

COMMITTEE PRINT

111TH CONGRESS
1ST SESSION

S. _____

To identify and address risks to the stability of the United States financial system through the establishment of the Agency for Financial Stability, to ensure the orderly resolution of failing complex financial institutions in order to minimize economic turmoil and protect the interest of taxpayers, to provide for effective bank supervision through the establishment of the Financial Institutions Regulatory Administration, to enhance the regulation of consumer financial products and services through the establishment of the Consumer Financial Protection Agency, to allow the Federal government to better coordinate and monitor insurance matters through the establishment of the Office of National Insurance in the Department of Treasury, to improve the regulation of derivatives, securities, securities products, credit rating agencies, and hedge funds, to increase investor protections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DODD (from the Committee on Banking, Housing, and Urban Affairs) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To identify and address risks to the stability of the United States financial system through the establishment of the Agency for Financial Stability, to ensure the orderly resolution of failing complex financial institutions in order to minimize economic turmoil and protect the interest of taxpayers, to provide for effective bank supervision

through the establishment of the Financial Institutions Regulatory Administration, to enhance the regulation of consumer financial products and services through the establishment of the Consumer Financial Protection Agency, to allow the Federal government to better coordinate and monitor insurance matters through the establishment of the Office of National Insurance in the Department of Treasury, to improve the regulation of derivatives, securities, securities products, credit rating agencies, and hedge funds, to increase investor protections, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Restoring American Financial Stability Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Severability.
- Sec. 4. Effective date.

TITLE I—AGENCY FOR FINANCIAL STABILITY

- Sec. 101. Short title.
- Sec. 102. Definitions.
- Sec. 103. Agency for Financial Stability established.
- Sec. 104. Agency authority.
- Sec. 105. Authority to require supervision and regulation of financial companies to mitigate systemic risk.
- Sec. 106. Registration with FIRA by specified financial companies.
- Sec. 107. Enhanced supervision and prudential standards for specified financial companies.
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- Sec. 109. Reports and public disclosures.
- Sec. 110. Affiliations.
- Sec. 111. Prompt corrective action for specified financial companies.

- Sec. 112. Concentration limits.
- Sec. 113. Regulations.
- Sec. 114. Avoiding duplication.
- Sec. 115. Agency funding.
- Sec. 116. Resolution of disputes among member agencies.
- Sec. 117. Additional standards applicable to activities or practices for financial stability purposes.
- Sec. 118. Effect of rescission of identification.
- Sec. 119. Mitigation of systemic risk.
- Sec. 120. Rule of construction.

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- Sec. 201. Definitions.
- Sec. 202. Systemic risk determination.
- Sec. 203. Resolution; stabilization.
- Sec. 204. Judicial review.
- Sec. 205. Directors not liable for acquiescing in appointment of receiver.
- Sec. 206. Termination and exclusion of other actions.
- Sec. 207. Rulemaking.
- Sec. 208. Powers and duties of the Corporation.
- Sec. 209. Clarification of prohibition regarding concealment of assets from receiver or liquidating agent.
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- Sec. 302. Definitions.

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- Sec. 321. Transfer date.
- Sec. 322. Powers and duties transferred.
- Sec. 323. Abolishment.
- Sec. 324. Savings provisions.
- Sec. 325. References in Federal law to Federal banking agencies.

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- Sec. 331. Transferred powers, authorities, rights, and duties.
- Sec. 332. Regulations and orders.
- Sec. 333. Additional powers and duties of the Chairperson.
- Sec. 334. Additional powers of the Board of Governors and the Federal Deposit Insurance Corporation.
- Sec. 335. Funding.
- Sec. 336. Personnel.
- Sec. 337. Contracting and leasing authority.

Subtitle D—Additional FIRA Authority for Specified Financial Companies

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- Sec. 341. Examinations of companies that do not control banks.
- Sec. 342. Enforcement.
- Sec. 343. Acquisitions.
- Sec. 344. Prohibition against management interlocks between certain financial holding companies.

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- Sec. 351. Use of funds, personnel, and property.
- Sec. 352. Transfer of employees.
- Sec. 353. Property transferred.
- Sec. 354. Funds transferred.
- Sec. 355. Disposition of affairs.
- Sec. 356. Continuation of services.

Subtitle F—Termination of Federal Thrift Charter

- Sec. 361. Termination of Federal savings associations.
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- Sec. 401. Short title.
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- Sec. 403. Elimination of private adviser exemption; limited exemption for foreign private advisers; limited intrastate exemption.
- Sec. 404. Collection of systemic risk data; reports; examinations; disclosures.
- Sec. 405. Disclosure provision eliminated.
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- Sec. 407. Exemptions of venture capital fund advisers.
- Sec. 408. Exemption of and record keeping by private equity fund advisers.
- Sec. 409. Family offices.
- Sec. 410. State and Federal responsibilities; asset threshold for Federal registration of investment advisers.
- Sec. 411. Custody of client assets.
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- Sec. 531. Regulation of credit for reinsurance and reinsurance agreements.
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- Sec. 603. Moratorium and study on treatment of credit card banks, industrial loan companies, and certain other companies under the Bank Holding Company Act of 1956.
- Sec. 604. Reports and examinations of bank holding companies; regulation of functionally regulated subsidiaries.
- Sec. 605. Requirements for financial holding companies to remain well capitalized and well managed.
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TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT
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- Sec. 802. Findings and purposes.
- Sec. 803. Definitions.
- Sec. 804. Designation of systemic importance.
- Sec. 805. Standards for systemically important financial market utilities and payment, clearing, or settlement activities.
- Sec. 806. Operations of designated financial market utilities.

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1 **SEC. 2. DEFINITIONS.**

2 As used in this Act, the following definitions shall
 3 apply, except as the context otherwise requires or as other-
 4 wise specifically provided in this Act:

5 (1) **ADVISORY BOARD.**—The term “Advisory
 6 Board” means the State Bank Advisory Board es-
 7 tablished under title III.

8 (2) **AFFILIATE.**—The term “affiliate” means
 9 any company that controls, is controlled by, or is
 10 under common control with another company.

11 (3) **AGENCY.**—The term “Agency” means the
 12 Agency for Financial Stability established under title
 13 I.

14 (4) **APPROPRIATE FEDERAL BANKING AGEN-**
 15 **CY.**—On and after the transfer date, as defined in

1 section 302, the term “appropriate Federal banking
2 agency” means FIRA.

3 (5) BOARD OF GOVERNORS.—The term “Board
4 of Governors” means the Board of Governors of the
5 Federal Reserve System.

6 (6) CFPA.—The term “CFPA” means the
7 Consumer Financial Protection Agency established
8 under title X.

9 (7) COMMISSION.—The term “Commission”
10 means the Securities and Exchange Commission, ex-
11 cept in the context of the Commodity Futures Trad-
12 ing Commission.

13 (8) CORPORATION.—The term “Corporation”
14 means the Federal Deposit Insurance Corporation.

15 (9) CREDIT UNION.—The term “credit union”
16 means a Federal credit union, State credit union, or
17 State-chartered credit union, as those terms are de-
18 fined in section 101 of the Federal Credit Union Act
19 (12 U.S.C. 1752).

20 (10) FEDERAL BANKING AGENCY.—The term—

21 (A) “Federal banking agency” means the
22 Board of Governors, FIRA, and the Corpora-
23 tion; and

1 (B) “Federal banking agencies” means all
2 of the agencies referred to in subparagraph (A),
3 collectively.

4 (11) FIRA.—The terms “FIRA” and “FIRA
5 Board” mean the Financial Institutions Regulatory
6 Administration established under title III, and the
7 Board of Directors thereof, respectively.

8 (12) FUNCTIONALLY REGULATED SUB-
9 SIDIARY.—The term “functionally regulated sub-
10 sidiary” has the same meaning as in section 5(e)(5)
11 of the Bank Holding Company Act of 1956 (12
12 U.S.C. 1844(e)(5)).

13 (13) PRIMARY FINANCIAL REGULATORY AGEN-
14 CY.—The term “primary financial regulatory agen-
15 cy” means—

16 (A) FIRA, with respect to an insured de-
17 pository institution, a bank holding company, a
18 savings and loan holding company (as defined
19 in section 10(a) of the Homeowners’ Loan Act),
20 a specified financial company (as defined in sec-
21 tion 102), and a branch, agency, representative
22 office, or commercial lending company of a for-
23 eign bank (as defined in section 1 of the Inter-
24 national Banking Act of 1978);

1 (B) the Securities and Exchange Commis-
2 sion, with respect to—

3 (i) any broker or dealer that is reg-
4 istered with the Commission under the Se-
5 curities Exchange Act of 1934;

6 (ii) any investment company that is
7 registered with the Commission under the
8 Investment Company Act of 1940;

9 (iii) any investment adviser that is
10 registered with the Commission under the
11 Investment Advisers Act of 1940, with re-
12 spect to the investment advisory activities
13 of such company and activities that are in-
14 cidental to such advisory activities; and

15 (iv) any clearing agency registered
16 with the Commission under the Securities
17 Exchange Act of 1934;

18 (C) the Commodity Futures Trading Com-
19 mission, with respect to any futures commission
20 merchant, any commodity trading adviser, and
21 any commodity pool operator registered with
22 the Commodity Futures Trading Commission
23 under the Commodity Exchange Act, with re-
24 spect to the commodities activities of such enti-

1 ty and activities that are incidental to such
2 commodities activities; and

3 (D) the State insurance authority of the
4 State in which an insurance company is domi-
5 ciled, with respect to the insurance activities
6 and activities that are incidental to such insur-
7 ance activities of an insurance company that is
8 subject to supervision by the State insurance
9 authority under State insurance law.

10 (14) PRUDENTIAL STANDARDS.—The term
11 “prudential standards” means enhanced supervision
12 and regulatory standards developed by the Agency
13 under section 107, applicable to specified financial
14 companies (as defined in section 102).

15 (15) SECRETARY.—The term “Secretary”
16 means the Secretary of the Treasury.

17 (16) SECURITIES TERMS.—The—

18 (A) terms “broker”, “dealer”, “issuer”,
19 “nationally recognized statistical ratings organi-
20 zation”, “security”, and “securities laws” have
21 the same meanings as in section 3 of the Secu-
22 rities Exchange Act of 1934 (15 U.S.C. 78c);

23 (B) term “investment adviser” has the
24 same meaning as in section 202 of the Invest-

1 ment Advisers Act of 1940 (15 U.S.C. 80b-2);
2 and

3 (C) term “investment company” has the
4 same meaning as in section 3 of the Investment
5 Company Act of 1940 (15 U.S.C. 80a-3).

6 (17) STATE.—The term “State” means any
7 State, commonwealth, territory, or possession of the
8 United States, the District of Columbia, the Com-
9 monwealth of Puerto Rico, the Commonwealth of the
10 Northern Mariana Islands, American Samoa, Guam,
11 or the United States Virgin Islands.

12 (18) WELL CAPITALIZED.—The term “well cap-
13 italized” has the same meaning as in section 111.

14 (19) WELL MANAGED.—The term “well man-
15 aged” has the same meaning as in section 2(o)(9) of
16 the Bank Holding Company Act of 1956 (12 U.S.C.
17 1841(o)(9)).

18 (20) OTHER INCORPORATED DEFINITIONS.—
19 The terms “bank”, “bank holding company”, “con-
20 trol” (when used with respect to a depository insti-
21 tution), “deposit”, “depository institution”, “appro-
22 priate Federal banking agency”, “Federal savings
23 association”, “including”, “insured branch”, “in-
24 sured depository institution”, “national member
25 bank”, “national nonmember bank”, “savings asso-

1 ciation”, “State bank”, “State member bank”,
2 “State nonmember bank”, “State savings associa-
3 tion”, and “subsidiary” have the same meanings as
4 in section 3 of the Federal Deposit Insurance Act
5 (12 U.S.C. 1813).

6 **SEC. 3. SEVERABILITY.**

7 If any provision of this Act, an amendment made by
8 this Act, or the application of such provision or amend-
9 ment to any person or circumstance is held to be unconsti-
10 tutional, the remainder of this Act, the amendments made
11 by this Act, and the application of the provisions of such
12 to any person or circumstance shall not be affected there-
13 by.

14 **SEC. 4. EFFECTIVE DATE.**

15 Except as otherwise specifically provided in this Act
16 and the amendments made in this Act, this Act and such
17 amendments shall take effect on the date of enactment
18 of this Act.

19 **TITLE I—AGENCY FOR**
20 **FINANCIAL STABILITY**

21 **SEC. 101. SHORT TITLE.**

22 This title may be cited as the “Financial Stability Act
23 of 2009”.

1 **SEC. 102. DEFINITIONS.**

2 For purposes of this title the following definitions
3 shall apply:

4 (1) AGENCY.—The term “Agency” means the
5 Agency for Financial Stability established under this
6 title.

7 (2) BANK HOLDING COMPANY.—The term
8 “bank holding company” has the same meaning as
9 in section 2 of the Bank Holding Company Act of
10 1956 (12 U.S.C. 1841).

11 (3) FINANCIAL COMPANY DEFINITIONS.—

12 (A) FOREIGN NONBANK FINANCIAL COM-
13 PANY.—The term “foreign nonbank financial
14 company” means a company (other than one
15 that would be treated in the United States as
16 a bank holding company) that is—

17 (i) incorporated or organized in a
18 country other than the United States; and

19 (ii) in whole or in part engaged in, di-
20 rectly or indirectly, including through a
21 branch in the United States, activities in
22 the United States that are financial in na-
23 ture (as defined in section 4(k) of the
24 Bank Holding Company Act of 1956).

25 (B) U.S. NONBANK FINANCIAL COM-
26 PANY.—The term “U.S. nonbank financial com-

1 pany” means a company (other than a bank
2 holding company) that is—

3 (i) incorporated or organized under
4 the laws of the United States or any State;
5 and

6 (ii) in whole or in part engaged in, di-
7 rectly or indirectly, activities in the United
8 States that are financial in nature (as de-
9 fined in section 4(k) of the Bank Holding
10 Company Act of 1956).

11 (C) FINANCIAL COMPANY.—The term “fi-
12 nancial company” means a U.S. nonbank finan-
13 cial company, a foreign nonbank financial com-
14 pany, and a bank holding company.

15 (4) MEMBER AGENCY.—The term “member
16 agency” means an agency represented by a member
17 of the board of directors of the Agency.

18 (5) SPECIFIED COMPANY DEFINITIONS.—

19 (A) SPECIFIED BANK HOLDING COM-
20 PANY.—The term “specified bank holding com-
21 pany” means a bank holding company that is
22 subject to enhanced supervision and prudential
23 standards, in accordance with section 107.

24 (B) SPECIFIED FOREIGN NONBANK FINAN-
25 CIAL COMPANY.—The term “specified foreign

1 nonbank financial company” means a foreign
2 nonbank financial company that is subject to
3 enhanced supervision and prudential standards,
4 in accordance with section 107.

5 (C) SPECIFIED U.S. NONBANK FINANCIAL
6 COMPANY.—The term “specified U.S. nonbank
7 financial company” means a U.S. nonbank fi-
8 nancial company that is subject to enhanced su-
9 pervision and prudential standards, in accord-
10 ance with section 107.

11 (D) SPECIFIED FINANCIAL COMPANY.—
12 The term “specified financial company” means
13 a specified U.S. nonbank financial company, a
14 specified foreign nonbank financial company,
15 and a specified bank holding company.

16 **SEC. 103. AGENCY FOR FINANCIAL STABILITY ESTAB-**
17 **LISHED.**

18 (a) ESTABLISHMENT.—There is established the
19 Agency for Financial Stability, which shall be an inde-
20 pendent establishment, as defined in section 104 of title
21 5, United States Code.

22 (b) MEMBERSHIP.—The Agency shall be headed by
23 a board of directors, which shall consist of—

1 (1) the Chairperson of the Agency, who shall be
2 appointed by the President, by and with the advice
3 and consent of the Senate;

4 (2) the Secretary of the Treasury;

5 (3) the Chairman of the Board of Governors of
6 the Federal Reserve System;

7 (4) the Chairperson of FIRA;

8 (5) the Director of the CFPA;

9 (6) the Chairman of the Commission;

10 (7) the Chairperson of the Corporation;

11 (8) the Chairperson of the Commodity Futures
12 Trading Commission; and

13 (9) an independent member appointed by the
14 President, by and with the advice and consent of the
15 Senate, having experience in insurance industry or
16 regulation.

17 (c) TERMS; VACANCY.—

18 (1) TERMS.—The Chairperson and the inde-
19 pendent member of the board of directors of the
20 Agency shall each serve for a term of 6 years.

21 (2) VACANCY.—Any vacancy on the board of di-
22 rectors of the Agency shall be filled in the manner
23 in which the original appointment was made.

24 (3) ACTING OFFICIALS MAY SERVE.—In the
25 event of a vacancy in the office of the Secretary,

1 Chairman, Chairperson, or Director of a member
2 agency, and pending the appointment of a successor,
3 or during the absence or disability of the Secretary,
4 Chairman, Chairperson, or Director, the acting Sec-
5 retary, Chairman, Chairperson, or Director shall be
6 a member of the board of directors in the place of
7 the Secretary, Chairman, Chairperson, or Director.

8 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-
9 MITTEES.—The Agency is authorized to appoint such spe-
10 cial advisory, technical, or professional committees as may
11 be useful in carrying out its functions, and the members
12 of such committees may be members of the board of direc-
13 tors of the Agency, or other persons, or both.

14 (e) BOARD MEETINGS.—The board of directors of the
15 Agency shall meet at the call of the Chairperson, but not
16 less frequently than quarterly.

17 (f) NONAPPLICABILITY OF CERTAIN FEDERAL
18 LAWS.—The Federal Advisory Committee Act shall not
19 apply to the Agency, or to any special advisory, technical,
20 or professional committees appointed by the Agency.

21 (g) ASSISTANCE FROM FEDERAL AGENCIES.—Any
22 department or agency of the United States is authorized
23 to provide to the Agency and any special advisory, tech-
24 nical, or professional committees appointed by the Agency,

1 such services, funds, facilities, staff, and other support
2 services as it may determine advisable.

3 (h) COMPENSATION OF MEMBERS OF THE BOARD OF
4 DIRECTORS.—

5 (1) CHAIRPERSON.—The Chairperson of the
6 board of directors of the Agency shall receive com-
7 pensation at the rate prescribed for level II of the
8 Executive Schedule under section 5313 of title 5,
9 United States Code.

10 (2) FEDERAL EMPLOYEE BOARD MEMBERS.—
11 All members of the board of directors of the Agency
12 who are officers or employees of the United States
13 shall serve without compensation in addition to that
14 received for their services as officers or employees of
15 the United States.

16 (3) NON-FEDERAL EMPLOYEE BOARD MEM-
17 BER.—The member of the board of directors of the
18 Agency who is not an officer or employee of the Fed-
19 eral Government shall be compensated at the rate
20 prescribed for level III of the Executive Schedule
21 under section 5314 of title 5, United States Code.

22 (4) CONFORMING AMENDMENTS.—Section 5313
23 of title 5, United States Code, is amended by adding
24 at the end the following:

1 “Chairperson of the Agency for Financial Sta-
2 bility”.

3 (i) AGENCY PERSONNEL.—

4 (1) IN GENERAL.—The Chairperson may fix the
5 number of, and appoint and direct, all employees of
6 the Agency.

7 (2) COMPENSATION.—The Chairperson shall
8 fix, adjust, and administer the pay for all employees
9 of the Agency, without regard to chapter 51 or sub-
10 chapter III of chapter 53 of title 5, United States
11 Code, relating to classification of positions and Gen-
12 eral Schedule pay rates.

13 (3) COMPARABILITY.—Section 1206(a) of the
14 Financial Institutions Reform, Recovery, and En-
15 forcement Act of 1989 (12 U.S.C. 1833b(a)) is
16 amended—

17 (A) by striking “the Comptroller of the
18 Currency” and inserting “the Agency for Fi-
19 nancial Stability, the Financial Institutions
20 Regulatory Administration, the Consumer Fi-
21 nancial Protection Agency,”;

22 (B) by striking “Board,” and inserting
23 “Board, and”; and

24 (C) by striking “and the Office of Thrift
25 Supervision,”.

1 (j) DETAIL OF GOVERNMENT EMPLOYEES.—Any
2 Federal Government employee may be detailed to the
3 Agency without reimbursement, and such detail shall be
4 without interruption or loss of civil service status or privi-
5 lege.

6 (k) PROCUREMENT OF TEMPORARY AND INTERMIT-
7 TENT SERVICES.—The Chairperson may procure tem-
8 porary and intermittent services under section 3109(b) of
9 title 5, United States Code, at rates for individuals which
10 do not exceed the daily equivalent of the annual rate of
11 basic pay prescribed for level V of the Executive Schedule
12 under section 5316 of such title.

13 (l) CONTRACTING AND LEASING AUTHORITY.—Not-
14 withstanding the Federal Property and Administrative
15 Services Act of 1949 (41 U.S.C. 251 et seq.) or any other
16 provision of law, the Chairperson may—

17 (1) enter into and perform contracts, execute
18 instruments, and acquire, in any lawful manner,
19 such goods and services, or personal or real property
20 (or property interest), as the Chairperson deems
21 necessary to carry out the duties and responsibilities
22 of the Agency; and

23 (2) hold, maintain, sell, lease, or otherwise dis-
24 pose of the property (or property interest) acquired
25 under paragraph (1).

1 **SEC. 104. AGENCY AUTHORITY.**

2 (a) **PURPOSES AND DUTIES OF THE AGENCY.—**

3 (1) **IN GENERAL.—**The purposes of the Agency
4 are—

5 (A) to identify risks to United States fi-
6 nancial system stability and economic growth
7 that could arise from the material financial dis-
8 tress or failure of large or complex financial
9 companies;

10 (B) to promote market discipline, by elimi-
11 nating expectations on the part of shareholders,
12 creditors, and counterparties of such companies
13 that the Government will shield them from
14 losses in the event of failure; and

15 (C) to respond to emerging risks in finan-
16 cial activities and products that could desta-
17 bilize United States financial markets.

18 (2) **DUTIES.—**To fulfill its purposes, the Agen-
19 cy shall, in accordance with this title—

20 (A) collect information from member agen-
21 cies and other Federal and State financial regu-
22 latory agencies and, if necessary, directly from
23 financial companies in order to assess risks to
24 the financial system;

25 (B) monitor the financial services market-
26 place in order to identify potential threats to

1 the stability of the United States financial sys-
2 tem;

3 (C) facilitate information sharing and co-
4 ordination among the member agencies and
5 other Federal and State agencies regarding do-
6 mestic financial services policy development,
7 rulemaking, examinations, reporting require-
8 ments, and enforcement actions;

9 (D) identify gaps in regulation that could
10 pose risk to the stability of the United States
11 financial system;

12 (E) require financial companies that may
13 pose threats to United States financial system
14 stability or economic growth in the event of
15 their material financial distress or failure to
16 submit to enhanced supervision and heightened
17 prudential standards;

18 (F) promulgate regulations to establish
19 heightened prudential standards and reporting
20 and disclosure requirements for specified finan-
21 cial companies;

22 (G) promulgate regulations to establish
23 heightened risk-based capital, leverage, and li-
24 quidity requirements that increase on a grad-
25 uated basis for certain bank holding companies;

1 (H) identify systemically important finan-
2 cial market utilities and payment, clearing, and
3 settlement activities (as that term is defined in
4 section 803), and require such utilities and ac-
5 tivities to be subject to standards established by
6 the Board of Governors;

7 (I) provide a forum for—

8 (i) discussion and analysis of emerg-
9 ing market developments and financial reg-
10 ulatory issues; and

11 (ii) resolution of jurisdictional dis-
12 putes among the members of the board of
13 directors of the Agency; and

14 (J) report to and testify before Congress
15 semiannually on—

16 (i) the activities of the Agency;

17 (ii) significant financial market devel-
18 opments and potential emerging threats to
19 United States financial system stability;

20 (iii) all determinations made under
21 Section 105 and the basis for such deter-
22 minations; and

23 (iv) recommendations—

1 (I) to enhance the integrity, effi-
2 ciency, competitiveness, and stability
3 of United States financial markets;

4 (II) to promote market discipline;
5 and

6 (III) to maintain investor con-
7 fidence.

