Testimony of Kieran P. Quinn, CMB, Chairman

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before the

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Hearing on

"Reforming the Regulation of Government Sponsored Enterprises"

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Chairman Dodd, Ranking Member Shelby and Members of the Committee, my name is Kieran P. Quinn, and I am Chairman of the Mortgage Bankers Association.[1] I am also Chairman of Column Financial, Credit Suisse's mortgage lending subsidiary for multifamily, hotel, retail and commercial properties. Thank you for the opportunity to testify before you today as you refocus the Committee on developing legislation to reform the nation's regulation of the Government Sponsored Enterprises (GSEs), including Fannie Mae and Freddie Mac as well as the Federal Home Loan Banks.

I have been in the mortgage lending business for 30 years and my company has transacted business with both the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) on a regular basis. In my official capacity at MBA, I have worked with representatives of lenders of all business models and sizes from across the nation to develop MBA's policies on GSE oversight reform.

Before I begin, please let me say Mr. Chairman MBA particularly appreciates Congress' rapid and bipartisan response to the difficult conditions in the national economy. MBA believes the housing components of the Economic Stimulus Act of 2008, signed by the President on February 13, (P.L. 110-185) will bring much needed liquidity for the mortgage markets, particularly in areas with high housing costs. MBA also appreciates the dedication of the Committee to GSE oversight reform. This legislation is a first priority of MBA and the mortgage industry and MBA will do all it can to assist your work.

I. INTRODUCTION AND SUMMARY

The most recent opportunity the MBA has had to offer testimony on GSE regulatory reform occurred in March 2007 during a House hearing on the subject. It is astonishing to consider the scope and magnitude of events that have transpired within the housing finance system since that time. One sector after another became debilitated by a market-shaking crisis, until the entire system ground to a near standstill as creditors began losing confidence in the portfolios of their lending partners. I describe it as a "near standstill" because at one point, there were only four entities engaging in secondary market transactions – Fannie Mae, Freddie Mac, the Federal Home Loan Bank System, and Ginnie Mae. It is no exaggeration to say that as bleak as things have become, just imagine how much worse conditions in the housing finance system would be without the GSEs. It is just this type of calamity Congress sought to avoid when the

[1] **The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.**

GSEs were chartered. And so, now as always, MBA strongly supports the vital role Fannie Mae and Freddie Mac play in maintaining and improving liquidity and stability in the secondary mortgage market. MBA also strongly supports the vital role that the Federal Home Loan Bank System plays in providing liquidity to the primary mortgage market and supporting the demand for mortgages through advances by the FHLBanks to their members.

Although all of these enterprises are government sponsored, for the remainder of my remarks today, I will use the term GSEs when referring to Fannie Mae and Freddie Mac and, when I refer to the Federal Home Loan Bank System, I will use the term FHLB System or FHLBanks.

GSE and FHLBank System reform legislation has been on the congressional agenda since 2003. Since that time, accounting irregularities, charter infractions, corporate governance misdeeds and market fluctuations have shed light on the fact the strength of the GSE supervisory framework has not kept pace with the size and complexity of the entities under supervision or the market in which they operate. Even though current conditions seem bleak, there will come a day when non-GSE sources of liquidity will return to the secondary market. When this happens, the primary market will become vibrant and once again blossom with innovations in housing finance products and services. To hasten this return to normalcy, MBA implores Congress to fortify the GSE and FHLBank supervisory framework in a comprehensive manner to ensure that these entities focus on their housing finance mission within their duly authorized charter purposes and secondary market powers.

The recent turmoil in the housing finance system has demonstrated the need for enhanced accountability for all participants. Lending institutions and other primary market participants must ensure that they are compliant with all consumer disclosure and safety and soundness requirements. Investors and other secondary market participants must adopt risk management practices commensurate with the level of sophistication of the transactions in which they engage. Consumers must heighten their accountability to ensure they have adequate resources to satisfy their long term financial obligations. Finally, regulators must be proactive, communicate with each other, and establish clear parameters so that authorized activities can be conducted in a safe and sound manner.

MBA offers the following suggestions for addressing this last concern as it relates to statutory reform of the structure and powers of the GSEs' and FHLBanks' supervisor:

1. The GSEs and the FHLBanks should be supervised by a single, independent regulator with the duty to ensure their mission compliance and safety and soundness. The fundamental differences between the GSEs and the FHLBanks should be reflected in the supervisory structure.

2. A statutory framework should be established to empower the GSE regulator with the full range of safety and soundness oversight authority possessed by similar

federal financial institution regulators. It should also detail the regulator's powers with respect to mission compliance.

3. The statute should include thresholds for the GSEs' and FHLBanks' authorized activities and safety and soundness requirements. These thresholds should not hinder the regulator's authority to revise these requirements as markets demand or in exigent circumstances.

4. The statute should also establish affordable housing goals that are reasonable and do not distort the market but nonetheless, require the GSEs to lead the market in encouraging lending in underserved markets and to underserved families.

The remainder of my remarks discusses each of these principles and provides suggestions for incorporating them into GSE regulatory reform legislation. MBA appreciates the recent efforts of HUD and OFHEO to respond to disruptions in the secondary market. Given the current market conditions in the housing finance system, MBA believes it is imperative that we provide sufficient powers to enable the GSEs' regulator to respond to future, unforeseen calamities.

III. SAFETY AND SOUNDNESS OVERSIGHT OF THE GSEs BENEFITS THE ENTIRE MORTGAGE MARKET

The GSEs must act in a safe and sound manner to perform their secondary market functions, including meeting specific affordable housing goals. Our housing finance system, made up of both GSEs and private companies, requires access to liquid funds day in and day out from both American and international capital sources. The housing GSEs are major links between the capital market and the housing market.

Furthermore, regulating the safety and soundness of two firms as big and as complex as Fannie Mae and Freddie Mac is extremely challenging. Under trying circumstances, OFHEO has done an admirable job of using the supervisory tools at hand to discharge its duties. For example, we note OFHEO's recent decision to lift the cap on each of the GSE's mortgage portfolio while preserving their higher capital requirements for the time being. Nevertheless, OFHEO's strongest supervisory actions to date were effectuated through consent orders negotiated with each GSE. Fannie Mae and Freddie Mac inevitably will remediate the operational and control weaknesses that triggered their respective consent orders. When this happens, it may become more difficult for OFHEO to successfully take such an aggressive approach to supervision as a consent order. To avoid this possibility we believe the GSE regulator should be equipped with a specific range of powers and protocols commensurate to the severity of the situation.

Unquestionably, MBA remains firm in its support for efforts to expressly confer powers and procedural parameters on the regulator, on par with modern U.S. bank regulators, to carry out every aspect of sound regulation. For example, the regulator needs general regulatory authority, which OFHEO currently lacks. As mentioned above, cease and

desist authority is another fundamental, effective, flexible, and important tool a financial regulator can have. Regulators can narrowly tailor cease and desist orders to resolve a particular problem, without otherwise limiting or interfering with the institution's operations. Assuring flexibility in cease and desist orders makes them effective.

We believe that the entire secondary mortgage market would benefit from this enhanced clarity regarding the range of possible supervisory actions the GSEs' regulator could take in response to various supervisory concerns.

A. Capital Regulation

It is important that Fannie Mae and Freddie Mac maintain capital levels that support liquidity for the residential mortgage markets and that are also consistent with safety and soundness, stability for the overall market, and minimum exposure to risk for the American taxpayer. Some have proposed that the regulator's capital setting authority should permit the regulator to require capital increases only in a narrow set of circumstances. MBA does not share that approach. MBA believes the regulator should have flexible authority to set appropriate capital standards.

Today, Freddie Mac's and Fannie Mae's capital surcharge is based on OFHEO's cease and desist authority, not its capital authority. OFHEO's cease and desist authority is flexible and can address many problems, not just capital deficiencies. If, under new law, the regulator's capital authority is limited, it is possible that some might infer that the regulator's cease and desist authority has also been limited. In order to preserve its usefulness as a flexible and powerful supervisory tool, it is important that Congress be careful not to inadvertently limit the regulator's cease and desist authority.

B. Receivership

Congress has debated whether to include provisions that would permit a regulator to appoint a receiver if either Fannie Mae or Freddie Mac were to become financially distressed. MBA's view is that in the unlikely event of distress at either company, it is important to maintain the operations of mortgage finance markets. MBA believes this should be the fundamental principle behind any receivership provisions.

MBA does not believe the regulator should appoint a receiver or conservator lightly. Rather, the regulator should only be able to appoint a conservator or receiver when there is a serious capital deficiency, a serious threat to liquidity, or a real possibility of market disruption.

When a regulator does need to intervene, it should be able to operate the enterprise to restore it to health if that would best protect the housing markets. If necessary, the regulator should be able to maintain the operations of the mortgage securitization business, which is critical to the markets, while winding down the portfolio operation in an orderly manner. Because it may be necessary for a GSE in receivership to issue

debt to ensure an orderly wind-down of the portfolio business, the receiver should of course have the authority to cause the GSE to issue debt to ensure that orderliness.

To ensure certainty in the markets today, before there is a problem, Congress also should specify a priority of claims in the event either Fannie Mae or Freddie Mac is in receivership. Congress should specify that holders of MBS that the GSE had issued have a prior claim to the mortgages backing the MBS, as well as to the flow of revenue the GSE continues to receive as guarantee fees. That guarantee fee revenue would be necessary for the securitization business to continue. The securitization business is critical to the market's functions, and Congress should ensure its continuation even if Fannie Mae or Freddie Mac is in receivership. These provisions would help maintain the operations of the mortgage finance markets, which should be the underlying policy for any Congressional action in this area.

Only Congress, not the regulator, should be able to rescind a GSE's charter.

C. Portfolio Restrictions

During discussions of regulatory improvements, it has been suggested that Congress should place strict limits on the size of Fannie Mae's and Freddie Mac's portfolios of mortgage loans and MBS due to risks arising from these portfolios. Fannie Mae and Freddie Mac have been subject to portfolio caps as a result of their respective consent order agreements with OFHEO. These caps were lifted by OFHEO as of March 1. Since the beginning of the mortgage market disruptions, many industry participants, including MBA, appealed to Congress and OFHEO to rescind the caps so that the GSEs could purchase more loans in order to provide greater liquidity to the secondary market. We reiterate our support for OFHEO's decision to lift the cap while preserving the temporarily higher capital requirements. Present circumstances demonstrate all too well that the mortgage and financial markets fluctuate and evolve. Because the GSEs' portfolios can and do provide liquidity and stability in times like these, MBA believes that a congressionally mandated dollar cap or limit on the GSEs' portfolios would impede the GSEs' ability to respond to market conditions.

The portfolios also help the GSEs meet their statutory affordable housing goals. Special loan structures enable many lower income families to purchase homes. And, some of the unique characteristics of single-family reverse mortgages for the elderly make them difficult to securitize. Both Fannie Mae and Freddie Mac purchase a significant number of single-family and multifamily loans that are not easily securitized for their portfolios and these purchases make a critical contribution to the GSEs' ability to meet their goals. A rigid portfolio limitation could interfere with this important source of financing for affordable homes for lower income Americans. Finally, by financing their portfolios, the GSEs also have attracted significant foreign capital to the American mortgage markets, spurring further growth in the U.S. housing market. The GSEs' portfolio functions should be preserved.

MBA does not support the establishment of arbitrary limits on the GSEs' portfolios. Instead, MBA believes the regulator should be authorized to assess the risks in each GSE's portfolio and the degree to which the portfolio supports the GSE's secondary market and affordable housing missions. Based on this analysis, the regulator should be empowered to design appropriate means for limiting the risks of the portfolios considering current financing needs.

D. GSE Exemption from SEC Registration

The GSEs' charters contain specific exemptions from Securities and Exchange Commission (SEC) registration. In response to a considerable degree of pressure, the GSEs agreed in July 2002 to register one class of their common stock under Section 12 (g)[2] of the Securities and Exchange Act of 1934 (the '34 Act or the Exchange Act). Pursuant to the Exchange Act's reporting requirements, the GSEs agreed to file annual, quarterly and current reports updating their financial materials which will be subject to SEC review and comment.

The issue is whether this level of voluntary filing is sufficient, or whether the GSEs' SEC exemption should be eliminated and the GSEs should be required to fully register their debt, equity and MBS issuances. There would appear to be no adverse impact to the housing finance system, or significant additional burden to the GSEs, of requiring Fannie Mae and Freddie Mac to register either their non-MBS debt or their equity securities under the Securities Act of 1933 and the Exchange Act of 1934. However, MBA believes the statutory exemption for MBS issued by the GSEs should be preserved.

GSE MBS is traded through pools with specified characteristics and through trades of MBS of a generic nature, not yet identified. These generic MBS are traded in the to-be-announced, or TBA, market. The TBA market has numerous uses for the mortgage industry, including dollar roll hedging, without the intent to take control of the actual collateral, reference pricing, purchasing collateral for future structured transactions, and other purposes. One problem with SEC registration for GSE MBS is that TBA securities could not comply with the rigorous disclosure regime required under the SEC's Regulation AB because actual information is not available for these issuances prior to purchase.

A second concern is that there would be significant transaction delays caused by the SEC process. According to 2004 testimony by the SEC, the timing of transactions could be affected.[3]

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[2] Under Section 12(g), an issuer that is exempt from the 1934 Act can register its stock with the SEC. Once an issuer submits to the registration and reporting requirements, it can opt to discontinue that status only under very limited circumstances. For practical purposes here, it is a permanent election.

[3] See testimony of Alan Beller, Director, SEC Division of Corporate Finance, before the Committee on Bank, Housing and Urban Affairs, United States Senate, February 10, 2004. www.sec.gov/news/testimony/ts021004alb.htm

A third problem with bringing GSE MBS under SEC registration is that the lenders who sell their mortgages in return for MBS could be viewed under the securities laws as underwriters with underwriter liability. All of these factors will converge to make GSE executions more expensive and impede a market which is working very well.

At the same time, it does not appear that investors would gain much by virtue of registration of GSE MBS. Investors already have distinctive safeguards with GSE MBS for several reasons:

- Fannie Mae and Freddie Mac mortgage securities almost always include a *corporate guarantee* that principal and interest will be paid in the manner described and principal will be repaid;

- Fannie Mae and Freddie Mac remain engaged in their transactions in significant roles, including as trustee, master servicer, and guarantor; and

- Fannie Mae and Freddie Mac are responsible under the terms of their agreements to assume servicing responsibilities in the event of a default and to assure that the loans are serviced as agreed.

IV. MISSION OVERSIGHT

The need to assure that the GSEs carry out their charter purposes and statutory responsibilities and do not stray beyond them is equally important to effective oversight of all secondary market GSEs. Both GSEs receive significant explicit and implicit public advantages intended to facilitate their secondary market functions. These benefits include exemptions from certain state and local taxes, lines of credit with the U.S. Treasury and extraordinary borrowing advantages in the capital markets resulting from their public ties. The FHLBanks also benefit from a variety of statutory advantages.

