

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;

(II) any breach of fiduciary duty; or
 (III) any unsafe or unsound practice;
 and

(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(E) the Office of Finance.

(12) Executive officer

The term “executive officer” means, with respect to an enterprise, the chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman, any executive vice president, and any senior vice president in charge of a principal business unit, division, or function.

(13) Limited-life regulated entity

The term “limited-life regulated entity” means an entity established by the Agency under section 4617(i) of this title with respect to a Federal Home Loan Bank in default or in danger of default or with respect to an enterprise in default or in danger of default.

(14) Low-income

The term “low-income” means—

(A) in the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(B) in the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by the Director.

(15) Median income

The term “median income” means, with respect to an area, the unadjusted median family income for the area, as determined and published annually by the Director.

(16) Moderate-income

The term “moderate-income” means—

(A) in the case of owner-occupied units, income not in excess of area median income; and

(B) in the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families, as determined by the Director.

(17) Mortgage purchases

The term “mortgage purchases” includes mortgages purchased for portfolio or securitization.

(18) Multifamily housing

The term “multifamily housing” means a residence consisting of more than 4 dwelling units.

(19) Office of Finance

The term “Office of Finance” means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

(20) Regulated entity

The term “regulated entity” means—

(A) the Federal National Mortgage Association and any affiliate thereof;

(B) the Federal Home Loan Mortgage Corporation and any affiliate thereof; and

(C) any Federal Home Loan Bank.

(21) Single family housing

The term “single family housing” means a residence consisting of 1 to 4 dwelling units.

(22) State

The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(23) Total capital

The term “total capital” means, with respect to an enterprise, the sum of the following:

(A) The core capital of the enterprise;¹

(B) A general allowance for foreclosure losses, which—

(i) shall include an allowance for portfolio mortgage losses, an allowance for nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the enterprise for estimated foreclosure losses on mortgage-backed securities; and

(ii) shall not include any reserves of the enterprise made or held against specific assets.

(C) Any other amounts from sources of funds available to absorb losses incurred by the enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

(24) Very low-income

(A) In general

The term “very low-income” means—

(i) in the case of owner-occupied units, families having incomes not greater than 50 percent of the area median income; and

(ii) in the case of rental units, families having incomes not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

(B) Rule of construction

For purposes of section² 4568 and 4569 of this title, the term “very low-income” means—

(i) in the case of owner-occupied units, income in excess of 30 percent but not greater than 50 percent of the area median income; and

(ii) in the case of rental units, income in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

(25) Violation

The term “violation” includes any action (alone or in combination with another or oth-

¹ So in original. The semicolon probably should be a period.

² So in original. Probably should be “sections”.

ers) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(26) Conforming mortgage

The term “conforming mortgage” means, with respect to an enterprise, a conventional mortgage having an original principal obligation that does not exceed the dollar amount limitation in effect at the time of such origination and applicable to such mortgage, under, as applicable—

(A) section 302(b)(2) of the Federal National Mortgage Association Charter Act [12 U.S.C. 1717(b)(2)]; or

(B) section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454(a)(2)].

(27) Extremely low-income

The term “extremely low-income” means—

(A) in the case of owner-occupied units, income not in excess of 30 percent of the area median income; and

(B) in the case of rental units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Director.

(28) Low-income area

The term “low-income area” means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located, and, for the purposes of section 4562(a)(1)(B) of this title, shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts and shall include families having incomes not greater than 100 percent of the area median income who reside in designated disaster areas.

(29) Minority census tract

The term “minority census tract” means a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of the area family median income.

(30) Shortage of standard rental units both affordable and available to extremely low-income renter households

(A) In general

The term “shortage of standard rental units both affordable and available to extremely low-income renter households” means the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 30 percent of the adjusted area median income as determined by the Director that are occupied by extremely low-income renter households or are vacant for rent; and

(ii) the number of extremely low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of ex-

tremely low-income households as described in subparagraph (A)(ii), there is no shortage.

(31) Shortage of standard rental units both affordable and available to very low-income renter households

(A) In general

The term “shortage of standard rental units both affordable and available to very low-income renter households” means the gap between—

(i) the number of units with complete plumbing and kitchen facilities with a rent that is 30 percent or less of 50 percent of the adjusted area median income as determined by the Director that are occupied by either extremely low- or very low-income renter households or are vacant for rent; and

(ii) the number of extremely low- and very low-income renter households.

