

**[DISCUSSION DRAFT]**112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**H. R.** \_\_\_\_\_

To protect the taxpayers of the United States by limiting the Federal payment of legal fees for current and former officers and affiliated parties of Fannie Mae and Freddie Mac.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. NEUGEBAUER introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To protect the taxpayers of the United States by limiting the Federal payment of legal fees for current and former officers and affiliated parties of Fannie Mae and Freddie Mac.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “\_\_\_\_\_ Act  
5        of 2011”.

1 **SEC. 2. LIMITATIONS ON INDEMNIFICATION OF LEGAL**  
2 **FEES.**

3 (a) LIMITATIONS.—Section 1318 of the Federal  
4 Housing Enterprises Financial Safety and Soundness Act  
5 of 1992 (12 U.S.C. 4518) is amended by adding at the  
6 end the following new subsection:

7 “(f) PROCEDURES FOR INDEMNIFICATION OF LEGAL  
8 FEES.—The Director shall, by regulation, establish re-  
9 quirements prescribing the procedures and terms for ad-  
10 vancement of amounts by an enterprise for qualified in-  
11 demnification payments for the benefit of any entity-affili-  
12 ated party, which shall provide as follows:

13 “(1) DETERMINATION OF REASONABLE EX-  
14 PENSES.—

15 “(A) PROPOSED CRITERIA.—If at any time  
16 an enterprise is required, pursuant to law, regu-  
17 lation, order, bylaw, or agreement or contract,  
18 to make a qualified indemnification payment for  
19 the benefit of an entity-affiliated party, the Di-  
20 rector shall require the enterprise to submit to  
21 the Director proposed criteria to be used in de-  
22 termining, at the time for the advancement of  
23 amounts for such payment, whether the liability  
24 or legal expenses for which such payment is to  
25 be made is reasonable, which shall include—

1 “(i) methods and procedures for mak-  
2 ing such determinations;

3 “(ii) a process for review and appeal  
4 of such determinations; and

5 “(iii) terms and conditions for advanc-  
6 ing amounts for liability or legal expenses  
7 determined to be reasonable.

8 “(B) REVIEW.—Upon receipt of proposed  
9 criteria submitted pursuant to subparagraph  
10 (A), the Director shall promptly review such  
11 proposed criteria and approve or disapprove  
12 such criteria based on a determination of  
13 whether such criteria will ensure that amounts  
14 are advanced only for qualified indemnification  
15 payments for liability or legal expenses that are  
16 reasonable.

17 “(2) REQUIREMENT TO POST BOND.—

18 “(A) REQUIREMENT.—The Director shall  
19 require, as a condition of an enterprise advanc-  
20 ing any amounts for a qualified indemnification  
21 payment for the benefit of an entity-affiliated  
22 party, that the entity-affiliated party provide  
23 such collateral, security, bonding, or other as-  
24 surances of repayment, as the Director shall re-  
25 quire.

1           **["(B) PROCEEDINGS INVOLVING CLAIMS**  
2           OF FRAUD, MORAL TURPITUDE, AND BREACH  
3           OF FIDUCIARY DUTY.—The Director shall re-  
4           quire each enterprise to adopt bylaws requiring  
5           any entity-affiliated party accused **[in any**  
6           claim, proceeding, or action, whether adminis-  
7           trative, civil, or criminal**]** of fraud, moral turpi-  
8           tude, or breach of fiduciary duty to post such  
9           collateral, security, bonding, or other assur-  
10          ances of repayment, as the Director shall re-  
11          quire.**]**

12          “(3) PROHIBITION OF USE OF AMOUNTS BOR-  
13          ROWED FROM TAXPAYERS FOR SETTLEMENT  
14          COSTS.—

15               “(A) PROHIBITION.—The Director shall  
16               prohibit an enterprise from using any Treasury  
17               funds to satisfy any settlement, judgment,  
18               order, or penalty.

19               “(B) TREASURY FUNDS.—For purposes of  
20               subparagraph (A), the term ‘Treasury funds’  
21               means amounts obtained by an enterprise pur-  
22               suant to—

23                       “(i) purchase by the Secretary of the  
24                       Treasury of obligations or securities of the  
25                       enterprise pursuant to—

1                   “(I) subsection (c) or (g) of sec-  
2                   tion 304 of the Federal National  
3                   Mortgage Association Charter Act (12  
4                   U.S.C. 1719);

5                   “(II) subsection (c) or (l) of sec-  
6                   tion 306 of the Federal Home Loan  
7                   Mortgage Corporation Act (12 U.S.C.  
8                   1455); or

9                   “(III) subsection (i) or (l) of sec-  
10                  tion 11 of the Federal Home Loan  
11                  Bank Act (12 U.S.C. 1431); or

12                  “(ii) any other lending, advance, sub-  
13                  sidy, payment, appropriation, or purchase  
14                  of any obligation or security, by the Fed-  
15                  eral Government or any agency or entity of  
16                  the Federal Government.

17                  “(C) ASSETS TO BE USED FOR SETTLE-  
18                  MENT COSTS.—An enterprise shall satisfy any  
19                  settlement, judgment, order, or penalty, to the  
20                  maximum extent possible, with proceeds from  
21                  the sale of assets of the enterprise, including  
22                  assets in the retained portfolio of the enterprise  
23                  and real estate owned of the enterprise and  
24                  other physical assets of the enterprise.

1           “(4) NOTIFICATION OF SETTLEMENT.—The Di-  
2           rector shall prohibit an enterprise from entering into  
3           any **【consent decree or settlement】** of any claim,  
4           proceeding, or action involving an entity-affiliated  
5           party that will result in any qualified indemnifica-  
6           tion payments in an aggregate amount exceeding  
7           \$1,000,000 before the **【Director/ enterprise】** sub-  
8           mits to the Congress notification of such proposed  
9           **【consent decree or settlement】** and the terms and  
10          amount of the qualified indemnification payments in-  
11          volved.

12          “(5) DEFINITIONS.—For purposes of this sub-  
13          section, the following definitions shall apply:

14                 “(A) QUALIFIED INDEMNIFICATION PAY-  
15                 MENT.—The term ‘qualified indemnification  
16                 payment’ means any payment (or agreement to  
17                 make any payment) by an enterprise for the  
18                 benefit of any person who is or was an entity-  
19                 affiliated party, to pay or reimburse such per-  
20                 son for any liability or legal expense with re-  
21                 gard to any claim, proceeding, or action, wheth-  
22                 er administrative, civil, or criminal.

23                 “(B) OTHER DEFINITIONS.—The terms ‘li-  
24                 ability or legal expense’ and ‘payment’ have the

1           meanings given such terms in subsection  
2           (e)(5).”.

3           (b) APPLICABILITY.—The amendment made by sub-  
4 section (a) shall apply with respect to any advancement  
5 of amounts for a qualified indemnification payment for the  
6 benefit of an entity-affiliated party that is made after **【the**  
7 date of the enactment of this Act/ the date of the effective-  
8 ness of the regulations issued by the Director to carry out  
9 section 1318(f) of the Federal Housing Enterprises Fi-  
10 nancial Safety and Soundness Act of 1992, as added by  
11 such amendment?**】**