The new GSE regulator must assure that the GSEs are carrying out their secondary market functions and assisting, but not harming the work of, the primary mortgage market. Although the Department of Housing and Urban Development (HUD) has worked hard at mission regulation of the GSEs, it has had even fewer resources and less direction than OFHEO to carry out its functions.

Prior to the recent market disruptions, the secondary mortgage market enjoyed vigorous competition among thousands of largely private industry firms of all shapes and sizes. Since the credit crunch emerged however, the number of private secondary market participants has dwindled. Currently, the GSEs provide a secondary market and mortgage financing for mortgage lenders for an estimated $4.2 trillion in loans, approximately 70 percent of the total MBS in the nation, and, according to a recent analyst report, an estimated 80 percent of the nation's overall mortgage market. The combined portfolios of the enterprises are estimated to exceed $4 trillion. Their combined outstanding debt is slightly more than that of the United States Treasury. The

scale of the Federal Home Loan Bank System lags the total of both of the GSEs but it is massive, too. The total consolidated obligations of the FHLBanks are just under $1 trillion and their member institutions hold over $600 billion in advances from the FHLBanks. Additional statistics regarding primary and secondary market characteristics are included in Appendix A.

As recent conditions demonstrate, properly focusing the GSEs' power, fueled by their public advantages, can assist the primary market in weathering a storm in the housing finance system. If not effectively regulated, the GSEs can wield their market-shaping powers to their own advantage by creating barriers to entry and competition from other primary and secondary market players. Therefore, MBA believes the regulator must have the authority to assure that the GSEs' purposes are performed through new and existing program review authority, general regulatory authority, authority to establish and enforce the housing goals, fair lending and reporting requirements as well as all other mission-related authorities.

A. Affordable Housing Goals

One of the key ways of measuring the mission-related activities of Fannie Mae and Freddie Mac is through their affordable housing goals performance. Congress established these goals by statute in 1992 to clarify the GSEs' obligations to carry out their purposes of serving the primary market by purchasing, in the secondary market, their fair share of mortgage loans made to finance homes including those for low-income families and in underserved areas.

MBA wholly supports the GSEs' requirements to help finance affordable housing. MBA believes the goals should be high enough to cause the GSEs to stretch their reach into underserved markets, but that the goals should be reasonable, to avoid market distortions or other adverse unintended consequences. Congress should not give the regulator authority to set an unlimited number of goals and subgoals.

MBA believes that Congress should retain the existing housing goals, but should amend them to provide greater focus on the housing needs of lower income households. MBA also believes that it is important to focus on what activities count toward the goals and supports, for example, the view that loans that lenders have to repurchase from the GSEs should be subtracted from the goals-eligible loans at the time of the buyback.

B. Goals Credit for GSE Purchases of Senior Tranches of MBS Secured By Subprime ARMs

MBA recognizes that the nonprime mortgage sector has experienced significant loan performance concerns. We commend the federal banking agencies for responding to this issue by reiterating the importance of establishing strong risk management practices and underwriting standards and clear customer disclosures. We understand that the GSEs are working closely with OFHEO to establish risk management procedures relating to purchases of alternative mortgages too. MBA continues to

believe that subprime ARMs are useful affordability options for mortgage borrowers including those in the nonprime mortgage market. Therefore, MBA believes that so long as a goals-qualifying mortgage complies with all applicable laws, regulations and regulatory guidance, such mortgages should be eligible for housing goals credit.

Under current law, HUD establishes guidelines to measure the extent of compliance with the goals which may assign full credit, partial credit or no credit toward achievement of the goals to different categories of mortgage purchases.[4] Under a new law, the Director should exercise this authority considering the value of these and other products to homeownership, as well the extent to which purchases of senior tranches of these and other securities add to liquidity and otherwise meet the objectives of the goals.

C. Affordable Housing Fund

Some have suggested that, in addition to retaining the affordable housing goals, Congress should require the GSEs to contribute to a fund to assist lower income families in obtaining affordable housing. While several proposals have been offered on how to calculate the contribution, MBA is supportive of the approach in H.R. 1427 which calculates the contribution as a percentage of outstanding GSE debt. This approach would make it difficult for the GSEs to pass on this cost, thus minimizing the risk that the fund would become a tax on consumers or lenders. It would also tie the contribution to a benefit of government sponsorship, the GSEs' lower capital costs. Notably, the same amount of contribution can be required under this calculation method as any other method.

To assure the funds actually go toward meeting the affordable housing needs for which they are intended, the GSEs' regulator should be responsible for establishing and managing the funds as well as monitoring their administration. MBA believes an advisory board of industry practitioners should be established to assist the regulator in assuring funds are spent appropriately. If the funds are distributed by a formula to state or local agencies to administer, MBA recommends that a process similar to that used for HOME[5] funds be employed so that both cities and states receive an allocation and have the ability to target the funds to areas of greatest need.

D. Expansion of High-Cost Areas and Ceiling Increases for GSE Eligible Loans

The Economic Stimulus Act of 2008 provided a temporary adjustment to the GSE conforming loan limit in areas determined by HUD to be high-cost areas. Prior to enactment of the act, the nationwide conforming loan limit for loans eligible for GSE purchase for securitization or for their portfolios was $417,000 for a single family home.

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[4] Sec. 1336 of FHEFSSA, 12 USC 4566

[5] HOME Investment Partnerships Act, 42 USC 12701 note.

Under the GSEs' charters, this limitation may be increased by up to 50 percent to $625,500 for properties located in Alaska, Hawaii, Guam and the Virgin Islands.

Under the act, the GSEs' loan limits increase to 125 percent of the area median house price for the property up to a statutory cap of 175 percent of the current GSE limit of $417,000 or $729,750 for a single-family property. For areas where 125 percent of the median house price is less than or equal to the GSE limit, the GSE limit is set at, and can go no lower than, the GSE limit of $417,000. For Alaska, Hawaii, Guam and the Virgin Islands the new limits may be increased by 50 percent subject to area median house prices and interpretation of the legislation (up to $1,094,625).

MBA believes the temporary increase in the loan limit for Fannie Mae and Freddie Mac will help consumers by providing important financing options, and will help restart the securitization market for higher value loans. For these reasons, MBA supports a temporary increase in the maximum loan limit that Fannie Mae and Freddie Mac may purchase from lenders, subject to the following conditions:

- The increase should be in effect for no less than 12 months, and up to 24 months if market conditions warrant;
- The temporary cap for a single family property should be set at no more than 150 percent of the current loan limit ($625,500) and should be available nationwide, in every state and U.S. territory; and
- Expanded loan limits should be available for purchase loans and refinancing.

We suggest this Committee consider the above principles if it contemplates any modification or extension of the current temporary limits. In addition, MBA opposes the permanent addition of new high cost states as unwarranted, and we believe the use of ZIP codes, census tracts or a county-based system presents operational difficulties and increased loan costs for both the temporary increases put in place and any permanent changes to the conforming loan limit going forward.

IV. A SINGLE REGULATOR FOR MISSION AND SAFETY AND SOUNDNESS

Another challenge to supervising the GSEs is their unique government sponsored status to achieve a public purpose. The GSEs combine the advantages of government sponsorship with the functional organizations of shareholder-owned corporations. Therefore, the GSEs must be regulated in a manner that ensures they maximize their mission-oriented activities in a fiscally responsible manner. Currently, OFHEO regulates the safety and soundness of Fannie Mae and Freddie Mac and the Department of Housing and Urban Development (HUD) has oversight for their mission-related activities. The Federal Housing Finance Board regulates both the mission and safety and soundness of the FHLBanks. MBA believes the current bifurcation of mission and safety and soundness oversight of the GSEs opens the door to regulatory arbitrage by a GSE or interagency communication missteps. To avoid these situations, the MBA believes a single regulator should be responsible for monitoring the GSEs' activities for mission and safety and soundness purposes.

MBA believes the most compelling reason to have a single mission and safety and soundness regulator is to facilitate evaluations of the GSEs' activities from both a public purpose and fiduciary perspective. Currently, HUD is charged with monitoring the GSEs' adherence to their charters, and OFHEO has oversight for the GSEs' safety and soundness. Like OFHEO, HUD lacks some of the most basic tools to do the job.

The GSEs' charters specify the purposes of the enterprises including: (1) providing stability in the secondary market for residential mortgages; (2) responding appropriately to the private capital market; (3) providing ongoing assistance to the secondary market for mortgages (including activities relating to mortgages on housing for low and moderate income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential financing; and (4) promoting access to mortgage credit throughout the nation including by increasing liquidity and improving the distribution of investment capital available for residential financing.[6]

The charters and current law, the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), detail the GSEs' authorities and establish prohibitions against certain activities including the direct origination of mortgage loans.[7] FHEFFSA also establishes the GSE affordable housing goals, fair lending and reporting obligations of the GSEs.

As the GSEs' mission regulator, HUD is empowered to exercise "general regulatory power" to ensure FHEFSSA and the purposes of the GSEs' charters are accomplished.[8] Although HUD's duties include reviewing "new programs" of the GSEs,[9] the specific provisions regarding new program review are constrained by a rigid time frame and unclear statutory review standards. Moreover, HUD is bound by the time frame for review regardless of the program's level of complexity.

The current definition of a "new program" effectively limits the programs subject to review and the standard of review does not allow HUD to reject a program unless it can demonstrate that it is unauthorized under broad authorities or the program is "not in the public interest." Current law also does not allow HUD to reject a program application on safety and soundness grounds. It is not clear to what extent the regulator may review and order a stop to ongoing activities outside of the GSEs' charter. To carry out all

[6] 12 USC 1716, 12 USC 1451 note. The Fannie Mae Charter includes a fifth purpose concerning managing and liquidating federally owned mortgage portfolios in an orderly manner.

[7] Section 304(a)(2)(B) of the Fannie Mae Charter, 12 U.S.C. 1716,; Section 305(a)(5) of the Freddie Mac Charter,12 U.S.C. 1451.

[8] Sec. 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), 12 USC 4541.

[9] Sec.1322 of FHEFSSA, 12 USC 4542.

these functions, HUD's budget has been woefully inadequate. MBA supports legislation to address all of these matters.

V. ASSURING THE GSEs' PERFORMANCE IS CONSISTENT WITH THEIR MISSIONS

Congress chartered Fannie Mae and Freddie Mac and conferred substantial public benefits on them, including exemption from certain state and local taxes and a line of credit with the Treasury, to do their jobs. Most other companies, banks, thrifts, and other lenders are chartered or created by a federal or state authority, not by Congress and do not enjoy these same advantages. Because of their public benefits and ties, the GSEs are able to undercut the prices of others in the marketplace.

For all of these reasons, the GSEs are subject to Congressional oversight. For the same reasons, they should be subject to strong regulatory review with clear guidance from Congress to assure they perform their missions and do not deviate from them at the cost of the private market.

Notably, the GSEs, at times, have encroached upon the private market, to the detriment of competitors and competition. In recent years HUD, for example, required Fannie Mae to cease its real estate owned (REO) management and disposition activities because those activities are beyond the GSE's charter. Those activities interfered with private market competitors who offer the same services.

MBA's longstanding view is Congress should ensure the regulator understands the distinction between the primary and secondary mortgage markets. The regulator should be given clear direction to review all GSE programs, products and activities to assure they are consistent with the GSEs' charters and applicable law. The regulator must be empowered to effectively review all new undertakings to assure they are in the public interest, are authorized, are safe and sound and do not distort the competitive landscape of the primary mortgage market.

Giving clear direction to review the GSEs' activities and establishing standards for such review regarding existing and new programs would provide more than mere clarity. It would go a long way to assuring competition in the future in both the primary and secondary markets.

We would add, however, MBA supports the ability of the GSEs to innovate to carry out their charter purposes. Such innovation is vital to the primary mortgage market. The new regulatory requirements must recognize this point and assure that the GSEs are able to make technological improvements within their sphere in a timely manner.

There are a number of ways to assure that the GSEs' purposes are carried out. Whatever means is chosen, Congress should be sure the legislative history indicates these authorities should indeed be fully carried out and that no negative inference

should be gleaned from Congress's decision not to pursue any previous formulation of these authorities in earlier versions of this legislation.

VI. FUNDING

MBA believes the GSE regulator's budget should be funded through assessments on the regulated entities outside the appropriations process, as bank regulators are funded. An insufficient budget, pressured by the constraints of appropriations, as well as regulatory weaknesses have been a serious impediment to Fannie Mae's and Freddie Mac's regulators over the years.

VII. IMPROVEMENTS TO THE REGULATION OF THE FEDERAL HOME LOAN BANKS

The FHLBanks have a distinctive structure and an important housing role.

MBA strongly supports the FHLBanks and their advancing, mortgage and affordable housing programs. Several hundred of our member companies are members of FHLBanks and, for many of those institutions, their largest single investment is their stock in their FHLBank. Appropriate regulation of the Federal Home Loan Bank System is critical to our members and to the continued support of housing provided by the FHLBanks. MBA suggests the following be considered in establishing improvements to the regulation and oversight of the FHLBanks.

A. Any New Regulatory Structure Should Recognize the Distinctive Nature of the System

The Federal Home Loan Bank System has a major presence in global capital markets with $934 billion of consolidated obligations outstanding. The proceeds of those obligations are used to fund the $641 billion in advances outstanding to member institutions and to fund portfolio investments. The advances are collateralized and the collateral is largely residential mortgage loans. Through their advancing programs, the FHLBanks stimulate demand for mortgage loans and provide funds for them.

In addition to supporting community institutions by providing low-cost advances, the FHLBanks' advancing program supports housing. This support comes from the requirement that advances be collateralized, and almost all of that collateral is residential, single-family mortgage loans.

The FHLBanks, with assets of $1.02 trillion as of December 31, 2006, support housing in other ways as well. For example, they held over $100 billion in Fannie Mae, Freddie Mac and non-agency MBS at the end of 2005. The FHLBanks also held approximately $9 billion in debt of Fannie Mae, Freddie Mac, and state and local housing agencies. Finally, the Banks hold approximately $98 billion in residential mortgages through their MPP and MPF programs.

The FHLBanks differ from the other two GSEs in many ways, including some of the following major respects:

- **Structure**: Fannie Mae and Freddie Mac are shareholder-owned and publicly traded corporations. The Federal Home Loan Banks comprise a system of 12 institutions, each covering certain states and each cooperatively owned by member institutions in those states.

- **Profit Motivation**: As cooperatively owned institutions, the FHLBanks' primary focus is member service through their programs and, therefore, their businesses are less focused on maximizing profits than the other GSEs.

- **Membership Value:** Members receive dividends from the FHLBanks as well as beneficial advancing rates and the right to participation in the FHLBanks' mortgage purchase and affordable housing programs.