8 (b) AUTHORITY TO OBTAIN INFORMATION.—

9 (1) IN GENERAL.—The Agency is authorized to
10 receive, and may request the production of, any data
11 or information from member agencies, as nec-
12 essary—

13 (A) to monitor the financial services mar-
14 ketplace to identify potential threats to the sta-
15 bility of the United States financial system; or

16 (B) to otherwise carry out any of the pro-
17 visions of this title.

18 (2) SUBMISSION BY MEMBER AGENCIES.—Not-
19 withstanding any other provision of law, any mem-
20 ber agency is authorized to provide information to
21 the Agency, and the Agency and the other member
22 agencies shall maintain the confidentiality of such
23 information.

24 (3) FINANCIAL DATA COLLECTION.—

1 (A) IN GENERAL.—The Agency may re-
2 quire the submission of periodic and other re-
3 ports from any financial company solely for the
4 purpose of assessing the extent to which a fi-
5 nancial activity or financial market in which the
6 financial company participates, or the financial
7 company itself, poses a threat to United States
8 financial stability.

9 (B) MITIGATION OF REPORT BURDEN.—
10 Before requiring the submission of reports from
11 financial companies that are regulated by mem-
12 ber agencies or any primary financial regulatory
13 agencies, the Agency shall coordinate with such
14 agencies and shall, whenever possible, rely on
15 information already being collected by such
16 agencies.

17 (4) BACK-UP EXAMINATION BY FIRA.—If the
18 Agency is unable to determine whether the financial
19 activities of a financial company pose a threat to
20 United States financial stability, based on informa-
21 tion or reports obtained under paragraph (3), dis-
22 cussions with management, and publicly available in-
23 formation, the Agency may request FIRA, and
24 FIRA is authorized, to conduct an examination of
25 the financial company for the sole purpose of deter-

1 mining whether a financial company should be treat-
2 ed as a specified financial company for purposes of
3 this title.

4 **SEC. 105. AUTHORITY TO REQUIRE SUPERVISION AND REG-**
5 **ULATION OF FINANCIAL COMPANIES TO MITI-**
6 **GATE SYSTEMIC RISK.**

7 (a) SPECIFIED BANK HOLDING COMPANIES AND
8 SPECIFIED U.S. NONBANK FINANCIAL COMPANIES.—The
9 Agency, on a nondelegable basis, may determine, by regu-
10 lation or order, that a bank holding company or a U.S.
11 nonbank financial company shall be designated as a speci-
12 fied bank holding company or specified U.S. nonbank fi-
13 nancial company, respectively, that is subject to enhanced
14 supervision and prudential standards, in accordance with
15 this title, if the Agency determines that material financial
16 distress at the bank holding company or U.S. nonbank fi-
17 nancial company would pose a threat to United States fi-
18 nancial stability or the United States economy during
19 times of economic stress, based on a consideration of—

20 (1) the amount and nature of the financial as-
21 sets of the company;

22 (2) the amount and types of the liabilities of
23 the company, including the degree of reliance on
24 short-term funding;

1 (3) the extent and type of the off-balance-sheet
2 exposures of the company;

3 (4) the extent and type of the transactions and
4 relationships of the company with other significant
5 financial companies, as defined by rule of the Agen-
6 cy;

7 (5) the importance of the company as a source
8 of credit for households, businesses, and State and
9 local governments and as a source of liquidity for
10 the United States financial system;

11 (6) the recommendation, if any, of a member of
12 the board of directors of the Agency;

13 (7) the operation of, or ownership interest in,
14 any clearing, settlement, or payment business of the
15 company; and

16 (8) any other factors that the Agency deems
17 appropriate.

18 (b) SPECIFIED FOREIGN NONBANK FINANCIAL COM-
19 PANIES.—The Agency, on a nondelegable basis, may de-
20 termine, by regulation or order, that a foreign nonbank
21 financial company that has substantial assets or oper-
22 ations in the United States shall be designated as a speci-
23 fied foreign financial company that is subject to enhanced
24 supervision and prudential standards in accordance with
25 this title, if the Agency determines that material financial

1 distress at the foreign nonbank financial company would
2 pose a threat to United States financial stability or the
3 United States economy, based on consideration of—

4 (1) the amount and nature of the United States
5 financial assets of the company;

6 (2) the amount and types of the liabilities of
7 the company used to fund activities and operations
8 in the United States, including the degree of reliance
9 on short-term funding;

10 (3) the extent of the United States-related off-
11 balance-sheet exposure of the company;

12 (4) the extent of the transactions or relation-
13 ships of the company with other United States fi-
14 nancial companies;

15 (5) the importance of the company as a source
16 of credit for United States households, businesses,
17 and State and local governments, and as a source of
18 liquidity for the United States financial system;

19 (6) the recommendation, if any, of a member of
20 the board of directors of the Agency; and

21 (7) any other factors that the Agency deems
22 appropriate.

23 (c) REEVALUATION AND RESCISSION.—The Agency
24 shall—

1 (1) not less frequently than annually, reevaluate
2 its determinations under subsections (a) and (b)
3 with respect to each specified financial company; and

4 (2) by order, rescind any such determination, if
5 the Agency determines that the financial company
6 no longer meets the standards under subsection (a)
7 or (b), as applicable.

8 (d) NOTICE AND OPPORTUNITY FOR HEARING AND
9 FINAL DETERMINATION.—

10 (1) IN GENERAL.—The Agency shall provide to
11 a financial company written notice of a proposed de-
12 termination of the Agency, including an explanation
13 of the basis of the proposed determination of the
14 Agency, that such financial company shall be subject
15 to enhanced supervision and prudential standards in
16 accordance with this title, as a specified financial
17 company.

18 (2) HEARING.—Not later than 30 days after
19 the date of receipt of any notice of a proposed deter-
20 mination under paragraph (1), the financial com-
21 pany may request, in writing, an opportunity for a
22 written or oral hearing before the Agency to contest
23 the proposed determination. Upon receipt of a timely
24 request, the Agency shall fix a time (not later than
25 30 days after the date of receipt of the request) and

1 place at which such company may appear, personally
2 or through counsel, to submit written materials (or,
3 at the sole discretion of the Agency, oral testimony
4 and oral argument).

5 (3) FINAL DETERMINATION.—Not later than 60
6 days after the date of a hearing under paragraph
7 (2), the Agency shall notify the financial company of
8 the final determination of the Agency, which shall
9 contain a statement of the basis for the decision of
10 the Agency.

11 (4) NO HEARING REQUESTED.—If a financial
12 company does not make a timely request for a hear-
13 ing, the Agency shall notify the financial company,
14 in writing, of the final determination of the Agency
15 under subsection (a) or (b), as applicable, not later
16 than 10 days after the date by which the company
17 may request a hearing under paragraph (2).

18 (e) EMERGENCY EXCEPTION.—

19 (1) IN GENERAL.—The Agency may waive or
20 modify the requirements of subsection (d) with re-
21 spect to a financial company, if the Agency deter-
22 mines, by an affirmative vote of not fewer than a
23 majority of its members (or if there are fewer than
24 a majority of all members then serving, by a unani-
25 mous vote of all members then serving) that such

1 waiver or modification is necessary or appropriate to
2 prevent or mitigate threats posed by the financial
3 company to United States financial stability.

4 (2) NOTICE.—The Agency shall provide notice
5 of a waiver or modification under this paragraph to
6 the financial company concerned as soon as prac-
7 ticable, but not later than 24 hours after the waiver
8 or modification is granted.

9 (3) OPPORTUNITY FOR HEARING.—The Agency
10 shall allow a financial company to request in writing
11 an opportunity for a written or oral hearing before
12 the Agency to contest a waiver or modification under
13 this paragraph, not later than 10 days after the date
14 of receipt of notice of the waiver or modification by
15 the company. Upon receipt of a timely request, the
16 Agency shall fix a time (not later than 15 days after
17 the date of receipt of the request) and place at
18 which the financial company may appear, personally
19 or through counsel, to submit written materials (or,
20 at the sole discretion of the Agency, oral testimony
21 and oral argument).

22 (4) NOTICE OF FINAL DETERMINATION.—Not
23 later than 30 days after the date of any hearing
24 under paragraph (3), the Agency shall notify the
25 subject financial company of the final determination

1 of the Agency under this paragraph, which shall con-
2 tain a statement of the basis for the decision of the
3 Agency.

4 (f) CONSULTATION.—The Agency shall consult with
5 the primary financial regulatory agency, if any, for each
6 financial company or subsidiary of a financial company
7 that is being considered for designation as a specified fi-
8 nancial company under this section before the Agency
9 makes any final determination with respect to such finan-
10 cial company or subsidiary under subsection (a), (b), or
11 (c).

12 **SEC. 106. REGISTRATION WITH FIRA BY SPECIFIED FINAN-**
13 **CIAL COMPANIES.**

14 (a) IN GENERAL.—Not later than 180 days after the
15 date of a final Agency determination under section 105
16 that a financial company is a specified financial company,
17 such specified financial company (other than a specified
18 bank holding company or another financial company that
19 is already registered with FIRA) shall register with FIRA,
20 on forms prescribed by FIRA, which shall include such
21 information as FIRA, in consultation with the Agency,
22 may deem necessary or appropriate to carry out this title.

23 (b) AUTHORITY TO EXTEND.—The Agency may, in
24 its discretion, extend the time period within which a speci-
25 fied financial company shall—

- 1 (B) leverage limits;
- 2 (C) liquidity requirements;
- 3 (D) a contingent capital requirement;
- 4 (E) resolution plan and credit exposure re-
- 5 port requirements;
- 6 (F) prompt corrective action requirements;
- 7 (G) concentration limits; and
- 8 (H) overall risk management requirements.

9 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-
10 NANCIAL COMPANIES.—In applying the standards
11 set forth in paragraph (1) to specified foreign finan-
12 cial companies, the Agency shall give due regard to
13 the principle of national treatment and equality of
14 competitive opportunity.

15 (3) CONSIDERATIONS.—In prescribing pruden-
16 tial standards under paragraph (1), the Agency
17 shall—

- 18 (A) take into account differences among
- 19 specified financial companies, based on—
 - 20 (i) the factors described in subsections
 - 21 (a) and (b) of section 105;
 - 22 (ii) whether the company owns an in-
 - 23 sured depository institution;
 - 24 (iii) nonfinancial activities and affili-
 - 25 ations of the company; and

1 (iv) any other factors that the Agency
2 determines appropriate; and

3 (B) to the extent possible, ensure that
4 small changes in the factors listed in sub-
5 sections (a) and (b) of section 105 would not
6 result in sharp, discontinuous changes in the
7 prudential standards established pursuant para-
8 graphs (1) and (2) of this subsection.

9 (4) WELL CAPITALIZED AND WELL MAN-
10 AGED.—The Agency shall require specified financial
11 companies to be well capitalized and well managed,
12 at all times.

13 (5) RISK COMMITTEE.—

14 (A) IN GENERAL.—The Agency shall re-
15 quire each specified financial company that is a
16 publicly traded company to establish a risk
17 committee, as set forth in subparagraph (B),
18 not later than 1 year after the date of receipt
19 of a notice of final determination pursuant to
20 section 105(d)(3) with respect to such specified
21 financial company.

22 (B) RISK COMMITTEE.—The risk com-
23 mittee shall—

1 (i) be responsible for the oversight of
2 the enterprise-wide risk management prac-
3 tices of the specified financial company;

4 (ii) include such number of inde-
5 pendent directors as the Agency may de-
6 termine appropriate, based on the nature
7 of operations, size of assets, and other ap-
8 propriate criteria related to the specified fi-
9 nancial company; and

10 (iii) include at least 1 risk manage-
11 ment expert having experience in identi-
12 fying, assessing, and managing risk expo-
13 sures of large, complex firms.

14 (C) RULEMAKING.—The Agency shall issue
15 final rules to carry out this paragraph, not later
16 than 1 year after the date of enactment of this
17 Act.

18 (c) CONTINGENT CAPITAL.—

19 (1) IN GENERAL.—The Agency shall promul-
20 gate regulations that require each specified financial
21 company to maintain a minimum amount of long-
22 term hybrid debt that is convertible to equity,
23 when—

1 (A) the specified financial company fails to
2 meet prudential standards established by the
3 Agency; and

4 (B) the Agency has determined that
5 threats to United States financial system sta-
6 bility make such a conversion necessary.

7 (2) FACTORS TO CONSIDER.—In establishing
8 regulations under this subsection, the Agency shall
9 consider—

10 (A) an appropriate transition period for
11 implementation of a conversion under this sub-
12 section;

13 (B) the factors described in subsection
14 (b)(3)(A);

15 (C) capital requirements applicable to the
16 specified financial company and its subsidiaries;
17 and

18 (D) any other factor that the Agency
19 deems appropriate.

20 **SEC. 108. HEIGHTENED STANDARDS FOR BANK HOLDING**
21 **COMPANIES THAT ARE NOT SPECIFIED FI-**
22 **NANCIAL COMPANIES.**

23 (a) IN GENERAL.—Subject to the limitation in sub-
24 section (b), the Agency shall, by regulation, establish

1 heightened standards for bank holding companies that are
2 not specified financial companies, which shall include—

- 3 (1) risk-based capital requirements;
- 4 (2) leverage limits; and
- 5 (3) liquidity requirements.

6 (b) LIMITATION.—The Agency may not establish
7 heightened standards under subsection (a) for any bank
8 holding company that has total assets of less than
9 \$10,000,000,000.

10 (c) CONSIDERATIONS.—In prescribing heightened
11 standards under subsection (a), the Agency shall—

12 (1) take into account differences among bank
13 holding companies, based on—

14 (A) any factor described in subsections (a)
15 and (b) of section 105, if applicable; and

16 (B) any other factors that the Agency de-
17 termines appropriate;

18 (2) establish such standards on a graduated
19 basis; and

20 (3) to the extent possible, ensure that small
21 changes in the factors listed in subsections (a) and
22 (b) of section 105 would not result in sharp, dis-
23 continuous changes in the standards established pur-
24 suant to subsection (a).

25 (d) RISK COMMITTEE.—

1 (1) REGULATIONS.—

2 (A) REQUIRED REGULATIONS.—The Agen-
3 cy shall promulgate regulations to require each
4 bank holding company that (i) is not a specified
5 financial company, (ii) is a publicly traded com-
6 pany, and (iii) has total assets of greater than
7 or equal to \$10,000,000,000, to establish a risk
8 committee as set forth in paragraph (2).

9 (B) PERMISSIVE REGULATIONS.—The
10 Agency may promulgate regulations to require
11 each bank holding company that (i) is not a
12 specified financial company, (ii) is a publicly
13 traded company, and (iii) has total assets of
14 less than \$10,000,000,000, to establish a risk
15 committee as set forth in paragraph (2).

16 (2) RISK COMMITTEE.—Each risk committee
17 established pursuant to this subsection shall—

18 (A) be responsible for the oversight of the
19 enterprise-wide risk management practices of
20 the bank holding company;

21 (B) include such number of independent
22 directors as the Agency may determine appro-
23 priate based on the nature of operations, size of
24 assets, and other appropriate criteria related to
25 the bank holding company; and

1 (C) include at least one risk management
2 expert with experience in identifying, assessing,
3 and managing risk exposures.

4 (3) RULEMAKING.—Not later than 1 year after
5 the date of the enactment of this Act, the Agency
6 shall issue final rules to carry out this subsection.

7 **SEC. 109. REPORTS AND PUBLIC DISCLOSURES.**

8 (a) REPORTS.—

9 (1) IN GENERAL.—Subject to paragraph (2),
10 the Agency may require specified financial compa-
11 nies, and any subsidiary thereof, to submit certified
12 reports to keep the Agency informed as to—

13 (A) the financial condition of the company,
14 systems for monitoring and controlling finan-
15 cial, operating, and other risks, transactions
16 with any depository institution subsidiaries, and
17 the extent to which the activities and operations
18 of the company and its subsidiaries could,
19 under adverse circumstances, have the potential
20 to disrupt financial markets or affect overall fi-
21 nancial stability; and

22 (B) compliance by the company or its sub-
23 sidiaries with applicable provisions of this title.

24 (2) USE OF EXISTING REPORTS.—

1 (A) IN GENERAL.—For purposes of com-
2 pliance with paragraph (1), the Agency shall, to
3 the fullest extent possible, use—

4 (i) reports that a specified financial
5 company or any functionally regulated sub-
6 sidiary of such company has been required
7 to provide to other Federal or State regu-
8 latory agencies;

9 (ii) information that is otherwise re-
10 quired to be reported publicly; and

11 (iii) externally audited financial state-
12 ments.

13 (B) AVAILABILITY.—Each specified finan-
14 cial company, and any subsidiary thereof, shall
15 provide to the Agency, at the request of the
16 Agency, copies of all reports referred to in sub-
17 paragraph (A).

18 (3) ENHANCED PUBLIC DISCLOSURES.—The
19 Agency may prescribe, by regulation, periodic public
20 disclosures by specified financial companies in order
21 to support market evaluation of the risk profile, cap-
22 ital adequacy, and risk management capabilities
23 thereof.

24 (b) APPROVAL OF RESOLUTION PLAN AND CREDIT
25 EXPOSURE REPORTS.—

1 (1) RESOLUTION PLAN.—The Agency shall re-
2 quire each specified financial company to report pe-
3 riodically to the Agency, FIRA, and the Corporation
4 the plan of the specified financial company for rapid
5 and orderly resolution in the event of material finan-
6 cial distress or failure.

7 (2) CREDIT EXPOSURE REPORT.—The Agency
8 shall require each specified financial company to re-
9 port periodically to the Agency, FIRA, and the Cor-
10 poration on—

11 (A) the nature and extent to which the
12 company has credit exposure to other signifi-
13 cant financial companies, as defined by rule of
14 the Agency; and

15 (B) the nature and extent to which other
16 significant financial companies, as defined by
17 rule of the Agency, have credit exposure to that
18 company.

19 (3) REVIEW AND DETERMINATION.—FIRA and
20 the Corporation shall—

21 (A) review the information provided in ac-
22 cordance with this section by each specified fi-
23 nancial company; and

24 (B) jointly determine if, based on all avail-
25 able information, the resolution plan required

1 under paragraph (1) is credible and would fa-
2 cilitate an orderly resolution of the specified fi-
3 nancial company under title 11, United States
4 Code, or title II of this Act.

5 (4) NOTICE OF DEFICIENCIES.—If FIRA and
6 the Corporation jointly determine pursuant to sub-
7 paragraph (3)(B) that the resolution plan of a speci-
8 fied financial company is not credible or would not
9 facilitate an orderly resolution of the specified finan-
10 cial company under title 11, United States Code, or
11 title II of this Act—

12 (A) FIRA and the Corporation shall notify
13 the specified financial company of the defi-
14 ciencies in the resolution plan; and

15 (B) the specified financial company shall
16 resubmit the resolution plan within a time
17 frame determined by the Agency, with revisions
18 demonstrating that the plan is credible and
19 would result in an orderly resolution under title
20 11, United States Code, or title II of this Act,
21 including any proposed changes in business op-
22 erations and corporate structure to facilitate
23 implementation of the plan.

24 (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

1 (A) IN GENERAL.—If a specified financial
2 company fails to resubmit the resolution plan
3 within the time frame established by the Agen-
4 cy, with such revisions as are required under
5 subparagraph (4)(B), FIRA and the Corpora-
6 tion may jointly impose more stringent capital,
7 leverage, or liquidity requirements, or restric-
8 tions on the growth, activities, or operations of
9 the specified financial company or any of its
10 subsidiaries, until such time as the specified fi-
11 nancial company resubmits a plan that rem-
12 edies the deficiencies.

13 (B) DIVESTITURE.—FIRA and the Cor-
14 poration, in consultation with the Agency, may
15 direct a specified financial company, by order,
16 to divest certain assets or operations identified
17 by FIRA and the Corporation, to facilitate an
18 orderly resolution of the specified financial com-
19 pany under title 11, United States Code, or
20 title II of this Act in the event of its failure, in
21 any case in which—

22 (i) FIRA and the Corporation have
23 jointly imposed more stringent require-
24 ments on the specified financial company
25 pursuant to subparagraph (A); and

1 (ii) the specified financial company
2 has failed, within the 2-year period begin-
3 ning on the date of the imposition of such
4 requirements under subparagraph (A), to
5 resubmit the resolution plan with such re-
6 visions as were required under paragraph
7 (4)(B).

8 (6) RULES.—Not later than 18 months after
9 the date of enactment of this Act, the Agency shall
10 issue final rules implementing this subsection.

11 **SEC. 110. AFFILIATIONS.**

12 (a) AFFILIATIONS.—Nothing in this title shall be
13 construed to require a specified financial company to con-
14 form its activities to the requirements of section 4 of the
15 Bank Holding Company Act of 1956 (12 U.S.C. 1843).

16 (b) REQUIREMENT.—If a specified financial company
17 conducts activities other than those that are determined
18 to be financial in nature or incidental thereto under sec-
19 tion 4(k) of the Bank Holding Company Act of 1956, the
20 Agency may require the specified financial company to es-
21 tablish and conduct all activities that are determined to
22 be financial in nature or incidental thereto under that sec-
23 tion 4(k) in an intermediate holding company established
24 pursuant to regulation of the Agency, not later than 90
25 days after the date on which the specified financial com-

1 pany was notified of the determination under section
2 105(a).

3 (c) REGULATIONS.—The Agency shall promulgate
4 regulations to establish—

5 (1) the criteria for determining whether to re-
6 quire a specified financial company to establish an
7 intermediate holding company under subsection (b);
8 and

9 (2) any restrictions or limitations on trans-
10 actions between such intermediate holding company
11 and its affiliates.

12 **SEC. 111. PROMPT CORRECTIVE ACTION FOR SPECIFIED FI-**
13 **NANCIAL COMPANIES.**

14 (a) DEFINITIONS.—For purposes of this section the
15 following definitions shall apply:

16 (1) CAPITAL CATEGORIES.—

17 (A) WELL CAPITALIZED.—A specified fi-
18 nancial company is “well capitalized” if it ex-
19 ceeds the required minimum level for each rel-
20 evant capital measure, as established by the
21 Agency.

22 (B) UNDERCAPITALIZED.—A specified fi-
23 nancial company is “undercapitalized” if it fails
24 to meet the required minimum level for any rel-

1 evant capital measure, as established by the
2 Agency.

3 (C) SIGNIFICANTLY UNDERCAPITALIZED.—
4 A specified financial company is “significantly
5 undercapitalized” if it is significantly below the
6 required minimum level for any relevant capital
7 measure, as established by the Agency.

8 (D) CRITICALLY UNDERCAPITALIZED.—A
9 specified financial company is “critically under-
10 capitalized” if it fails to meet any level specified
11 in subsection (c)(3)(A).

12 (2) OTHER DEFINITIONS.—

13 (A) AVERAGE.—The “average” of an ac-
14 counting item (such as total assets or tangible
15 equity) during a given period means the sum of
16 that item at the close of business on each busi-
17 ness day during that period, divided by the
18 total number of business days in that period.

19 (B) CAPITAL DISTRIBUTION.—The term
20 “capital distribution” means—

21 (i) a distribution of cash or other
22 property by a specified financial company
23 to its owners, made on account of that
24 ownership, but not including any dividend
25 consisting only of shares of the specified fi-

1 nancial company or rights to purchase
2 such shares;

3 (ii) a payment by a specified financial
4 company to repurchase, redeem, retire, or
5 otherwise acquire any of its shares or other
6 ownership interests, including any exten-
7 sion of credit to finance acquisition of
8 those shares or interests by any person; or

9 (iii) a transaction that the Agency or
10 FIRA determines, by order or regulation,
11 to be in substance a distribution of capital
12 to the owners of the specified financial
13 company.

14 (C) CAPITAL RESTORATION PLAN.—The
15 term “capital restoration plan” means a plan
16 required under subsection (e)(2).

17 (D) COMPENSATION.—The term “com-
18 pensation” includes any payment of money or
19 provision of any other thing of value in consid-
20 eration of employment.

21 (E) RELEVANT CAPITAL MEASURE.—The
22 term “relevant capital measure” means the
23 measures described in subsection (c).

24 (F) REQUIRED MINIMUM LEVEL.—The
25 term “required minimum level” means, with re-

1 spect to each relevant capital measure, the min-
2 imum acceptable capital level specified by the
3 Agency, by regulation.

4 (G) SENIOR EXECUTIVE OFFICER.—The
5 term “senior executive officer” has the same
6 meaning as the term “executive officer” in sec-
7 tion 22(h) of the Federal Reserve Act (12
8 U.S.C. 375b).

