 1 under the CAMELS system, leverage ratio of at least 3 percent. An undercapitalized bank has a total risk-based capital ratio of not less than 8 percent or a leverage ratio of not less than 4 percent (unless CAMELS rate 1, in which case the lower limit is 3 percent). A significantly undercapitalized bank has a total risk-based capital of less than 6 percent or a leverage ratio that is equal to or less than 3 percent). A critically undercapitalized bank has a ratio of tangible equity to total assets that is less than 2 percent. In addition, the regulations specify minimum ratios of core or tier 1 capital to total assets. See, eg. 12 CFR §6.4.

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	[12 USC § 1831o]		
Critical Capital Level	A critically undercapitalized bank has a ratio of tangible equity to total assets that is less than 2%.	The critical capital level is the level prescribed by the 92 Act for the Enterprises, or such other level as the Director shall establish. For each FHLBank, it is the level the Director shall establish by regulation. [Sec. 141]	The critical capital level for the FHLBanks shall be the amount of capital as the Director shall, by regulation, require. In establishing the critical capital level, the Director shall take due consideration of the critical capital level established for the Enterprises. [Sec. 141]
Capital Distributions	A bank may not make a capital distribution if it would result in the bank becoming undercapitalized. [12 USC § 1831o]	An entity may not make a capital distribution if it would result in the entity becoming undercapitalized. [Sec. 142]	Same. [Sec. 141]
Discretionary Classification and Reclassification	If the agency determines (after a hearing) that a bank is in an unsafe or unsound condition, or it received a less than satisfactory rating for asset quality, management, earnings or liquidity, the agency may reclassify a well capitalized bank as adequately capitalized, and may require other banks to comply with the sanctions noted above for undercapitalized or significantly undercapitalized banks. [12 USC § 1831o]	The Director may reclassify a regulated entity as undercapitalized, significantly undercapitalized, or critically undercapitalized, if: (i) the entity is engaging in conduct that could result in a rapid depletion of capital; (ii) the value of the collateral for the mortgage loans or mortgage backed securities has decreased; (iii) after an opportunity for a hearing, that the entity is in an unsafe or unsound condition; or (iv) the regulated entity received less than a satisfactory exam rating for credit risk, market risk, operations, or corporate governance. Before taking a classification, reclassification or discretionary prompt corrective action, the Agency must provide notice to Congress. [Sec. 142].	Same. [Secs. 141, 145]
Supervisory Actions for Undercapitalized Entities	An undercapitalized bank is subject to increased regulatory scrutiny and must file an acceptable capital restoration plan. In addition:	An undercapitalized regulated entity must submit an acceptable capital restoration plan. Capital distributions are prohibited if the distribution would result in a lower capital	Same, except new growth is linked to increase in total capital, not “tangible equity.” [Sec. 142].

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	(i) Asset growth may be limited; (ii) No new acquisitions, branches, or new lines of business without regulatory approval; (iii) No brokered deposits or excessive interest payments on deposits; and (iii) The agency may apply further restrictions as described below for significantly undercapitalized banks. [12 USC 1831o]	classification. Director is to monitor the condition of the entity and compliance with the capital restoration plan. Asset growth is restricted unless consistent with the plan and "*tangible equity*" is increasing. Director is to approve all new activities and acquisitions, and such actions must be consistent with the plan. If necessary, Director may take actions authorized for significantly undercapitalized entities. [Sec. 142]	
Supervisory Actions for Significantly Undercapitalized Entities	A banking agency *must* take at least one of the following actions with respect to a bank that is significantly undercapitalized: (i) Require the bank to raise capital by selling shares, including voting shares; (ii) Require the bank to be acquired or merged if grounds exist for appointment of a receiver; (iii) Restrict transactions with affiliates; (iv) Restrict interest paid on deposits; (v) Limit asset growth; (vi) Restrict risky activities; (vii) Order the election of new Board of Directors; (viii) Require the bank to dismiss directors or officers;	In addition to the actions available for undercapitalized entities, the Director *must* take one or more of the following actions: (i) limit the increase in or order reduction in obligations; (ii) limit or prohibit growth or require contraction in assets; (iii) require the acquisition of new capital; (iv) require the termination or restriction of activities; (v) order a new election of the board of directors, or dismiss particular directors or executive officers, and hire new executive officers; (vi) reclassify the entity as critically undercapitalized if it has not submitted and adhered to an approved plan; and (vii) take any other action that will better restore the capital of the entity. [Sec. 143]	Same. [Sec. 143]