- **Scope of Mission:** The FHLBanks primarily support residential housing but they are also empowered to support economic development, including commercial, industrial, manufacturing, social service, and other projects.

Accordingly, any new regulatory structure should reflect the fact the FHLBank System is fundamentally different from Fannie Mae and Freddie Mac. Some of the bills introduced in previous Congresses have recognized this distinction to a greater or lesser degree. While MBA supports establishment of a single regulator to oversee Fannie Mae, Freddie Mac and the Federal Home Loan Bank System, a separate division should focus on the FHLBanks. MBA notes that S. 1100 and H.R. 1427 incorporate this provision.

B. Securitization Authority Should Be Made Explicit

In addition to their advancing programs and the collateral required to be held, the FHLBanks support housing through the billions of dollars they hold as investments in GSE mortgage-backed securities and in residential, single-family mortgages purchased through their Mortgage Purchase Program (MPP) and Mortgage Purchase Finance (MPF) programs. While these programs have shrunk in recent years to approximately $98 billion, they remain valuable to the mortgage market to a greater extent than their dollar volume might indicate. They provide important competition to the programs of the other GSEs.

The Federal Housing Finance Board has expressed concerns about the FHLBanks holding mortgages on their balance sheets. From a safety and soundness perspective, the primary tool to manage these assets would be securitization of these loans. However, concerns have been expressed that the FHLBanks may not have the authority to do so.

While MBA believes the Federal Home Loan Bank Act conveys adequate authority in this area, MBA thinks it would be useful to add clarifying language into the statute to expressly authorize this activity. Currently, this provision is not included in either the House or Senate GSE regulatory reform bills. Securitization would further increase competition in the secondary market benefiting home loan borrowers and renters with lower costs.

C. The FHLBanks' Affordable Housing Program Should Be Preserved

As a result of the FHLBanks' Affordable Housing Program, the Banks collectively are the largest donor organization to affordable housing in the nation. The program functions well, it achieves its purpose and is well administered. Considering the FHLBanks are doing their share to support affordable housing, MBA does not believe further intervention, such as attaching goals to eligible collateral or making the FHLBanks subject to other goals is necessary.

VIII. CONCLUSION

For the reasons described above, MBA believes regulation of the GSEs must be carried out by a strong, independent and well-funded entity with the resources and expertise to evaluate the GSEs' performance, both as financial institutions and as public purpose entities.

Together the secondary and primary mortgage markets have offered the needed financing to provide homeownership and affordable rental opportunities across the nation, which has been a driving force in establishing communities, creating financial stability and wealth for consumers and fueling the overall economy. Improved regulation of the GSEs, including the Federal Home Loan Bank System, if properly done, will help assure the vitality and the robust, competitive nature of both the primary and secondary mortgage markets for years to come.

The Mortgage Bankers Association appreciates the opportunity to present its views on these important issues. For your convenience, Appendix B presents a brief summary of MBA's positions on the key elements in current GSE reform legislation in the House and Senate. MBA will do all it can to help the Congress move forward to develop, and we hope shortly enact, effective, comprehensive, GSE legislation to provide effective safety and soundness and mission regulation for the GSEs and the FHLBanks.

APPENDIX A
Market Data and Information – Primary and Secondary Mortgage Markets

The most recent data on mortgage loans made by lenders in 2006 provided under the Home Mortgage Disclosure Act (HMDA) demonstrate the greatest and widest availability of mortgage finance in our nation's history. The data show that borrowers in virtually every area of the nation, of every race and ethnicity, and at every income level receive an array of credit opportunities.

Homeownership has fallen from its highest levels in history, but Americans are still building significant wealth. According to the Federal Reserve's Flow of Funds data, the value of residential real estate assets owned by households has increased from $10.3 trillion in 1999 to $21 trillion as of the third quarter of 2007, and aggregate homeowners' equity exceeds $10 trillion. According to the Fed's 2004 Survey of Consumer Finances, the median net worth for homeowners was $184,000. For renters, it was $4,000. Clearly, many homeowners have been successful in accumulating wealth, both by steadily building up equity through their monthly payments, and through the rate of home price appreciation we have seen in recent years.

More than a third of homeowners, approximately 34 percent, own their homes free and clear. Of the 66 percent of the remaining homeowners, 75 percent have fixed rate mortgages and 25 percent have adjustable rate mortgages (ARMs). Many of the borrowers with adjustable rate loans have jumbo loans,[10] indicating that they are wealthier.

There were approximately 14 million mortgage originations in 2006, based on HMDA data, worth a total of $2.5 trillion. Over $10 trillion in residential mortgage loans were outstanding at the end of the third quarter of 2007. This enormous amount reflects an increase from $5.1 trillion at the end of 2000, and $2.6 trillion outstanding in 1990. In 2006, there were $33 billion in multifamily property loan originations.

The confluence of several factors has contributed to the growth in credit opportunities for mortgage borrowers over the last 15 years. These factors include innovations in the mortgage market, resulting in the range of mortgage products available today including fixed-rate products and adjustable rate products as well as the "nontraditional."[11] They also include increased competition from a number of loan originators including mortgage companies, banks, credit unions and mortgage brokers.

[10] Jumbo loans are loans that exceed the conforming loan limit, currently $417,000 for single family properties.

[11] Under the Federal Regulators' Nontraditional Guidance, nontraditional products include mortgages that may involve the deferral of principal and/or interest including interest only and payment option mortgages. Interagency Guidance on Nontraditional Mortgage Product Risks, 71 Fed. Reg. 58,609 (Oct. 4, 2006).

8,886 lenders reported under HMDA last year.[12] These lenders employ about 370,000 employees nationwide to meet borrowers' credit needs. An estimated 2,670 lenders originated multifamily loans.

The secondary market is made up of the following.

Fannie Mae and Freddie Mac currently guarantee MBS valued at approximately $3 trillion. Fannie Mae and Freddie Mac can only buy and securitize residential loans that meet charter act eligibility standards as to loan size and loan-to-value ratio. There are virtually no restrictions on the multifamily loans that the GSE may purchase. Fannie Mae and Freddie Mac maintain a very large presence in the secondary market. As indicated, they purchase or securitize approximately 70 percent of the single family conforming mortgage loans in the United States. Their share of the market for multifamily loans in 2005 was 27 percent.

Private-label MBS issuers, which are non-GSE securitizers, such as lenders and dealers, issued more than half of the mortgage-backed securities in 2005 and 2006, outpacing the GSEs. Private label issuers generally do not guarantee their MBS but publicly offered securities are subject to rating and senior investors receive a variety of other sources of credit enhancement. The loans backing private label MBS are typically ineligible for GSE purchase. Loans that are too big for Fannie Mae and Freddie Mac to purchase (jumbo loans), as well as subprime, low documentation, and other nonconforming mortgages are securitized by these issuers. In 2006, over $1.1 trillion in private-label MBS was issued, including jumbo, nonprime, Alt A, and other nonconforming mortgage products.

Government National Mortgage Association (Ginnie Mae) securitizes FHA-insured, Rural Housing Service (RHS) and Department of Veterans Affairs (VA) guaranteed residential and multifamily mortgage loans. Currently the outstanding balance of these securities is approximately $412 billion.

Federal Home Loan Banks hold government loans and conventional, conforming residential loans in the approximate amount of $98 billion. Like Fannie Mae and Freddie Mac, the FHLBanks have portfolios and they invest in Ginnie Mae, GSE and non-agency MBS.

Whole loan portfolio investors, including thrifts, banks, pension funds, and insurance companies, hold unsecuritized loans, both residential and nonresidential, for their own portfolios. The whole loan market is approximately $3.4 trillion today.

[12] Banks that are exempt from HMDA reporting and Regulation C include institutions with less than $35 million in assets, are not in the home lending business or have offices exclusively in rural (nonmetropolitan) areas. Mortgage companies are required to report unless they extend less than 100 purchase or refinance loans a year or do not operate in at least one metropolitan area.

Appendix B

Summary of Mortgage Bankers Association Positions Regarding Key Elements in Current GSE Reform Legislation (Senate and House)

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
Significant Definitions	Regulated Entity – Fannie Mae, Freddie Mac, and the FHLBs. (Enterprise is defined in the 1992 Act as Fannie Mae, Freddie Mac, and their affiliates, and this definition does not change. In this document, enterprise means Fannie Mae and Freddie Mac, while regulated entity means the enterprises and the FHLBs.) Authorizing Statutes – Fannie Mae and Freddie Mac charter acts and the FHLB Act. The bill permits the Director to take enforcement action against entity-affiliated parties. This means: 1. officers, directors, employees, controlling stockholder, or agent for a regulated entity; 2. Shareholders, affiliates, consultants and joint venture partners that participate in the conduct of the regulated entity's affairs; this does not include FHLB members based on their advances or on their FHLB stock ownership; 3. Certain outsiders, such as attorneys and accountants, who participate in wrongdoing 4. Any "not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity." (This could provide enforcement jurisdiction over the Fannie Mae and Freddie Mac foundations.) Finance Facility - The FHLB Finance Facility that this bill creates. Violation – "any action (alone or in combination with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation."	Regulated Entity – Fannie Mae, Freddie Mac, and the FHLBs. (Enterprise is defined in the 1992 Act as Fannie Mae, Freddie Mac, and their affiliates, and this definition does not change. In this document, enterprise means Fannie Mae and Freddie Mac, while regulated entity means the enterprises and the FHLBs.) Authorizing Statutes – Fannie Mae and Freddie Mac charter acts and the FHLB Act. The bill permits the Director to take enforcement action against regulated entity-affiliated parties. This means: 1. Officers, directors, employees, agent for a regulated entity or controlling shareholder of an enterprise; 2. Shareholders, affiliates, consultants and joint venture partners that participate in the conduct of the regulated entity's affairs; 3. Certain outsiders, such as attorneys and accountants, who participate in wrongdoing; 4. Any "not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity." (This could provide enforcement jurisdiction over foundations.)	The definition of violation in S. 1100 is from 12 U.S.C. § 1813(v) in banking law. It closes many loopholes in enforcement cases. Entity-affiliated party or regulated entity-affiliated party is also drawn from banking law. It permits the Director to bring enforcement actions against, for example, outside attorneys and accountants. Banking agencies can reach these people but OFHEO today cannot. Without the definition of "violation," however, this definition may not serve its purpose of permitting the Director to reach outside attorneys and accountants. S. 1100 clarifies that FHLB members are not entity-affiliated parties merely because they get advances from or own stock in an FHLB. Other participation in the FHLBs' affairs would be required for enforcement authority to reach FHLB members.
Agency Structure and Ombudsman	Section 101 Establishes the Federal Housing Enterprise Regulatory Agency as an independent agency. It has general regulatory authority over Fannie Mae, Freddie Mac, the FHLBs, and the Finance Facility. The Director "shall" exercise its general regulatory authority "including" its duties and authorities of § 1313, to ensure that the purposes of the revised 1992	Section 101 Establishes the Federal Housing Finance Agency as an independent agency. It has general supervisory and regulatory power over the regulated entities. The Director "shall" exercise its general regulatory authority "including" its duties and authorities of § 1313, to ensure that the purposes of the revised 1992 Act, the Authorizing Statutes, and other applicable	Under both bills, the Director could give program approval and oversight functions to the regulatory Deputy, to the Housing Mission and Goals Deputy, or to both.

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	Act, the Authorizing Statutes, and other applicable laws are carried out. The Agency is headed by a Director appointed by the president and confirmed by the Senate for a six-year term. The first Director is OFHEO's Director until a successor is appointed. There are three Deputy Directors, one for Fannie Mae and Freddie Mac, one for the FHLBs, and one responsible for housing mission and goals of all the regulated entities. The Director divides functions between the Deputies. Section 103 adds § 1313A Creates the Federal Housing Enterprise Board (Board) to advise the Director. The Board has 4 members – the Secretaries of Treasury and HUD, the Chair of the SEC, and the Director, who chairs the Board. Any member may call a meeting, and the Board must meet quarterly. The Board testifies and the Director reports to Congress annually on the regulated entities' safety and soundness, "operational; status," and performance of their missions, and on the Agency's operations, resources, and performance. Section 105 Creates the position of Inspector General of the Agency.	laws are carried out. The Agency is headed by a Director appointed by the president and confirmed by the Senate for a five-year term. The first Director is OFHEO's Director until a successor is appointed. There are three Deputy Directors, one for Fannie Mae and Freddie Mac, one for the FHLBs, and one responsible for the housing mission and goals of all the regulated entities. The Director divides functions between the Deputies. The President can appoint the Director immediately, although the Agency is not created until a year after enactment. Section 103 adds § 1313B. Creates the Federal Housing Enterprise Board (Board) to advise the Director. The Board has 3 members – Secretaries of Treasury and HUD and the Director, who chairs the Board. Any Board member may call a meeting at any time, and the Board must meet quarterly. The Board testifies before Congress annually. The Board is subject to the Sunshine Act (5 U.S.C. § 552b.) The Director reports to Congress annually, including any assessments by Board members, on the regulated entities' safety and soundness, "operational status," and performance of their missions, and on the Agency's operations, resources, and performance. In addition, the report must cover the enterprises' housing goals compliance and the FHLBs' compliance with their community investment and affordable housing programs. Requires the Director to establish an Ombudsman, by regulation. The Ombudsman will consider complaints and appeals from regulated entities and from anyone with a business relationship with a regulated entity. The Director sets the Ombudsman's duties and authorities.	
Director's Duties	Section 102 replaces § 1313 The Director has two "principal duties" – first, to oversee the prudential operations of each regulated	Section 102 replaces § 1313 The Director has two "principal duties" – first, to oversee the operations of each regulated entity and	The House bill gives the Director a duty to "minimize the cost of housing finance" through all the regulated entities.