9 (b) PROMPT CORRECTIVE ACTION.—FIRA shall, for
10 the purposes of minimizing threats to the stability of the
11 United States financial system and protecting the interest
12 of taxpayers, take prompt corrective action to resolve the
13 problems of specified financial companies, in accordance
14 with regulations promulgated by the Agency.

15 (c) CAPITAL STANDARDS.—

16 (1) RELEVANT CAPITAL MEASURES.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B)(ii), the capital standards pre-
19 scribed by the Agency under this section shall
20 include—

21 (i) a leverage limit; and

22 (ii) a risk-based capital requirement.

23 (B) OTHER CAPITAL MEASURES.—The
24 Agency may, by regulation—

1 (i) establish any additional relevant
2 capital measures to carry out this section;

3 or

4 (ii) rescind any relevant capital meas-
5 ure required under subparagraph (A),
6 upon determining that the measure is no
7 longer an appropriate means for carrying
8 out this section.

9 (2) CAPITAL CATEGORIES GENERALLY.—The
10 Agency shall, by regulation, specify for each relevant
11 capital measure the level at which a specified finan-
12 cial company is well capitalized, undercapitalized,
13 and significantly undercapitalized.

14 (3) CRITICAL CAPITAL.—

15 (A) AGENCY TO SPECIFY LEVEL.—

16 (i) LEVERAGE LIMIT.—The Agency
17 shall, by regulation, specify the ratio of
18 tangible equity to total assets at which a
19 specified financial company is critically
20 undercapitalized.

21 (ii) OTHER RELEVANT CAPITAL MEAS-
22 URES.—The Agency may, by regulation,
23 specify for 1 or more other relevant capital
24 measures, the level at which a specified fi-

1 nancial company is critically undercapital-
2 ized.

3 (B) LEVERAGE LIMIT RANGE.—The level
4 specified under subparagraph (A)(i) shall re-
5 quire tangible equity in an amount that is equal
6 to—

7 (i) not less than 2 percent of total as-
8 sets of the specified financial company;
9 and

10 (ii) except as provided in clause (i),
11 not more than 65 percent of the required
12 minimum level of capital under the lever-
13 age limit.

14 (d) CAPITAL DISTRIBUTIONS RESTRICTED.—

15 (1) IN GENERAL.—A specified financial com-
16 pany shall make no capital distribution if, after
17 making the distribution, the specified financial com-
18 pany would be undercapitalized.

19 (2) EXCEPTION.—Notwithstanding paragraph
20 (1), FIRA may permit a specified financial company
21 to repurchase, redeem, retire, or otherwise acquire
22 shares or ownership interests, if the repurchase, re-
23 demption, retirement, or other acquisition—

24 (A) is made in connection with the
25 issuance of additional shares or obligations of

1 the specified financial company in at least an
2 equivalent amount; and

3 (B) will reduce the financial obligations of,
4 or otherwise improve the financial condition of,
5 the specified financial company.

6 (e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED
7 COMPANIES.—

8 (1) MONITORING REQUIRED.—FIRA shall—

9 (A) closely monitor the condition of any
10 specified financial company that is under-
11 capitalized;

12 (B) closely monitor compliance by any
13 specified financial company that is under-
14 capitalized with capital restoration plans, re-
15 strictions, and requirements imposed under this
16 section; and

17 (C) periodically review the plan, restric-
18 tions, and requirements applicable to any speci-
19 fied financial company that is undercapitalized
20 to determine whether the plan, restrictions, and
21 requirements are effective.

22 (2) CAPITAL RESTORATION PLAN REQUIRED.—

23 (A) IN GENERAL.—Any specified financial
24 company that is undercapitalized shall submit
25 an acceptable capital restoration plan to FIRA

1 within the time allowed by FIRA under sub-
2 paragraph (D).

3 (B) CONTENTS OF PLAN.—The capital res-
4 toration plan required by subparagraph (A)
5 shall—

6 (i) specify—

7 (I) the steps that the specified fi-
8 nancial company will take to become
9 well capitalized;

10 (II) the levels of capital to be at-
11 tained by the specified financial com-
12 pany during each year in which the
13 plan will be in effect;

14 (III) how the specified financial
15 company will comply with the restric-
16 tions or requirements then in effect
17 under this section; and

18 (IV) the types and levels of ac-
19 tivities in which the specified financial
20 company will engage; and

21 (ii) contain such other information as
22 FIRA may require.

23 (C) CRITERIA FOR ACCEPTING PLAN.—
24 FIRA shall not accept a capital restoration plan

1 for purposes of this paragraph, unless FIRA
2 determines that the plan—

- 3 (i) complies with subparagraph (B);
4 (ii) is based on realistic assumptions,
5 and is likely to succeed in restoring the
6 capital of the specified financial company;
7 and
8 (iii) would not appreciably increase
9 the risk (including credit risk, interest-rate
10 risk, and other types of risk) to which the
11 specified financial company is exposed.

12 (D) DEADLINES FOR SUBMISSION AND RE-
13 VIEW OF PLANS.—FIRA shall, by regulation,
14 establish deadlines that—

- 15 (i) provide specified financial compa-
16 nies with reasonable time to submit capital
17 restoration plans, but in no case later than
18 45 days after the date on which the speci-
19 fied financial company becomes under-
20 capitalized; and
21 (ii) require FIRA to act on capital
22 restoration plans expeditiously, but in no
23 case later than 60 days after the date on
24 which the plan is submitted.

1 (3) ASSET GROWTH RESTRICTED.—A specified
2 financial company that is undercapitalized may not
3 permit its average total assets during any calendar
4 quarter to exceed its average total assets during the
5 preceding calendar quarter, unless—

6 (A) FIRA has accepted the capital restora-
7 tion plan of the specified financial company;

8 (B) any increase in total assets is con-
9 sistent with the plan; and

10 (C) the specified financial company ratio of
11 tangible equity to total assets increases during
12 the calendar quarter at a rate that is sufficient
13 to enable it to become well capitalized within a
14 reasonable time.

15 (4) PRIOR APPROVAL REQUIRED FOR ACQUISI-
16 TIONS AND NEW LINES OF BUSINESS.—A specified
17 financial company that is undercapitalized may not,
18 directly or indirectly, acquire any interest in any
19 company or insured depository institution, or engage
20 in any new line of business, unless—

21 (A) FIRA has accepted the capital restora-
22 tion plan of the specified financial company, the
23 specified financial company is implementing the
24 plan, and FIRA determines that the proposed

1 (ii) fails—

2 (I) to submit an acceptable cap-
3 ital restoration plan within the time
4 allowed by FIRA under subsection
5 (e)(2)(D); or

6 (II) in any material respect, to
7 implement a capital restoration plan
8 acceptable to FIRA.

9 (2) SPECIFIC ACTIONS AUTHORIZED.—

10 (A) IN GENERAL.—FIRA shall carry out
11 this subsection by taking 1 or more of the ac-
12 tions described in subparagraphs (B) through
13 (H).

14 (B) REQUIRING RECAPITALIZATION.—
15 FIRA may—

16 (i) require the specified financial com-
17 pany to sell enough of its shares or obliga-
18 tions so that the specified financial com-
19 pany will be well capitalized after the sale;

20 (ii) further require instruments sold
21 under clause (i) to be voting shares; or

22 (iii) require the specified financial
23 company to be acquired by or combine with
24 another company.

1 (C) RESTRICTING TRANSACTIONS WITH AF-
2 FILIATES.—FIRA may—

3 (i) require the specified financial com-
4 pany, if it has established an intermediate
5 holding company pursuant to section 110,
6 to comply with section 23A of the Federal
7 Reserve Act (12 U.S.C. 371e), as if the in-
8 termediate holding company were a mem-
9 ber bank; and

10 (ii) further restrict the transactions of
11 the specified financial company with affili-
12 ates and insiders.

13 (D) RESTRICTING ASSET GROWTH.—FIRA
14 may restrict the asset growth of the specified fi-
15 nancial company more stringently than as spec-
16 ified in subsection (e)(3), or require it to reduce
17 its total assets.

18 (E) RESTRICTING ACTIVITIES.—FIRA may
19 require the specified financial company or any
20 of its subsidiaries to alter, reduce, or terminate
21 any activity that FIRA determines poses exces-
22 sive risk to the specified financial company.

23 (F) IMPROVING MANAGEMENT.—FIRA
24 may—

1 (i) order a new election for the board
2 of directors of the specified financial com-
3 pany;

4 (ii) require the specified financial
5 company to dismiss from office any direc-
6 tor or senior executive officer who had held
7 office for more than 180 days immediately
8 before the date on which the specified fi-
9 nancial company became undercapitalized,
10 except that a dismissal under this clause
11 shall not be construed to be a removal
12 under section 8 of the Federal Deposit In-
13 surance Act (12 U.S.C. 1818); or

14 (iii) require the specified financial
15 company to employ qualified senior execu-
16 tive officers (who, if FIRA so specifies,
17 shall be subject to approval by FIRA).

18 (G) REQUIRING DIVESTITURE.—FIRA
19 may require the specified financial company to
20 divest itself of or liquidate any subsidiary, if
21 FIRA determines that the subsidiary is in dan-
22 ger of becoming insolvent, poses a significant
23 risk to the specified financial company, or is
24 likely to cause a significant dissipation of the

1 assets or earnings of the specified financial
2 company.

3 (H) REQUIRING OTHER ACTION.—FIRA
4 may require the specified financial company to
5 take any other action that FIRA determines
6 will better carry out the purpose of this section
7 than any other action or combination of actions
8 authorized by this paragraph.

9 (3) PRESUMPTION IN FAVOR OF CERTAIN AC-
10 TIONS.—In complying with paragraph (2), FIRA
11 shall, unless FIRA determines that such action
12 would not be appropriate, take the action authorized
13 in—

14 (A) clause (i) or (iii) of paragraph (2)(B);

15 and

16 (B) paragraph (2)(C)(i).

17 (4) SENIOR EXECUTIVE OFFICER COMPENSA-
18 TION RESTRICTED.—

19 (A) IN GENERAL.—The specified financial
20 company may not, without the prior written ap-
21 proval of FIRA—

22 (i) pay any bonus to any senior execu-
23 tive officer; or

24 (ii) provide compensation to any sen-
25 ior executive officer at a rate exceeding the

1 average rate of compensation (excluding
2 bonuses, stock options, and profit-sharing)
3 of that officer during the 12 calendar
4 months preceding the calendar month in
5 which the specified financial company be-
6 came undercapitalized.

7 (B) FAILURE TO SUBMIT PLAN.—FIRA
8 may not grant any approval under subpara-
9 graph (A) with respect to a specified financial
10 company that has failed to submit an accept-
11 able capital restoration plan in accordance with
12 this section.

13 (5) CONSULTATION WITH OTHER REGU-
14 LATORS.—Before FIRA makes a determination
15 under paragraph (2)(F) with respect to a subsidiary
16 that is a broker, dealer, government securities
17 broker, government securities dealer, investment
18 company, or investment adviser, FIRA shall consult
19 with the Commission and, in the case of any other
20 subsidiary which is subject to any financial responsi-
21 bility or capital requirement, the primary financial
22 regulatory agency for such subsidiary, if any, with
23 respect to the proposed determination of FIRA, and
24 actions pursuant to such determination.

1 (g) MORE STRINGENT TREATMENT BASED ON
2 OTHER SUPERVISORY CRITERIA.—

3 (1) IN GENERAL.—If FIRA determines (after
4 notice and an opportunity for hearing) that a speci-
5 fied financial company is in an unsafe or unsound
6 condition or, pursuant to section 8(b)(8) of the Fed-
7 eral Deposit Insurance Act (12 U.S.C. 1818(b)(8)),
8 deems the specified financial company to be engag-
9 ing in an unsafe or unsound practice, FIRA may—

10 (A) if the specified financial company is
11 well capitalized, require the specified financial
12 company to comply with one or more provisions
13 of subsections (d) and (e), as if the specified fi-
14 nancial company were undercapitalized; or

15 (B) if the specified financial company is
16 undercapitalized, take any one or more actions
17 authorized under subsection (f)(2), as if the
18 specified financial company were significantly
19 undercapitalized.

20 (2) CONTENTS OF PLAN.—A plan that may be
21 required pursuant to paragraph (1)(A) shall specify
22 the steps that the specified financial company will
23 take to correct the unsafe or unsound condition or
24 practice.

1 (h) MANDATORY BANKRUPTCY PETITION OR RESO-
2 LUTION FOR CRITICALLY UNDERCAPITALIZED COMPA-
3 NIES.—FIRA, in consultation with the Corporation, shall,
4 not later than 90 days after the date on which a specified
5 financial company becomes critically undercapitalized—

6 (1) require the specified financial company to
7 file a petition for bankruptcy under section 301 of
8 title 11, United States Code;

9 (2) file a petition for involuntary bankruptcy on
10 behalf of a specified financial company under section
11 303 of title 11, United States Code; or

12 (3) submit a written recommendation pursuant
13 to section 202 with respect to the specified financial
14 company.

15 (i) IMPLEMENTATION.—FIRA shall prescribe such
16 regulations, issue such orders, and take such other actions
17 as FIRA determines to be necessary to carry out this sec-
18 tion.

19 (j) OTHER AUTHORITY NOT AFFECTED.—This sec-
20 tion does not limit any authority of the Agency, FIRA,
21 any other Federal regulatory agency, or a State to take
22 action in addition to (but not in derogation of) that re-
23 quired under this section.

24 (k) CONSULTATION.—The Agency, FIRA, and the
25 Secretary shall consult with their foreign counterparts and

1 through appropriate multilateral organizations to reach
2 agreement to extend comprehensive and robust prudential
3 supervision and regulation to all highly leveraged and sub-
4 stantially interconnected financial companies. In their reg-
5 ulation and supervision of specified foreign financial com-
6 panies, the Agency and FIRA shall take into account the
7 extent to which such companies are subject to standards
8 comparable to those applied to other specified U.S.
9 nonbank financial companies.

10 (l) ADMINISTRATIVE REVIEW OF DISMISSAL OR-
11 DERS.—

12 (1) TIMELY PETITION REQUIRED.—A director
13 or senior executive officer dismissed pursuant to an
14 order under subsection (f)(2)(F)(ii) may obtain re-
15 view of that order by filing a written petition for re-
16 instatement with FIRA, not later than 10 days after
17 the date of receipt of notice of the dismissal.

18 (2) PROCEDURE.—

19 (A) HEARING REQUIRED.—FIRA shall
20 give a petitioner under this paragraph an op-
21 portunity—

22 (i) to submit written materials in sup-
23 port of the petition; and

1 (ii) to appear, personally or through
2 counsel, before 1 or more members of
3 FIRA or designated employees of FIRA.

4 (B) DEADLINE FOR HEARING.—FIRA
5 shall—

6 (i) schedule the hearing authorized by
7 subparagraph (A)(ii) promptly after a peti-
8 tion is filed under this paragraph; and

9 (ii) hold the hearing not later than 30
10 days after the date on which the petition
11 is filed, unless the petitioner requests that
12 the hearing be held at a later time.

13 (C) DEADLINE FOR DECISION.—Not later
14 than 60 days after the date of the hearing
15 under this paragraph, the Agency shall—

16 (i) by order, grant or deny the peti-
17 tion;

18 (ii) if the order is adverse to the peti-
19 tioner, set forth the basis for the order;
20 and

21 (iii) notify the petitioner of the order.

22 (3) STANDARD FOR REVIEW OF DISMISSAL OR-
23 DERS.—The petitioner shall bear the burden of prov-
24 ing that the continued employment of the petitioner

1 would materially strengthen the ability of the speci-
2 fied financial company—

3 (A) to become well capitalized, to the ex-
4 tent that the order is based on the capital level
5 of or failure to submit or implement a capital
6 restoration plan by the specified financial com-
7 pany; and

8 (B) to correct the unsafe or unsound con-
9 dition or unsafe or unsound practice, to the ex-
10 tent that the order is based on subsection
11 (g)(1).

12 (m) ENFORCEMENT AUTHORITY FOR SPECIFIED
13 FOREIGN FINANCIAL COMPANY.—

14 (1) TERMINATION AUTHORITY.—If FIRA deter-
15 mines that a condition, practice, or activity of a
16 specified foreign financial company does not comply
17 with this title or the rules or orders prescribed by
18 the Agency under this title, or otherwise poses a
19 threat to United States financial stability, FIRA
20 may, after notice and opportunity for a hearing,
21 order a specified foreign financial company that op-
22 erates a branch, agency, or subsidiary in the United
23 States to terminate the activities of such branch,
24 agency, or subsidiary.

1 (2) DISCRETION TO DENY HEARING.—FIRA
2 may issue an order under paragraph (1) without
3 providing for an opportunity for a hearing, if FIRA
4 determines that expeditious action is necessary in
5 order to protect the public interest.

6 (n) AUTHORITY TO FILE INVOLUNTARY PETITION
7 FOR BANKRUPTCY.—Section 303 of title 11, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 “(m)(1) Notwithstanding subsections (a) and (b) of
11 this section, an involuntary case may be commenced by
12 the Financial Institutions Regulatory Administration
13 against a specified financial company, on the ground that
14 the specified financial company is critically undercapital-
15 ized.

16 “(2) For purposes of this subsection, the terms ‘bank
17 holding company’, ‘specified financial company’, and ‘criti-
18 cally undercapitalized’ have the same meanings as in sec-
19 tions 102 and 111 of the Restoring American Financial
20 Stability Act of 2009.”.

21 **SEC. 112. CONCENTRATION LIMITS.**

22 (a) STANDARDS.—In order to limit the risks that the
23 failure of any specified financial company could pose to
24 any other financial company and to the stability of the

1 United States financial system, the Agency, by regulation,
2 shall prescribe standards that limit such risks.

3 (b) LIMITATION ON CREDIT EXPOSURE.—The regu-
4 lations prescribed by the Agency under subsection (a) shall
5 prohibit each specified financial company from having
6 credit exposure to any unaffiliated company that exceeds
7 25 percent of the capital stock and surplus (or such lower
8 amount as the Agency may determine by regulation to be
9 necessary to mitigate risks to financial stability) of the
10 specified financial company.

11 (c) CREDIT EXPOSURE.—For purposes of subsection
12 (b), “credit exposure” to a company means—

13 (1) all extensions of credit to the company, in-
14 cluding loans, deposits, and lines of credit;

15 (2) all repurchase agreements and reverse re-
16 purchase agreement with the company;

17 (3) all securities borrowing and lending trans-
18 actions with the company, to the extent that such
19 transactions create credit exposure for the specified
20 financial company;

21 (4) all guarantees, acceptances, or letters of
22 credit (including endorsement or standby letters of
23 credit) issued on behalf of the company;

24 (5) all purchases of or investment in securities
25 issued by the company;

1 (6) counterparty credit exposure to the com-
2 pany in connection with a derivative transaction be-
3 tween the specified financial company and the com-
4 pany; and

5 (7) any other similar transactions that the
6 Agency, by regulation, determines to be a credit ex-
7 posure for purposes of this section.

8 (d) **ATTRIBUTION RULE.**—For purposes of this sec-
9 tion, any transaction by a specified financial company with
10 any person is a transaction with a company, to the extent
11 that the proceeds of the transaction are used for the ben-
12 efit of, or transferred to that company.

13 (e) **RULEMAKING.**—The Agency may issue such regu-
14 lations and orders, including definitions consistent with
15 this section, as may be necessary to administer and carry
16 out this section.

17 (f) **EXEMPTIONS.**—The Agency may, by regulation or
18 order, exempt transactions, in whole or in part, from the
19 definition of “credit exposure”, if the Agency finds that
20 the exemption is in the public interest and is consistent
21 with the purpose of this section.

22 (g) **TRANSITION PERIOD.**—This section and any reg-
23 ulations and orders of the Agency under this section shall
24 not be effective until 3 years after the date of enactment

1 of this section. The Agency may extend such period for
2 up to an additional 2 years to promote financial stability.

3 **SEC. 113. REGULATIONS.**

4 Except as otherwise specified in this title, not later
5 than 18 months after the date of enactment of this Act,
6 the Agency shall issue final regulations to implement this
7 title.

8 **SEC. 114. AVOIDING DUPLICATION.**

9 The Agency shall take any action that the Agency
10 deems appropriate to avoid imposing requirements under
11 this title that are duplicative of requirements applicable
12 to financial companies under other provisions of law.

13 **SEC. 115. AGENCY FUNDING.**

14 (a) **FINANCIAL STABILITY FUND.—**

15 (1) **FUND ESTABLISHED.—**There is established
16 in the Treasury of the United States a separate fund
17 to be known as the “Financial Stability Fund”.

18 (2) **FUND RECEIPTS.—**All amounts provided to
19 the Agency under subsection (c), and all supervisory
20 assessments that the Agency receives under sub-
21 section (d) shall be deposited into the Financial Sta-
22 bility Fund.

23 (3) **INVESTMENTS AUTHORIZED.—**

24 (A) **AMOUNTS IN FUND MAY BE IN-**
25 **VESTED.—**The Chairperson may request the

1 Secretary to invest the portion of the Financial
2 Stability Fund that is not, in the judgment of
3 the Chairperson, required to meet the needs of
4 the Agency.

5 (B) ELIGIBLE INVESTMENTS.—Invest-
6 ments shall be made by the Secretary in obliga-
7 tions of the United States or obligations that
8 are guaranteed as to principal and interest by
9 the United States, with maturities suitable to
10 the needs of the Financial Stability Fund, as
11 determined by the Chairperson.

12 (C) INTEREST AND PROCEEDS CRED-
13 ITED.—The interest on, and the proceeds from
14 the sale or redemption of, any obligations held
15 in the Financial Stability Fund shall be cred-
16 ited to and form a part of the Financial Sta-
17 bility Fund.

18 (b) USE OF FUNDS.—

19 (1) IN GENERAL.—Funds obtained by, trans-
20 ferred to, or credited to the Financial Stability Fund
21 shall be immediately available to the Agency, and
22 shall remain available until expended, to pay the ex-
23 penses of the Agency in carrying out its duties and
24 responsibilities.

1 (2) FEES, ASSESSMENTS, AND OTHER FUNDS
2 NOT GOVERNMENT FUNDS.—Funds obtained by,
3 transferred to or credited to the Financial Stability
4 Fund shall not be construed to be Government funds
5 or appropriated monies.

6 (3) AMOUNTS NOT SUBJECT TO APPORTION-
7 MENT.—Notwithstanding any other provision of law,
8 amounts in the Financial Stability Fund shall not be
9 subject to apportionment for purposes of chapter 15
10 of title 31, United States Code, or under any other
11 authority or for any other purpose.

12 (c) INTERIM FUNDING.—During the 2-year period
13 following the date of enactment of this Act, the Board of
14 Governors shall provide to the Agency an amount suffi-
15 cient to cover the expenses of the Agency.

16 (d) PERMANENT SELF-FUNDING.—

17 (1) IN GENERAL.—Beginning 2 years after the
18 date of enactment of this Act, the Agency shall es-
19 tablish, by regulation, an assessment schedule, in-
20 cluding the assessment base and rates applicable to
21 specified financial companies, that takes into ac-
22 count differences among specified financial compa-
23 nies, based on the considerations for establishing the
24 prudential standards under section 107(b)(3)(B), to

1 collect assessments equal to the estimated total ex-
2 penses of the Agency.

3 (2) SHORTFALL.—To the extent that the as-
4 sements under paragraph (1) do not fully cover
5 the total expenses of the Agency, the Board of Gov-
6 ernors shall provide to the Agency an amount suffi-
7 cient to cover the difference.

8 **SEC. 116. RESOLUTION OF DISPUTES AMONG MEMBER**
9 **AGENCIES.**

10 (a) REQUEST FOR DISPUTE RESOLUTION.—The
11 Agency shall resolve a dispute among 2 or more member
12 agencies if—

13 (1) a member agency has a dispute with an-
14 other member agency about the respective jurisdic-
15 tion over a particular financial company or financial
16 activity or product (excluding matters for which an-
17 other dispute mechanism specifically has been pro-
18 vided under Federal law);

19 (2) the disputing agencies cannot, after a dem-
20 onstrated good faith effort, resolve the dispute with-
21 out the intervention of the Agency;

22 (3) any of the member agencies involved in the
23 dispute—

1 (A) provides all other disputants prior no-
2 tice of its intent to request dispute resolution
3 by the Agency; and

4 (B) requests in writing, not earlier than 14
5 days after providing the notice described in sub-
6 paragraph (A), that the Agency resolve the dis-
7 pute.