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	(ix) Require the bank to hire qualified officers and employees; (xi) Prohibiting deposits from correspondent banks; (xii) Prohibit capital distributions by holding company without regulatory approval; (xiii) Require the divestiture of subsidiaries or affiliates; (xiv) Require the holding company to sell the bank; and (xv) Take any other action the agency determines appropriate, including actions available for critically undercapitalized institutions. [12 USC 1831o]		
Restriction on Compensation and Bonus	A significantly undercapitalized bank may not, without the prior written approval of the agency, pay any bonus to any senior executive officer, or provide compensation to such officer at a rate in excess of that paid in the 12 months prior to the bank becoming undercapitalized. [12 USC 1831o]	A significantly undercapitalized entity may not pay any bonus to an executive officer or increase compensation beyond the average rate for the past 12 months, without Director approval. [Sec. 143]	Same. [Sec. 143]
Corporate Governance of Enterprises	Publicly traded bank holding companies are subject to Sarbanes-Oxley provisions. Publicly traded banks that are required to register with the OCC under the 1934 Act are subject to Sections 302, 303, 304, 306, 401(b), 404, 406 and 407 of Sarbanes-Oxley. These Sections are administered by the OCC with respect to national banks. [15	No similar provision, but regulated entities are required to register under the 1934 Act and therefore are subject to many of the provisions of Sarbanes-Oxley. The Enterprises (but not the FHLBanks) are subject to the requirement to have an independent audit committee under section 301 of Sarbanes-Oxley.	With respect to the Enterprises, the bill mandates various corporate governance measures, including: (i) a majority of the seated members of the board of each Enterprise must be independent board members, as defined in NYSE rules; (ii) Enterprise board must meet at least eight times a year; (iii) non-management directors must meet at regularly scheduled executive sessions without management participation; (iv) a quorum defined as at least a majority of the seated board members, and no proxy voting; (v)

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	USC § 78*l*(i)] Banking agencies are required to promulgate substantially similar regulations to those of the SEC, or to publish a detailed explanation for why such regulations are not appropriate.		management shall provide board members with adequate and appropriate information; (vi) at least annual board review of all legal and regulatory requirements; (vii required committees include an audit committee, a compensation and nominating committee, and a corporate governance committee; (viii) must comply with SEC audit committee requirements and NYSE rules; (ix) compensation of directors must be reasonable and not focus solely on earnings performance; and (x) if restatement is required due to material noncompliance as a result of misconduct, the CEO and CFO shall reimburse the Enterprise. [Sec. 114]
Code of Conduct and Ethics	Publicly traded banks are subject to 406 of Sarbanes-Oxley, as administered by the OCC. [15 USC § 78*l*(i)]	The regulated entities are subject to section 406 of Sarbanes-Oxley.	An Enterprise shall establish a written code of conduct and ethics that includes standards in section 406 of Sarbanes-Oxley. [Sec.114]
Responsibilities of the Board	Publicly traded banks are subject to Section 404 of Sarbanes-Oxley, as administered by the OCC. [15 USC § 78*l*(i)] Similar requirements are also imposed under the FDI Act. [12 USC 1831m]	The regulated entities must comply with Section 404 of Sarbanes-Oxley, which requires an internal controls report by management and by a certified public accounting firm.	The Board of an Enterprise is responsible for directing the conduct and affairs of the Enterprise. Responsibilities include policies and procedures relating to corporate strategy, risk policy, legal compliance, corporate performance, compensation, integrity of accounting and financial reporting, process and adequacy of reporting and disclosures. [Sec. 114]
Prohibition on Extensions of Credit	Publicly traded banks are not subject to 402 of Sarbanes-Oxley. [15 USC § 78*l*(i)] The Federal Reserve Act limits bank loans to directors and senior officers. [12 USC §§ 375a & 375b]	The regulated entities are subject to section 402 of Sarbanes-Oxley, which restricts loans to board members and executive officers.	An Enterprise may not extend or maintain credit in the form of a personal loan to any board member or executive officer, as provided by section 13(k) of the Securities and Exchange Act of 1934. [Sec. 114]
Certification of Disclosures	Publicly traded banks are subject to Section 302, as administered by the OCC. [15 USC § 78*l*(i)].	The regulated entities are subject to Section 302 of Sarbanes-Oxley, which requires the CEO and CFO to certify annual and quarterly reports.	The CEO and CFO of an Enterprise shall review and certify quarterly and annual reports as required by Section 302 of Sarbanes-Oxley. [Sec. 114]
Change in Auditors	Publicly traded banks are not subject to Section 203 of Sarbanes-Oxley. [15 USC § 78*l*(i)]	Section 203 of Sarbanes-Oxley prohibits a registered public accounting firm from providing audit services to an issuer (which includes the regulated entities) if the lead audit partner has performed audit services for that issuer in each of the five previous years.	An Enterprise may not accept auditing services from the same external auditing firm if the lead or coordinating audit partner has performed audit services for the Enterprise in each of the five previous years. [Sec.114]