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	entity on a consolidated basis, and second, to ensure: 1. Safety and soundness; 2. That the regulated entities "foster liquid, efficient, competitive, and resilient" markets, including housing activities for low- and moderate-income families "involving a reasonable economic return that may be less than the return earned on other activities;" 3. That the regulated entities comply with the amended 1992 Act, the Authorizing Statutes, and rules, regulations, guidelines, and orders issued under those statutes; 4. The regulated entities carry out their mission only through activities that are consistent with this title and the authorizing statutes" 5. The regulated entities' activities "are consistent with the public interest"; 6. The regulated entities remain adequately capitalized "after due consideration of the risk to such" regulated entity; and 7. The FHLBs finance community financial institutions for small businesses, small farms, and small agribusinesses, and accept as collateral whole interests in "such obligations." The Director has authority to review the acquisition or transfer of a controlling interest in a regulated entity, and to reject it if warranted under the Director's principal duties. The Director also has incidental powers as "necessary or appropriate" to fulfill its duties and responsibilities. The Director may sue and be sued.	any joint office of the FHLBs (created pursuant to Section 204), and second, to "ensure" a list of things: 1. Safety and soundness; 2. That the regulated entities "foster liquid, efficient, competitive, and resilient" markets, that minimize the cost of housing finance including housing activities for low- and moderate-income families "involving a reasonable economic return that may be less than the return earned on other activities;" 3. that the regulated entities comply with the Act and with rules, regulations, guidelines, and orders issued under the Act or the Authorizing Statutes; 4. The regulated entities carry out their mission "only through activities that are consistent with this title and the authorizing statutes." The Director has authority to review acquisition or transfer of a controlling interest in Fannie Mae or Freddie Mac, and to reject it if warranted under the Director's principal duties. The Director also has incidental powers as "necessary or appropriate" to fulfill its duties and responsibilities. The Director may sue and be sued.	
Prudential Management and Operations Standards and Remedies for Non-Compliance	Section 108 adds § 1313B. This section states that the Director "may" establish standards, "by regulation, order, or guideline," for Fannie Mae and Freddie Mac relating to: 1. Adequacy of internal controls and information systems; 2. Independence and adequacy of internal audit systems; 3. Management of interest rate risk; 4. Management of market risk, including standards	Section 102 adds § 1313A. This section states that the Director "shall" establish standards "by regulation, guideline, or order," for Fannie Mae, Freddie Mac, and the FHLBs, relating to: 1. Adequacy of internal controls and information systems including information security and privacy policies and practices; 2. Independence and adequacy of internal audit systems; 3. Management of credit and counterparty risk;	The standards are optional under S. 1100 but are required under H.R. 1427. Item 10 in the H.R. 1427 list is not in S. 1100. The analogous bank provision is 12 U.S.C. § 1831p-1, "Standards for safety and soundness," although S. 1100 and H.R. 1427 are broader. The standards under S. 1100 are enforceable administratively or judicially. Under H.R. 1427, they are enforceable administratively if they are established through regulation. Otherwise, under

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	that measure, monitor, control, and, as warranted, limit market risk; 5. Adequacy and maintenance of liquidity and reserves; 6. Investments and acquisitions by an enterprise to ensure consistency with laws; 7. Overall risk management processes, including board and senior management oversight, processes and policies to identify, measure, monitor, and control material risks, including reputational risk, and for adequate and well-tested business resumption plans for all major systems with remote sites; 8. Management of asset and investment portfolio growth; and 9. Other operational and management standards the Director determines are appropriate.	4. Management of interest rate risk; 5. Management of market risk, including standards that measure, monitor, control, and, as warranted, limit market risk; 6. Adequacy and maintenance of liquidity and reserves; 7. Management of any asset and investment portfolio; 8. Investments and acquisitions to ensure consistency with laws; 9. Overall risk management processes, including board and senior management oversight, processes and policies to identify, measure, monitor, and control material risks, including reputational risk, and for adequate and well-tested business resumption plans for all major systems with remote sites; 10. Maintenance of adequate records in accordance with accounting practices that enable the Director to evaluate the regulated entities' financial condition; 11. Issuance of subordinated debt that the Director considers necessary for each regulated entity; and 12. Other operational and management standards the Director determines are appropriate. If there is a failure to meet a standard, the Director must (if the standard is a regulation) or may (if the standard is by guideline) require a compliance plan. Failure to comply with the plan may result in orders imposing growth restrictions, capital surcharges, or other measures. This section is in addition to any other authority. If the regulated entity has undergone "extraordinary growth" prior to the non-compliance, the Director's remedies become mandatory.	H.R. 1427, the Director can issue orders for violations of the standards, but orders in H.R. 1427 are enforceable only through civil money penalties, not through cease and desist orders and not judicially. Note that the remedies provided in the House bill under 1313 A are in addition to the broader cease and desist and other remedies in Subtitle D.
Liaison with FFIEC		Section 136 The Agency would be included in the Federal Institutions Examination Council.	The House bill provision would associate the GSE regulator with the other federal financial regulators on the FFIEC, a position that has been suggested by MBA and others.
Issuance of Regulations and Orders (General Regulatory Authority)	Sections 101, 107, and 121 Together these sections repeal HUD's general	Sections 101, 111 Together these sections repeal HUD's general	S. 1100, in § 107, includes "directives" in the list of alternative regulatory or other actions the Director

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	regulatory authority and give general regulatory authority to the Director. Section 107 Expands § 1319G, which currently requires OFHEO to issue regulations necessary to carry out the 1992 Act and OFHEO's duties. Requires the Director to issue regulations, guidelines, directives, or orders necessary to ensure the purposes of the amended 1992 Act and the Authorizing Statutes are carried out.	regulatory authority and give general regulatory authority to the Director. Section 111 Amends § 1319G, which currently requires OFHEO to issue regulations necessary to carry out the 1992 Act and OFHEO's duties. H.R. 1427 requires the Director to issue regulations, guidelines, or orders necessary to ensure the purposes of the amended 1992 Act and the Authorizing Statutes are carried out. Repeals current requirement that the Director give Congress 15 days to review regulations before proposing them.	can employ.
Workplace Diversity		Section 110 Each regulated entity must create an Office of Minority and Women Inclusion and shall develop and implement standards to ensure use of minorities, women and MWOBs in all of the activities of the regulated entity including contracting functions. The entities shall include in their annual reports to the Director a description of their actions taken in accordance with this section. The agency shall also take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States	No similar section in Senate bill.
Mortgagor Identification Requirements		All regulated entities, the enterprises and the FHLBs, are prohibited from dealing in any mortgage if the borrower does not have a Social Security Number.	The provision in the House bill calling for borrowers to have SSNs is directed at immigrant borrowers and is highly controversial.
Assessments	Section 106 Amends § 1316 to fully remove the Agency's funding from the appropriations process. The regulated entities are assessed for their regulatory costs based on their assets, both on- and off-balance sheet. The Director may impose a nonperiodic assessment on a regulated entity that is not adequately capitalized or that is subject to an enforcement or prompt corrective action, so that the extra costs of supervising that regulated entity are not passed on to other	Section 106 Amends § 1316 to fully remove the Agency's funding from the appropriations process. The regulated entities are assessed for their regulatory costs based on their assets. For the enterprises, this includes both on-balance sheet assets and securities issued or guaranteed, and for the FHLBs, it includes assets as the Director determines in accordance with GAAP. The Director may impose a nonperiodic assessment on a regulated entity that is not adequately capitalized	Removing the regulator from the Congressional appropriations process would solve a problem that has hampered GSE regulators. Assessments under S. 1100 would be enforceable, but under H.R. 1427, enforcement would have to be by administrative action, such as through cease and desist proceedings.

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	regulated entities. Authorizes the Director to maintain a working capital fund. GAO must annually report to Congress on how much the Director collects and on its allocation of resources. (§ 406.)	or that is subject to an enforcement or prompt corrective action, so that the extra costs of supervising that regulated entity are not passed on to other regulated entities. Authorizes the Director to maintain a working capital fund. The Director must file quarterly financial reports with OMB, and is subject to GAO audit at least every three years. The Director must provide an "assertion" about the effectiveness of the Agency's internal controls.	
Bright Line between GSE Secondary Market Functions and Primary Market Functions	No explicit provision, but see next entry.	Section 140 No explicit use of the term "bright line" but this section of the bill provides that the subpart of the law concerning mission regulation "may not be construed to authorize an enterprise to engage in any program or activity that contravenes or is inconsistent with the Fannie Mae Charter Act or Freddie Mac Act."	Sec. 140 and Sec. 132 of HR 1427 below empower the Director to stop new and ongoing GSE activities that contravene or are inconsistent with law
Mission Regulation Authority	Sections 121 Repeals HUD's authority over new programs. Section 122 Requires the Director to require the enterprises to obtain the Director's prior approval before initially offering any new product. The term product is defined *(1) to include* all programs, products and activities offered by the enterprise in the marketplace; and <u>(2) *not to include-*</u> . a. The automated loan underwriting system (AUS) of an enterprise as of the date of enactment including any upgrade to its technology, operating system or software b. Any modifications to the mortgage terms and conditions or mortgage underwriting criteria relating to mortgages purchased or guaranteed by the enterprise, provided such modifications do not alter the underlying transaction so as to include services or financing, other than mortgage financing or create	Section 131 Repeals HUD's authority over new programs. Section 132 Requires the Director to require the enterprises to obtain the Director's prior approval before initially offering any new product. The term product is defined only by exclusion, to exclude (1) The automated loan underwriting system (AUS) of an enterprise as of the date of enactment including any upgrades to its technology, operating system or software (2) Any modifications to the mortgage terms and conditions or mortgage underwriting criteria relating to mortgages purchased or guaranteed by the enterprise, provided such modifications do not alter the underlying transaction so as to include services or financing other than residential mortgage financing or create significant new exposure to risk for the enterprise or holder of the mortgage.	S 1100 and HR 1427 are very similar in this area. Both bills make the Director responsible for reviewing "new products." Only the Senate bill, however, defines what a "product" is as well as what it is not and in doing so makes clear that the definition encompasses "all programs, products and activities offered by a GSE in the marketplace." Both S.1100 and HR 1427 define what a "new product" *is not* by exempting (1) the GSEs current automated underwriting systems and any upgrades as well as (2) any modification to mortgage terms or underwriting conditions relating to mortgages that are purchased or guaranteed by an enterprise from the definition of "product" and from the Director's review. MBA appreciates the drafters' interest in allowing innovation by the GSEs respecting their automated underwriting systems. However, the second exemption would establish a large and worrisome gap

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	significant exposure to risk. To get approval of a product, the enterprise must submit a written request in the form the Director prescribes, by order or regulation. "Immediately" upon receipt of a request for approval, the Director must publish notice of the application and "shall give interested parties the opportunity to respond" to the product In writing. The comment period is 30 days beginning on the date of publication. Within 30 days after the end of the comment period, the Director shall approve or deny the product and must specify the grounds for its decision. If the Director does not act in that time period, the enterprise may offer the product. Expedited review - If an enterprise determines that any new activity, service, undertaking, or offering is not a product, it must notify the Director before commencing it. "Immediately" upon receipt of such notice, the Director determines whether the proposed activity, service, undertaking or offering is a product. If so, the enterprise must get prior approval. For a product to be approved, the Director must determine that a product: • Is authorized under certain provisions of the charter Acts permitting enterprise programs to purchase, service, sell, lend on the security of or otherwise deal in mortgages, (the same provision in the standard for approval under current law) in current law); • Is in the public interest; • Is consistent with the safety and soundness of the enterprise or the mortgage finance system; and • Does not impair the stability or competitiveness of the mortgage finance system. The Director may approve any product conditionally or with limitations. Section provides that nothing in the section restricts the Director's safety and soundness authority, over all new and existing products or activities or the	To get approval of a product, the enterprise must submit a written request in the form the Director prescribes, by order or regulation. "Immediately" upon receipt of a request for approval, the Director must publish notice of the application and "shall give interested parties the opportunity to respond" to the product In writing The comment period is 30 days beginning on the date of publication. Within 30 days after the end of the comment period, the Director shall approve or deny the product and must specify the grounds for its decision. If the Director does not act in that time period, the enterprise may offer the product. Expedited review - If an enterprise determines that any new activity, service, undertaking, or offering is not a product, it must notify the Director before commencing it. "Immediately" upon receipt of such notice, the Director determines whether the proposed activity, service, undertaking or offering is a product. If so, the enterprise must get prior approval. For a product to be approved, the Director must determine that a product: • Is authorized under certain provisions of the charter Acts permitting enterprise programs to purchase, service, sell, lend on the security of or otherwise deal in mortgages, (the same provision in the standard for approval under current law); • Is in the public interest; • Is consistent with the safety and soundness of the enterprise or the mortgage finance system; and • Does not materially impair the efficiency of the mortgage finance system. The Director may approve any product conditionally or with limitations. Section provides that nothing in this section restricts the Director's safety and soundness authority, over all new and existing products or activities or the Director's authority to review all new and existing products or activities to ensure they are consistent	in the Director's authority. For example, if the GSEs were to develop a product that was harmful to borrowers, including possibly subprime borrowers, even if it was significantly different from current products, it could not be reviewed by the regulator. Current law, unlike the bills' provisions, allows HUD to review programs if they are significantly different and, therefore, would likely provide sufficient authority to review such a product when it was part of a new program. While the standards for review for new products under both bills are similar but there is one key difference. The Senate bill requires disapproval of a product if it "impairs the stability or competitiveness of the mortgage finance system." The House Bill requires disapproval if the product "materially impairs the efficiency of the mortgage finance system." MBA believes the Senate approach is the better formulation because it provides broader authority to the Director to assure that new products do not undermine the stability or competitiveness of the mortgage financing system encompassing both the primary and secondary markets. The Director will be required to publish notices of new products under both bills. Notably, the Director will not be able to publish information that causes competitive harm to the enterprises because of the *Trade Secrets Act*, 18 U.S.C. § 1905. This Act makes it a criminal offense for federal employees to disclose trade secrets or certain confidential information they come across in the course of their official duties, and will limit what the Director can publish. Both bills unfortunately retain the "clock" and provide that a product is approved if it is not disapproved

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	Director's authority to review all new and existing products or activities to ensure they are consistent with the enterprises' statutory mission.	with the enterprises' statutory mission.	within 30 days after the close of public comments While MBA appreciates the need to allow the GSEs to move forward to innovate without undue red tape, the Director should have latitude to extend the period of review in unusual circumstances. The fact that the Director may approve a product conditionally or with limitations helps ameliorate this concern. .
Nonmission-Related Assets and Portfolios	Section 109 adds § 1369E States that Congress finds the portfolios of the enterprises should be focused on meeting affordable housing goals. Therefore bill provides all mortgages or MBS acquired must meet the housing goals or be securitized. The Director can make an exception to mitigate market disruptions.	Section 115 adds § 1369E Requires the Director to establish standards by which the portfolio holdings or rate of growth of the portfolio holdings of the enterprises will be deemed to be consistent with the mission and the safe and sound operations of the enterprises. The Director must consider: 1. Size and growth of the market; 2. Liquidity needs of secondary market; 3. Need for an inventory of mortgages in connection with securitizations; 4. Need for direct support for affordable housing; 5. Enterprises' liquidity needs; 6. Risks posed by the portfolios; and 7. Any additional factors that the Director determines to be necessary to carry out the purpose of establishing standards for assessing whether the portfolio holdings are consistent with the mission and safe and sound operations of the enterprises.'' Permits the Director to require an enterprise to dispose of assets or obligations in order to be consistent with the standards.	S. 1100 would place strict limitations on portfolio holdings of the enterprises, confining them to serving affordable housing goals. H.R. 1427 gives the Director some latitude to regulate portfolio assets for reasons of safety and soundness and mission.
Corporate Governance of Enterprises	No provision.	Section 116 A majority of the seated directors of each enterprise must be independent as the NYSE defines the term. Enterprise boards must meet at least 8 times a year and not less than once each quarter. Non-management enterprise directors must regularly meet without management.	

