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§ 4501. Congressional findings

The Congress finds that—

(1) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (referred to in this section collectively as the “enterprises”), and the Federal Home Loan Banks (referred to in this section as the “Banks”), have important public missions that are reflected in the statutes and charter Acts establishing the Banks and the enterprises;

(2) because the continued ability of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to accomplish their public missions is important to providing housing in the United States and the health of the Nation’s economy, more effective Federal regulation is needed to reduce the risk of failure of the enterprises;

(3) considering the current operating procedures of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks, the enterprises and the Banks currently pose low financial risk of insolvency;

(4) neither the enterprises nor the Banks, nor any securities or obligations issued by the enterprises or the Banks, are backed by the full faith and credit of the United States;

(5) an entity regulating the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should have sufficient autonomy from the enterprises and special interest groups;

(6) an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes;

(7) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return; and

(8) the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.] should be amended to emphasize that providing for financial safety and soundness of the Federal Home Loan Banks is the primary mission of the Federal Housing Finance Board.

(Pub. L. 102-550, title XIII, §1302, Oct. 28, 1992, 106 Stat. 3941.)

Editorial Notes

REFERENCES IN TEXT

The Federal Home Loan Bank Act, referred to in par. (8), is act July 22, 1932, ch. 522, 47 Stat. 725, as amended, which is classified generally to chapter 11 (§1421 et seq.) of this title. For complete classification of this Act to the Code, see section 1421 of this title and Tables.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-289, §1(a), July 30, 2008, 122 Stat. 2654, provided that: “This Act [see Tables for classification] may be cited as the ‘Housing and Economic Recovery Act of 2008’.”

Pub. L. 110-289, div. A, §1001, July 30, 2008, 122 Stat. 2659, provided that: “This division [see Tables for classification] may be cited as the ‘Federal Housing Finance Regulatory Reform Act of 2008’.”

SHORT TITLE

Pub. L. 102-550, title XIII, §1301, Oct. 28, 1992, 106 Stat. 3941, provided that: “This title [enacting this chapter,

amending sections 1422a, 1430, 1430b, 1451 to 1456, 1716 to 1719, 1723, 1723a, and 1723c of this title, sections 3132 and 5313 of Title 5, Government Organization and Employees, section 1905 of Title 18, Crimes and Criminal Procedure, and section 3534 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1451, 1452, 1723, and 4562 of this title, and amending provisions set out as a note under section 1451 of this title] may be cited as the ‘Federal Housing Enterprises Financial Safety and Soundness Act of 1992.’

§ 4502. Definitions

For purposes of this chapter:

(1) Affiliate

Except as provided by the Director, the term “affiliate” means any entity that controls, is controlled by, or is under common control with, an enterprise.

(2) Agency

The term “Agency” means the Federal Housing Finance Agency established under section 4511 of this title.

(3) Authorizing statutes

The term “authorizing statutes” means—

- (A) the Federal National Mortgage Association Charter Act;
- (B) the Federal Home Loan Mortgage Corporation Act; and
- (C) the Federal Home Loan Bank Act.

(4) Board

The term “Board” means the Federal Housing Finance Oversight Board established under section 4513a of this title.

(5) Capital distribution

(A) In general

The term “capital distribution” means—

- (i) any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an enterprise, except a dividend consisting only of shares of the enterprise;
- (ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by the enterprise of such shares; and
- (iii) any transaction that the Director determines by regulation to be, in substance, the distribution of capital.

(B) Exception

Any payment made by an enterprise to repurchase its shares for the purpose of fulfilling an obligation of the enterprise under an employee stock ownership plan that is qualified under section 401 of title 26 or any substantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

(6) Compensation

The term “compensation” means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(7) Core capital

The term “core capital” means, with respect to an enterprise, the sum of the following (as

determined in accordance with generally accepted accounting principles):

- (A) The par or stated value of outstanding common stock.
- (B) The par or stated value of outstanding perpetual, noncumulative preferred stock.
- (C) Paid-in capital.
- (D) Retained earnings.

The core capital of an enterprise shall not include any amounts that the enterprise could be required to pay, at the option of investors, to retire capital instruments.

(8) Default; in danger of default

(A) Default

The term “default” means, with respect to a regulated entity, any adjudication or other official determination by any court of competent jurisdiction, or the Agency, pursuant to which a conservator, receiver, limited-life regulated entity, or legal custodian is appointed for a regulated entity.

(B) In danger of default

The term “in danger of default” means a regulated entity with respect to which, in the opinion of the Agency—

- (i) the regulated entity is not likely to be able to pay the obligations of the regulated entity in the normal course of business; or
- (ii) the regulated entity—
 - (I) has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and
 - (II) there is no reasonable prospect that the capital of the regulated entity will be replenished.

(9) Director

The term “Director” means the Director of the Federal Housing Finance Agency.

(10) Enterprise

The term “enterprise” means—

- (A) the Federal National Mortgage Association and any affiliate thereof; and
- (B) the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(11) Entity-affiliated party

The term “entity-affiliated party” means—

- (A) any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;
- (B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Federal Home Loan Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;
- (C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—
 - (i) the independent contractor knowingly or recklessly participates in—
 - (I) any violation of any law or regulation;