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Compliance Program	OCC examiner guidance provides that all banks must have a consumer compliance program in place that includes appropriate internal controls.	No similar provision.	The compliance program of an Enterprise shall be headed by a compliance officer who reports directly to the board of directors. [Sec. 114]
Risk Management Program	Safety and soundness standards promulgated under 12 USC § 1831-p require banks to have systems and controls to monitor various risks to the institution. OCC supervisory guidance requires banks to have appropriate risk management program in light of the size and activities of the institution.	No similar provision.	The risk management program of an Enterprise shall be headed by a risk management officer who reports directly to the CEO. [Sec. 114]
Compliance with Other Laws		No provision for de-registering.	If an Enterprise de-registers or has not registered its common stock with the SEC under the 1934 Act, the Enterprise shall comply or continue to comply with Section 10A and 13(k) of the 1934 Act and Sections 302, 304, and 406 of Sarbanes-Oxley. An Enterprise may not de-register with the SEC without giving 60 days prior notice to the Director. [Sec. 113]
Modification of Certain Provisions	Not applicable.	No similar provision.	The Director may modify NYSE standards made applicable by this Act through a rulemaking procedure. [Sec. 114]
Conservatorship and Receivership - Enterprises	A conservator or receiver may be appointed for a national bank if:[4] (i) Assets are less than obligations; (ii) Substantial dissipation of assets or earnings due to violation of law or unsafe practice; (iii) Unsafe or unsound condition; (iv) Willful violation of a final C&D;	Director may appoint a conservator or receiver for an Enterprise if any of 12 grounds exist: (i) Assets insufficient for obligations; (ii) Substantial dissipation of assets or earnings due to a violation of law or unsafe practice; (iii) Regulated entity is in an unsafe or unsound condition; (iv) Willful violation of a cease-and-desist order;	Same, except: Unlike the Senate bill, the House bill explicitly provides that with the approval of the Agency, any FHLBank may acquire the assets of, and assume the liabilities of a FHLBank in conservatorship or receivership. The Senate bill requires the Agency to organize a successor enterprise for a failed Enterprise. In the House the Agency has the discretion to organize a successor for both a failed Enterprise and a failed FHLBank . The Senate bill directs that in disposing of assets, the Agency is to maximize

The FDIC may appoint itself conservator for any insured institution if one of these grounds exist, and the FDIC determines that the appointment is necessary to reduce the risk of or amount of loss that the FDIC und is expected to incur.