8 (b) AGENCY DECISION.—The Agency shall decide the
9 dispute—

10 (1) within a reasonable time after receiving the
11 dispute resolution request;

12 (2) after consideration of relevant information
13 provided by each party to the dispute; and

14 (3) by agreeing with 1 of the disputants regard-
15 ing the entirety of the matter or by determining a
16 compromise position.

17 (c) FORM AND BINDING EFFECT.—An Agency deci-
18 sion under this section shall—

19 (1) be in writing;

20 (2) include an explanation of the reasons there-
21 for; and

22 (3) be binding on all Federal agencies that are
23 parties to the dispute.

1 **SEC. 117. ADDITIONAL STANDARDS APPLICABLE TO ACTIVI-**
2 **TIES OR PRACTICES FOR FINANCIAL STA-**
3 **BILITY PURPOSES.**

4 (a) IN GENERAL.—The Agency may issue rec-
5 ommendations to the primary financial regulatory agen-
6 cies to apply new or heightened standards and safeguards,
7 including standards enumerated in section 107 and 108,
8 for a financial activity or practice conducted by financial
9 companies under their respective jurisdictions, if the
10 Agency determines that the conduct of such activity or
11 practice could create or increase the risk of significant li-
12 quidity, credit, or other problems spreading among finan-
13 cial companies or United States financial markets.

14 (b) PROCEDURE FOR RECOMMENDATIONS TO REGU-
15 LATORS.—

16 (1) NOTICE AND OPPORTUNITY FOR COM-
17 MENT.—

18 (A) IN GENERAL.—The Agency shall con-
19 sult with the primary financial regulatory agen-
20 cies and provide notice to the public and oppor-
21 tunity for comment for any proposed rec-
22 ommendation that the primary financial regu-
23 latory agencies apply new or heightened stand-
24 ards and safeguards for a financial activity or
25 practice.

1 (2) CRITERIA.—The new or heightened stand-
2 ards and safeguards for a financial activity or prac-
3 tice recommended under paragraph (1)—

4 (A) shall take costs to long-term economic
5 growth into account; and

6 (B) may include prescribing the conduct of
7 the activity or practice in specific ways (such as
8 by limiting its scope, or applying particular cap-
9 ital or risk-management requirements to the
10 conduct of the activity) or prohibiting the activ-
11 ity or practice.

12 (c) IMPLEMENTATION OF RECOMMENDED STAND-
13 ARDS.—

14 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
15 AGENCY.—

16 (A) IN GENERAL.—Each primary financial
17 regulatory agency is authorized to impose, re-
18 quire reports regarding, examine for compliance
19 with, and enforce standards in accordance with
20 this section with respect to those entities for
21 which it is the primary financial regulatory
22 agency.

23 (B) RULE OF CONSTRUCTION.—The au-
24 thority under this paragraph is in addition to,
25 and does not limit, any other authority of a pri-

1 mary financial regulatory agency. Compliance
2 by an entity with actions taken by a primary fi-
3 nancial regulatory agency under this section
4 shall be enforceable in accordance with the stat-
5 utes governing the respective jurisdiction of the
6 primary financial regulatory agency over the en-
7 tity, as if the agency action were taken under
8 those statutes.

9 (2) IMPOSITION OF STANDARDS.—Standards
10 imposed under this subsection shall be the standards
11 recommended by the Agency in accordance with sub-
12 section (a), or any other similar standards that the
13 Agency deems acceptable, after consultation between
14 the Agency and the primary financial regulatory
15 agency.

16 (d) REPORT TO CONGRESS.—The Agency shall report
17 to Congress on—

18 (1) any recommendations by the Agency issued
19 under this section;

20 (2) the implementation or failure to implement
21 such recommendation on the part of a primary fi-
22 nancial regulatory agency; and

23 (3) in any case in which no primary financial
24 regulatory agency exists for the financial company
25 conducting financial activities or practices referred

1 to in subsection (a), recommendations for legislation
2 that would prevent such activities or practices from
3 threatening the stability of the United States finan-
4 cial system.

5 **SEC. 118. EFFECT OF RESCISSION OF IDENTIFICATION.**

6 (a) NOTICE.—If the Agency determines that a finan-
7 cial company, activity, or practice no longer requires any
8 heightened standards implemented under this title, includ-
9 ing standards imposed under section 107, 108, or 117,
10 the Agency shall inform the relevant primary financial reg-
11 ulatory agency or agencies of that finding.

12 (b) DETERMINATION OF PRIMARY FINANCIAL REGU-
13 LATORY AGENCY TO CONTINUE.—A primary financial
14 regulatory agency that has imposed heightened standards
15 for financial stability purposes under this title shall deter-
16 mine whether standards that it has imposed under this
17 title should remain in effect.

18 **SEC. 119. MITIGATION OF SYSTEMIC RISK.**

19 (a) IN GENERAL.—If the Agency and FIRA deter-
20 mine, after notice and an opportunity for hearing, that
21 the size of a specified financial company or the scope or
22 nature of activities directly or indirectly conducted by a
23 specified financial company poses a threat to the safety
24 and soundness of the specified financial company or to the
25 financial stability of the United States, the Agency and

1 FIRA may require the specified financial company to sell
2 or otherwise transfer assets or off-balance-sheet items to
3 unaffiliated entities, to terminate one or more activities,
4 or to impose conditions on the manner in which the speci-
5 fied financial company conducts one or more activities.

6 (b) APPLICATION TO FOREIGN FINANCIAL COMPA-
7 NIES.—The Agency shall prescribe regulations regarding
8 the application of heightened standards under this title to
9 foreign nonbank financial companies and companies that
10 own or control a Federal or State branch, subsidiary, or
11 operating entity that is a specified financial company, giv-
12 ing due regard to the principle of national treatment and
13 equality of competitive opportunity.

14 **SEC. 120. RULE OF CONSTRUCTION.**

15 Any regulation or standard imposed by the Agency
16 under this title shall supersede any conflicting, less strin-
17 gent requirements of the primary financial regulatory
18 agency, but only to the extent of the conflict.

19 **TITLE II—ENHANCED**
20 **RESOLUTION AUTHORITY**

21 **SEC. 201. DEFINITIONS.**

22 For purposes of this title, the following definitions
23 shall apply:

24 (1) APPROPRIATE FEDERAL REGULATORY
25 AGENCY.—

1 (A) CORPORATION AND COMMISSION.—The
2 term “appropriate Federal regulatory agency”
3 means—

4 (i) the Corporation; and

5 (ii) the Commission, if the financial
6 company, or an affiliate thereof, is a
7 broker or dealer registered with the Com-
8 mission under section 15(b) of the Securi-
9 ties Exchange Act of 1934 (15 U.S.C.
10 78o(b)) (other than an insured depository
11 institution).

12 (B) RULES OF CONSTRUCTION.—More
13 than 1 agency may be an appropriate Federal
14 regulatory agency with respect to any given fi-
15 nancial company, in which case—

16 (i) the Commission shall be the appro-
17 priate Federal regulatory agency for pur-
18 poses of section 202, if the largest sub-
19 sidiary of the financial company is a
20 broker or dealer, as measured by total as-
21 sets as of the end of the previous calendar
22 quarter; and

23 (ii) otherwise the Corporation shall be
24 the appropriate Federal regulatory agency
25 for purposes of section 202.

1 (iii) any company that is predomi-
2 nantly engaged in activities that are finan-
3 cial in nature or incidental thereto for pur-
4 poses of section 4(k) of the Bank Holding
5 Company Act of 1956; or

6 (iv) any subsidiary of any company
7 described in clauses (i) through (iii) (other
8 than an insured depository institution, any
9 broker or dealer registered with the Com-
10 mission under section 15(b) of the Securi-
11 ties Exchange Act of 1934 (15 U.S.C.
12 78o(b)), that is a member of the Securities
13 Investor Protection Corporation, or an in-
14 surance company).

15 (7) FUND.—The term “Fund” means the Sys-
16 temic Resolution Fund established in accordance
17 with section 208(n).

18 (8) SPECIFIED FINANCIAL COMPANY.—The
19 term “specified financial company” means a finan-
20 cial company subject to heightened prudential stand-
21 ards, as defined in section 102.

22 (9) INSURANCE COMPANY.—The term “insur-
23 ance company” means a domestic insurance com-
24 pany, as that term is defined for purposes of title
25 11, United States Code.

1 **SEC. 202. SYSTEMIC RISK DETERMINATION.**

2 (a) WRITTEN RECOMMENDATION AND DETERMINA-
3 TION.—

4 (1) VOTE REQUIRED.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), FIRA and the Corporation, at the
7 request of the Secretary, the Chairperson of the
8 FIRA Board, or the Chairperson of the Agency,
9 or on their own initiative, shall consider wheth-
10 er to make the written recommendation author-
11 ized in paragraph (2) with respect to a specified
12 financial company. Such recommendation shall
13 be made upon a vote of not less than two-thirds
14 of the members of the FIRA Board then serv-
15 ing and two-thirds of the members of the board
16 of directors of the Corporation then serving.

17 (B) CASES INVOLVING BROKERS OR DEAL-
18 ERS.—In any case in which a specified financial
19 company has a broker or a dealer as its largest
20 subsidiary, as measured by total assets as the
21 end of the previous calendar quarter, the Com-
22 mission and FIRA, at the request of the Sec-
23 retary or the Chairman of the FIRA Board, or
24 on their own initiative, shall consider whether
25 to make the written recommendation authorized
26 in paragraph (2) with respect to a specified fi-

1 nancial company. Such recommendation shall
2 be made upon a vote of not less than two-thirds
3 of the members of the FIRA Board then serv-
4 ing and the members of the Commission then
5 serving.

6 (2) RECOMMENDATION REQUIRED.—Any writ-
7 ten recommendation pursuant to paragraph (1) shall
8 contain—

9 (A) an evaluation of whether the specified
10 financial company is in default or in danger of
11 default;

12 (B) a description of the effect that the de-
13 fault of the specified financial company would
14 have on economic conditions or financial sta-
15 bility in the United States; and

16 (C) a recommendation regarding the na-
17 ture and the extent of actions to be taken under
18 section 203 regarding the specified financial
19 company.

20 (b) DETERMINATION BY THE SECRETARY.—Notwith-
21 standing any other provision of Federal or State law, if,
22 upon a written recommendation as provided for in sub-
23 section (a)(1), the Secretary (in consultation with the
24 President) determines that—

1 (1) the specified financial company is in default
2 or in danger of default;

3 (2) the failure of the specified financial com-
4 pany and its resolution under otherwise applicable
5 Federal or State law would have serious adverse ef-
6 fects on financial stability or economic conditions in
7 the United States; and

8 (3) any action under section 203 would avoid or
9 mitigate such adverse effects, taking into consider-
10 ation the effectiveness of the action in mitigating po-
11 tential adverse effects on the financial system or eco-
12 nomic conditions, the cost to the general fund of the
13 Treasury, and the potential to increase excessive risk
14 taking on the part of creditors, counterparties, and
15 shareholders in the specified financial company;
16 then the Secretary shall take action in accordance with
17 section 203(a); the Corporation shall take action in ac-
18 cordance with section 203(b), and the Corporation may
19 take 1 or more actions specified in section 203(c).

20 (c) DOCUMENTATION AND REVIEW.—

21 (1) IN GENERAL.—The Secretary shall—

22 (A) document any determination under
23 subsection (b); and

24 (B) retain the documentation for review
25 under paragraph (2).

1 (2) GAO REVIEW.—The Comptroller General of
2 the United States shall review and report to Con-
3 gress on any determination under subsection (b), in-
4 cluding—

5 (A) the basis for the determination;

6 (B) the purpose for which any action was
7 taken pursuant thereto; and

8 (C) the likely effect of the determination
9 and such action on the incentives and conduct
10 of specified financial companies and their credi-
11 tors, counterparties, and shareholders.

12 (3) REPORT TO CONGRESS.—Not later than 30
13 days after a determination is made under subsection
14 (b), the Secretary shall provide written notice of the
15 determination to the Committee on Banking, Hous-
16 ing, and Urban Affairs of the Senate and the Com-
17 mittee on Financial Services of the House of Rep-
18 resentatives, including a description of the basis for
19 the determination.

20 (d) DEFAULT OR IN DANGER OF DEFAULT.—For
21 purposes of subsection (b), a specified financial company
22 shall be considered to be in default or in danger of default
23 if, as determined in accordance with subsection (b)—

1 (1) a case has been, or likely will promptly be,
2 commenced with respect to the specified financial
3 company under title 11, United States Code;

4 (2) the specified financial company is critically
5 undercapitalized, as such term has been or may be
6 defined by the Agency under section 111;

7 (3) the specified financial company has in-
8 curred, or is likely to incur, losses that will deplete
9 all or substantially all of its capital, and there is no
10 reasonable prospect for the company to avoid such
11 depletion without assistance under section 203;

12 (4) the assets of the specified financial company
13 are, or are likely to be, less than its obligations to
14 creditors and others; or

15 (5) the specified financial company is, or is like-
16 ly to be, unable to pay its obligations (other than
17 those subject to a bona fide dispute) in the normal
18 course of business.

19 **SEC. 203. RESOLUTION; STABILIZATION.**

20 (a) APPOINTMENT OF RECEIVER.—Upon the Sec-
21 retary making a determination in accordance with section
22 202(b), the Secretary shall appoint the Corporation as re-
23 ceiver for the covered financial company.

24 (b) CONSULTATION.—The Corporation, as receiver—

1 (1) shall consult with the primary financial reg-
2 ulatory agency of the covered financial company and
3 its covered subsidiaries for purposes of ensuring an
4 orderly resolution of the covered financial company;

5 (2) may consult with, or under section
6 208(a)(1)(B)(v) or section 208(a)(1)(J), acquire the
7 services of, any outside experts, as appropriate to in-
8 form and aid the Corporation in the resolution proc-
9 ess; and

10 (3) shall consult with the primary financial reg-
11 ulatory agencies of any subsidiaries of the covered fi-
12 nancial company that are not covered subsidiaries,
13 and coordinate with such regulators regarding the
14 treatment of such solvent subsidiaries and the sepa-
15 rate resolution of any such insolvent subsidiaries
16 under other governmental authority, as appropriate.

17 (c) EMERGENCY STABILIZATION AFTER APPOINT-
18 MENT OF RECEIVER.—Upon the appointment by the Sec-
19 retary of the Corporation as receiver under subsection (a),
20 the Corporation may, with the approval of the Secretary
21 and subject to the conditions in subsections (d) and (e),
22 under such terms and conditions as the Corporation deems
23 appropriate—

1 (1) make loans to, or purchase any debt obliga-
2 tion of, the covered financial company or any cov-
3 ered subsidiary;

4 (2) purchase or guarantee against loss the as-
5 sets of the covered financial company or any covered
6 subsidiary, directly or through an entity established
7 by the Corporation for such purpose;

8 (3) assume or guarantee the obligations of the
9 covered financial company or any covered subsidiary
10 to 1 or more third parties;

11 (4) take a lien on any or all assets of the cov-
12 ered financial company or any covered subsidiary,
13 including a first priority lien on all unencumbered
14 assets of the company or any covered subsidiary to
15 secure repayment of any transactions conducted
16 under this subsection; or

17 (5) sell or transfer all, or any part, of such ac-
18 quired assets, liabilities, or obligations of the covered
19 financial company or any covered subsidiary.

20 (d) MANDATORY TERMS AND CONDITIONS FOR ALL
21 STABILIZATION ACTIONS.—The Corporation is authorized
22 to take the stabilization actions listed in subsection (c),
23 only if the Corporation—

24 (1) with the written approval of the Secretary,
25 determines that such action is necessary for the pur-

1 pose of financial stability and not for the purpose of
2 preserving the covered financial company; and

3 (2) ensures that—

4 (A) the shareholders of a covered financial
5 company do not receive payment until after all
6 other claims are fully paid;

7 (B) taking any action listed in subsection
8 (c) will not prevent unsecured creditors from
9 bearing losses; and

10 (C) management responsible for the failed
11 condition of the covered financial company is
12 removed (if such management has not already
13 been removed at the time at which the Corpora-
14 tion is appointed receiver).

15 (e) RECOUPMENT OF FUNDS EXPENDED FOR SYS-
16 TEMIC STABILIZATION PURPOSES.—Amounts expended
17 from the Fund by the Corporation under this section shall
18 be repaid in full to the Fund from—

19 (1) amounts received through the resolution
20 process, including the proceeds of the sale of, or in-
21 come from, the assets of the covered financial com-
22 pany; and

23 (2) if the sources described in paragraph (1)
24 are insufficient to repay the amount of the stabiliza-
25 tion action in full, the difference shall be recouped

1 through assessments on financial companies in ac-
2 cordance with section 208(o).

3 **SEC. 204. JUDICIAL REVIEW.**

4 If the Corporation is appointed receiver for a covered
5 financial company, the covered financial company may,
6 not later than 30 days thereafter, bring an action in the
7 United States district court for the judicial district in
8 which the home office of such covered financial company
9 is located, or in the United States District Court for the
10 District of Columbia, for an order requiring that the re-
11 ceiver be removed, and the court shall, upon the merits,
12 dismiss such action or direct the receiver to be removed.
13 Review of such an action shall be limited to the appoint-
14 ment of a receiver under section 203.

15 **SEC. 205. DIRECTORS NOT LIABLE FOR ACQUIESCING IN**
16 **APPOINTMENT OF RECEIVER.**

17 The members of the board of directors (or body per-
18 forming similar functions) of a covered financial company
19 shall not be liable to the shareholders or creditors thereof
20 for acquiescing in or consenting in good faith to—

21 (1) the appointment of the Corporation as re-
22 ceiver for the covered financial company under sec-
23 tion 203; or

24 (2) an acquisition, combination, or transfer of
25 assets or liabilities under section 208.

1 **SEC. 206. TERMINATION AND EXCLUSION OF OTHER AC-**
2 **TIONS.**

3 The Corporation as receiver for a covered financial
4 company under this title shall immediately, and by oper-
5 ation of law, terminate any case commenced with respect
6 to the covered financial company under title 11, United
7 States Code, or any proceeding under any State insolvency
8 law with respect to the covered financial company, and no
9 such case or proceeding may be commenced with respect
10 to the covered financial company at any time while the
11 Corporation acts as receiver for the covered financial com-
12 pany.

13 **SEC. 207. RULEMAKING.**

14 The Corporation may, in consultation with the Agen-
15 cy, prescribe such rules or regulations as the Corporation
16 considers necessary or appropriate to implement this title.

17 **SEC. 208. POWERS AND DUTIES OF THE CORPORATION.**

18 (a) POWERS AND AUTHORITIES.—

19 (1) GENERAL POWERS.—

20 (A) SUCCESSOR TO COVERED FINANCIAL
21 COMPANY.—The Corporation shall, upon ap-
22 pointment as receiver for a covered financial
23 company under section 203, and by operation of
24 law, succeed to—

25 (i) all rights, titles, powers, and privi-
26 leges of the covered financial company, and

1 of any stockholder, member, officer, or di-
2 rector of such institution with respect to
3 the covered financial company and the as-
4 sets of the covered financial company; and

5 (ii) title to the books, records, and as-
6 sets of any previous receiver or other legal
7 custodian of such covered financial com-
8 pany.

9 (B) OPERATION OF THE COVERED FINAN-
10 CIAL COMPANY.—The Corporation, as receiver
11 for a covered financial company, may—

12 (i) take over the assets of and operate
13 the covered financial company with all the
14 powers of the members or shareholders,
15 the directors, and the officers of the cov-
16 ered financial company, and conduct all
17 business of the covered financial company;

18 (ii) collect all obligations and money
19 owed to the covered financial company;

20 (iii) perform all functions of the cov-
21 ered financial company, in the name of the
22 covered financial company;

23 (iv) preserve and conserve the assets
24 and property of the covered financial com-
25 pany; and

1 (v) provide by contract for assistance
2 in fulfilling any function, activity, action,
3 or duty of the Corporation as receiver.

4 (C) FUNCTIONS OF COVERED FINANCIAL
5 COMPANY OFFICERS, DIRECTORS, AND SHARE-
6 HOLDERS.—

7 (i) IN GENERAL.—The Corporation
8 may provide for the exercise of any func-
9 tion by any member or stockholder, direc-
10 tor, or officer of any covered financial com-
11 pany for which the Corporation has been
12 appointed as receiver under this title.

13 (ii) PRESUMPTION.—There shall be a
14 strong presumption that the Corporation,
15 as receiver for a covered financial com-
16 pany, will remove management responsible
17 for the failed condition of the covered fi-
18 nancial company (if such management has
19 not already been removed at the time at
20 which the Corporation is appointed as re-
21 ceiver).

22 (D) ADDITIONAL POWERS AS RECEIVER.—
23 The Corporation may, as receiver for a covered
24 financial company, and subject to all legally en-
25 forceable and perfected security interests, place

1 the covered financial company in liquidation
2 and proceed to realize upon the assets of the
3 covered financial company, in such manner as
4 the Corporation deems appropriate, including
5 through the sale of assets, the transfer of assets
6 to a bridge financial company established under
7 subsection (h), or the exercise of any other
8 rights or privileges granted to the receiver
9 under this section.

10 (E) ORGANIZATION OF BRIDGE COMPA-
11 NIES.—The Corporation, as receiver for a cov-
12 ered financial company may organize a bridge
13 financial company under subsection (h).

14 (F) MERGER; TRANSFER OF ASSETS AND
15 LIABILITIES.—

16 (i) IN GENERAL.—Subject to clause
17 (ii), the Corporation, as receiver for a cov-
18 ered financial company, may—

19 (I) merge the covered financial
20 company with another company; or

21 (II) transfer any asset or liability
22 of the covered financial company (in-
23 cluding assets and liabilities associ-
24 ated with any trust or custody busi-
25 ness) without obtaining any approval,

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1 assignment, or consent with respect to
2 such transfer.

3 (ii) FEDERAL AGENCY APPROVAL;
4 ANTITRUST REVIEW.—With respect to a
5 transaction described in clause (i) that re-
6 quires approval by a Federal agency—

7 (I) the transaction may not be
8 consummated before the 5th calendar
9 day after the date of approval by the
10 Federal agency responsible for such
11 approval;

12 (II) if, in connection with any
13 such approval, a report on competitive
14 factors is required, the Federal agency
15 responsible for such approval shall
16 promptly notify the Attorney General
17 of the United States of the proposed
18 transaction, and the Attorney General
19 shall provide the required report not
20 later than 10 days after the date of
21 the request; and

22 (III) if a filing with the Depart-
23 ment of Justice or the Federal Trade
24 Commission is required under the
25 Hart-Scott-Rodino Antitrust Improve-

1 ments Act of 1976, the waiting period
2 shall expire not later than the 30th
3 day following the date of such filing,
4 notwithstanding any other provision of
5 Federal law or any attempt by any
6 Federal agency to extend such waiting
7 period, and no further request for in-
8 formation by any Federal agency shall
9 be permitted.

10 (G) PAYMENT OF VALID OBLIGATIONS.—

11 The Corporation, as receiver for a covered fi-
12 nancial company, shall, to the extent that funds
13 are available, pay all valid obligations of the
14 covered financial company that are due and
15 payable at the time of the appointment of the
16 Corporation as receiver, in accordance with the
17 prescriptions and limitations of this title.

18 (H) SUBPOENA AUTHORITY.—

19 (i) IN GENERAL.—The Corporation,
20 as receiver for a covered financial com-
21 pany, may, for purposes of carrying out
22 any power, authority, or duty with respect
23 to the covered financial company (includ-
24 ing determining any claim against the cov-
25 ered financial company and determining

1 and realizing upon any asset of any person
2 in the course of collecting money due the
3 covered financial company), exercise any
4 power established under section 8(n) of the
5 Federal Deposit Insurance Act, as if the
6 covered financial company were an insured
7 depository institution.

8 (ii) RULE OF CONSTRUCTION.—This
9 section may not be construed as limiting
10 any rights that the Corporation, in any ca-
11 pacity, might otherwise have to exercise
12 any powers described in clause (i) under
13 any other provision of law.

14 (I) INCIDENTAL POWERS.—The Corpora-
15 tion, as receiver for a covered financial com-
16 pany, may take any action authorized by this
17 section that the Corporation determines is in
18 the best interests of the covered financial com-
19 pany, its customers, its creditors, its counter-
20 parties, or the stability of the United States fi-
21 nancial system.