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
		A quorum for the enterprises is at least a majority of seated directors. Enterprise directors may not vote by proxy. There are requirements for management information to the board and for board committees. Each enterprise must administer a written code of conduct. CEO and CFO are liable for reimbursement in the event of a required restatement due to their misconduct under §304 of SOX. The CEO and CFO must make SOX certifications. Enterprise boards must oversee corporate strategy, major plans of action, risk policy, legal compliance, corporate performance and growth plans, among several other matters. Enterprise boards must also oversee "responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner." Each enterprise must have a compliance officer reporting to the CEO.	
Presidentially Appointed and Public Interest Directors	Sections 162 (enterprises) and 201 (FHLBs) Enterprises Each currently has 18 directors, 5 of whom are presidentially appointed. This bill eliminates the presidentially appointed directors and leaves the 13 stockholder-elected directors. Sitting presidentially appointed directors are to remain until the end of their one-year terms. The Director could set a different board size. The President no longer could remove a director for good cause. The boards still need to have one member from each of the following: community interests; banking services, credit needs, housing or financial consumer protection groups. FHLBs - Currently, the FHFB can appoint 6 directors for each FHLB, and its members elect the other directors. This bill sets the boards' sizes at 13 or such other number as the Director determines appropriate. All directors are elected by FHLB member vote.	Sections 181 (enterprises) and 202 (FHLBs) Enterprises. Each currently has 18 directors, 5 of whom are presidentially appointed. Under H.R. 1427, the boards would consist of thirteen persons or such other number that the director determines appropriate. Sitting presidentially appointed directors are to remain until the end of their one-year terms. FHLBs. Currently, the FHFB can appoint 6 directors for each FHLB, and its members elect the other directors. This bill sets the board for each FHLB at 13 directors or such other number as the Director determines appropriate. The Director also appoints at least 2/5 of each FHLB's directors ("independent directors") from a list recommended by the Federal Housing Enterprise Board. • A majority of directors of each FHLB must be an officer or director of a member bank of that FHLB's district. At least 2/5 of the directors of each FHLB	The Director/Regulator continues to select a minority of the board members of the regulated FHLBs – a system opposed by the current Chair of the FHFB and by MBA. Under S. 1100, procedures for nomination and election of independent directors are established by each FHLB. The regulator does not appoint independent directors, as it has under current law.

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	• A majority of each board has to be directors or officers of a member of the FHLB (member directors), and non-member directors have to be at least 1/3 of the board. • At least 2 of the non-member directors have to be public interest directors, that is, consumer or community representatives. • Directors must be U.S. citizens. • Deletes a requirement that the number of elected directors from each state must at least equal the number for that state in 1960. • Directors' terms are changed from 3 years to 4, and are staggered.	must be independent. Independent means they must reside in the district and may not serve as officer or director of any member. • At least 2 of the independent directors must be public interest directors, that is, from organizations representing consumer or community representatives. Other independent directors must have financial or management expertise. • Deletes a requirement that the number of elected directors from each state must at least equal the number for that state in 1960. • Directors' terms are changed from 3 years to 4, and are staggered. In appointing independent directors of an FHLB, the Director shall take into consideration the demographic makeup of the community most served by the Affordable Housing Program of the bank.	
SEC Registration	Section 111 Each regulated entity must register, and maintain registration of, at least one class of capital stock with the SEC. The enterprises must comply with the SEC rules for proxy solicitations and tender offers. Removes MBS and debt exemptions; including a provision specifying MBS swap counterparties are not issuers, underwriters or dealers under the Securities Act of 1933. Section 205 The FHLBs and their members are exempt from specified SEC rules. The SEC may issue regulations to implement these exemptions. The SEC is required to consider the FHLBs' distinctive characteristics when evaluating the accounting treatment of REFCORP payments, the role of the combined FHLB financials, the accounting classification of redeemable FHLB stock, and the accounting treatment of the joint and several nature of FHLB debt.	Section 117 Each regulated entity must register, and maintain registration of, at least one class of capital stock with the SEC. The enterprises must comply with the SEC rules for proxy solicitations and tender offers. Section 205 Permits Director to set regulations to "ensure" that each FHLB has access to information it needs "to determine the nature and extent of its joint and several liability. Provides that by this information sharing, or by permitting this information sharing, the Director does not waive any privilege. The FHLBs could, however, be required to waive privileges. Section 207 The FHLBs, their members, and securities are exempt from specified SEC rules. In issuing any regulations to implement these exemptions, the SEC shall consider the FHLBs' distinctive characteristics when evaluating the accounting treatment of REFCORP payments, the role of the combined FHLB financials, the accounting classification of redeemable FHLB stock, and the	S. 1100 requires the SEC to issue regulations within a year. Note that while MBS exemption is removed, MBS swap counterparties would not have underwriter liability. The FHLBs have advocated that, while they will have filed with the SEC, the "exempted securities" language be included to assure their securities (debt) are on par with that of the enterprises.

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
		accounting treatment of redeemable capital stock and of the joint and several nature of FHLB debt.	
Compensation, Golden Parachutes and Indemnification Payments	Section 112 The Agency could, by regulation or order, prohibit or limit golden parachute or indemnification payments. Golden parachute payments are payments "in the nature of compensation" to "any affiliated party," pursuant to a regulated entity's obligation, that is contingent on that party's termination of affiliation with the regulated entity, and is made after the regulated entity becomes insolvent, has a conservator or receiver appointed, or the Agency determines the regulated entity is in a troubled condition. Troubled condition would be defined by regulation. The definition would also reach payments that precede but are in contemplation of the regulated entity's insolvency, conservatorship, receivership, or troubled condition. Payments under retirement plans and deferred compensation plans would still be permitted. Indemnification payments mean payments to or for the benefit of any affiliated party to reimburse the party for legal expenses to defend an enforcement action by the Agency that results in a final civil money penalty assessment, removal or prohibition order, or order requiring affirmative remedial action. It also includes a payment of a civil money penalty assessment, payment of a remedial action order, or any judgment. A regulated entity's purchases of directors' and officers' insurance is permitted, as long as the insurance does not pay actual penalties, remedial payments, or judgments. In prohibiting or limiting golden parachute or indemnification payments, the Director must consider factors that it prescribes by regulation. These factors may include: 1. Whether there is reason to believe the affiliated party engaged in fraud, breach of trust or fiduciary duty, or insider abuses that had a material affect on the regulated entity; 2. Whether there is reason to believe the affiliated	Section 108 The Director can prohibit unreasonable executive compensation at a regulated entity in cases of wrongdoing. The Director can require a regulated entity to withhold compensation during a review of its reasonableness and comparability. Expressly states that Director approval of a contract providing severance pay does not preclude the Director from prohibiting excessive compensation under § 1318(a).	H.R. 1472 does not amend § 1318(a) (prohibition of excessive compensation) to apply it to the FHLBs. However, it adds new § 1318(c) that permits the Director to require a regulated entity, including an FHLB, to withhold payment during a § 1318(a) review.

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	party is substantially responsible for the regulated entity's insolvency, conservatorship, or receivership; 3. Whether there is reason to believe the affiliated party materially violated a law that had a material affect on the regulated entity; 4. Whether the affiliated party was in a position of managerial or fiduciary responsibility; 5. How long the party was affiliated with the regulated entity. The regulated entities would not be permitted to prepay salary or legal expenses of any affiliated party in contemplation of, or after, insolvency to prevent, or with a view to preventing, the proper application of assets to creditors, or to prefer, or with a view to preferring, one creditor over another.		
Authority to Require Reports; Reports of Fraudulent Loans	Sections 104 and 113 Expands current authority of the Director, in § 1314, to require regular and special reports from the regulated entities on their condition and other matters the Director considers appropriate. The Director may require the regulated entities to submit fair value financials to the Director. Adds that the Director may require reports "by general or specific orders" for both regular and special reports. Also adds failure by a regulated entity to make reports as required and when required, or to submit or publish a false or misleading report, is subject to civil money penalties under § 1314 (not the regular civil money penalty authority). Penalty amounts may be up to $2000 per day in cases where the regulated entity shows the violation was inadvertent. If the violation was knowing or was with reckless disregard for reporting accuracy, penalties may be up to $2 million per day. Violations worse than inadvertent but not as egregious as knowing or with reckless disregard may be subject to penalties up to $20,000 per day. Requires the Director, by regulation, to require a report to the Director when a regulated entity discovers it has purchased or sold a fraudulent loan or financial instrument or suspects possible fraud relating	Sections 104 and 105 Expands current authority of the Director, in § 1314, to require regular and special reports from the regulated entities on their financial condition and other matters the Director considers appropriate. Requires the Director, by regulation, to require a report to the Director when a regulated entity discovers it has purchased or sold a fraudulent loan or financial instrument or suspects possible fraud relating to a purchase or sale of any loan or financial instrument. Other types of fraud are not covered. Regulated entities and regulated entity affiliated parties who make or require another to make any such report have "safe harbor" protection from liability in private lawsuits if the report is made in good faith. The Director must, by regulation, require the enterprises to disclose to the Director the "total" value of enterprise contributions to nonprofit organizations. If a contribution exceeds an amount the Director designates, the enterprise must disclose the recipient's name and the value of the contribution to that individual recipient. If a contribution exceeds an amount the Director designates and goes to a nonprofit where an enterprise director, officer, controlling person, or	Both bills require reports of fraudulent loans. The two bills are quite similar on this point. Both bills provide a safe harbor from defamation and similar claims. In H.R. 1427, the safe harbor only applies when the report is made in good faith. S. 1100 does not require a showing of good faith. The analogous safe harbor in the Bank Secrecy Act (that requires many financial institutions to report suspicious activities) does not require a showing of good faith. Under both bills, the safe harbor protects a regulated entity that makes "or requires another to make" a fraud report. This language implies that the regulated entities may require others to file the reports. However, under both bills the safe harbor does not reach lenders if the regulated entity requires the lender to file the report.

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	to a purchase or sale of any loan or financial instrument. Other types of fraud are not covered. Regulated entities and regulated entity affiliated parties who make or require another to make any such report have "safe harbor" protection from liability in private lawsuits.	spouse thereof, was a director or trustee, the enterprise must disclose the recipient's name and the value of the contribution to that individual recipient. The Director must make public the information submitted pursuant to this section.	
Examiners and Accountants	Section 105 Permits the Director to hire examiners, economists, accountants, and specialists in financial markets or in technology, for purposes of regulating the enterprises, outside of the competitive service. Creates the office of Inspector General.	Section 107 "Each" examination must review a regulated entity's procedures for reporting fraudulent loans. Permits the Director to hire examiners, accountants, and economists for regulating the regulated entities outside of the competitive service.	S. 1100 includes, in the list of hires outside competitive service, specialists in financial markets and in technology.
Reviews of Enterprises	Section 105 Deletes "by rating organization" from the heading, but not the text, of § 1319. This section permits the Director to have a rating organization review Fannie Mae and Freddie Mac.	Section 109 The Director can require a review of any regulated entity by any appropriate party.	Examiners themselves can review any of the regulated entities.
Risk-Based Capital Test	Section 110 Repeals OFHEO's statutory risk-based capital stress test. Requires the Director to establish risk-based capital requirement, by regulation or order, for the enterprises, to ensure that they operate safely and soundly "with sufficient capital and reserves to support the risks that arise in the[ir] operations and management." OFHEO's existing risk-based capital regulation remains in effect until the Director revises it. States that the risk-based capital authority does not limit the Director's authority to impose other requirements. Amends the risk-based capital requirement of § 6 of the FHLB Act to permit the Director flexibility in setting minimum capital levels.	Section 113 Requires the Director to set a risk-based capital requirement for the regulated entities, by regulation. The requirement with regard to the regulated entities must be sufficient "to support the risks that arise in the operations and management of" the regulated entities. The requirement for the enterprises could be different from that for the FHLBs under Section 6 of the FHLB Act. OFHEO's existing risk-based capital regulation remains in effect until the Director revises it. Extends the provision on confidentiality of information to cover all of the regulated entities, including the FHLBs. This provision makes confidential any information anyone receives, whether from the Director or a regulated entity, to enable the risk-based capital standards to be applied. Exempts all such information from FOIA disclosure.	Both bills provide flexible authority to set risk-based capital requirements. S. 1100 permits increased requirements by order as well as by regulation, close to banking law.
Minimum and Critical Capital Levels	Sections 110 and 141 Retains the current minimum capital requirement for the enterprises, but permits the Director to increase it	Section 114 Retains the current minimum capital requirement for all regulated entities. Permits the Director to increase	S. 1100 is similar to banking law, which permits banking regulators discretion to impose capital

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	"by regulation or order[.]" It would not have to be a percentage of assets or off-balance sheet items, as it is today. For the FHLBs, retains the current leverage requirement in the FHLB Act, but the Director may increase it "by regulation or order[.]" Critical capital requirements for the enterprises are to be the existing requirement or any other level the Director establishes by regulation. New requirements could go up or down. The requirements do not have to be a percentage of assets or obligations, as under current law, but could be risk-based. The Director shall establish critical capital requirements for the FHLBs by regulation.	this requirement, by regulation. The Director may impose temporary surcharges if: • The regulated entity is in an unsafe or unsound condition or faces a rapid capital depletion, or, for the enterprises only, the value of mortgages it holds or securitizes has decreased significantly; or • A regulated entity is operating in an unsafe and unsound manner because of violation of a prudential operating standard. Unless renewed, the temporary increase shall not remain in place for more than six months. The Director may "at any time by order or regulation" increase the capital requirements for "any program or activity" to ensure that the regulated entity has capital "to support the risks that arise in the operations and management of the regulated entity." Retains the current critical capital requirement for the enterprises. Adds authority to set critical capital requirements for the FHLBs "as the Director shall, by regulation require." The Director must consider the critical capital requirements for the enterprises and make appropriate modifications to reflect the differences between the enterprises and the FHLBs. FHLB critical capital regulation must be final within 180 days after the new law's effective date (one year after enactment). The Director must periodically review the capital levels and requirements.	surcharges on individual institutions as "necessary or appropriate" without a rulemaking. *See* 12 U.S.C. § 3907(2).
Capital Classifications	Section 142 Retains the four existing capital classifications that OFHEO uses – adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. Does not apply the classifications to the FHLBs. Broadens existing discretionary authority for the Director to lower a regulated entity's classification one level, and does apply this to the FHLBs. OFHEO can lower a classification when a regulated entity engages in conduct not approved by the Director that could result in a rapid depletion of core capital, or when	Section 151 Retains the four existing capital classifications that OFHEO uses – adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. They apply to the FHLBs, but the Director may modify the classification criteria as appropriate to reflect the differences between the enterprises and FHLBs. Regulations to implement the FHLB classifications are due within 180 days of enactment. Broadens existing discretionary authority for the Director to lower a regulated entity's classification one	The bills are very similar. S. 1100 removes consideration of compliance with the risk-based capital requirement from the lowest two classifications.