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	(v) Concealment of books and records; (vi) Bank is likely to be unable to pay its obligations in the normal course; (vii) Bank has or is likely to incur losses that will deplete substantially all of its capital, and no reasonable prospect for recapitalization without Federal aid; (viii) Any violation of law or unsafe or unsound practice that is likely to cause insolvency; a substantial dissipation of assets or earnings; weaken the bank=s condition, or prejudice depositors; (ix) Consent; (x) Loss of FDIC insurance; (xi) Bank is undercapitalized under PCA and has no reasonable prospect of becoming adequately capitalized, or has failed to submit or implement a capital restoration plan; (xii) The bank is critically undercapitalized under PCA; or (xiii) The bank is convicted of certain money laundering crimes.	(v) Concealment of books and records; (vi) Inability to meet obligations; (vii) Incurred or likely to incur losses that will deplete substantially all of the capital, and no reasonable prospect to become adequately capitalized; (viii) Violation of law or unsafe practice likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the regulated entity; (ix) Consent; (x) Regulated entity is undercapitalized and no reasonable prospect of becoming adequately capitalized, or failed to submit or implement a capital restoration plan; (xi) Regulated entity is critically undercapitalized; or (xii) The Attorney General notifies the Director that the regulated entity has been found guilty of violating certain money laundering laws. The conservator or receiver may not revoke, terminate or	the return and minimize loss. The House bill provides that the Agency must dispose of assets in a manner that maintains stability in the housing finance markets, and to the extent consistent with that goal, maximizes returns and minimizes losses. The Senate bill provides that the appointment of a receiver for a regulated entity terminates all rights of shareholders and creditors of that entity, other than the right to payment of their monetary claims pursuant to the procedures contained in this section. The House bill does not explicitly make this statement. The Senate bill states that the charter of a regulated entity is not an asset of that entity. The House bill protects both Federal Reserve Banks and FHLBanks from the mandatory “cram down” provisions that allow the receiver to reduce the value of a secured claim to the current market value of the security. The Senate bill only protects Federal Reserve Banks from this “cram down” authority. The Senate bill protects mortgages, pools of mortgages, and interests in pools of mortgages held in a trust, custodial or agency capacity by an Enterprise from the claims of general creditors. The House bill provides this protection for both the Enterprises and the FHLBanks. The House bill provides a priority to the FHLBanks for debts arising from the Bank’s payment obligations. The Senate bill has no similar provision. In the House bill the authority of the Agency to repudiate contracts or require enforcement of contracts with a regulated entity in conservatorship or receivership does not apply to contracts with a Federal Reserve Bank or FHLBank. No similar provision in the Senate bill. The House bill provides that the conservator or receiver may not revoke,

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		annul the *Enterprise's* charter. [Sec. 144]	terminate or annul the charter of a regulated entity. [Sec. 144]
Mandatory Receivership	Within 90 days after a depository institution becomes critically undercapitalized, the appropriate agency must either appoint a receiver or conservator, or with the concurrence of the FDIC, take some other action. After 270 days, the institution must be placed in receivership, unless the appropriate agency and the FDIC determine that the institution has positive net worth and is making progress under the capital restoration plan. [12 USC 1831o(h)(3)]. In addition, to prevent systemic risk, the FDIC (with the concurrence of the Treasury) may provide assistance to an insolvent bank in lieu of closing the institution. [12 USC 1823(c)(4)(G)]	The Director shall appoint the Agency as receiver of a regulated entity if: (i) the assets of the entity are, and during the preceding 30 calendar days have been, less than the obligations of the entity; or (ii) the regulated entity is not, and during the preceding 30 calendar days has not been, generally paying its debts as they become due. [Sec. 144]	No similar provision.

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Cease-and-Desist Order (C&D)	A C&D order may be issued if the bank or an institution-affiliated party ("IAP") has engaged, is engaging, or the agency has reasonable cause to believe is about to engage in an unsafe or unsound practice; violation of a law, regulation, or order; violation of a condition imposed in writing; or violation of a written agreement. A C&D order may be based on a less than satisfactory exam rating in credit risk, market risk, operations, or corporate governance. A C&D order may include a requirement to take certain affirmative actions. [12 USC 1818(b)]	The Director is given authority to issue a C&D order against a regulated entity or affiliated party for engaging in an unsafe or unsound practice; violating a law, regulation, or order; violating a condition imposed in writing; or violating a written agreement. A cease-and-desist order may be based on a less than satisfactory exam rating in *credit risk, market risk, operations, or corporate governance*. A C&D order may include a requirement to take certain affirmative actions. [Sec. 151]	Same, except under the House bill the Director may not enforce compliance with the housing goals, mortgage data collection requirements, reports on housing activity requirements, and annual requirements to contribute to the Affordable Housing Fund under this provision. A C&D order may be issued for less than satisfactory exam rating in asset quality, management, earnings or liquidity. Bill specifies that possible affirmative actions may include reimbursement of compensation, and an attachment of property of an entity or party. [Sec. 161]
Temporary C&D Order	Following initiation of a C&D action, the agency may issue an ex parte order directing a bank or IAP to immediately cease an activity or to take a specified action. [12 USC § 1818(c)]	Authorizes the Director to issue a temporary C&D order pending resolution of the permanent order. The temporary order is immediately effective and may be issued without prior notice or hearing. [Sec. 152]	Same. [Sec. 162]
Prejudgment Attachment	C&D order may prohibit a party from withdrawing or transferring funds, if the Agency meets the standards of Rule 65, other than the need to show irreparable harm. [12 U.S.C. 1818(b)(10)]	No similar provision.	The Director may go to court under Rule 65 to seek an order prohibiting any person subject to an Agency proceeding to withdraw or transfer funds. Director need not show irreparable harm. [Sec. 163]
Removal and Prohibition Authority	An institution-affiliated party ("IAP") subject to a removal, suspension, or prohibition order may not, without written permission, hold any office, or participate in any manner, in the affairs of any insured institution, credit union, bank holding company, bank regulatory agency, or the FHFB. [12 USC § 1818(e)]	The Director may remove or suspend a person from participating in the affairs of a regulated entity for such things as violating laws, regulations, orders, engaging in unsafe practices, and breaching fiduciary duties. A person who is removed or suspended may not participate in the affairs of any regulated entity or the Finance Facility, while the order is in effect without the consent of the Director. [Sec. 153]. A removal or suspension order also prohibits the person from voting the shares of any regulated entity, or transferring such shares.	Same, except the removal or suspension order may also prohibit the regulated entity from paying to the person any compensation or any other thing of value in connection with any resignation, removal, retirement, or other termination of employment. [Secs. 129 and 166]