22 (J) UTILIZATION OF PRIVATE SECTOR.—In
23 carrying out its responsibilities in the manage-
24 ment and disposition of assets from a covered
25 financial company, the Corporation, as receiver

1 for a covered financial company, may utilize the
2 services of private persons, including real estate
3 and loan portfolio asset management, property
4 management, auction marketing, legal, and bro-
5 kerage services, if such services are available in
6 the private sector, and the Corporation deter-
7 mines that utilization of such services is prac-
8 ticable, efficient, and cost effective.

9 (K) SHAREHOLDERS AND CREDITORS OF
10 COVERED FINANCIAL COMPANY.—Notwith-
11 standing any other provision of law, the Cor-
12 poration, as receiver for a covered financial
13 company, by operation of law, to the rights, ti-
14 tles, powers, and privileges described in sub-
15 paragraph (A), shall terminate all rights and
16 claims that the stockholders and creditors of
17 the covered financial company may have against
18 the assets of the covered financial company or
19 the Corporation arising out of their status as
20 stockholders or creditors, except for their right
21 to payment, resolution, or other satisfaction of
22 their claims, as permitted under this section.
23 The Corporation shall ensure that actions taken
24 under section 203(c) will not prevent share-
25 holders and unsecured creditors from bearing

1 losses, consistent with the priority of claims
2 provisions in section 208(b).

3 (L) COORDINATION WITH FOREIGN FINAN-
4 CIAL AUTHORITIES.—The Corporation, as re-
5 ceiver for a covered financial company, shall co-
6 ordinate with the appropriate foreign financial
7 authorities regarding the resolution of subsidi-
8 aries of the covered financial company that are
9 established in a country other than the United
10 States.

11 (2) AUTHORITY OF CORPORATION TO DETER-
12 MINE CLAIMS.—

13 (A) IN GENERAL.—The Corporation may,
14 as receiver for a covered financial company, de-
15 termine claims in accordance with the require-
16 ments of this subsection and regulations pre-
17 scribed under paragraph (3).

18 (B) NOTICE REQUIREMENTS.—The Cor-
19 poration, as receiver for a covered financial
20 company, in any case involving the liquidation
21 or winding up of the affairs of a covered finan-
22 cial company, shall—

23 (i) promptly publish a notice to the
24 creditors of the covered financial company
25 to present their claims, together with

1 proof, to the receiver by a date specified in
2 the notice, which shall be not earlier than
3 90 days after the date of publication of
4 such notice; and

5 (ii) republish such notice 1 month and
6 2 months, respectively, after the date of
7 publication under clause (i).

8 (C) MAILING REQUIRED.—The receiver
9 shall mail a notice similar to the notice pub-
10 lished under subparagraph (B)(i) at the time of
11 such publication to any creditor shown on the
12 books of the covered financial company—

13 (i) at the last address of the creditor
14 appearing in such books; or

15 (ii) upon discovery of the name and
16 address of a claimant not appearing on the
17 books of the covered financial company,
18 not later than 30 days after the date of the
19 discovery of such name and address.

20 (3) RULEMAKING AUTHORITY RELATING TO DE-
21 TERMINATION OF CLAIMS.—

22 (A) IN GENERAL.—Subject to subsection
23 (b), the Corporation may prescribe rules and
24 regulations regarding the allowance or disallow-
25 ance of claims by the Corporation and providing

1 for administrative determination of claims and
2 review of such determination.

3 (B) EXISTING RULES.—The Corporation
4 may elect to use the regulations adopted pursu-
5 ant to section 11 of the Federal Deposit Insur-
6 ance Act (12 U.S.C. 1821) with respect to the
7 determination of claims for a covered financial
8 company, as if the covered financial company
9 were an insured depository institution.

10 (4) PROCEDURES FOR DETERMINATION OF
11 CLAIMS.—

12 (A) DETERMINATION PERIOD.—

13 (i) IN GENERAL.—Before the end of
14 the 180-day period beginning on the date
15 on which any claim against a covered fi-
16 nancial company is filed with the Corpora-
17 tion as receiver, the Corporation shall de-
18 termine whether to allow or disallow the
19 claim, and shall notify the claimant of any
20 determination with respect to such claim.

21 (ii) EXTENSION OF TIME.—The period
22 described in clause (i) may be extended by
23 a written agreement between the claimant
24 and the Corporation.

1 (iii) MAILING OF NOTICE SUFFI-
2 CIENT.—The requirements of clause (i)
3 shall be deemed to be satisfied if the notice
4 of any determination with respect to any
5 claim is mailed to the last address of the
6 claimant which appears—

7 (I) on the books of the covered fi-
8 nancial company;

9 (II) in the claim filed by the
10 claimant; or

11 (III) in documents submitted in
12 proof of the claim.

13 (iv) CONTENTS OF NOTICE OF DIS-
14 ALLOWANCE.—If any claim filed under
15 clause (i) is disallowed, the notice to the
16 claimant shall contain—

17 (I) a statement of each reason
18 for the disallowance; and

19 (II) the procedures available for
20 obtaining agency review of the deter-
21 mination to disallow the claim or judi-
22 cial determination of the claim.

23 (B) ALLOWANCE OF PROVEN CLAIM.—The
24 Corporation shall allow any claim received on or
25 before the date specified in the notice published

1 under paragraph (2)(B)(i) by the Corporation
2 from any claimant which is proved to the satis-
3 faction of the Corporation.

4 (C) DISALLOWANCE OF CLAIMS FILED
5 AFTER END OF FILING PERIOD.—

6 (i) IN GENERAL.—Except as provided
7 in clause (ii), claims filed after the date
8 specified in the notice published under
9 paragraph (2)(B)(i) shall be disallowed,
10 and such disallowance shall be final.

11 (ii) CERTAIN EXCEPTIONS.—Clause
12 (i) shall not apply with respect to any
13 claim filed by any claimant after the date
14 specified in the notice published under
15 paragraph (2)(B)(i), and such claim may
16 be considered by the receiver, if—

17 (I) the claimant did not receive
18 notice of the appointment of the re-
19 ceiver in time to file such claim before
20 such date; and

21 (II) such claim is filed in time to
22 permit payment of such claim.

23 (D) AUTHORITY TO DISALLOW CLAIMS.—

24 (i) IN GENERAL.—The Corporation
25 may disallow any portion of any claim by

1 a creditor or claim of security, preference,
2 or priority which is not proved to the satis-
3 faction of the Corporation.

4 (ii) PAYMENTS TO LESS THAN FULLY
5 SECURED CREDITORS.—In the case of a
6 claim of a creditor against a covered finan-
7 cial company which is secured by any prop-
8 erty or other asset of such covered finan-
9 cial company, the receiver—

10 (I) may treat the portion of such
11 claim which exceeds an amount equal
12 to the fair market value of such prop-
13 erty or other asset as an unsecured
14 claim against the covered financial
15 company; and

16 (II) may not make any payment
17 with respect to such unsecured por-
18 tion of the claim, other than in con-
19 nection with the disposition of all
20 claims of unsecured creditors of the
21 covered financial company.

22 (iii) EXCEPTIONS.—No provision of
23 this paragraph shall apply with respect
24 to—

1 (I) any extension of credit from
2 any Federal reserve bank, or the Cor-
3 poration, to any covered financial
4 company; or

5 (II) subject to clause (ii), any le-
6 gally enforceable or perfected security
7 interest in the assets of the covered fi-
8 nancial company securing any such
9 extension of credit.

10 (iv) NO JUDICIAL REVIEW OF DETER-
11 MINATION.—No court may review the de-
12 termination of the Corporation pursuant to
13 this subparagraph to disallow a claim.

14 (E) LEGAL EFFECT OF FILING.—

15 (i) STATUTE OF LIMITATION
16 TOLLED.—For purposes of any applicable
17 statute of limitations, the filing of a claim
18 with the Corporation shall constitute a
19 commencement of an action.

20 (ii) NO PREJUDICE TO OTHER AC-
21 TIONS.—Subject to paragraph (9), the fil-
22 ing of a claim with the Corporation shall
23 not prejudice any right of the claimant to
24 continue any action which was filed before
25 the date of appointment of the Corporation

1 as receiver for the covered financial com-
2 pany.

3 (5) PROVISION FOR JUDICIAL DETERMINATION
4 OF CLAIMS.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), a claimant may file suit on a claim
7 (or continue an action commenced before the
8 date of the appointment of the Corporation as
9 receiver) in the district or territorial court of
10 the United States for the district within which
11 the principal place of business of the covered fi-
12 nancial company is located or the United States
13 District Court for the District of Columbia (and
14 such court shall have jurisdiction to hear such
15 claim).

16 (B) TIMING.—A claim under subparagraph
17 (A) may be filed before the end of the 60-day
18 period beginning on the earlier of—

19 (i) the end of the period described in
20 paragraph (4)(A)(i) (or, if extended by
21 agreement of the Corporation and the
22 claimant, the period described in para-
23 graph (4)(A)(ii)) with respect to any claim
24 against a covered financial company for
25 which the Corporation is receiver; or

1 (ii) the date of any notice of disallow-
2 ance of such claim pursuant to paragraph
3 (4)(A)(i).

4 (C) STATUTE OF LIMITATIONS.—If any
5 claimant fails to file suit on such claim (or con-
6 tinue an action commenced before the date of
7 the appointment of the Corporation as receiver)
8 before the end of the 60-day period described in
9 subparagraph (B), the claim shall be deemed to
10 be disallowed (other than any portion of such
11 claim which was allowed by the receiver) as of
12 the end of such period, such disallowance shall
13 be final, and the claimant shall have no further
14 rights or remedies with respect to such claim.

15 (6) EXPEDITED DETERMINATION OF CLAIMS.—

16 (A) PROCEDURE REQUIRED.—The Cor-
17 poration shall establish a procedure for expe-
18 dited relief outside of the routine claims process
19 established under paragraph (4) for any claim-
20 ant that—

21 (i) alleges the existence of a legally
22 valid and enforceable or perfected security
23 interest in assets of any covered financial
24 company for which the appropriate Federal

1 regulatory agency has been appointed as
2 receiver; and

3 (ii) alleges that irreparable injury will
4 occur if the routine claims procedure is fol-
5 lowed.

6 (B) DETERMINATION PERIOD.—Before the
7 end of the 90-day period beginning on the date
8 on which any claim is filed in accordance with
9 the procedures established pursuant to subpara-
10 graph (A), the Corporation shall—

11 (i) determine—

12 (I) whether to allow or disallow
13 such claim; or

14 (II) whether such claim should be
15 determined pursuant to the proce-
16 dures established pursuant to para-
17 graph (4);

18 (ii) notify the claimant of the deter-
19 mination; and

20 (iii) if the claim is disallowed, provide
21 a statement of each reason for the dis-
22 allowance and the procedure for obtaining
23 a judicial determination.

24 (C) PERIOD FOR FILING OR RENEWING
25 SUIT.—Any claimant who files a request for ex-

1 pedited relief shall be permitted to file a suit,
2 or to continue such a suit filed before the ap-
3 pointment of the Corporation as receiver, seek-
4 ing a determination of the rights of the claim-
5 ant with respect to such security interest after
6 the earlier of—

7 (i) the end of the 90-day period begin-
8 ning on the date of the filing of a request
9 for expedited relief; or

10 (ii) the date on which the Corporation
11 denies the claim.

12 (D) STATUTE OF LIMITATIONS.—If an ac-
13 tion described in subparagraph (C) is not filed,
14 or the motion to renew a previously filed suit is
15 not made, before the end of the 30-day period
16 beginning on the date on which such action or
17 motion may be filed in accordance with sub-
18 paragraph (B), the claim shall be deemed to be
19 disallowed as of the end of such period (other
20 than any portion of such claim which was al-
21 lowed by the receiver), such disallowance shall
22 be final, and the claimant shall have no further
23 rights or remedies with respect to such claim.

24 (E) LEGAL EFFECT OF FILING.—

1 (i) STATUTE OF LIMITATION
2 TOLLED.—For purposes of any applicable
3 statute of limitations, the filing of a claim
4 with the receiver shall constitute a com-
5 mencement of an action.

6 (ii) NO PREJUDICE TO OTHER AC-
7 TIONS.—Subject to paragraph (9), the fil-
8 ing of a claim with the receiver shall not
9 prejudice any right of the claimant to con-
10 tinue any action which was filed before the
11 appointment of the Corporation as receiver
12 for the covered financial company.

13 (7) AGREEMENTS AGAINST INTEREST OF THE
14 RECEIVER.—No agreement that tends to diminish or
15 defeat the interest of the Corporation as receiver in
16 any asset acquired by the receiver under this section
17 shall be valid against the receiver, unless such agree-
18 ment is in writing and executed by an authorized of-
19 ficer or representative of the covered financial com-
20 pany, and has been since the time of its execution
21 an official record of the company.

22 (8) PAYMENT OF CLAIMS.—

23 (A) IN GENERAL.—The Corporation as re-
24 ceiver may, in its discretion and to the extent
25 funds are available, pay creditor claims, in such

1 manner and amounts as are authorized under
2 this section, which are—

3 (i) allowed by the receiver;

4 (ii) approved by the Corporation pur-
5 suant to a final determination pursuant to
6 paragraph (6); or

7 (iii) determined by the final judgment
8 of any court of competent jurisdiction.

9 (B) PAYMENT OF DIVIDENDS ON
10 CLAIMS.—The Corporation as receiver may, in
11 the sole discretion of the Corporation, and to
12 the extent otherwise permitted by this section,
13 pay dividends on proven claims at any time,
14 and no liability shall attach to the Corporation
15 (in the capacity of the Corporation as receiver),
16 by reason of any such payment, for failure to
17 pay dividends to a claimant whose claim is not
18 proved at the time of any such payment.

19 (C) RULEMAKING AUTHORITY OF COR-
20 PORATION.—The Corporation may prescribe
21 such rules, including definitions of terms, as it
22 deems appropriate to establish a single uniform
23 interest rate for, or to make payments of post
24 insolvency interest to creditors holding proven
25 claims against the receivership estates of a cov-

1 ered financial company following satisfaction by
2 the receiver for the principal amount of all
3 creditor claims.

4 (9) SUSPENSION OF LEGAL ACTIONS.—

5 (A) IN GENERAL.—After the appointment
6 of the Corporation as receiver for a covered fi-
7 nancial company, the Corporation may request
8 a stay in any non-criminal judicial action or
9 proceeding to which such covered financial com-
10 pany is or becomes a party, for a period not to
11 exceed 90 days.

12 (B) GRANT OF STAY BY ALL COURTS RE-
13 QUIRED.—Upon receipt of a request by the Cor-
14 poration pursuant to subparagraph (A) for a
15 stay of any non-criminal judicial action or pro-
16 ceeding in any court having jurisdiction of such
17 action or proceeding, the court shall grant such
18 stay as to all parties.

19 (10) ADDITIONAL RIGHTS AND DUTIES.—

20 (A) PRIOR FINAL ADJUDICATION.—The
21 Corporation shall abide by any final
22 unappealable judgment of any court of com-
23 petent jurisdiction which was rendered before
24 the appointment of the Corporation as receiver.

1 (B) RIGHTS AND REMEDIES OF RE-
2 CEIVER.—In the event of any appealable judg-
3 ment, the Corporation as receiver shall—

4 (i) have all the rights and remedies
5 available to the covered financial company
6 (before the date of appointment of the re-
7 ceiver under section 203) and the Corpora-
8 tion, including removal to Federal court
9 and all appellate rights; and

10 (ii) not be required to post any bond
11 in order to pursue such remedies.

12 (C) NO ATTACHMENT OR EXECUTION.—No
13 attachment or execution may issue by any court
14 upon assets in the possession of the receiver for
15 a covered financial company.

16 (D) LIMITATION ON JUDICIAL REVIEW.—
17 Except as otherwise provided in this subsection,
18 no court shall have jurisdiction over—

19 (i) any claim or action for payment
20 from, or any action seeking a determina-
21 tion of rights with respect to, the assets of
22 any covered financial company for which
23 the Corporation has been appointed re-
24 ceiver, including any assets which the Cor-

1 poration may acquire from itself as such
2 receiver; or

3 (ii) any claim relating to any act or
4 omission of such covered financial company
5 or the Corporation as receiver.

6 (E) DISPOSITION OF ASSETS.—In exer-
7 cising any right, power, privilege, or authority
8 as receiver in connection with any covered fi-
9 nancial company for which the Corporation is
10 acting as receiver under this section, the Cor-
11 poration shall, to the greatest extent prac-
12 ticable, conduct its operations in a manner
13 that—

14 (i) maximizes the net present value
15 return from the sale or disposition of such
16 assets;

17 (ii) minimizes the amount of any loss
18 realized in the resolution of cases;

19 (iii) minimizes the cost to the general
20 fund of the Treasury;

21 (iv) mitigates the potential for serious
22 adverse effects to the financial system and
23 the United States economy;

1 (v) ensures timely and adequate com-
2 petition and fair and consistent treatment
3 of offerors; and

4 (vi) prohibits discrimination on the
5 basis of race, sex, or ethnic groups in the
6 solicitation and consideration of offers.

7 (11) STATUTE OF LIMITATIONS FOR ACTIONS
8 BROUGHT BY RECEIVER.—

9 (A) IN GENERAL.—Notwithstanding any
10 provision of any contract, the applicable statute
11 of limitations with regard to any action brought
12 by the Corporation as receiver for a covered fi-
13 nancial company shall be—

14 (i) in the case of any contract claim,
15 the longer of—

16 (I) the 6-year period beginning
17 on the date on which the claim ac-
18 crues; or

19 (II) the period applicable under
20 State law; and

21 (ii) in the case of any tort claim, the
22 longer of—

23 (I) the 3-year period beginning
24 on the date on which the claim ac-
25 crues; or

1 (II) the period applicable under
2 State law.

3 (B) DETERMINATION OF THE DATE ON
4 WHICH A CLAIM ACCRUES.—For purposes of
5 subparagraph (A), the date on which the stat-
6 ute of limitations begins to run on any claim
7 described in subparagraph (A) shall be the later
8 of—

9 (i) the date of the appointment of the
10 Corporation as receiver under this title; or

11 (ii) the date on which the cause of ac-
12 tion accrues.

13 (C) REVIVAL OF EXPIRED STATE CAUSES
14 OF ACTION.—

15 (i) IN GENERAL.—In the case of any
16 tort claim described in clause (ii) for which
17 the statute of limitation applicable under
18 State law with respect to such claim has
19 expired not more than 5 years before the
20 date of appointment of the Corporation as
21 receiver for a covered financial company,
22 the Corporation may bring an action as re-
23 ceiver on such claim without regard to the
24 expiration of the statute of limitation ap-
25 plicable under State law.

1 (ii) CLAIMS DESCRIBED.—A tort
2 claim referred to in clause (i) is a claim
3 arising from fraud, intentional misconduct
4 resulting in unjust enrichment, or inten-
5 tional misconduct resulting in substantial
6 loss to the covered financial company.

7 (12) FRAUDULENT TRANSFERS.—

8 (A) IN GENERAL.—The Corporation, as re-
9 ceiver for any covered financial company, may
10 avoid a transfer of any interest of an institu-
11 tion-affiliated party, or any person that the
12 Corporation determines is a debtor of the cov-
13 ered financial company, in property, or any ob-
14 ligation incurred by such party or person, that
15 was made during the 5-year period preceding
16 the date on which the Corporation was ap-
17 pointed receiver, if such party or person volun-
18 tarily or involuntarily made such transfer or in-
19 curred such liability with the intent to hinder,
20 delay, or defraud the covered financial company
21 or the Corporation.

22 (B) RIGHT OF RECOVERY.—To the extent
23 that a transfer is avoided under subparagraph
24 (A), the Corporation may recover, for the ben-
25 efit of the covered financial company, the prop-

1 erty transferred or, if a court so orders, the
2 value of such property (at the time of such
3 transfer) from—

4 (i) the initial transferee of such trans-
5 fer or the institution-affiliated party or
6 person for whose benefit such transfer was
7 made; or

8 (ii) any immediate or mediate trans-
9 feree of any such initial transferee.

10 (C) RIGHTS OF TRANSFEREE OR OBLI-
11 GEE.—The Corporation may not recover under
12 subparagraph (B)—

13 (i) any transfer that takes for value,
14 including satisfaction or securing of a
15 present or antecedent debt, in good faith;
16 or

17 (ii) any immediate or mediate good
18 faith transferee of such transferee.

19 (D) RIGHTS UNDER THIS SUBSECTION.—
20 The rights of the Corporation as receiver for a
21 covered financial company under this subsection
22 shall be superior to any rights of a trustee or
23 any other party (other than any party which is
24 a Federal agency) under title 11, United States
25 Code.

1 (E) DEFINITION.—For purposes of this
2 paragraph, the term “institution-affiliated
3 party” means—

4 (i) any director, officer, employee, or
5 controlling stockholder of, or agent for, a
6 covered financial company;

7 (ii) any shareholder, consultant, joint
8 venture partner, and any other person as
9 determined by the Corporation (by regula-
10 tion or otherwise) who participates in the
11 conduct of the affairs of a covered finan-
12 cial company; and

13 (iii) any independent contractor (in-
14 cluding any attorney, appraiser, or ac-
15 countant) who knowingly or recklessly par-
16 ticipates in any violation of any law or reg-
17 ulation, any breach of fiduciary duty, or
18 any unsafe or unsound practice, which
19 caused or is likely to cause more than a
20 minimal financial loss to, or a significant
21 adverse effect on, the covered financial
22 company.

23 (13) ATTACHMENT OF ASSETS AND OTHER IN-
24 JUNCTIVE RELIEF.—Subject to paragraph (14), any
25 court of competent jurisdiction may, at the request

1 of the Corporation as receiver for a covered financial
2 company, issue an order in accordance with Rule 65
3 of the Federal Rules of Civil Procedure, including an
4 order placing the assets of any person designated by
5 the Corporation under the control of the court and
6 appointing a trustee to hold such assets.

7 (14) STANDARDS.—

8 (A) SHOWING.—Rule 65 of the Federal
9 Rules of Civil Procedure shall apply with re-
10 spect to any proceeding under paragraph (13),
11 without regard to the requirement of such rule
12 that the applicant show that the injury, loss, or
13 damage is irreparable and immediate.

14 (B) STATE PROCEEDING.—If, in the case
15 of any proceeding in a State court, the court
16 determines that rules of civil procedure avail-
17 able under the laws of the State provide sub-
18 stantially similar protections to the right of the
19 parties to due process as provided under Rule
20 65 (as modified with respect to such proceeding
21 by subparagraph (A)), the relief sought by the
22 Corporation pursuant to paragraph (14) may be
23 requested under the laws of such State.

24 (15) TREATMENT OF CLAIMS ARISING FROM
25 BREACH OF CONTRACTS EXECUTED BY THE COR-

1 PORATION AS RECEIVER.—Notwithstanding any
2 other provision of this subsection, any final and
3 unappealable judgment for monetary damages en-
4 tered against the Corporation as receiver for a cov-
5 ered financial company for the breach of an agree-
6 ment executed or approved by the Corporation after
7 the date of its appointment shall be paid as an ad-
8 ministrative expense of the receiver. Nothing in this
9 paragraph shall be construed to limit the power of
10 a receiver to exercise any rights under contract or
11 law, including to terminate, breach, cancel, or other-
12 wise discontinue such agreement.

13 (16) ACCOUNTING AND RECORDKEEPING RE-
14 QUIREMENTS.—

15 (A) IN GENERAL.—The Corporation as re-
16 ceiver for a covered financial company shall,
17 consistent with the accounting and reporting
18 practices and procedures established by the
19 Corporation, maintain a full accounting of each
20 receivership or other disposition of any covered
21 financial company.

22 (B) ANNUAL ACCOUNTING OR REPORT.—
23 With respect to each receivership to which the
24 Corporation is appointed, the Corporation shall
25 make an annual accounting or report, as appro-

1 appropriate, available to the Secretary and the Comp-
2 troller General of the United States.

3 (C) AVAILABILITY OF REPORTS.—Any re-
4 port prepared pursuant to subparagraph (B)
5 shall be made available by the Corporation upon
6 request to any member of the public.