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	there is a significant decrease in the value of mortgages that the regulated entity holds or has securitized. This bill: • Deletes the requirement that a core capital depletion must result from conduct not approved by the Director. • Adds that a significant decrease in the value of "collateral pledged" can suffice, even if the collateral is unrelated to mortgages. This could encompass collateral behind derivatives. • Adds that a lower classification may be based on an unsafe or unsound condition, after notice and hearing. • Adds that the Director may lower a classification if the Director determines that the regulated entity is engaging in an unsafe or unsound practice based on an unsatisfactory examination report rating for credit risk, market risk, operations, or corporate governance. Prohibits dividends that make a regulated entity undercapitalized, but the Director can override this to permit dividends in some circumstances. Amends the classification criteria slightly. • "Adequately capitalized "stays at meets all capital requirements. • "Undercapitalized" stays at fails risk-based but meets minimum requirements. • "Significantly undercapitalized" still means the regulated entity fails minimum and meets critical, but risk-based requirement is irrelevant. Under current law, an enterprise is not significantly undercapitalized if it meets its risk-based requirement. • "Critically undercapitalized" still means fails critical requirement, but risk-based requirement is irrelevant. Under current law, an enterprise is not critically undercapitalized if it meets its risk-based requirement.	level for any regulated entity. OFHEO can lower a classification when a regulated entity engages in conduct not approved by the Director that could result in a rapid depletion of core capital, or when there is a significant decrease in the value of mortgages that the regulated entity holds or has securitized. This bill: • Deletes the requirement that a capital depletion must result from conduct not approved by the Director. • Retains current law that permits reclassification, of an enterprise only, if the value of mortgages held or securitized has decreased significantly. • Adds that a lower classification may be based on an unsafe or unsound condition, after notice and hearing. • Adds that the Director may lower a classification if the Director determines that the regulated entity is engaging in an unsafe or unsound practice based on an unsatisfactory examination report rating for asset quality, management, earnings, or liquidity. Prohibits dividends that make a regulated entity undercapitalized, but the Director can override this to permit dividends in some circumstances. Requires that the Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the FHLBs and the minimum capital levels established for the regulated entities under this section. The Director must rescind any temporary minimum capital level increase if the Director determines that the circumstances or facts justifying the temporary increase are no longer present.	
Supervisory Actions Applicable to	Section 143 – Undercapitalized regulated entity	Section 152 – Undercapitalized regulated entity	Both bills give the new regulator stronger powers

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
Undercapitalized Regulated Entity	Requires the Director to closely monitor an undercapitalized regulated entity and its capital restoration plan; restricts asset growth unless the Director has accepted its capital restoration plan and an increase in total assets is consistent with the plan such that the enterprise can become adequately capitalized in a reasonable time. An undercapitalized regulated entity may not, directly or indirectly, acquire any interest in any entity or engage in any new activity without approval of the Director. The Director may take any of the actions authorized with respect to a significantly undercapitalized regulated entity if the Director determines such actions are necessary to carry out the purposes of the subtitle.	Requires the Director to monitor closely an undercapitalized regulated entity and its capital restoration plan; restricts asset growth unless the Director has accepted the capital restoration plan, an increase in total assets is consistent with the plan, and total capital-to-assets increases such that the enterprise can become adequately capitalized in a reasonable time. An undercapitalized regulated entity may not, directly or indirectly, acquire any interest in any entity or engage in any new program or new business activity without the Director's approval. The definition of new business activity is the same as under amended § 1321 (see mission regulation authority above). The Director may take any of the actions authorized with respect to a significantly undercapitalized regulated entity if the Director determines such actions are necessary to carry out the purposes of the subtitle.	than OFHEO currently has to handle an undercapitalized enterprise. OFHEO today can require capital restoration plans and restrict dividends. OFHEO can classify the enterprise as significantly undercapitalized by finding that the enterprise fails to file, or fails to make good faith, reasonable efforts to comply with, a capital restoration plan.
Supervisory Actions Applicable to Significantly Undercapitalized Regulated Entity	Section 144 – Significantly undercapitalized regulated entity Applies to all the regulated entities OFHEO's current authority to require capital plans and to restrict dividends. Requires the Director to take one or more of the actions that today are within OFHEO's discretion to take. Gives the Director new authority to order election of a new board for a regulated entity, dismiss directors or executive officers, and require the regulated entity to employ qualified executive officers. Gives the Director new authority to take other actions that the Director "determines will better carry out the purposes of this section[.]" Requires the Director's approval before the regulated entity may give a bonus or raise to executive officers.	Section 153 – Significantly undercapitalized regulated entity Retains OFHEO's current authority to require capital plans and to restrict dividends. Requires the Director to take one or more of the actions that today are within OFHEO's discretion to take. Gives the Director new authority to order election of a new board for the regulated entity, dismiss directors or executive officers, and require the regulated entity to employ qualified executive officers. Gives the Director new authority to take other actions that the Director "determines will better carry out the purposes of this section[.]" Requires the Director's approval before the regulated entity may give a bonus or raise to executive officers.	Both bills give the new regulator stronger powers than OFHEO currently has to handle a significantly undercapitalized enterprise. Today OFHEO must require capital restoration plans and restrict dividends, and it has discretion to limit debt, growth, or terminate, reduce or modify any activity that creates excessive risk. OFHEO can classify the enterprise as critically undercapitalized by finding that the enterprise fails to file, or fails to make good faith, reasonable efforts to comply with, a capital restoration plan.
Conservators and Receivers	Section 145 Authorizes the Director to appoint the Agency as either conservator or receiver for Fannie Mae, Freddie Mac, or an FHLB.	Section 154 Authorizes the Director to appoint the Agency as either conservator or receiver for Fannie Mae, Freddie Mac, or an FHLB. Appointment is discretionary unless the Director determines that a state of asset –	Any mortgage, pool, or interest in a pool, held, in a trust, i.e., MBS, is specifically bankruptcy remote and held for the benefit of creditors. See new section 1367 (b)(19)(B).

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	Mandatory receivership Mandates receivership when, for 30 days a regulated entity: • Has had assets less than its obligations, or • Has not been generally paying its debts. When a regulated entity is critically undercapitalized, the Director must determine monthly whether receivership is mandated. Grounds for appointment • Substantial dissipation of assets or earnings due to violation of law or unsafe or unsound practice; • Unsafe or unsound condition to transact business; • Willful violation of final cease and desist order; • Concealment of books, records, or assets; • Likely inability to pay obligations in the normal course of business; • Actual or likely losses that will deplete all or substantially all capital, and there is no reasonable prospect of becoming adequately capitalized; • Violation of law or unsafe or unsound practice that is likely to cause insolvency or substantial dissipation of assets or earnings, or to weaken the enterprise; • Consent; • Regulated entity is undercapitalized or significantly undercapitalized and: has no reasonable prospect of becoming adequately capitalized, fails to become adequately capitalized, or fails to submit or materially implement a capital plan; • Regulated entity is critically undercapitalized; or • Regulated entity is convicted of money laundering. Powers As either conservator or receiver, the Agency may operate the enterprise and perform all functions consistent with a conservatorship or receivership. If there is a receiver, the Agency shall place the regulated entity in liquidation, which may include	insufficiency or failure to pay creditors has gone on for 30 days – and then the receivership is mandatory. Grounds for appointment • Assets are less than obligations; • Substantial dissipation of assets or earnings due to violation of law or unsafe or unsound practice; • Unsafe or unsound condition to transact business; • Willful violation of final cease and desist order; • Concealment of books, records, or assets; • Likely inability to pay obligations in the normal course of business; • Actual or likely losses that will deplete all or substantially all capital, and there is no reasonable prospect of becoming adequately capitalized; • Violation of law or unsafe or unsound practice that is likely to cause insolvency or substantial dissipation of assets or earnings, or to weaken the enterprise; • Consent; • Regulated entity is undercapitalized or significantly undercapitalized and: has no reasonable prospect of becoming adequately capitalized, fails to become adequately capitalized, or fails to submit or materially implement a capital plan; • Regulated entity is critically undercapitalized; or • Regulated entity is convicted of money laundering. Powers As either conservator or receiver, the Agency may operate the enterprise and perform all functions consistent with a conservatorship or receivership. If there is a receiver, the Agency may place the regulated entity in liquidation, having due regard to the conditions of the housing finance market. Both conservators and receivers, in selling assets, must conduct their operations in a manner that maintains stability in the housing finance markets, and to the extent consistent with that goal, must maximize the return, minimize losses, and ensure "adequate competition and fair and consistent treatment of offerors." Who gets what	H.R. 1427 would permit a limited-life regulated entity, subject to the Director's approval, to issue debt with a super-priority lien, and otherwise to manage agency debt and MBS, and to issue new debt or equity securities for previously existing debt or MBS.

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	selling assets or transferring assets to a limited-life regulated entity, or exercising other Agency rights. A receiver must organize a limited-life regulated entity. Appointment of a receiver terminates all claims stockholders and creditors have against the regulated entity's assets or charter or against the Agency, except to their rights to payment specified in the bill. A regulated entity's assets do not include its charter. Both conservators and receivers, in selling assets, must maximize the return, minimize losses, and ensure "adequate competition and fair and consistent treatment of offerors." <u>Who gets what</u> A receiver may determine which claims against an enterprise are valid. The receiver, in its discretion, and to the extent funds are available from the assets of the regulated entity, may pay allowed claims. The receiver may also pay dividends on claims, from the assets of the regulated entity. Mortgages held in trust, custodial, or agency capacity for the benefit of any person other than the enterprise are only available to MBS holders. Unsecured claims and expenses of the receiver get paid in this order: • The receiver's administrative expenses. These include "actual, necessary costs and expenses" the receiver incurs in preserving the assets, or in liquidating or otherwise resolving the affairs of a failed regulated entity. They include obligations a receiver determines are "necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity." • General or senior debt. • Junior debt. • Shareholders. <u>Limited life regulated entity</u> If the Agency is appointed receiver of: • An FHLB, the Agency "may" organize a limited-life regulated entity for FHLB in default or in danger of	A receiver may determine which claims against an enterprise are valid. The receiver, in its discretion, and to the extent funds are available from the assets of the regulated entity, may pay allowed claims. The receiver may also pay dividends on claims, from the assets of the regulated entity. Mortgages held in trust, custodial, or agency capacity for the benefit of any person other than the regulated entity are only available to MBS holders. Unsecured claims and expenses of the receiver get paid in this order: • The receiver's administrative expenses. These include "actual, necessary costs and expenses" the receiver incurs in preserving the assets, or in liquidating or otherwise resolving the affairs of a regulated entity. They include obligations a receiver incurs after being appointed, as "necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity." • General or senior debt. • Junior debt. • Shareholders. <u>Limited life regulated entity</u> When a regulated entity is in default or the Agency anticipates it will default, the Agency may organize a limited-life entity. The Director "shall" grant the limited-life entity a temporary charter. This bill does not define the term "default." The Agency "may" grant a temporary charter if the Agency finds that continued operation of a regulated entity in default or in danger of default is "in the best interest of the national economy and the housing markets." This bill does not define the term "in danger of default." The Agency decides which assets and liabilities of a regulated entity in default or in danger of default to transfer to the limited-life regulated entity. Unless Congress authorizes a sale of stock of the limited-life regulated entity, it would last for 2 years, which the Director may extend for 3 additional 1-year	

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	default. If so, the Director "shall" grant a temporary charter to the limited-life regulated entity. A regulated entity is in default when a conservator or receiver or legal custodian is appointed. A regulated entity is in danger of default when, in the Agency's opinion, the FHLB: is unlikely to pay its obligations in the normal course of business; has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and there is no reasonable prospect its capital will be restored. • An enterprise, the Agency "shall" organize a limited life-regulated entity. That entity succeeds to the preexisting enterprise charter. The Agency decides which assets and liabilities of a regulated entity in default or in danger of default to transfer to the limited-life regulated entity. The Agency shall wind up the affairs of the limited life regulated entity within two years, although the Director may extend the period for 3 additional 1-year periods. If the Agency sells at least 80% of the stock of a limited-life regulated entity, it ceases to be limited-life. The Agency is not required to sell stock, except that if it sells at least 80% of the stock of a limited-life regulated entity with respect to an enterprise, the Agency must sell any remaining stock within 1 to 3 years. The limited-life regulated entity can issue unsecured debt. If it is unable to do so, the Director can authorize the limited-life regulated entity to incur new debt that has priority over ""all the obligations" of the limited-life regulated entity, or to incur debt that is secured by a junior lien or by a lien on property that has no other lien. The Director can authorize the limited-life regulated entity to incur debt secured by a senior or equal lien (except not by a senior or equal lien on mortgages that back MBS the regulated entity issued or guaranteed) when the limited-life regulated entity is otherwise unable to obtain "such" credit and there is "adequate protection" for others who have liens on the same collateral. The Director must hold a hearing	periods. The Agency must wind up the limited-life regulated entity if its time expires. In other words, Congress has as long as 5 years to prevent the end of the regulated entity. The limited-life regulated entity can issue unsecured debt. If it is unable to do so, the Director can authorize the limited-life regulated entity to incur new debt that has priority over "administrative expenses," or that is secured by a junior lien or by a lien on property that has no other lien. The Director can authorize the limited-life regulated entity to incur debt secured by a senior or equal lien (except not by a senior or equal lien on mortgages that back MBS the regulated entity issued or guaranteed) when the limited-life regulated entity is otherwise unable to obtain "such" credit and there is "adequate protection" for others who have liens on the same collateral. The Director must hold a hearing first, and has the burden of proof. If any such authorization to issue debt or to create a prior lien is reversed or modified on appeal, the debt incurred or prior lien created is not affected as to any party who acted in good faith, even if the party knew there was an appeal pending, as long as the authority to incur debt or create a prior lien was not stayed pending appeal. A limited-life regulated entity may, "subject to" the Director's approval and conditions, issue debt "to which all other debt obligations of the limited-life regulated entity shall be subordinate in right and payment." This would not necessitate the hearing and other limitations described above. A limited-life regulated entity may, in addition to any other powers: • "extend a maturity date or change an interest rate or other terms of outstanding securities;" and • Issue securities in exchange for existing securities, claims, interests, or "for any other appropriate purposes[.]" The Director may not revoke a regulated entity's	

PART I GSE BILLS COMPARED – PROVISIONS OTHER THAN AFFORDABLE HOUSING

SUBJECT	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007	COMMENTS
	first, and has the burden of proof. If any such authorization to issue debt or to create a prior lien is reversed or modified on appeal, the debt incurred or prior lien created is not affected as to any party who acted in good faith, even if the party knew there was an appeal pending, as long as the authority to incur debt or create a prior lien was not stayed pending appeal. A receiver may not revoke an enterprise charter.	charter.	
Enforcement Provisions			Both bills give the Director enforcement authority more like that of the banking agencies than what OFHEO has today. Only S. 1100 would bring the enforcement authority up to par with the enforcement authority federal banking agencies have.