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Enforcement of Orders	Banking agencies may go to court to enforce any notice or order issued under the enforcement provisions, or under prompt corrective action, or issued to enforce compliance with a safety and soundness standard or guidelines. [12 USC 1818(i)(1)]	The Director may go to the US District Court to obtain enforcement of any outstanding notice, order, or subpoena, or request the Attorney General to bring such an action. [Sec. 154]. The courts may not issue an injunction or otherwise effect the issuances of a notice, standard or order under Subtitle B (capital) or Subtitle C (enforcement authority). [Sec. 154]	Same, except: (i) The Director may go to court for enforcement of orders issued under the capital and enforcement subtitles, not under subtitle A (principal duties and prudential standards). (ii) Limitation on court's jurisdiction includes Agency's notices and orders, but unlike Senate bill does not include "standards." [Sec. 164]
Civil Money Penalties (CMP)	There are three tiers of penalties that may be assessed against a bank or IAP, depending on the nature of the violation: (i) $6,500 per day; (ii) t$32,500 per day; and (iii) a fine up to $1,250,000[5] per day. [12 USC 1818(i)(2)]	The Director may assess a CMP against a regulated entity or affiliated party, *or any executive officer*, for violating certain laws, orders, regulations, conditions and written agreements. There are three tiers of penalties, depending on the nature of the violation: (i) $10,000 per day; (ii) $50,000 per day; and (iii) $2,000,000 per day for an entity, and a total of $2,000,000 for an individual. Violations of the housing goals are not covered under this section. [Sec. 155]	Same, except: (i) A CMP may be assessed against a regulated-entity affiliated party, and against any *director or executive officer*. (ii) The Director may issue regulations pursuant to which an entity may reimburse or indemnify a party subject to a CMP. [Sec. 165]
Criminal Penalty	A criminal penalty is imposed for violating a removal or suspension order. [12 USC 1818(j)]	A criminal penalty is imposed for violating a removal or suspension order. [Sec. 156]	Same. [Sec. 167].
Enforcement Action after Separation From Service	The banking agencies may take an enforcement action against an IAP before the end of the six year period from that person's separation from the institution. [12 USC § 1818(i)(3)]	"The separation of a *director or executive officer* of an *Enterprise* or entity-affiliated party" does not affect jurisdiction of the Director to bring an enforcement action against *such director or executive officer* before the end of the six year period from the separation. [Sec. 157]	The House provides a two-year period to bring an enforcement action against a separated regulated entity-affiliated party. [Sec. 169]
Subpoena		Authorizes the Director to issue a subpoena in connection	Authorizes the Director to issue a subpoena in connection with any

Id. The penalty for an insured institution is capped at the lesser of $1,250,000 or 1 percent of the institution=s total assets.