7 (D) RECORDKEEPING REQUIREMENT.—

8 (i) IN GENERAL.—The Corporation
9 shall prescribe such regulations and estab-
10 lish retention schedules, as the Corporation
11 determines to be appropriate, regarding
12 the management and disposition of the
13 records of a covered financial company for
14 which the Corporation is appointed as re-
15 ceiver, with due regard for—

16 (I) the costs and other burdens
17 imposed on the receiver by the main-
18 tenance of such records;

19 (II) the avoidance of duplicative
20 record retention; and

21 (III) the expected evidentiary
22 needs of the Corporation as receiver,
23 and the public regarding the records
24 of failed insured depository institu-
25 tions.

1 (ii) OLD RECORDS.—Notwithstanding
2 clause (i), and unless otherwise required by
3 applicable Federal law or court order, the
4 Corporation may, at any time, destroy any
5 records of a covered financial company for
6 which the Corporation is appointed re-
7 ceiver, provided that 10 years have elapsed
8 since the records were created or acquired
9 by the covered financial company.

10 (iii) RECORDS DEFINED.—As used in
11 this subparagraph, the terms “records”
12 and “records of a covered financial com-
13 pany” mean any document, book, paper,
14 map, photograph, microfiche, microfilm,
15 computer or electronically-created record
16 generated or maintained by the covered fi-
17 nancial company in the course of and nec-
18 essary to its transaction of business.

19 (b) PRIORITY OF EXPENSES AND UNSECURED
20 CLAIMS.—

21 (1) IN GENERAL.—Unsecured claims against a
22 covered financial company, or the Corporation as re-
23 ceiver for such covered financial company under this
24 section, that are proven to the satisfaction of the re-
25 ceiver shall have priority in the following order:

1 (A) Administrative expenses of the re-
2 ceiver.

3 (B) Any amounts owed to the United
4 States, unless the United States agrees or con-
5 sents otherwise.

6 (C) Any other general or senior liability of
7 the covered financial company (which is not a
8 liability described under subparagraph (D) or
9 (E)).

10 (D) Any obligation subordinated to general
11 creditors (which is not an obligation described
12 under subparagraph (E)).

13 (E) Any obligation to shareholders, mem-
14 bers, general partners, limited partners, or
15 other persons with interests in the equity of the
16 covered financial company arising as a result of
17 their status as shareholders, members, general
18 partners, limited partners, or other persons
19 with interests in the equity of the covered finan-
20 cial company.

21 (2) POST-RECEIVERSHIP FINANCING PRI-
22 ORITY.—In the event that the Corporation as re-
23 ceiver for a covered financial company is unable to
24 obtain unsecured credit for the covered financial
25 company from commercial sources, the Corporation

1 as receiver may obtain credit or incur debt on the
2 part of the covered financial company, which shall
3 have priority over any or all administrative expenses
4 of the receiver under paragraph (1)(A).

5 (3) CLAIMS OF THE UNITED STATES.—Unse-
6 cured claims of the United States shall, at a min-
7 imum, have a higher priority than liabilities of the
8 covered financial company that count as regulatory
9 capital.

10 (4) CREDITORS SIMILARLY SITUATED.—All
11 claimants of a covered financial company that are
12 similarly situated under paragraph (1) shall be
13 treated in a similar manner, except that the Cor-
14 poration as receiver may take any action (including
15 making payments) that does not comply with this
16 subsection, if—

17 (A) the Corporation determines that such
18 action is necessary—

19 (i) to maximize the value of the assets
20 of the covered financial company;

21 (ii) to maximize the present value re-
22 turn from the sale or other disposition of
23 the assets of the covered financial com-
24 pany;

1 (iii) to minimize the amount of any
2 loss realized upon the sale or other dispo-
3 sition of the assets of the covered financial
4 company; or

5 (iv) to contain or address serious ad-
6 verse effects on financial stability or the
7 United States economy; and

8 (B) all claimants that are similarly situ-
9 ated under paragraph (1) receive not less than
10 the amount provided in subsection (d)(2).

11 (5) SECURED CLAIMS UNAFFECTED.—This sub-
12 section shall not affect secured claims, except to the
13 extent that the security is insufficient to satisfy the
14 claim, and then only with regard to the difference
15 between the claim and the amount realized from the
16 security.

17 (6) DEFINITIONS.—As used in this subsection,
18 the term “administrative expenses of the receiver”
19 includes—

20 (A) the actual, necessary costs and ex-
21 penses incurred by the Corporation as receiver
22 in preserving the assets of a covered financial
23 company or liquidating or otherwise resolving
24 the affairs of a covered financial company; and

1 (B) any obligations that the Corporation
2 as receiver determines are necessary and appro-
3 priate to facilitate the smooth and orderly liq-
4 uidation or other resolution of the covered fi-
5 nancial company.

6 (c) PROVISIONS RELATING TO CONTRACTS ENTERED
7 INTO BEFORE APPOINTMENT OF RECEIVER.—

8 (1) AUTHORITY TO REPUDIATE CONTRACTS.—

9 In addition to any other rights that a receiver may
10 have, the Corporation as receiver for any covered fi-
11 nancial company may disaffirm or repudiate any
12 contract or lease—

13 (A) to which the covered financial company
14 is a party;

15 (B) the performance of which the Corpora-
16 tion as receiver, in the discretion of the Cor-
17 poration, determines to be burdensome; and

18 (C) the disaffirmance or repudiation of
19 which the Corporation as receiver determines,
20 in the discretion of the Corporation, will pro-
21 mote the orderly administration of the affairs of
22 the covered financial company.

23 (2) TIMING OF REPUDIATION.—The Corpora-
24 tion, as receiver for any covered financial company,
25 shall determine whether or not to exercise the rights

1 of repudiation under this subsection within a reason-
2 able period of time following the date of such ap-
3 pointment.

4 (3) CLAIMS FOR DAMAGES FOR REPUDI-
5 ATION.—

6 (A) IN GENERAL.—Except as provided in
7 paragraphs (4), (5), and (6) and subparagraph
8 (C) of this paragraph, the liability of the Cor-
9 poration, as receiver for a covered financial
10 company, for the disaffirmance or repudiation
11 of any contract pursuant to paragraph (1) shall
12 be—

13 (i) limited to actual direct compen-
14 satory damages; and

15 (ii) determined as of—

16 (I) the date of the appointment
17 of the Corporation as receiver; or

18 (II) in the case of any contract
19 or agreement referred to in paragraph
20 (8), the date of the disaffirmance or
21 repudiation of such contract or agree-
22 ment.

23 (B) NO LIABILITY FOR OTHER DAM-
24 AGES.—For purposes of subparagraph (A), the

1 term “actual direct compensatory damages”
2 does not include—

- 3 (i) punitive or exemplary damages;
4 (ii) damages for lost profits or oppor-
5 tunity; or
6 (iii) damages for pain and suffering.

7 (C) MEASURE OF DAMAGES FOR REPUDI-
8 ATION OF QUALIFIED FINANCIAL CONTRACTS.—
9 In the case of any qualified financial contract
10 or agreement to which paragraph (8) applies,
11 compensatory damages shall be—

- 12 (i) deemed to include normal and rea-
13 sonable costs of cover or other reasonable
14 measures of damages utilized in the indus-
15 tries for such contract and agreement
16 claims; and
17 (ii) paid in accordance with this sub-
18 section and subsection (d), except as other-
19 wise specifically provided in this sub-
20 section.

21 (4) LEASES UNDER WHICH THE COVERED FI-
22 NANCIAL COMPANY IS THE LESSEE.—

23 (A) IN GENERAL.—If the Corporation as
24 receiver disaffirms or repudiates a lease under
25 which the covered financial company was the

1 lessee, the receiver shall not be liable for any
2 damages (other than damages determined pur-
3 suant to subparagraph (B)) for the
4 disaffirmance or repudiation of such lease.

5 (B) PAYMENTS OF RENT.—Notwith-
6 standing subparagraph (A), the lessor under a
7 lease to which subparagraph (A) applies shall—

8 (i) be entitled to the contractual rent
9 accruing before the later of the date on
10 which—

11 (I) the notice of disaffirmance or
12 repudiation is mailed; or

13 (II) the disaffirmance or repudi-
14 ation becomes effective, unless the les-
15 sor is in default or breach of the
16 terms of the lease;

17 (ii) have no claim for damages under
18 any acceleration clause or other penalty
19 provision in the lease; and

20 (iii) have a claim for any unpaid rent,
21 subject to all appropriate offsets and de-
22 fenses, due as of the date of the appoint-
23 ment which shall be paid in accordance
24 with this subsection and subsection (d).

1 the lease after the date of the repudi-
2 ation of such lease; and

3 (II) may offset against any rent
4 payment which accrues after the date
5 of the repudiation of the lease, any
6 damages which accrue after such date
7 due to the nonperformance of any ob-
8 ligation of the covered financial com-
9 pany under the lease after such date;
10 and

11 (ii) the Corporation as receiver shall
12 not be liable to the lessee for any damages
13 arising after such date as a result of the
14 repudiation, other than the amount of any
15 offset allowed under clause (i)(II).

16 (6) CONTRACTS FOR THE SALE OF REAL PROP-
17 erty.—

18 (A) IN GENERAL.—If the receiver repudi-
19 ates any contract (which meets the require-
20 ments of subsection (a)(7)) for the sale of real
21 property, and the purchaser of such real prop-
22 erty under such contract is in possession and is
23 not, as of the date of such repudiation, in de-
24 fault, such purchaser may either—

- 1 (i) treat the contract as terminated by
2 such repudiation; or
3 (ii) remain in possession of such real
4 property.

5 (B) PROVISIONS APPLICABLE TO PUR-
6 CHASER REMAINING IN POSSESSION.—If any
7 purchaser of real property under any contract
8 described in subparagraph (A) remains in pos-
9 session of such property pursuant to clause (ii)
10 of subparagraph (A)—

11 (i) the purchaser—

12 (I) shall continue to make all
13 payments due under the contract after
14 the date of the repudiation of the con-
15 tract; and

16 (II) may offset against any such
17 payments any damages which accrue
18 after such date due to the non-
19 performance (after such date) of any
20 obligation of the covered financial
21 company under the contract; and

22 (ii) the Corporation as receiver shall—

23 (I) not be liable to the purchaser
24 for any damages arising after such
25 date as a result of the repudiation,

1 other than the amount of any offset
2 allowed under clause (i)(II);

3 (II) deliver title to the purchaser
4 in accordance with the provisions of
5 the contract; and

6 (III) have no obligation under
7 the contract other than the perform-
8 ance required under subclause (II).

9 (C) ASSIGNMENT AND SALE ALLOWED.—

10 (i) IN GENERAL.—No provision of this
11 paragraph shall be construed as limiting
12 the right of the Corporation as receiver to
13 assign the contract described in subpara-
14 graph (A) and sell the property subject to
15 the contract and the provisions of this
16 paragraph.

17 (ii) NO LIABILITY AFTER ASSIGNMENT
18 AND SALE.—If an assignment and sale de-
19 scribed in clause (i) is consummated, the
20 Corporation as receiver shall have no fur-
21 ther liability under the contract described
22 in subparagraph (A) or with respect to the
23 real property which was the subject of such
24 contract.

1 (7) PROVISIONS APPLICABLE TO SERVICE CON-
2 TRACTS.—

3 (A) SERVICES PERFORMED BEFORE AP-
4 POINTMENT.—In the case of any contract for
5 services between any person and any covered fi-
6 nancial company for which the Corporation has
7 been appointed receiver, any claim of such per-
8 son for services performed before the date of
9 appointment shall be—

10 (i) a claim to be paid in accordance
11 with subsections (a), (b), and (d); and

12 (ii) deemed to have arisen as of the
13 date the receiver was appointed.

14 (B) SERVICES PERFORMED AFTER AP-
15 POINTMENT AND PRIOR TO REPUDIATION.—If,
16 in the case of any contract for services de-
17 scribed in subparagraph (A), the Corporation as
18 receiver accepts performance by the other per-
19 son before making any determination to exer-
20 cise the right of repudiation of such contract
21 under this section—

22 (i) the other party shall be paid under
23 the terms of the contract for the services
24 performed; and

1 (ii) the amount of such payment shall
2 be treated as an administrative expense of
3 the receivership.

4 (C) ACCEPTANCE OF PERFORMANCE NO
5 BAR TO SUBSEQUENT REPUDIATION.—The ac-
6 ceptance by the Corporation as receiver for
7 services referred to in subparagraph (B) in con-
8 nection with a contract described in subpara-
9 graph (B) shall not affect the right of the Cor-
10 poration as receiver to repudiate such contract
11 under this section at any time after such per-
12 formance.

13 (8) CERTAIN QUALIFIED FINANCIAL CON-
14 TRACTS.—

15 (A) RIGHTS OF PARTIES TO CONTRACTS.—
16 Subject to subsection (a)(7) and paragraphs (9)
17 and (10) of this subsection, and notwith-
18 standing any other provision of this section, any
19 other provision of Federal law, or the law of
20 any State, no person shall be stayed or prohib-
21 ited from exercising—

22 (i) any right that such person has to
23 cause the termination, liquidation, or accel-
24 eration of any qualified financial contract
25 with a covered financial company which

1 arises upon the date of appointment of the
2 Corporation as receiver for such covered fi-
3 nancial company at any time after such
4 appointment;

5 (ii) any right under any security
6 agreement or arrangement or other credit
7 enhancement related to one or more quali-
8 fied financial contracts described in clause
9 (i); and

10 (iii) any right to offset or net out any
11 termination value, payment amount, or
12 other transfer obligation arising under or
13 in connection with 1 or more contracts and
14 agreements described in clause (i), includ-
15 ing any master agreement for such con-
16 tracts or agreements.

17 (B) APPLICABILITY OF OTHER PROVI-
18 SIONS.—Subsection (a)(9) shall apply in the
19 case of any judicial action or proceeding
20 brought against the Corporation as receiver re-
21 ferred to in subparagraph (A), or the subject
22 covered financial company, by any party to a
23 contract or agreement described in subpara-
24 graph (A)(i) with such covered financial com-
25 pany.

1 (C) CERTAIN TRANSFERS NOT AVOID-
2 ABLE.—

3 (i) IN GENERAL.—Notwithstanding
4 paragraph (11), section 5242 of the Re-
5 vised Statutes of the United States or any
6 other provision of Federal or State law re-
7 lating to the avoidance of preferential or
8 fraudulent transfers, the Corporation,
9 whether acting as the Corporation or as re-
10 ceiver for a covered financial company,
11 may not avoid any transfer of money or
12 other property in connection with any
13 qualified financial contract with a covered
14 financial company.

15 (ii) EXCEPTION FOR CERTAIN TRANS-
16 FERS.—Clause (i) shall not apply to any
17 transfer of money or other property in con-
18 nection with any qualified financial con-
19 tract with a covered financial company if
20 the Corporation determines that the trans-
21 feree had actual intent to hinder, delay, or
22 defraud such company, the creditors of
23 such company, or the Corporation as re-
24 ceiver appointed for such company.

1 (D) CERTAIN CONTRACTS AND AGREE-
2 MENTS DEFINED.—For purposes of this sub-
3 section, the following definitions shall apply:

4 (i) QUALIFIED FINANCIAL CON-
5 TRACT.—The term “qualified financial
6 contract” means any securities contract,
7 commodity contract, forward contract, re-
8 purchase agreement, swap agreement, and
9 any similar agreement that the Corpora-
10 tion determines by regulation, resolution,
11 or order to be a qualified financial contract
12 for purposes of this paragraph.

13 (ii) SECURITIES CONTRACT.—The
14 term “securities contract”—

15 (I) means a contract for the pur-
16 chase, sale, or loan of a security, a
17 certificate of deposit, a mortgage loan,
18 any interest in a mortgage loan, a
19 group or index of securities, certifi-
20 cates of deposit, or mortgage loans or
21 interests therein (including any inter-
22 est therein or based on the value
23 thereof) or any option on any of the
24 foregoing, including any option to
25 purchase or sell any such security,

1 certificate of deposit, mortgage loan,
2 interest, group or index, or option,
3 and including any repurchase or re-
4 verse repurchase transaction on any
5 such security, certificate of deposit,
6 mortgage loan, interest, group or
7 index, or option (whether or not such
8 repurchase or reverse repurchase
9 transaction is a “repurchase agree-
10 ment”, as defined in clause (v));

11 (II) does not include any pur-
12 chase, sale, or repurchase obligation
13 under a participation in a commercial
14 mortgage loan unless the Corporation
15 determines by regulation, resolution,
16 or order to include any such agree-
17 ment within the meaning of such
18 term;

19 (III) means any option entered
20 into on a national securities exchange
21 relating to foreign currencies;

22 (IV) means the guarantee (in-
23 cluding by novation) by or to any se-
24 curities clearing agency of any settle-
25 ment of cash, securities, certificates of

1 deposit, mortgage loans or interests
2 therein, group or index of securities,
3 certificates of deposit or mortgage
4 loans or interests therein (including
5 any interest therein or based on the
6 value thereof) or option on any of the
7 foregoing, including any option to
8 purchase or sell any such security,
9 certificate of deposit, mortgage loan,
10 interest, group or index, or option
11 (whether or not such settlement is in
12 connection with any agreement or
13 transaction referred to in subclauses
14 (I) through (XII) (other than sub-
15 clause (II)));

16 (V) means any margin loan;

17 (VI) means any extension of
18 credit for the clearance or settlement
19 of securities transactions;

20 (VII) means any loan transaction
21 coupled with a securities collar trans-
22 action, any prepaid securities forward
23 transaction, or any total return swap
24 transaction coupled with a securities
25 sale transaction;

1 (VIII) means any other agree-
2 ment or transaction that is similar to
3 any agreement or transaction referred
4 to in this clause;

5 (IX) means any combination of
6 the agreements or transactions re-
7 ferred to in this clause;

8 (X) means any option to enter
9 into any agreement or transaction re-
10 ferred to in this clause;

11 (XI) means a master agreement
12 that provides for an agreement or
13 transaction referred to in any of sub-
14 clauses (I) through (X), other than
15 subclause (II), together with all sup-
16 plements to any such master agree-
17 ment, without regard to whether the
18 master agreement provides for an
19 agreement or transaction that is not a
20 securities contract under this clause,
21 except that the master agreement
22 shall be considered to be a securities
23 contract under this clause only with
24 respect to each agreement or trans-
25 action under the master agreement

1 that is referred to in any of sub-
2 clauses (I) through (X), other than
3 subclause (II); and

4 (XII) means any security agree-
5 ment or arrangement or other credit
6 enhancement related to any agree-
7 ment or transaction referred to in this
8 clause, including any guarantee or re-
9 imbursement obligation in connection
10 with any agreement or transaction re-
11 ferred to in this clause.

12 (iii) COMMODITY CONTRACT.—The
13 term “commodity contract” means—

14 (I) with respect to a futures com-
15 mission merchant, a contract for the
16 purchase or sale of a commodity for
17 future delivery on, or subject to the
18 rules of, a contract market or board
19 of trade;

20 (II) with respect to a foreign fu-
21 tures commission merchant, a foreign
22 future;

23 (III) with respect to a leverage
24 transaction merchant, a leverage
25 transaction;

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1 (IV) with respect to a clearing
2 organization, a contract for the pur-
3 chase or sale of a commodity for fu-
4 ture delivery on, or subject to the
5 rules of, a contract market or board
6 of trade that is cleared by such clear-
7 ing organization, or commodity option
8 traded on, or subject to the rules of,
9 a contract market or board of trade
10 that is cleared by such clearing orga-
11 nization;

12 (V) with respect to a commodity
13 options dealer, a commodity option;

14 (VI) any other agreement or
15 transaction that is similar to any
16 agreement or transaction referred to
17 in this clause;

18 (VII) any combination of the
19 agreements or transactions referred to
20 in this clause;

21 (VIII) any option to enter into
22 any agreement or transaction referred
23 to in this clause;

24 (IX) a master agreement that
25 provides for an agreement or trans-

1 action referred to in any of subclauses
2 (I) through (VIII), together with all
3 supplements to any such master
4 agreement, without regard to whether
5 the master agreement provides for an
6 agreement or transaction that is not a
7 commodity contract under this clause,
8 except that the master agreement
9 shall be considered to be a commodity
10 contract under this clause only with
11 respect to each agreement or trans-
12 action under the master agreement
13 that is referred to in any of sub-
14 clauses (I) through (VIII); or

15 (X) any security agreement or
16 arrangement or other credit enhance-
17 ment related to any agreement or
18 transaction referred to in this clause,
19 including any guarantee or reimburse-
20 ment obligation in connection with
21 any agreement or transaction referred
22 to in this clause.

23 (iv) FORWARD CONTRACT.—The term
24 “forward contract” means—

1 (I) a contract (other than a com-
2 modity contract) for the purchase,
3 sale, or transfer of a commodity or
4 any similar good, article, service,
5 right, or interest which is presently or
6 in the future becomes the subject of
7 dealing in the forward contract trade,
8 or product or byproduct thereof, with
9 a maturity date that is more than 2
10 days after the date on which the con-
11 tract is entered into, including a re-
12 purchase or reverse repurchase trans-
13 action (whether or not such repur-
14 chase or reverse repurchase trans-
15 action is a “repurchase agreement”,
16 as defined in clause (v)), consignment,
17 lease, swap, hedge transaction, de-
18 posit, loan, option, allocated trans-
19 action, unallocated transaction, or any
20 other similar agreement;

21 (II) any combination of agree-
22 ments or transactions referred to in
23 subclauses (I) and (III);

1 (III) any option to enter into any
2 agreement or transaction referred to
3 in subclause (I) or (II);

4 (IV) a master agreement that
5 provides for an agreement or trans-
6 action referred to in subclause (I),
7 (II), or (III), together with all supple-
8 ments to any such master agreement,
9 without regard to whether the master
10 agreement provides for an agreement
11 or transaction that is not a forward
12 contract under this clause, except that
13 the master agreement shall be consid-
14 ered to be a forward contract under
15 this clause only with respect to each
16 agreement or transaction under the
17 master agreement that is referred to
18 in subclause (I), (II), or (III); or

19 (V) any security agreement or ar-
20 rangement or other credit enhance-
21 ment related to any agreement or
22 transaction referred to in subclause
23 (I), (II), (III), or (IV), including any
24 guarantee or reimbursement obliga-
25 tion in connection with any agreement

1 or transaction referred to in any such
2 subclause.

3 (v) REPURCHASE AGREEMENT.—The
4 term “repurchase agreement”(which defini-
5 tion also applies to a reverse repurchase
6 agreement)—

7 (I) means an agreement, includ-
8 ing related terms, which provides for
9 the transfer of one or more certifi-
10 cates of deposit, mortgage related se-
11 curities (as such term is defined in
12 section 3 of the Securities Exchange
13 Act of 1934), mortgage loans, inter-
14 ests in mortgage-related securities or
15 mortgage loans, eligible bankers’ ac-
16 ceptances, qualified foreign govern-
17 ment securities (which, for purposes
18 of this clause, means a security that is
19 a direct obligation of, or that is fully
20 guaranteed by, the central government
21 of a member of the Organization for
22 Economic Cooperation and Develop-
23 ment, as determined by regulation or
24 order adopted by the Board of Gov-
25 ernors of the Federal Reserve System)

1 or securities that are direct obliga-
2 tions of, or that are fully guaranteed
3 by, the United States or any agency
4 of the United States against the
5 transfer of funds by the transferee of
6 such certificates of deposit, eligible
7 bankers' acceptances, securities, mort-
8 gage loans, or interests with a simul-
9 taneous agreement by such transferee
10 to transfer to the transferor thereof
11 certificates of deposit, eligible bank-
12 ers' acceptances, securities, mortgage
13 loans, or interests as described above,
14 at a date certain not later than 1 year
15 after such transfers or on demand,
16 against the transfer of funds, or any
17 other similar agreement;

18 (II) does not include any repur-
19 chase obligation under a participation
20 in a commercial mortgage loan, unless
21 the Corporation determines, by regu-
22 lation, resolution, or order to include
23 any such participation within the
24 meaning of such term;

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1 (III) means any combination of
2 agreements or transactions referred to
3 in subclauses (I) and (IV);

4 (IV) means any option to enter
5 into any agreement or transaction re-
6 ferred to in subclause (I) or (III);

7 (V) means a master agreement
8 that provides for an agreement or
9 transaction referred to in subclause
10 (I), (III), or (IV), together with all
11 supplements to any such master
12 agreement, without regard to whether
13 the master agreement provides for an
14 agreement or transaction that is not a
15 repurchase agreement under this
16 clause, except that the master agree-
17 ment shall be considered to be a re-
18 purchase agreement under this sub-
19 clause only with respect to each agree-
20 ment or transaction under the master
21 agreement that is referred to in sub-
22 clause (I), (III), or (IV); and

23 (VI) means any security agree-
24 ment or arrangement or other credit
25 enhancement related to any agree-

1 ment or transaction referred to in
2 subclause (I), (III), (IV), or (V), in-
3 cluding any guarantee or reimburse-
4 ment obligation in connection with
5 any agreement or transaction referred
6 to in any such subclause.