PART II GSE REFORM BILLS COMPARED – AFFORDABLE HOUSING PROVISIONS

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
Affordable Housing Reports	Section 1324 The Secretary shall prepare and submit to Congress annually a new report concerning the activities of each enterprise including (1) the extent and manner in which each GSE is achieving the housing goals, is complying with the duty to serve underserved markets and is achieving the statutory purposes. In collecting data for this report, the Director shall identify activities involving subprime loans and compare the subprime loans purchased by the enterprises to other loans purchased by enterprises. To assist in preparing the new report, the Secretary shall conduct monthly surveys of mortgage markets, including data on individual mortgages eligible for purchase by the enterprises as well as those not eligible for purchase. This would involve data on house prices, loan to value ratios, mortgage terms, borrower creditworthiness, etc. The Secretary must also collect data on individual subprime mortgages and borrowers and determine whether the borrowers would qualify for prime loans.		Section 134 The Director shall prepare and submit to Congress annually a new report concerning performance and activities against housing goals as well as a number other studies including studies that (1) "examine the primary and secondary multifamily housing mortgage markets" and factors inhibiting standardization and securitization, (2) examine actions taken for first-time homebuyers, (3) analyze pricing trends, and (4) compare the subprime loans purchased by the enterprises to other loans purchased by enterprises. To assist in preparing the new report, the Director shall conduct monthly surveys of mortgage markets, including data on individual mortgages eligible for purchase by the enterprises as well as those not eligible for purchase. This would involve data on house prices, loan to value ratios, mortgage terms, borrower creditworthiness, etc. The Director shall issue regulations defining "subprime" but only for the purposes of this section. Section 135 To obtain information helpful in applying the formula for the Affordable Housing Fund, the regulated entities must conduct an annual study "to determine the levels of affordable housing inventory, and the changes in such levels, in communities throughout the United States." Results of the study must be made public.
Mortgagor Identification	No similar provision	No similar provision	Section 136 The Director must issue regulations prohibiting the enterprises from dealing with any mortgage on a 1-4 family residence unless the mortgagor has a social security number.
Affordable Housing Goals	Section 1331 - 1334 The Secretary, in implementing the goals, shall	Section 124 Transfers authority from HUD to the Director for	Section 137 The Director, in implementing the goals, may

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	review data to assess disparities between interest rates on loans to minorities and nonminorities of similar creditworthiness. If a pattern of disparities exists, the Secretary must refer the finding to the appropriate Congressional committees and require the enterprise to undertake remedial action, if appropriate. Repeals existing goals and replaces them with six single-family goals and one multifamily goal. Goals are annual. There are also multifamily "special requirements." Single-family goals. The single-family goals are: • Low-income families (80% of area median income (AMI)) • Families in low income areas, and • Very low income families (50% AMI) Qualifying loans are purchase money, conventional, conforming, and the property must be owner-occupied. The goals have to be set as a percentage of the enterprises' business. In setting the goals, the Secretary shall consider (1) national housing needs, (2) economic, housing and demographic conditions (3) the performance of the GSEs in previous years, (4) the ability to "lead the industry", (5) recent HMDA data, (6) the size of the conventional market, and (7) the need to maintain the GSE's sound financial condition. For goals purposes, borrower income is measured as of origination. Single-family refinance goals These goals mirror the single family goals above except they relate to loans to pay off or prepay an existing loan for each of the three categories. Multifamily goal There is one multifamily goal, which includes: • Loans on units for very low-income families, (50% AMI); and	affordable housing goals. Retains HUD's authority for fair housing. Section 127 Requires the Director, by regulation, to require the enterprises to make public the same information on single-family loans that HMDA requires lenders to report. Retains the three existing goals with some modifications, adds a home purchase goal, permits the Director to establish new goals and to modify or rescind the existing goals. The three existing goals remain, but some of the underlying definitions are changed. • The low- and moderate-income (LMI) goal currently requires the enterprises to buy loans on housing for LMI families, defined as families at or below 100% of area median income (AMI). This bill would lower the LMI definition to no more than 80% of AMI. • The special affordable goal currently requires the enterprises to purchase loans on housing for low-income families in low-income areas, and loans to very low income families. This bill would leave the goal in place but change the definitions, as follows: o Low-income would change from 80% of AMI to 50%; o The definition of median income would change also. Currently, median income is set by "areas" that HUD defines. The definition would change to be set as median income for a metropolitan statistical area (MSA) for families in MSAs, and for other families, the statewide non-metropolitan median family income. • The underserved areas goal currently requires the enterprises to buy loans on housing for families in central cities, rural areas, and other underserved areas. This bill would add a	review data to assess disparities between interest rates on loans to minorities and nonminorities of similar creditworthiness. If a pattern of disparities exists with respect to any lender or lenders, the Director must refer the finding to the appropriate regulatory or enforcement agency, require the enterprise to submit additional, relevant data on a lender or lenders, and require the enterprise to undertake remedial action, if appropriate. Repeals existing goals and replaces them with three single-family goals and one multifamily goal. Goals are annual. There is also one single-family subgoal, and there are multifamily "special requirements." Single-family goals. The single-family goals are: • Low-income families (80% of area median income (AMI)) • Families in low income areas, and • Very low income families (50% AMI) Qualifying loans are purchase money, conventional, conforming, and the property must be owner-occupied or 1-4 rental. The goals have to be set as a percentage of the enterprises' business. They are set at a base level, and the Director has some authority to raise them and lower them. The base level for each goal is set at the same percentage that loans qualifying for that goal are of the entire market. That is, if low-income loans make up X% of the market, the low-income base goal is X%. The percentage is measured using the average percentage for the three most recent years for which HMDA data are public. The market is defined as conventional, conforming, single-family, owner-occupied and 1-4 family rental, purchase money loans. For goals purposes, the Director determines what a conforming loan is by the original principal balance as reported in HMDA data. Borrower income is

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	• Loans on dwelling units assisted by low-income housing tax credits. It is unclear whether there are two subgoals within the goal. The Secretary may give full credit toward the goal for qualifying dwelling units financed by bonds (taxable or not) that state or local housing finance agencies issue, but only if the enterprise either: guarantees the bond; or purchases it and it is not investment grade. (There is no prohibition against a GSE receiving full credit for private MBS regardless of whether the securities are investment grade, as under current law.) The Secretary would have to create "additional requirements" for small multifamily housing projects. Small may be based on number of units (5 to 50) or loan size (up to $5 million). Among the factors used to set the multifamily goal, must be the ability of the enterprise to lead the industry in underserved markets "such as for small multifamily projects, multifamily properties in need of preservation and rehabilitation and multifamily properties located in rural areas". For the multifamily goal, income must be measured by the income of actual or prospective tenants if data are available, and otherwise by rent levels affordable to low-income and very low-income families. A rent level is affordable for its income category if the rent level is no more than 30% of the top of that income category, adjusted for unit size. In establishing the multifamily goal, the Secretary may consider loans on single-family rental housing purchased by an enterprise. <u>Decreases in goals</u> Upon petition by an enterprise (but not others), the Secretary may reduce any goal, but not an additional requirement, only if: • Reduction is required by market and economic	definition of "underserved." (This new definition applies only to this goal, and not to the home purchase goal, or to the housing duties described in the next entry.) An underserved area is an urban census tract with "average media n" income less than 80% of area median income, or an urban census tract with median family income less than area median and a minority population of at least 30%. Section 129 There is a <u>new home purchase goal</u> for owner-occupied single-family homes. The Director sets it by regulation. It must be annual, and may have "components," including for first-time homebuyers, LMI borrowers, homebuyers in central cities and in rural and other underserved areas and homebuyers who finance through state or local affordable housing programs. Components are enforceable. The Director can <u>add, modify, or rescind goals</u> to address national housing needs where the housing need is greatest. The goals could be set as percentage-of-business, as dollar goals, or by other means. In any event, the goals would need to be consistent with the enterprises' missions and authorizing statutes. <u>Enforcement authority</u>. The Director would have somewhat more enforcement authority compared to current law. Currently, if HUD determines that an enterprise has failed a goal or that failure is probable, it gives written notice to the enterprise, which has an opportunity to respond in writing. HUD considers the response, and determines whether the enterprise has failed or will probably fail a goal that is feasible to meet. HUD then requires the enterprise to submit a housing plan describing how the enterprise will come into compliance. Failure to submit or comply with the plan can be the basis for a cease and desist order or civil money penalty. Failure to meet a goal, alone, cannot be the basis	measured as of origination. <u>Single-family subgoals</u> These goals, which are subgoals of each of the single family goals, are for the refinance of owner-occupied or 1-4 rental units. The subgoals are enforceable in the same manner that the goals are enforceable. <u>Multifamily goal</u> There is one multifamily goal, which includes: • Loans on dwelling units for low-income families (80% AMI) • Loans on units for very low-income families, (50% AMI) and • Loans on dwelling units assisted by low-income housing tax credits. It appears that there are three subgoals within the goal. The Director must give full credit toward the goal for qualifying dwelling units financed by bonds (taxable or not) that state or local housing finance agencies issue, only if the enterprise either: guarantees the bond; or purchases it and it is not investment grade. (It appears that the GSEs can continue to get full credit for private MBS regardless of whether the securities are investment grade, as under current law.) The Director would have to create "additional requirements" for small multifamily housing projects. Small may be based on number of units or loan size, or both, but the requirement must include projects of a size typical in rural areas. For the multifamily goal, income must be measured by the income of actual or prospective tenants if data are available, and otherwise by rent levels affordable to low-income and very low-income families. A rent level is affordable for its income category if the rent level is no more than 30% of the top of that

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	conditions or enterprise financial condition, or • Meeting the goal would constrain liquidity, over-invest in market segments, or otherwise be contrary to the enterprises' statutory purposes. There is no provision for increasing the goals. <u>Income definitions</u> *Low income area* is a census tract or block numbering area at 80% or less of AMI in the area where the census tract or block numbering area is. For purposes of the single-family low-income areas goal, it includes families in those areas with incomes no more than 100% of AMI who live in minority census tracts. *Very low Income* The definition of very low-income is decreased from 60% of AMI to 50%. *Extremely low income* is 30% or less of AMI. <u>Compliance determinations</u> After year-end, the Director determines whether the enterprises meet their single-family goals, and must give its determination to each enterprise within 30 days of making it. The Director cannot make it public before giving it to the enterprise. Each enterprise has 30 days to comment on the determination. For the multifamily goal and additional requirements, the Director simply determines compliance. <u>Special Counting Requirements</u> The Secretary shall determine whether an enterprise receives full, partial or no credit for a transaction. In making this determination, the Secretary must consider whether "the transaction or activity is substantially equivalent to a mortgage purchase and either (A) creates a new market, or (B) adds liquidity to an existing market, provided" that the purchase is not "contrary to good lending practices" and "actually fulfills the purposes of the enterprise and is in accordance with the chartering	for a cease and desist order or civil money penalty under current law. This bill: • Makes the housing plan step optional; • Permits the Director, in case of failure to meet a goal, to prohibit new activities, freeze any pending approval of new activities, or suspend ongoing activities, pending achieving the goal; • Permits the Director to issue a cease and desist order or to assess a civil money penalty for violating any order, rule, goal, duty, or other regulation relating to the housing goals or duties; • Changes civil money penalty amounts. Currently, penalties for failure to submit a housing plan can be up to $25,000 per day, and for failure to comply with a plan or to submit annual housing reports can be up to $10,000 per day. Penalties would be: o Up to $100,000 per day for failure to meet a goal or submit or comply with a plan. o Up to $50,000 per day for failure to submit housing reports or to comply with other housing orders, rules, duties, or regulations relating to the housing goals or duties.	income category, adjusted for unit size. In establishing the multifamily goal, the Director must consider a number of factors. The factors are similar to those currently in §§ 1332 and 1334, including "ability of the enterprises to lead the industry," but the factor of "economic, housing, and demographic conditions" in current law is omitted. <u>Increases and decreases in goals from base</u> The Director may increase a single-family goal above the base, by regulation: • "to reflect expected changes in market performance related to" HMDA data; and • Upon considering a number of factors. The factors are similar to those currently §§ 1332 and 1334. Upon petition by an enterprise (but not others), the Director may reduce any goal, but not an additional requirement, only if: • Reduction is required by market and economic conditions or enterprise financial condition, or • Meeting the goal would constrain liquidity, over-invest in market segments, or otherwise be contrary to the enterprises' statutory purposes. Denial of a petition is judicially appealable. <u>Income definitions</u> *Low income area* is a census tract or block numbering area at 80% or less of AMI in the area where the census tract or block numbering area is. For purposes of the single-family low-income areas goal, it includes families in those areas with incomes no more than 100% of AMI who live in minority census tracts. *Very low Income* The definition of very low-income is decreased from 60% of AMI to 50%. *Extremely low income* is 30% or less of AMI.