(B) Rule of construction

If the number of units described in subparagraph (A)(i) exceeds the number of extremely low- and very low-income households as described in subparagraph (A)(ii), there is no shortage.

(Pub. L. 102-550, title XIII, §1303, Oct. 28, 1992, 106 Stat. 3942; Pub. L. 110-289, div. A, §1002(a), title I, §1128(d), July 30, 2008, 122 Stat. 2659, 2702.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in par. (3)(A), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, which is classified generally to subchapter III (§1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in par. (3)(B), is title III of Pub. L. 91-351, July 24, 1970, 84 Stat. 451, which is classified generally to chapter 11A (§1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

The Federal Home Loan Bank Act, referred to in par. (3)(C), is act July 22, 1932, ch. 522, 47 Stat. 725, 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.

AMENDMENTS

2008—Pub. L. 110-289, §1002(a)(2)–(14), added pars. (2) to (4), (8), (11), (13), (19), (20), and (25), redesignated former pars. (2) to (12) and (16) to (19) as (5) to (7), (9), (10), (12), (14) to (18), and (21) to (24), respectively, substituted “Federal Housing Finance Agency” for “Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development” in par. (9), and struck out former pars. (13) to (15) which defined the terms “new program”, “Office”, and “Secretary”, respectively.

Pars. (8)(B), (9), (10)(B), (19)(B). Pub. L. 110-289, §1002(a)(1), substituted “Director” for “Secretary”.

Par. (24). Pub. L. 110-289, §1128(d)(1), added par. (24) and struck out former par. (24) which defined the term “very low-income”.

Pars. (26) to (31). Pub. L. 110-289, §1128(d)(2), added pars. (26) to (31).

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4503. Protection of taxpayers against liability

This chapter may not be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks, or to honor, reimburse, or otherwise guarantee any obligation or liability of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks. This chapter may not be construed as implying that any such enterprise or Bank, or any obligations or securities of such an enterprise or Bank, are backed by the full faith and credit of the United States.

(Pub. L. 102-550, title XIII, §1304, Oct. 28, 1992, 106 Stat. 3944.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “This title and the amendments made by this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

SUBCHAPTER I—SUPERVISION AND REGULATION OF ENTERPRISES

PART A—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

§ 4511. Establishment of the Federal Housing Finance Agency

(a) Establishment

There is established the Federal Housing Finance Agency, which shall be an independent agency of the Federal Government.

(b) General supervisory and regulatory authority

(1) In general

Each regulated entity shall, to the extent provided in this chapter, be subject to the supervision and regulation of the Agency.

(2) Authority over Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Office of Finance

The Director shall have general regulatory authority over each regulated entity and the Office of Finance, and shall exercise such general regulatory authority, including such duties and authorities set forth under section 4513 of this title, to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out.

(c) Savings provision

The authority of the Director to take actions under subchapters II and III shall not in any

way limit the general supervisory and regulatory authority granted to the Director under subsection (b).

(Pub. L. 102-550, title XIII, §1311, as added Pub. L. 110-289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2661.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

This Act, referred to in subsec. (b)(2), is Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

PRIOR PROVISIONS

A prior section 4511, Pub. L. 102-550, title XIII, §1311, Oct. 28, 1992, 106 Stat. 3944, related to establishment of the Office of Federal Housing Enterprise Oversight, prior to repeal by Pub. L. 110-289, div. A, title I, §1101, July 30, 2008, 122 Stat. 2661.

Statutory Notes and Related Subsidiaries

TRANSFER AND RIGHTS OF CERTAIN HUD EMPLOYEES

Pub. L. 110-289, div. A, title I, §1133, July 30, 2008, 122 Stat. 2728, provided that:

“(a) TRANSFER.—Each employee of the Department of Housing and Urban Development whose position responsibilities primarily involve the establishment and enforcement of the housing goals under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561 et seq.) shall be transferred to the Federal Housing Finance Agency for employment, not later than the effective date of the Federal Housing Finance Regulatory Reform Act of 2008 [div. A (§§1001-1605) of Pub. L. 110-289, approved July 30, 2008], and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

“(b) GUARANTEED POSITIONS.—

“(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.

“(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

“(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

“(1) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such position shall be transferred, subject to paragraph (2).

“(2) DECLINE OF TRANSFER.—The Director may decline a transfer of authority under paragraph (1) to the extent that such authority relates to—

“(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or