7 (vi) SWAP AGREEMENT.—The term
8 “swap agreement” means—

9 (I) any agreement, including the
10 terms and conditions incorporated by
11 reference in any such agreement,
12 which is an interest rate swap, option,
13 future, or forward agreement, includ-
14 ing a rate floor, rate cap, rate collar,
15 cross-currency rate swap, and basis
16 swap; a spot, same day-tomorrow, to-
17 morrow-next, forward, or other for-
18 eign exchange, precious metals, or
19 other commodity agreement; a cur-
20 rency swap, option, future, or forward
21 agreement; an equity index or equity
22 swap, option, future, or forward
23 agreement; a debt index or debt swap,
24 option, future, or forward agreement;
25 a total return, credit spread or credit

1 swap, option, future, or forward
2 agreement; a commodity index or
3 commodity swap, option, future, or
4 forward agreement; weather swap, op-
5 tion, future, or forward agreement; an
6 emissions swap, option, future, or for-
7 ward agreement; or an inflation swap,
8 option, future, or forward agreement;

9 (II) any agreement or transaction
10 that is similar to any other agreement
11 or transaction referred to in this
12 clause and that is of a type that has
13 been, is presently, or in the future be-
14 comes, the subject of recurrent deal-
15 ings in the swap or other derivatives
16 markets (including terms and condi-
17 tions incorporated by reference in
18 such agreement) and that is a for-
19 ward, swap, future, option, or spot
20 transaction on one or more rates, cur-
21 rencies, commodities, equity securities
22 or other equity instruments, debt se-
23 curities or other debt instruments,
24 quantitative measures associated with
25 an occurrence, extent of an occur-

1 rence, or contingency associated with
2 a financial, commercial, or economic
3 consequence, or economic or financial
4 indices or measures of economic or fi-
5 nancial risk or value;

6 (III) any combination of agree-
7 ments or transactions referred to in
8 this clause;

9 (IV) any option to enter into any
10 agreement or transaction referred to
11 in this clause;

12 (V) a master agreement that pro-
13 vides for an agreement or transaction
14 referred to in subclause (I), (II), (III),
15 or (IV), together with all supplements
16 to any such master agreement, with-
17 out regard to whether the master
18 agreement contains an agreement or
19 transaction that is not a swap agree-
20 ment under this clause, except that
21 the master agreement shall be consid-
22 ered to be a swap agreement under
23 this clause only with respect to each
24 agreement or transaction under the
25 master agreement that is referred to

1 in subclause (I), (II), (III), or (IV);
2 and

3 (VI) any security agreement or
4 arrangement or other credit enhance-
5 ment related to any agreement or
6 transaction referred to in any of sub-
7 clauses (I) through (V), including any
8 guarantee or reimbursement obliga-
9 tion in connection with any agreement
10 or transaction referred to in any such
11 subclause.

12 (vii) DEFINITIONS RELATING TO DE-
13 FAULT.—When used in this paragraph and
14 paragraph (10)—

15 (I) the term “default” means,
16 with respect to a covered financial
17 company, any adjudication or other
18 official determination by any court of
19 competent jurisdiction, or other public
20 authority pursuant to which the Cor-
21 poration has been appointed receiver;
22 and

23 (II) the term “in danger of de-
24 fault” means a covered financial com-
25 pany with respect to which the Cor-

1 poration or appropriate State author-
2 ity has determined that—

3 (aa) in the opinion of the
4 Corporation or such authority—

5 (AA) the covered finan-
6 cial company is not likely to
7 be able to pay its obligations
8 in the normal course of busi-
9 ness; and

10 (BB) there is no rea-
11 sonable prospect that the
12 covered financial company
13 will be able to pay such obli-
14 gations without Federal as-
15 sistance; or

16 (bb) in the opinion of the
17 Corporation or such authority—

18 (AA) the covered finan-
19 cial company has incurred or
20 is likely to incur losses that
21 will deplete all or substan-
22 tially all of its capital; and

23 (BB) there is no rea-
24 sonable prospect that the

1 capital will be replenished
2 without Federal assistance.

3 (viii) TREATMENT OF MASTER AGREE-
4 MENT AS ONE AGREEMENT.—Any master
5 agreement for any contract or agreement
6 described in any of clauses (i) through (vi)
7 (or any master agreement for such master
8 agreement or agreements), together with
9 all supplements to such master agreement,
10 shall be treated as a single agreement and
11 a single qualified financial contract. If a
12 master agreement contains provisions re-
13 lating to agreements or transactions that
14 are not themselves qualified financial con-
15 tracts, the master agreement shall be
16 deemed to be a qualified financial contract
17 only with respect to those transactions that
18 are themselves qualified financial con-
19 tracts.

20 (ix) TRANSFER.—The term “transfer”
21 means every mode, direct or indirect, abso-
22 lute or conditional, voluntary or involun-
23 tary, of disposing of or parting with prop-
24 erty or with an interest in property, includ-
25 ing retention of title as a security interest

1 and foreclosure of the equity of redemption
2 of the covered financial company.

3 (x) PERSON.—The term “person” in-
4 cludes any governmental entity in addition
5 to any entity included in the definition of
6 such term in section 1, title 1, United
7 States Code.

8 (E) CLARIFICATION.—No provision of law
9 shall be construed as limiting the right or
10 power of the Corporation, or authorizing any
11 court or agency to limit or delay, in any man-
12 ner, the right or power of the Corporation to
13 transfer any qualified financial contract in ac-
14 cordance with paragraphs (9) and (10) of this
15 subsection or to disaffirm or repudiate any such
16 contract in accordance with subsection (c)(1).

17 (F) WALKAWAY CLAUSES NOT EFFEC-
18 TIVE.—

19 (i) IN GENERAL.—Notwithstanding
20 the provisions of subparagraph (A) of this
21 paragraph and sections 403 and 404 of the
22 Federal Deposit Insurance Corporation
23 Improvement Act of 1991, no walkaway
24 clause shall be enforceable in a qualified fi-

1 nancial contract of a covered financial
2 company in default.

3 (ii) LIMITED SUSPENSION OF CERTAIN
4 OBLIGATIONS.—In the case of a qualified
5 financial contract referred to in clause (i),
6 any payment or delivery obligations other-
7 wise due from a party pursuant to the
8 qualified financial contract shall be sus-
9 pended from the time at which the Cor-
10 poration is appointed as receiver until the
11 earlier of—

12 (I) the time at which such party
13 receives notice that such contract has
14 been transferred pursuant to para-
15 graph (10)(A); or

16 (II) 5:00 p.m. (eastern time) on
17 the third business day following the
18 date of the appointment of the Cor-
19 poration as receiver.

20 (iii) WALKAWAY CLAUSE DEFINED.—
21 For purposes of this subparagraph, the
22 term “walkaway clause” means any provi-
23 sion in a qualified financial contract that
24 suspends, conditions, or extinguishes a
25 payment obligation of a party, in whole or

1 in part, or does not create a payment obli-
2 gation of a party that would otherwise
3 exist, solely because of the status of such
4 party as a nondefaulting party in connec-
5 tion with the insolvency of a covered finan-
6 cial company that is a party to the con-
7 tract or the appointment of or the exercise
8 of rights or powers by the Corporation as
9 receiver for such covered financial com-
10 pany, and not as a result of the exercise by
11 a party of any right to offset, setoff, or net
12 obligations that exist under the contract,
13 any other contract between those parties,
14 or applicable law.

15 (G) RECORDKEEPING.—The Corporation,
16 in consultation with the Agency, may prescribe
17 regulations requiring that the covered financial
18 company maintain such records with respect to
19 qualified financial contracts (including market
20 valuations) as the Corporation determines to be
21 necessary or appropriate in order to assist the
22 Corporation as receiver for the covered financial
23 company in being able to exercise its rights and
24 fulfill its obligations under this paragraph or
25 paragraph (9) or (10).

1 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
2 TRACTS.—

3 (A) IN GENERAL.—In making any transfer
4 of assets or liabilities of a covered financial
5 company in default which includes any qualified
6 financial contract, the Corporation as receiver
7 for such covered financial company shall ei-
8 ther—

9 (i) transfer to one financial institu-
10 tion, other than a financial institution for
11 which a conservator, receiver, trustee in
12 bankruptcy, or other legal custodian has
13 been appointed or which is otherwise the
14 subject of a bankruptcy or insolvency pro-
15 ceeding—

16 (I) all qualified financial con-
17 tracts between any person or any af-
18 filiate of such person and the covered
19 financial company in default;

20 (II) all claims of such person or
21 any affiliate of such person against
22 such covered financial company under
23 any such contract (other than any
24 claim which, under the terms of any
25 such contract, is subordinated to the

1 claims of general unsecured creditors
2 of such company);

3 (III) all claims of such covered fi-
4 nancial company against such person
5 or any affiliate of such person under
6 any such contract; and

7 (IV) all property securing or any
8 other credit enhancement for any con-
9 tract described in subclause (I) or any
10 claim described in subclause (II) or
11 (III) under any such contract; or

12 (ii) transfer none of the qualified fi-
13 nancial contracts, claims, property or other
14 credit enhancement referred to in clause (i)
15 (with respect to such person and any affil-
16 iate of such person).

17 (B) TRANSFER TO FOREIGN BANK, FINAN-
18 CIAL INSTITUTION, OR BRANCH OR AGENCY
19 THEREOF.—In transferring any qualified finan-
20 cial contracts and related claims and property
21 under subparagraph (A)(i), the Corporation as
22 receiver for the covered financial company shall
23 not make such transfer to a foreign bank, fi-
24 nancial institution organized under the laws of
25 a foreign country, or a branch or agency of a

1 foreign bank or financial institution unless,
2 under the law applicable to such bank, financial
3 institution, branch or agency, to the qualified
4 financial contracts, and to any netting contract,
5 any security agreement or arrangement or other
6 credit enhancement related to one or more
7 qualified financial contracts, the contractual
8 rights of the parties to such qualified financial
9 contracts, netting contracts, security agree-
10 ments or arrangements, or other credit en-
11 hancements are enforceable substantially to the
12 same extent as permitted under this section.

13 (C) TRANSFER OF CONTRACTS SUBJECT
14 TO THE RULES OF A CLEARING ORGANIZA-
15 TION.—In the event that the Corporation as re-
16 ceiver for a covered financial company transfers
17 any qualified financial contract and related
18 claims, property, or credit enhancement pursu-
19 ant to subparagraph (A)(i) and such contract is
20 cleared by or subject to the rules of a clearing
21 organization, the clearing organization shall not
22 be required to accept the transferee as a mem-
23 ber by virtue of the transfer.

24 (D) DEFINITIONS.—For purposes of this
25 paragraph—

1 (i) the term “financial institution”
2 means a broker or dealer, a depository in-
3 stitution, a futures commission merchant,
4 a bridge financial company, or any other
5 institution determined by the Corporation,
6 by regulation, to be a financial institution;
7 and

8 (ii) the term “clearing organization”
9 has the same meaning as in section 402 of
10 the Federal Deposit Insurance Corporation
11 Improvement Act of 1991.

12 (10) NOTIFICATION OF TRANSFER.—

13 (A) IN GENERAL.—

14 (i) NOTICE.—The Corporation shall
15 provide notice in accordance with clause

16 (ii), if—

17 (I) the Corporation as receiver
18 for a covered financial company in de-
19 fault or in danger of default transfers
20 any assets or liabilities of the covered
21 financial company; and

22 (II) the transfer includes any
23 qualified financial contract.

24 (ii) TIMING.—The Corporation as re-
25 ceiver for a covered financial company

1 shall notify any person who is a party to
2 any contract described in clause (i) of such
3 transfer not later than 5:00 p.m. (eastern
4 time) on the third business day following
5 the date of the appointment of the Cor-
6 poration as receiver.

7 (B) CERTAIN RIGHTS NOT ENFORCE-
8 ABLE.—

9 (i) RECEIVERSHIP.—A person who is
10 a party to a qualified financial contract
11 with a covered financial company may not
12 exercise any right that such person has to
13 terminate, liquidate, or net such contract
14 under paragraph (8)(A) solely by reason of
15 or incidental to the appointment under this
16 section of the Corporation as receiver for
17 the covered financial company (or the in-
18 solvency or financial condition of the cov-
19 ered financial company for which the Cor-
20 poration has been appointed as receiver)—

21 (I) until 5:00 p.m. (eastern time)
22 on the third business day following
23 the date of the appointment; or

24 (II) after the person has received
25 notice that the contract has been

1 transferred pursuant to paragraph
2 (9)(A).

3 (ii) NOTICE.—For purposes of this
4 paragraph, the Corporation as receiver for
5 a covered financial company shall be
6 deemed to have notified a person who is a
7 party to a qualified financial contract with
8 such covered financial company, if the Cor-
9 poration has taken steps reasonably cal-
10 culated to provide notice to such person by
11 the time specified in subparagraph (A).

12 (C) TREATMENT OF BRIDGE FINANCIAL
13 COMPANY.—For purposes of paragraph (9), a
14 bridge financial company shall not be consid-
15 ered to be a covered financial company for
16 which a conservator, receiver, trustee in bank-
17 ruptcy, or other legal custodian has been ap-
18 pointed, or which is otherwise the subject of a
19 bankruptcy or insolvency proceeding.

20 (D) BUSINESS DAY DEFINED.—For pur-
21 poses of this paragraph, the term “business
22 day” means any day other than any Saturday,
23 Sunday, or any day on which either the New
24 York Stock Exchange or the Federal Reserve
25 Bank of New York is closed.

1 (11) DISAFFIRMANCE OR REPUDIATION OF
2 QUALIFIED FINANCIAL CONTRACTS.—In exercising
3 the rights of disaffirmance or repudiation of the
4 Corporation as receiver with respect to any qualified
5 financial contract to which a covered financial com-
6 pany is a party, the Corporation shall either—

7 (A) disaffirm or repudiate all qualified fi-
8 nancial contracts between—

9 (i) any person or any affiliate of such
10 person; and

11 (ii) the covered financial company in
12 default; or

13 (B) disaffirm or repudiate none of the
14 qualified financial contracts referred to in sub-
15 paragraph (A) (with respect to such person or
16 any affiliate of such person).

17 (12) CERTAIN SECURITY AND CUSTOMER IN-
18 TERESTS NOT AVOIDABLE.—No provision of this
19 subsection shall be construed as permitting the
20 avoidance of any—

21 (A) legally enforceable or perfected secu-
22 rity interest in any of the assets of any covered
23 financial company except where such an inter-
24 est is taken in contemplation of the insolvency
25 of the covered financial company or with the in-

1 tent to hinder, delay, or defraud the company
2 or the creditors of such company; or

3 (B) legally enforceable interest in customer
4 property.

5 (13) AUTHORITY TO ENFORCE CONTRACTS.—

6 (A) IN GENERAL.—The Corporation as re-
7 ceiver for a covered financial company may en-
8 force any contract, other than a liability insur-
9 ance contract of a director or officer or a finan-
10 cial institution bond, entered into by the cov-
11 ered financial company, notwithstanding any
12 provision of the contract providing for termi-
13 nation, default, acceleration, or exercise of
14 rights upon, or solely by reason of, insolvency
15 or the appointment of or the exercise of rights
16 or powers by a receiver.

17 (B) CERTAIN RIGHTS NOT AFFECTED.—
18 No provision of this paragraph may be con-
19 strued as impairing or affecting any right of the
20 Corporation as receiver to enforce or recover
21 under a liability insurance contract of a director
22 or officer or financial institution bond under
23 other applicable law.

24 (C) CONSENT REQUIREMENT.—

1 (i) IN GENERAL.—Except as otherwise
2 provided by this section, no person may ex-
3 ercise any right or power to terminate, ac-
4 celerate, or declare a default under any
5 contract to which the covered financial
6 company is a party, or to obtain possession
7 of or exercise control over any property of
8 the covered financial company or affect
9 any contractual rights of the covered finan-
10 cial company, without the consent of the
11 Corporation as receiver for the covered fi-
12 nancial company, during the 90-day period
13 beginning on the date of the appointment
14 of the Corporation as receiver.

15 (ii) CERTAIN EXCEPTIONS.—No provi-
16 sion of this subparagraph shall apply to a
17 director or officer liability insurance con-
18 tract or a financial institution bond, to the
19 rights of parties to certain qualified finan-
20 cial contracts pursuant to paragraph (8),
21 or to the rights of parties to netting con-
22 tracts pursuant to subtitle A of title IV of
23 the Federal Deposit Insurance Corporation
24 Improvement Act of 1991 (12 U.S.C. 4401
25 et seq.), or shall be construed as permit-

1 ting the Corporation as receiver to fail to
2 comply with otherwise enforceable provi-
3 sions of such contract.

4 (14) EXCEPTION FOR FEDERAL RESERVE
5 BANKS AND CORPORATION SECURITY INTEREST.—

6 No provision of this subsection shall apply with re-
7 spect to—

8 (A) any extension of credit from any Fed-
9 eral reserve bank or the Corporation to any cov-
10 ered financial company; or

11 (B) any security interest in the assets of
12 the covered financial company securing any
13 such extension of credit.

14 (15) SAVINGS CLAUSE.—The meanings of terms
15 used in this subsection are applicable for purposes of
16 this subsection only, and shall not be construed or
17 applied so as to challenge or affect the characteriza-
18 tion, definition, or treatment of any similar terms
19 under any other statute, regulation, or rule, includ-
20 ing the Gramm-Leach-Bliley Act, the Legal Cer-
21 tainty for Bank Products Act of 2000, the securities
22 laws (as that term is defined in section 3(a)(47) of
23 the Securities Exchange Act of 1934), and the Com-
24 modity Exchange Act.

25 (d) VALUATION OF CLAIMS IN DEFAULT.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of Federal law or the law of any State, and
3 regardless of the method utilized by the Corporation
4 for a covered financial company, including trans-
5 actions authorized under subsection (h), this sub-
6 section shall govern the rights of the creditors of any
7 such covered financial company.

8 (2) MAXIMUM LIABILITY.—The maximum li-
9 ability of the Corporation, acting as receiver for a
10 covered financial company or in any other capacity,
11 to any person having a claim against the Corpora-
12 tion as receiver or the covered financial company for
13 which the Corporation is appointed shall equal the
14 amount that such claimant would have received if—

15 (A) a determination had not been made
16 under section 202 with respect to the covered
17 financial company; and

18 (B) the covered financial company had
19 been liquidated under title 11, United States
20 Code, or any case related to title 11, United
21 States Code (including a case initiated by the
22 Securities Investor Protection Corporation with
23 respect to a financial company that is subject to
24 the Securities Investor Protection Act of 1970),
25 or any State insolvency law.

1 (3) ADDITIONAL PAYMENTS AUTHORIZED.—

2 (A) IN GENERAL.—The Corporation, as re-
3 ceiver for a covered financial company and with
4 the approval of the Secretary, may make addi-
5 tional payments or credit additional amounts to
6 or with respect to or for the account of any
7 claimant or category of claimants of the covered
8 financial company, if the Corporation deter-
9 mines that such payments or credits are nec-
10 essary or appropriate—

11 (i) to minimize losses to the Corpora-
12 tion as receiver from the resolution of the
13 covered financial company under this sec-
14 tion; or

15 (ii) to prevent or mitigate serious ad-
16 verse effects to financial stability or the
17 United States economy.

18 (B) MANNER OF PAYMENT.—The Corpora-
19 tion may make payments or credit amounts
20 under subparagraph (A) directly to the claim-
21 ants or may make such payments or credit such
22 amounts to a company other than a covered fi-
23 nancial company or a bridge financial company
24 established with respect thereto in order to in-

1 duce such other company to accept liability for
2 such claims.

3 (e) LIMITATION ON COURT ACTION.—Except as pro-
4 vided in this section or at the request of the receiver ap-
5 pointed for a covered financial company under this section,
6 no court may take any action to restrain or affect the exer-
7 cise of powers or functions of the receiver hereunder.

8 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

9 (1) IN GENERAL.—A director or officer of a
10 covered financial company may be held personally
11 liable for monetary damages in any civil action de-
12 scribed in paragraph (2) by, on behalf of, or at the
13 request or direction of the Corporation, which action
14 is prosecuted wholly or partially for the benefit of
15 the Corporation—

16 (A) acting as receiver for such covered fi-
17 nancial company;

18 (B) acting based upon a suit, claim, or
19 cause of action purchased from, assigned by, or
20 otherwise conveyed by the Corporation as re-
21 ceiver; or

22 (C) acting based upon a suit, claim, or
23 cause of action purchased from, assigned by, or
24 otherwise conveyed in whole or in part by a cov-
25 ered financial company or its affiliate in con-

1 nection with assistance provided under section
2 203.

3 (2) ACTIONS COVERED.—Paragraph (1) shall
4 apply with respect to actions for gross negligence,
5 including any similar conduct or conduct that dem-
6 onstrates a greater disregard of a duty of care (than
7 gross negligence) including intentional tortious con-
8 duct, as such terms are defined and determined
9 under applicable State law.

10 (3) SAVINGS CLAUSE.—Nothing in this sub-
11 section shall impair or affect any right of the Cor-
12 poration under other applicable law.

13 (g) DAMAGES.—In any proceeding related to any
14 claim against a director, officer, employee, agent, attorney,
15 accountant, or appraiser of a covered financial company,
16 or any other party employed by or providing services to
17 a covered financial company, recoverable damages deter-
18 mined to result from the improvident or otherwise im-
19 proper use or investment of any assets of the covered fi-
20 nancial company shall include principal losses and appro-
21 priate interest.

22 (h) BRIDGE FINANCIAL COMPANIES.—

23 (1) ORGANIZATION.—

24 (A) PURPOSE.—The Corporation, as re-
25 ceiver for one or more covered financial compa-

1 nies or in anticipation of being appointed re-
2 ceiver for one or more covered financial compa-
3 nies, may organize one or more bridge financial
4 companies in accordance with this subsection.

5 (B) AUTHORITIES.—Upon the creation of
6 a bridge financial company under subparagraph
7 (A) with respect to a covered financial com-
8 pany, such bridge financial company may—

9 (i) assume such liabilities (including
10 liabilities associated with any trust or cus-
11 tody business) of such covered financial
12 company as the Corporation may, in its
13 discretion, determine to be appropriate;

14 (ii) purchase such assets (including
15 assets associated with any trust or custody
16 business) of such covered financial com-
17 pany as the Corporation may, in its discre-
18 tion, determine to be appropriate; and

19 (iii) perform any other temporary
20 function which the Corporation may, in its
21 discretion, prescribe in accordance with
22 this section.

23 (2) CHARTER AND ESTABLISHMENT.—

24 (A) ESTABLISHMENT.—The Corporation,
25 as receiver for a covered financial company,

1 may grant a Federal charter to and approve ar-
2 ticles of association for one or more bridge fi-
3 nancial company or companies with respect to
4 such covered financial company which shall, by
5 operation of law and immediately upon issuance
6 of its charter and approval of its articles of as-
7 sociation, be established and operate in accord-
8 ance with, and subject to, such charter, articles,
9 and this section.

10 (B) MANAGEMENT.—Upon its establish-
11 ment, a bridge financial company shall be under
12 the management of a board of directors ap-
13 pointed by the Corporation.

14 (C) ARTICLES OF ASSOCIATION.—The arti-
15 cles of association and organization certificate
16 of a bridge financial company shall have such
17 terms as the Corporation may provide, and
18 shall be executed by such representatives as the
19 Corporation may designate.

20 (D) TERMS OF CHARTER; RIGHTS AND
21 PRIVILEGES.—Subject to and in accordance
22 with the provisions of this subsection, the Cor-
23 poration shall—

24 (i) establish the terms of the charter
25 of a bridge financial company and the

1 rights, powers, authorities and privileges of
2 a bridge financial company granted by the
3 charter or as an incident thereto; and

4 (ii) provide for, and establish the
5 terms and conditions governing, the man-
6 agement (including the bylaws and the
7 number of directors of the board of direc-
8 tors) and operations of the bridge financial
9 company.