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Authority		with any proceeding, examination or investigation. Subpoenas may be enforced by the Director in US District Court. A criminal penalty may be assessed for willful failure to comply with a subpoena. [Sec. 158]	administrative proceeding under the enforcement subtitle. The Director may enforce the subpoena in US District Court. [Sec. 168]
Appointed Directors of Enterprises	Not applicable.	Eliminates the slots for the members of Fannie Mae's and Freddie Mac's board that are appointed by the President, and changes the size of the boards to 13 members, or such other number as the Director determines appropriate. [Sec. 162]	Replaces the Presidentially appointed members of each board with elected directors. Changes the size of each board to between 7 and 15 members. [Sec. 168]
Reports on Portfolio Holdings, Operations, and Risk Based Capital.	Not applicable.	Within two years, the Director, the Secretary of the Treasury, the Federal Reserve Board, the FDIC and the NCUA Board are to issue a joint report to Congress on the extent to which obligations issued or guaranteed by the regulated entities are held by insured depository institutions and the systemic risks of such holdings, the effects of prudent limits on such holdings, and the extent to which alternative investments are available to community depository institutions. [Sec. 403] Each fiscal quarter, the Director is to report to Congress on the risk-based capital levels of the regulated entities, , and the minimum and critical capital levels for the entities. [Sec. 404]	Within 12 months, the Director is to report to Congress on the portfolio holdings of the Enterprises, both mortgages, MBS and other assets, a description of the risk of such holdings and the risk management undertaken by the Enterprises; an analysis of portfolio holdings for safety and soundness; an assessment of whether such holdings fulfill the mission of the Enterprises; and an analysis of the potential systemic risk implications for the Enterprises and the financial markets of portfolio holdings. [Sec. 182]
Study of Alternative Secondary Market Systems			The Director, in consultation with the Federal Reserve, and the Secretaries of the Treasury and HUD, is to undertake a study on the effects on the markets of alternatives to the current secondary market system for housing finance. The Director is to consider, among other things, repeal of the chartering Acts, and increasing the number of charters [Sec. 184]
Effective Date		Unless otherwise specified, the bill is effective as of the date of enactment. [Sec. 163]	The bill becomes effective one year after date of enactment. [Secs. 185 & 211]
FEDERAL HOME LOAN BANKS			

Subject	Banking Law	Committee Adopted S.190	Committee Adopted H.R. 1461
Directors		The board of each Bank is to be composed of 13 directors, or another number the Director determines appropriate.	Same.
		At least one-third of the directors must be independent (not an officer or director of a member institution). Independent directors are to be nominated by each Bank's board and elected based on a "plurality of the votes of the members of the Bank at large," with each member having he same number of votes as in an election to fill a member directorship allocated to the member's state.	Same, except independent directors are nominated by the Bank's members.
		The procedures for nomination and election of independent directors to be prescribed in the Bank's bylaws	No similar requirement.
		At least two independent directors represent the public interest.	Same.
		No similar provision.	Independent directors who do not represent the public interest must have demonstrated knowledge or experience in financial management, auditing, accounting, risk management, organizational management, or other field specified in regulation.
		Retention of number of directors per state as of December 31, 1960 is repealed.	Same.
		The term of office for directors is changed from 3 years to 4 years. [Sec. 201]	Same. [Sec. 202]
Compensation	.	A Bank may pay reasonable compensation in accordance with the resolutions adopted by the directors and subject to the approval of the Bank's board. [Sec. 201]	Compensation is to be "reasonable and appropriate" in accordance with resolutions adopted by the Bank's board and subject to the approval of the Director of the Agency. [Sec. 202]
Transition		Directors appointed in "accordance with this section" (e.g.	Directors "serving" on the effective date (one year after date of enactment)