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	Act…" <u>Monitoring and Enforcing the Goals</u> The Secretary would have somewhat more enforcement authority compared to current law. Currently, if HUD determines that an enterprise has failed a goal or that failure is probable, it gives written notice to the enterprise, which has an opportunity to respond in writing. HUD considers the response, and determines whether the enterprise has failed or will probably fail a goal that is feasible to meet. HUD then requires the enterprise to submit a housing plan describing how the enterprise will come into compliance. Failure to submit or comply with the plan can be the basis for a cease and desist order or civil money penalty. Failure to meet a goal, alone, cannot be the basis for a cease and desist order or civil money penalty under current law. This bill: • Makes the housing plan step optional; • Permits the Secretary to issue a cease and desist order or to assess a civil money penalty for failure to meet a goal. • Permits the Secretary, in case of failure to meet a goal, to "exercise appropriate enforcement authority available to the Secretary under this Act." • Changes civil money penalty amounts. Currently, penalties for failure to submit a housing plan can be up to $25,000 per day, and for failure to comply with a plan or to submit annual housing reports can be up to $10,000 per day. Penalties would be: o Up to $50,000 per day for failure to meet a goal or submit or comply with a plan. o Up to $20,000 per day for failure to submit housing reports or to comply with other housing orders, rules, duties, or regulations		<u>Compliance determinations</u> After year-end, the Director determines whether the enterprises meet their single-family goals, and must give its determination to each enterprise within 30 days of making it. The Director cannot make it public before giving it to the enterprise. Each enterprise has 30 days to comment on the determination. For the multifamily goal and additional requirements, the Director simply determines compliance. <u>Monitoring and Enforcing the Goals</u> (Section 139) The Director must give at least 125% credit toward the goals for mortgages that meet energy efficiency or other environmental standards and for mortgages that include a licensed childcare center. The Director may not consider any affordable housing fund grant amounts in determining compliance with the goals, but may consider purchases of loans that have otherwise received assistance from the affordable housing fund. The Director would have somewhat more enforcement authority compared to current law. Currently, if HUD determines that an enterprise has failed a goal or that failure is probable, it gives written notice to the enterprise, which has an opportunity to respond in writing. HUD considers the response, and determines whether the enterprise has failed or will probably fail a goal that is feasible to meet. HUD then requires the enterprise to submit a housing plan describing how the enterprise will come into compliance. Failure to submit or comply with the plan can be the basis for a cease and desist order or civil money penalty. Failure to meet a goal, alone, cannot be the basis for a cease and desist order or civil money penalty under current law. This bill: • Makes the housing plan step optional; • Permits the Director, in case of failure to meet a goal, to prohibit new products and new

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	relating to the housing goals or duties.		activities, or suspend products and activities, pending achieving the goal; • Permits the Director to issue a cease and desist order or to assess a civil money penalty for failure to meet a goal.
Housing Duties	Section 1335 Duty to serve underserved markets Creates a new duty for the enterprises to purchase or securitize mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets. Requirements for duties To meet this duty, the enterprises must lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market: 1. For loans on manufactured homes for very low, low-, and moderate-income families 2. To preserve housing affordable to very low, low-, and moderate-income families, including projects subsidized under several federal programs (including projects subsidized under Section 8, 221(d)(3) BMIR, 236, 202, 811 and 515); 3. For loans to low and moderate income subprime borrowers including "precluding the purchase of loans with unacceptable terms and conditions including (i) mandatory arbitration provisions; (ii) single premium credit insurance financed into the mortgage; (iii) unreasonable prepayment penalties and upfront fees; (iv) introductory rates that expire in less than 10 years; and (v) any other such loans with unacceptable terms and conditions, or which are contrary to good lending practices or to sustainable homeownership.	Section 128 Duties Creates two new duties for the enterprises: • Increase the liquidity of mortgage investments; and • Improve the distribution of investment capital available for mortgage financing for underserved markets. Requirements for duties To meet these duties, the enterprises must lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market: 1. For loans on manufactured homes for very low, low-, and moderate-income families; 2. To preserve housing affordable to very low, low-, and moderate-income families, including projects subsidized under several federal housing programs (including projects subsidized under Section 8 housing, 236, 221(d)(3) BMIR; 202, 811 and 515) 3. For mortgages for very low, low-, and moderate-income families in rural areas and other underserved market that the Director finds lacks adequate conventional credit. Underserved markets may be defined geographically or by borrower type or market segment; and 4. For mortgages originated through State or local subsidized housing programs. Within 6 months of enactment, the Director must create a method of evaluating compliance with the	Section 138 Duties Creates a new duty for the enterprises: • Increase the liquidity of mortgage investments; and improve the distribution of investment capital available for mortgage financing for underserved markets. Requirements for duties To meet these duties, the enterprises must lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market: 1. For loans on manufactured homes for very low, low-, and moderate-income families (including loans secured by both real and personal property); 2. To preserve housing affordable to very low, low-, and moderate-income families, including projects subsidized under several federal programs (including projects subsidized under Section 8, 221(d)(3) BMIR, 236, 202, 811 and 515); 3. For mortgages for very low, low-, and moderate-income families in rural areas and other underserved markets that the Secretary (an undefined term) finds lacks adequate conventional credit. Underserved markets may be defined geographically or by borrower type or market segment. Within 6 months of the bill's effective date, the Director must create a method of evaluating compliance with the duties which includes rating

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	4. For loans made or purchased by community development financial institutions. 5. To assist depository institutions to meet CRA obligations. 6. For mortgages for very low, low-, and moderate-income families in rural areas and other underserved markets that the Secretary finds lacks adequate conventional credit. Underserved markets may be defined geographically or by borrower type or market segment. Within 6 months of the bill's effective date, the Secretary must create a method of evaluating compliance with the duties which includes rating the performance of each enterprise on each of the duties. Duties are enforceable just as are the goals.	duties. Each duty must be separately evaluated. Duties are enforceable just as are the goals.	the performance of each enterprise on each of the duties. Duties are enforceable just as are the goals.
Affordable Housing Fund	Section 1337 Affordable Housing Allocation <u>Contributions</u> The enterprises must set aside an amount equal to 4.2 basis points for each dollar of "total new business purchases" and transfer 65% to the Secretary of HUD to fund an affordable housing block grant program and 35% to the Secretary of the Treasury to fund "the Capital Magnet Fund." The Secretary must temporarily suspend allocations upon finding that the allocations would: • Contribute to the enterprise's financial instability; • Cause the enterprise to be undercapitalized, or • Prevent the enterprise from completing a capital restoration plan. The Secretary must issue regulations prohibiting the enterprises from "redirecting the costs…, through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the enterprise."	No provision.	Section 140 The Director, in consultation with the HUD Secretary, shall "establish and manage" a fund from "amounts allocated by the enterprises". <u>Fund purposes</u> Its purposes are to provide formula grants to grantees to use to: • Increase homeownership for extremely low (30% of AMI) and very low-income (50% of AMI or in rural areas below the poverty line) families; • Increase housing investment in low income areas and areas of chronic economic stress; • Increase and preserve the supply of rental and owner- occupied housing for extremely low- and very low-income families; • Increase investment in "public infrastructure development in connection with housing assisted" by the AHF; and • "leverage investments from other sources in affordable housing and in public infrastructure development in connection with housing assisted" by the AHF.

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	Block Grant Program It's purposes are to provide formula grants to States to use to: • Increase homeownership for extremely low (30% of AMI) and very low-income (50% of AMI or in rural areas below the poverty line) families; • Increase and preserve the supply of rental housing for extremely low- and very low-income families including homeless families. Allocation of Funds For 2008, all of the available block grant program funds must be used for grants to States to facilitate modifications and refinance options for low and moderate income borrowers facing foreclosure and make available foreclosed properties to low and moderate income homebuyers. The distribution of funds shall be done by formula based upon population, delinquency rate and ratio of foreclosures to owner-occupied units. Specific requirements are included for the types of loans and types of homeowners to be assisted. Up to 20% of the funds may be used to provide loans to non-profit developers to assist homebuyers in purchasing foreclosed properties. In 2009 and subsequent years the HUD Secretary would establish a formula for distribution of the funds to States. The formula would be based on several specific factors. Grant amounts could be allocated to "a State housing finance agency, housing and community development entity, tribally designated housing entity, or other qualified instrumentality of the grantee." Each year, each grantee must establish an allocation plan for distribution of the grants and accept public comments on the plan.		Contributions The enterprises must put money into the AHF in each of 2007 through 2011 in an amount equal to "1.2 basis points for each dollar of the average total mortgage portfolio of the enterprise during the preceding year". Allocations would not be required after 2011. The Director must temporarily suspend allocations upon finding that the allocations would: • Contribute to the enterprise's financial instability; • Cause the enterprise to be undercapitalized, or • Prevent the enterprise from completing a capital restoration plan. The Director must issue regulations prohibiting the enterprises from "redirecting such costs, through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the enterprise." Allocation of Funds If Congress establishes another affordable housing trust fund, the money allocated to this fund would be transferred to that fund. For 2007, the Louisiana HFA would receive 75% of available funds and the Mississippi Development Authority would receive 25%. The funds must be used for otherwise eligible activities in disaster areas declared following Hurricane Katrina and Rita. In 2008 and subsequent years the HUD Secretary would establish a formula for distribution of the funds to "the States and federally recognized Indian tribes". The formula would be based on population, families paying more than 50% of income for

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	Eligible fund activities Money can be used or committed only for assistance for: (1) Production, preservation, rehabilitation and operating costs of rental housing for extremely low- and very low-income families. (2) Production, preservation, and rehabilitation of housing for purchase of principal residences of, extremely low- and very low-income families who are first time homebuyers. The home price must meet requirements of the Cranston-Gonzalez National Affordable Housing Act and the home must meet resale restrictions of that act. Homebuyers must also complete pre-purchase counseling. No more than 10% of funds can go to homeownership activities. All allocations must be used or committed within two years of allocation or they will be recaptured and reallocated. The Secretary must have regulations governing the activities selection process which prohibit using amounts from the funds for: • Political activities; • Advocacy; • Lobbying, whether directly or through others; • Counseling services; • Travel expenses; • Preparing or providing advice on tax returns; and • Administrative, outreach, or other costs of the grantee or the funds recipients, but the regulation may permit limited funds to cover administrative costs of the grantee of carrying out the program. The regulations must also provide requirements for the awarding of grants to recipients that provide priority in funding based on the merits of an applicant's eligible activity, including: • Geographic diversity; • Ability to undertake activities timely • The extent to which rents are affordable for		housing, extremely low and very low income families, cost of development, families living in substandard housing, extremely old housing, and other factors as determined by the Secretary. Grant amounts would be allocated to "a State housing finance agency, housing and community development entity, tribally designated housing entity, or other qualified instrumentality of the grantee." Each year, each grantee must establish an allocation plan for distribution of the grants and accept public comments on the plan. Eligible fund activities Money in the AHF can be used or committed only for assistance for: (1) Production, preservation, and rehabilitation of rental housing for extremely low- and very low-income families. (2) Production, preservation, and rehabilitation of housing for purchase of principal residences of, extremely low- and very low-income families who are first time homebuyers. The home price must meet requirements of the Cranston-Gonzalez National Affordable Housing Act and the home must meet resale restrictions of that act. Homebuyers must also complete pre-purchase counseling and demonstrate that they are lawfully present in the U.S. (3) Public infrastructure development activities in connection with (1) and (2) above. Allocated funds are limited as follows: • 25% must go to REFCORP payments; • At least 10% must be used for (2) above; • No more than 12.5% can go to (3) above. All allocations must be used or committed within two years of allocation or they will be recaptured and reallocated. The Director must have regulations governing the activities selection process which prohibit using

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	extremely low income families; • The duration of affordability restrictions; • The extent other funding sources are used; and • The merits of the proposed activity. Loans that the enterprises purchase can count toward the affordable housing goals and the duty to serve underserved markets only to the extent the block grant does not fund the purchases. <u>Eligible recipients</u> Recipients may be for-profit or not-for-profit. Recipients must have a demonstrated experience and capacity to carry out activities as well as financial capacity and familiarity with other housing programs that could be used in conjunction with the grants. They must assure they will comply with applicable requirements. <u>Accountability</u> The Secretary must require each State to maintain a system to ensure that recipients use funds in accordance with applicable law and any conditions under which funds were disbursed. The Secretary must establish minimum requirements for agreements between the States and grant recipients, including reporting and auditing for the term of the grant. If a State determines that a recipient of funds has used the funds in material violation of any applicable requirement, the State must require reimbursement and the return of any unused funds. If the Secretary determines that a State failed to comply with requirements, the Secretary shall require the grantee to repay the Secretary and could terminate any assistance to the State. The State must file annual reports with the Secretary on their funding activities. The reports are public. If legislation is passed establishing an affordable housing trust fund, any amount allocated for this		amounts from the funds for: • Political activities; • Advocacy; • Lobbying, whether directly or through others; • Counseling services; • Travel expenses; • Preparing or providing advice on tax returns; and • Administrative, outreach, or other costs of the grantee or the funds recipients, but the regulation may permit use of up to 10% of grant funds to cover administrative costs of the grantee of carrying out the program. The Director must require each grantee and recipient to assure that no assistance is provided to an individual or household unless all adult members of the household provide personal identification in the form of a social security card with a photo ID card, a passport or a photo ID card issued by the Department of Homeland Security. The regulations must also provide requirements for the awarding of grants to recipients that provide priority in funding based on the merits of an applicant's eligible activity, including: • Greatest impact; • Geographic diversity; • Ability to undertake activities timely; • The extent to which rents are affordable for extremely low income families; • The duration of affordability restrictions; • The extent other funding sources are used; and • The merits of the proposed activity. Loans that the enterprises purchase can count toward the affordable housing goals only to the extent the AHF does not fund the purchases. <u>Eligible recipients</u> Recipients may be for-profit or not-for-profit, or faith-based organizations. Recipients must have a demonstrated ability and financial capacity to carry out the AHF activities. They must assure they will

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	program shall be transferred to that fund. Section 1339 Capital Magnet Fund A trust fund is established as a special account with the Community Development Financial Institutions Fund. The account is funded pursuant to section 1337 (35% of 4.2 bps of new business purchases). Expenditures A competitive grant program carried out by the Secretary of Treasury "to attract private capital for and increase investment in": • Development, preservation, rehabilitation and purchase of affordable housing for ELI, VLI and LI families; or • Economic development activities or community service facilities which in conjunction with housing stabilize or revitalize an area. Eligible grantees are CDFIs or nonprofits with a principal purpose of development or management of affordable housing. Eligible. Uses • Loan loss reserves • Revolving loan fund • Affordable housing fund • Fund supporting economic development activities or community service facilities • Risk-sharing loans Applications are submitted to Treasury. No one grantee can receive more than 15% of funds available in any year. Activities are to be funded in geographically diverse areas of economic distress. The grant funds are expected to leverage investment of 10 times the grant amount. Funds		comply with applicable requirements. Accountability The Director must require each grantee to maintain a system to ensure that recipients use funds in accordance with applicable law and any conditions under which funds were disbursed. The Director must establish minimum requirements for agreements between the grantees and grant recipients, including reporting and auditing for the term of the grant. If a grantee determines that a recipient of funds has used the funds in material violation of any applicable requirement, the grantee must require reimbursement. If the Director determines that a grantee failed to comply with requirements, the Director shall require the grantee to repay the Director and could terminate any assistance to the grantee. The grantees must file annual reports with the Director on their funding activities. The reports are public.

SUBJECT	S. 2391 AS INTRODUCED NOVEMBER 16, 2007	S. 1100 AS INTRODUCED APRIL 12, 2007	H.R. 1427 AS PASSED BY THE HOUSE MAY 22, 2007
	must be committed for use within two years or they will be recaptured. Grant funds may not be used for lobbying activities. Credit toward housing goals or the duty to serve underserved markets for purchases of mortgages that receive grant amounts is provided only to the extent the purchase is not funded by the grant. Accountability requirements for recipients and grantees are similar to those for the block grant program in Section 1337. <u>Criteria for selection of grantees</u> • Funds must be fairly distributed to urban, suburban and rural areas • Prioritization must be based on: - The ability to generate additional investments - Affordable housing need - Ability to utilize the funds timely		
Consistency with Mission	.		Section 141 Nothing in the housing goals, duties or affordable housing fund sections may be construed to authorize an enterprise to engage in an activity that is inconsistent with its charter.