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		elected) may continue to serve for the remainder of term. No "hold over" provision to retain seat until successor is elected. [201]	may continue to serve for the remainder of their term. No "hold over" provision to retain seat until a successor is elected. [Sec. 202]
Oversight		The Director of the new Agency is given the supervisory and regulatory responsibilities of the Federal Housing Finance Board. [Sec. 203]	Same. [Sec. 203]
Finance Corporation		Establishes the "Finance Facility" to issue and service consolidated debt and perform all other functions of the Office of Finance. Management is vested in a board composed of the Presidents of each of the Banks. For purposes of other laws, the Facility is treated like a FHLBank, except it does not have to register a class of capital stock with the SEC. The Facility may be a corporation, partnership, limited liability company, or joint venture of the Banks. [Sec. 203]	
Joint Offices		No similar provision.	Subject to the regulation of the Director, any two or more Banks may establish a joint office for the purposes of performing functions for or providing services to, the Bank on a common or collective basis, or may require that the Office of Finance perform such functions. [Sec. 204]
Information Sharing		No similar provision.	The Director to prescribe regulations to ensure that each Bank has access to information concerning the other Banks to enable the recipient to evaluate the nature and extent of its joint liability. Privileges are not waived. [Sec. 205]
Voluntary Merger		Same, except no member approval. [Sec. 207]	Explicit authority is granted for the voluntary merger of two or more Banks, subject to regulatory and member approvals. [Sec. 206]
Liquidation and Reorganization		Section 26 of the FHLBank Act is not amended.	Section 26 of the FHLBank Act is amended by deleting the authority of the regulator to liquidate Banks under that provision. The regulator retains the authority to reorganize Banks.
SEC Exemptions		The FHLBanks are exempt from a number of Securities laws, including: FHLBanks are exempt from sections 13(e), 14(a), 14(c) and 17A of the 1934 Act, and section 15 of the 1934 Act with	Same, except the House bill does not protect *brokers and dealers* who effect transactions in FHLBank capital stock or debt obligations from the definition of Government securities broker and dealer found in the 1934 Act. [This appears to be a drafting error.] [Sec. 207]

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		respect to FHLBank capital stock. FHLBank capital stock is to be considered "exempted securities" under the 1933 Act and the 1934 Act. The debt obligations of the FHLBanks are "exempted securities" under the 1933 Act and "government securities" under the 1934 Act and the Investment Company Act. [Sec. 205]	
Community Financial Institution Members		No similar provision.	The definition of a "community financial institution" is increased from $500 million in average assets to $1 billion. Permissible purposes for long-term FHLBank advances are expanded to include advances to community financial institutions for "community development activities." [Sec. 208]
Reduction in Number of Districts		The number of FHLBank districts may be reduced to less than eight pursuant to a voluntary merger or a liquidation under the receivership provisions. [Sec.208]	No similar provision.
Affordable Housing for Long-Term Care Facilities		No similar provision.	The GAO is to conduct a study of the use of Affordable Housing Program to determine how and the extent to which the programs are used to assist long-term care facilities. [Sec. 210]
TITLE III TRANSFER OF FUNCTIONS			
Abolishment of OFHEO		One year after the date of enactment, OFHEO is abolished. During the one-year period, the Director, solely for the purpose of winding up the affairs of OFHEO, shall manage the employees and take other action for the purpose of winding up the affairs of the Office. [Sec. 301]	Same. [Sec. 301]
		Regulations issued by OFHEO or the Secretary of HUD, and	Same, except does not provide that the Secretary may supersede or modify

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Continuation of Regulations		court orders relating to the functions transferred under this Act remain in force and effect until modified or superseded by the Director or the Secretary, as provided by applicable law. [Sec. 302]	existing regulations. [Sec. 302]
Transfer and Rights of OFHEO Employees		Each OFHEO employee shall be transferred to the new Agency not later than the date OFHEO is abolished. Each employee is guaranteed a new position with the same grade and tenure. Employees holding a permanent position shall not be involuntarily separated for at least 12 months, except for cause. The Director may decline to accept the transfer of certain employees not in the competitive service or SES. One year after OFHEO is abolished, the Director may reorganize the Agency and employees may receive early retirement benefits. Transferred employees may retain health and other benefits for 12 months. [Sec. 303]	Same. [Sec. 303]
Abolishment of Federal Housing Finance Board		One year after the date of enactment, the FHFB is abolished. The same transfer provisions as for OFHEO apply. [Secs. 311-313]	Same. [Secs. 321-323]
Basel II Study		The Federal Reserve Board is to study the effects of Basel II capital on the regulated entities, and the capital classification given to the debt of the entities, and report to Congress two years after the date of enactment. [Sec. 401]	No similar provision.
Affordable Housing Study		The Inspector General is to conduct an annual audit of the affordable housing activities of the Enterprises to ensure they support the affordable housing missions of those Enterprises. [Sec.402]	No similar provision.
Report on Resources and Allocations		The GAO is to report to Congress annually on the allocation of resources by the Agency and Director and the level of assessments collected. [Sec. 405]	