10 (E) TRANSFER OF RIGHTS AND PRIVI-
11 LEGES OF COVERED FINANCIAL COMPANY.—

12 (i) IN GENERAL.—Notwithstanding
13 any other provision of Federal law or the
14 law of any State, the Corporation may pro-
15 vide for a bridge financial company to suc-
16 ceed to and assume any rights, powers, au-
17 thorities or privileges of the covered finan-
18 cial company with respect to which the
19 bridge financial company was established
20 and, upon such determination by the Cor-
21 poration, the bridge financial company
22 shall immediately and by operation of law
23 succeed to and assume such rights, powers,
24 authorities, and privileges.

1 (ii) EFFECTIVE WITHOUT AP-
2 PROVAL.—Any succession to or assumption
3 by a bridge financial company of rights,
4 powers, authorities or privileges of a cov-
5 ered financial company under clause (i) or
6 otherwise shall be effective without any
7 further approval under Federal or State
8 law, assignment, or consent with respect
9 thereto.

10 (F) CORPORATE GOVERNANCE AND ELEC-
11 TION AND DESIGNATION OF BODY OF LAW.—To
12 the extent permitted by the Corporation and
13 consistent with this section and any rules, regu-
14 lations or directives issued by the Corporation
15 under this section, a bridge financial company
16 may elect to follow the corporate governance
17 practices and procedures as are applicable to a
18 corporation incorporated under the general cor-
19 poration law of the State of Delaware, or the
20 State of incorporation or organization of the
21 covered financial company with respect to which
22 the bridge financial company was established,
23 as such law may be amended from time to time.

24 (G) CAPITAL.—

1 (i) CAPITAL NOT REQUIRED.—Not-
2 withstanding any other provision of Fed-
3 eral or State law, a bridge financial com-
4 pany may, if permitted by the Corporation,
5 operate without any capital or surplus, or
6 with such capital or surplus as the Cor-
7 poration may in its discretion determine to
8 be appropriate.

9 (ii) NO CONTRIBUTION BY APPRO-
10 PRIATE FEDERAL REGULATORY AGENCY
11 REQUIRED.—The Corporation is not re-
12 quired to pay capital into a bridge finan-
13 cial company or to issue any capital stock
14 on behalf of a bridge financial company es-
15 tablished under this subsection.

16 (iii) AUTHORITY.—If the Corporation
17 determines that such action is advisable,
18 the Corporation may cause capital stock or
19 other securities of a bridge financial com-
20 pany established with respect to a covered
21 financial company to be issued and offered
22 for sale in such amounts and on such
23 terms and conditions as the financial may,
24 in its discretion, determine.

1 (3) INTERESTS IN AND ASSETS AND OBLIGA-
2 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
3 standing paragraph (1) or (2) or any other provision
4 of law—

5 (A) a bridge financial company shall as-
6 sume, acquire, or succeed to the assets or liabil-
7 ities of a covered financial company (including
8 the assets or liabilities associated with any trust
9 or custody business) only to the extent that
10 such assets or liabilities are transferred by the
11 Corporation to the bridge financial company in
12 accordance with, and subject to the restrictions
13 set forth in, paragraph (1)(B); and

14 (B) a bridge financial company shall not
15 assume, acquire, or succeed to any obligation
16 that a covered financial company for which the
17 Corporation has been appointed as receiver may
18 have to any shareholder, member, general part-
19 ner, limited partner, or other person with an in-
20 terest in the equity of the covered financial
21 company that arises as a result of the status of
22 that person having an equity claim in the cov-
23 ered financial company.

24 (4) BRIDGE FINANCIAL COMPANY TREATED AS
25 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A

1 bridge financial company shall be treated as a cov-
2 ered financial company in default at such times and
3 for such purposes as the Corporation may, in its dis-
4 cretion, determine.

5 (5) TRANSFER OF ASSETS AND LIABILITIES.—

6 (A) TRANSFER OF ASSETS AND LIABIL-
7 ITIES.—The Corporation, as receiver for a cov-
8 ered financial company, may transfer any assets
9 and liabilities of a covered financial company
10 (including any assets or liabilities associated
11 with any trust or custody business) to one or
12 more bridge financial companies in accordance
13 with and subject to the restrictions of para-
14 graph (1).

15 (B) SUBSEQUENT TRANSFERS.—At any
16 time after the establishment of a bridge finan-
17 cial company with respect to a covered financial
18 company, the Corporation, as receiver, may
19 transfer any assets and liabilities of such cov-
20 ered financial company as the Corporation may,
21 in its discretion, determine to be appropriate in
22 accordance with and subject to the restrictions
23 of paragraph (1).

24 (C) TREATMENT OF TRUST OR CUSTODY
25 BUSINESS.—For purposes of this paragraph,

1 the trust or custody business, including fidu-
2 ciary appointments, held by any covered finan-
3 cial company is included among its assets and
4 liabilities.

5 (D) EFFECTIVE WITHOUT APPROVAL.—
6 The transfer of any assets or liabilities, includ-
7 ing those associated with any trust or custody
8 business of a covered financial company to a
9 bridge financial company shall be effective with-
10 out any further approval under Federal or
11 State law, assignment, or consent with respect
12 thereto.

13 (E) EQUITABLE TREATMENT OF SIMI-
14 LARLY SITUATED CREDITORS.—The Corpora-
15 tion shall treat all creditors of a covered finan-
16 cial company that are similarly situated under
17 subsection (b)(1) in a similar manner in exer-
18 cising the authority of the Corporation under
19 this subsection to transfer any assets or liabil-
20 ities of the covered financial company to one or
21 more bridge financial companies established
22 with respect to such covered financial company,
23 except that the Corporation may take actions
24 (including making payments) that do not com-
25 ply with this subparagraph, if—

1 (i) the Corporation determines that
2 such actions are necessary—

3 (I) to maximize the value of the
4 assets of the covered financial com-
5 pany;

6 (II) to maximize the present
7 value return from the sale or other
8 disposition of the assets of the covered
9 financial company;

10 (III) to minimize the amount of
11 any loss realized upon the sale or
12 other disposition of the assets of the
13 covered financial company; or

14 (IV) to contain or address serious
15 adverse effects to financial stability or
16 the United States economy; and

17 (ii) all creditors that are similarly sit-
18 uated under subsection (b)(1) receive not
19 less than the amount provided in sub-
20 section (d)(2).

21 (F) LIMITATION ON TRANSFER OF LIABIL-
22 ITIES.—Notwithstanding any other provision of
23 law, the aggregate amount of liabilities of a cov-
24 ered financial company that are transferred to,
25 or assumed by, a bridge financial company from

1 a covered financial company may not exceed the
2 aggregate amount of the assets of the covered
3 financial company that are transferred to, or
4 purchased by, the bridge financial company
5 from the covered financial company.

6 (6) STAY OF JUDICIAL ACTION.—Any judicial
7 action to which a bridge financial company becomes
8 a party by virtue of its acquisition of any assets or
9 assumption of any liabilities of a covered financial
10 company shall be stayed from further proceedings
11 for a period of not longer than 45 days (or such
12 longer period as may be agreed to upon the consent
13 of all parties) at the request of the bridge financial
14 company.

15 (7) AGREEMENTS AGAINST INTEREST OF THE
16 BRIDGE FINANCIAL COMPANY.—No agreement that
17 tends to diminish or defeat the interest of the bridge
18 financial company in any asset of a covered financial
19 company acquired by the bridge financial company
20 shall be valid against the bridge financial company,
21 unless such agreement is in writing and executed by
22 an authorized officer or representative of the covered
23 financial company, and has been, since the time of
24 its execution on official record of the company.

25 (8) NO FEDERAL STATUS.—

1 (A) AGENCY STATUS.—A bridge financial
2 company is not an agency, establishment, or in-
3 strumentality of the United States.

4 (B) EMPLOYEE STATUS.—Representatives
5 for purposes of paragraph (1)(B), directors, of-
6 ficers, employees, or agents of a bridge financial
7 company are not, solely by virtue of service in
8 any such capacity, officers or employees of the
9 United States. Any employee of the Corporation
10 or of any Federal instrumentality who serves at
11 the request of the Corporation as a representa-
12 tive for purposes of paragraph (1)(B), director,
13 officer, employee, or agent of a bridge financial
14 company shall not—

15 (i) solely by virtue of service in any
16 such capacity lose any existing status as
17 an officer or employee of the United States
18 for purposes of title 5, United States Code,
19 or any other provision of law; or

20 (ii) receive any salary or benefits for
21 service in any such capacity with respect to
22 a bridge financial company in addition to
23 such salary or benefits as are obtained
24 through employment with the Corporation
25 or such Federal instrumentality.

1 (9) EXEMPT TAX STATUS.—Notwithstanding
2 any other provision of Federal or State law, a bridge
3 financial company, its franchise, property, and in-
4 come shall be exempt from all taxation now or here-
5 after imposed by the United States, by any territory,
6 dependency, or possession thereof, or by any State,
7 county, municipality, or local taxing authority.

8 (10) FEDERAL AGENCY APPROVAL; ANTITRUST
9 REVIEW.—If a transaction involving the merger or
10 sale of a bridge financial company requires approval
11 by a Federal agency, the transaction may not be
12 consummated before the 5th calendar day after the
13 date of approval by the Federal agency responsible
14 for such approval with respect thereto. If, in connec-
15 tion with any such approval a report on competitive
16 factors from the Attorney General is required, the
17 Federal agency responsible for such approval shall
18 promptly notify the Attorney General of the pro-
19 posed transaction and the Attorney General shall
20 provide the required report within 10 days of the re-
21 quest. If a filing is required under the Hart-Scott-
22 Rodino Antitrust Improvements Act of 1976 with
23 the Department of Justice or the Federal Trade
24 Commission, the waiting period shall expire not later
25 than the 30th day following such filing notwith-

1 standing any other provision of Federal law or any
2 attempt by any Federal agency to extend such wait-
3 ing period, and no further request for information
4 by any Federal agency shall be permitted.

5 (11) DURATION OF BRIDGE FINANCIAL COM-
6 PANY.—Subject to paragraphs (13) and (14), the
7 status of a bridge financial company as such shall
8 terminate at the end of the 2-year period following
9 the date on which it was granted a charter. The
10 Corporation may, in its discretion, extend the status
11 of the bridge financial company as such for no more
12 than 3 additional 1-year periods.

13 (12) TERMINATION OF BRIDGE FINANCIAL COM-
14 PANY STATUS.—The status of any bridge financial
15 company as such shall terminate upon the earliest
16 of—

17 (A) the merger or consolidation of the
18 bridge financial company with a company that
19 is not a bridge financial company;

20 (B) at the election of the Corporation, the
21 sale of a majority of the capital stock of the
22 bridge financial company to a company other
23 than the Corporation and other than another
24 bridge financial company;

1 (C) the sale of 80 percent, or more, of the
2 capital stock of the bridge financial company to
3 a person other than the Corporation and other
4 than another bridge financial company;

5 (D) at the election of the Corporation, ei-
6 ther the assumption of all or substantially all of
7 the liabilities of the bridge financial company by
8 a company that is not a bridge financial com-
9 pany, or the acquisition of all or substantially
10 all of the assets of the bridge financial company
11 by a company that is not a bridge financial
12 company, or other entity as permitted under
13 applicable law; and

14 (E) the expiration of the period provided in
15 paragraph (11), or the earlier dissolution of the
16 bridge financial company, as provided in para-
17 graph (14).

18 (13) EFFECT OF TERMINATION EVENTS.—

19 (A) MERGER OR CONSOLIDATION.—A
20 merger or consolidation as provided in para-
21 graph (12)(A) shall be conducted in accordance
22 with, and shall have the effect provided in, the
23 provisions of applicable law. For the purpose of
24 effecting such a merger or consolidation, the
25 bridge financial company shall be treated as a

1 corporation organized under the laws of the
2 State of Delaware (unless the law of another
3 State has been selected by the bridge financial
4 company in accordance with paragraph (2)(F)),
5 and the Corporation shall be treated as the sole
6 shareholder thereof, notwithstanding any other
7 provision of State or Federal law.

8 (B) CHARTER CONVERSION.—Following
9 the sale of a majority of the capital stock of the
10 bridge financial company, as provided in para-
11 graph (12)(B), the Corporation may amend the
12 charter of the bridge financial company to re-
13 flect the termination of the status of the bridge
14 financial company as such, whereupon the com-
15 pany shall have all of the rights, powers, and
16 privileges under its constituent documents and
17 applicable Federal or State law. In connection
18 therewith, the Corporation may take such steps
19 as may be necessary or convenient to reincor-
20 porate the bridge financial company under the
21 laws of a State and, notwithstanding any provi-
22 sions of Federal or State law, such State-char-
23 tered corporation shall be deemed to succeed by
24 operation of law to such rights, titles, powers
25 and interests of the bridge financial company as

1 the Corporation may provide, with the same ef-
2 fect as if the bridge financial company had
3 merged with the State-chartered corporation
4 under provisions of the corporate laws of such
5 State.

6 (C) SALE OF STOCK.—Following the sale
7 of 80 percent or more of the capital stock of a
8 bridge financial company, as provided in para-
9 graph (12)(C), the company shall have all of
10 the rights, powers, and privileges under its con-
11 stituent documents and applicable Federal or
12 State law. In connection therewith, the Cor-
13 poration may take such steps as may be nec-
14 essary or convenient to reincorporate the bridge
15 financial company under the laws of a State
16 and, notwithstanding any provisions of Federal
17 or State law, the State-chartered corporation
18 shall be deemed to succeed by operation of law
19 to such rights, titles, powers and interests of
20 the bridge financial company as the Corpora-
21 tion may provide, with the same effect as if the
22 bridge financial company had merged with the
23 State-chartered corporation under provisions of
24 the corporate laws of such State.

1 (D) ASSUMPTION OF LIABILITIES AND
2 SALE OF ASSETS.—Following the assumption of
3 all or substantially all of the liabilities of the
4 bridge financial company, or the sale of all or
5 substantially all of the assets of the bridge fi-
6 nancial company, as provided in paragraph
7 (12)(D), at the election of the Corporation, the
8 bridge financial company may retain its status
9 as such for the period provided in paragraph
10 (11) or may be dissolved at the election of the
11 Corporation.

12 (E) AMENDMENTS TO CHARTER.—Fol-
13 lowing the consummation of a transaction de-
14 scribed in subparagraph (A), (B), (C), or (D)
15 of paragraph (12), the charter of the resulting
16 company shall be amended to reflect the termi-
17 nation of bridge financial company status, if ap-
18 propriate.

19 (14) DISSOLUTION OF BRIDGE FINANCIAL COM-
20 PANY.—

21 (A) IN GENERAL.—Notwithstanding any
22 other provision of Federal or State law, if the
23 status of a bridge financial company as such
24 has not previously been terminated by the oc-

1 currence of an event specified in subparagraph
2 (A), (B), (C), or (D) of paragraph (12)—

3 (i) the Corporation may, in its discre-
4 tion, dissolve the bridge financial company
5 in accordance with this paragraph at any
6 time; and

7 (ii) the Corporation shall promptly
8 commence dissolution proceedings in ac-
9 cordance with this paragraph upon the ex-
10 piration of the 2-year period following the
11 date on which the bridge financial com-
12 pany was chartered, or any extension
13 thereof, as provided in paragraph (11).

14 (B) PROCEDURES.—The Corporation shall
15 remain the receiver for a bridge financial com-
16 pany for the purpose of dissolving the bridge fi-
17 nancial company. The Corporation as receiver
18 for a bridge financial company shall wind up
19 the affairs of the bridge financial company in
20 conformity with the provisions of law relating to
21 the liquidation of covered financial companies
22 under this title. With respect to any such bridge
23 financial company, the Corporation as receiver
24 shall have all the rights, powers, and privileges
25 and shall perform the duties related to the exer-

1 eise of such rights, powers, or privileges granted
2 by law to the Corporation as receiver for a cov-
3 ered financial company under this title and,
4 notwithstanding any other provision of law, in
5 the exercise of such rights, powers, and privi-
6 leges, the Corporation shall not be subject to
7 the direction or supervision of any State agency
8 or other Federal agency.

9 (15) AUTHORITY TO OBTAIN CREDIT.—

10 (A) IN GENERAL.—A bridge financial com-
11 pany may obtain unsecured credit and issue un-
12 secured debt.

13 (B) INABILITY TO OBTAIN CREDIT.—If a
14 bridge financial company is unable to obtain
15 unsecured credit or issue unsecured debt, the
16 Corporation may authorize the obtaining of
17 credit or the issuance of debt by the bridge fi-
18 nancial company—

19 (i) with priority over any or all of the
20 obligations of the bridge financial com-
21 pany;

22 (ii) secured by a lien on property of
23 the bridge financial company that is not
24 otherwise subject to a lien; or

1 (iii) secured by a junior lien on prop-
2 erty of the bridge financial company that
3 is subject to a lien.

4 (C) LIMITATIONS.—

5 (i) IN GENERAL.—The Corporation,
6 after notice and a hearing, may authorize
7 the obtaining of credit or the issuance of
8 debt by a bridge financial company that is
9 secured by a senior or equal lien on prop-
10 erty of the bridge financial company that
11 is subject to a lien, only if—

12 (I) the bridge financial company
13 is unable to otherwise obtain such
14 credit or issue such debt; and

15 (II) there is adequate protection
16 of the interest of the holder of the lien
17 on the property with respect to which
18 such senior or equal lien is proposed
19 to be granted.

20 (D) BURDEN OF PROOF.—In any hearing
21 under this subsection, the Corporation has the
22 burden of proof on the issue of adequate protec-
23 tion.

24 (16) EFFECT ON DEBTS AND LIENS.—The re-
25 versal or modification on appeal of an authorization

1 under this subsection to obtain credit or issue debt,
2 or of a grant under this section of a priority or a
3 lien, does not affect the validity of any debt so
4 issued, or any priority or lien so granted, to an enti-
5 ty that extended such credit in good faith, whether
6 or not such entity knew of the pendency of the ap-
7 peal, unless such authorization and the issuance of
8 such debt, or the granting of such priority or lien,
9 were stayed pending appeal.

10 (i) SHARING RECORDS.—If the Corporation has been
11 appointed as receiver for a covered financial company,
12 FIRA shall make all records relating to the covered finan-
13 cial company available to the Corporation, which may be
14 used by the Corporation in any manner that the Corpora-
15 tion determines to be appropriate.

16 (j) EXPEDITED PROCEDURES FOR CERTAIN
17 CLAIMS.—

18 (1) TIME FOR FILING NOTICE OF APPEAL.—

19 The notice of appeal of any order, whether interlocu-
20 tory or final, entered in any case brought by the
21 Corporation against a covered financial company's
22 director, officer, employee, agent, attorney, account-
23 ant, or appraiser or any other person employed by
24 or providing services to a covered financial company
25 shall be filed not later than 30 days after the date

1 of entry of the order. The hearing of the appeal shall
2 be held not later than 120 days after the date of the
3 notice of appeal. The appeal shall be decided not
4 later than 180 days after the date of the notice of
5 appeal.

6 (2) SCHEDULING.—A court of the United
7 States shall expedite the consideration of any case
8 brought by the Corporation against a director, offi-
9 cer, employee, agent, attorney, accountant, or ap-
10 praiser of a covered financial company or any other
11 person employed by or providing services to a cov-
12 ered financial company. As far as practicable, the
13 court shall give such case priority on its docket.

14 (3) JUDICIAL DISCRETION.—The court may
15 modify the schedule and limitations stated in para-
16 graphs (1) and (2) in a particular case, based on a
17 specific finding that the ends of justice that would
18 be served by making such a modification would out-
19 weigh the best interest of the public in having the
20 case resolved expeditiously.

21 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
22 receiver for any covered financial company, and for pur-
23 poses of carrying out any power, authority, or duty with
24 respect to a covered financial company—

1 (1) may request the assistance of any foreign fi-
2 nancial authority and provide assistance to any for-
3 eign financial authority in accordance with section
4 8(v) of the Federal Deposit Insurance Act, as if the
5 covered financial company were an insured deposi-
6 tory institution, the Corporation were the appro-
7 priate Federal banking agency for the company, and
8 any foreign financial authority were the foreign
9 banking authority; and

10 (2) may maintain an office to coordinate for-
11 eign investigations or investigations on behalf of for-
12 eign financial authorities.

13 (l) PROHIBITION ON ENTERING SECRECY AGREE-
14 MENTS AND PROTECTIVE ORDERS.—The Corporation
15 may not enter into any agreement or approve any protec-
16 tive order which prohibits the Corporation from disclosing
17 the terms of any settlement of an administrative or other
18 action for damages or restitution brought by the Corpora-
19 tion in its capacity as receiver for a covered financial com-
20 pany.

21 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
22 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

23 (1) IN GENERAL.—Except as specifically pro-
24 vided in this section, and notwithstanding any other
25 provision of law, the Corporation, in connection with

1 the liquidation of any covered financial company or
2 bridge financial company with respect to which the
3 Corporation has been appointed as receiver, shall—

4 (A) in the case of any covered financial
5 company or bridge financial company that is or
6 has a subsidiary that is a stockbroker, but is
7 not a member of the Securities Investor Protec-
8 tion Corporation, apply the provisions of sub-
9 chapter III of chapter 7 of title 11, United
10 States Code, in respect of the distribution to
11 any customer of all customer name securities
12 and customer property, as if such covered fi-
13 nancial company or bridge financial company
14 were a debtor for purposes of such subchapter;
15 or

16 (B) in the case of any covered financial
17 company or bridge financial company that is a
18 commodity broker, apply the provisions of sub-
19 chapter IV of chapter 7 of title 11, United
20 States Code, in respect of the distribution to
21 any customer of all customer property, as if
22 such covered financial company or bridge finan-
23 cial company were a debtor for purposes of
24 such subchapter.

1 (2) DEFINITIONS.—For purposes of this sub-
2 section—

3 (A) the terms “customer”, “customer
4 name securities” and “customer property” have
5 the same meanings as in section 741 of title II,
6 United States Code; and

7 (B) the terms “commodity broker” and
8 “stockbroker” have the same meanings as in
9 section 101 of title 11, United States Code.

10 (n) SYSTEMIC RESOLUTION FUND.—

11 (1) ESTABLISHMENT.—There is established in
12 the Treasury of the United States a separate fund
13 to be known as the “Systemic Resolution Fund”,
14 which shall be available to the Corporation to carry
15 out the authorities contained in this title, without
16 further appropriation, for the cost of actions author-
17 ized by this title, upon a determination made under
18 section 202, including the payment of administrative
19 expenses, the payment of principal and interest by
20 the Corporation on obligations issued under para-
21 graph (3), and the exercise of authorities under sec-
22 tion 203 and section 208.

23 (2) PROCEEDS.—Amounts received by the Cor-
24 poration (including amounts borrowed under para-
25 graph (3), repayments by the covered financial com-

1 pany, and assessments received under subsection (o),
2 but excluding amounts received by any covered fi-
3 nancial company when the Corporation is acting in
4 its capacity as receiver for such company) shall be
5 deposited into the Fund.

6 (3) CAPITALIZATION OF FUND.—

7 (A) CORPORATION AUTHORIZED TO ISSUE
8 OBLIGATIONS.—In order to capitalize the Fund,
9 upon the Secretary making the determination
10 provided for in section 202, the Corporation is
11 authorized to issue obligations to the Secretary.

12 (B) SECRETARY AUTHORIZED TO PUR-
13 CHASE OBLIGATIONS.—The Secretary may, in
14 the discretion of the Secretary, and under such
15 terms and conditions as the Secretary may re-
16 quire, purchase or agree to purchase any obliga-
17 tions issued under subparagraph (A), and for
18 such purpose the Secretary is authorized to use
19 as a public debt transaction the proceeds of the
20 sale of any securities issued under chapter 31
21 of title 31, United States Code, and the pur-
22 poses for which securities may be issued under
23 chapter 31 of title 31, United States Code, are
24 extended to include such purchases.

1 (C) INTEREST RATE.—Each purchase of
2 obligations by the Secretary under this para-
3 graph shall be upon such terms and conditions
4 as to yield a return at a rate not less than a
5 rate determined by the Secretary, taking into
6 consideration the current average yield on out-
7 standing marketable obligations of the United
8 States of comparable maturity.

9 (D) SECRETARY AUTHORIZED TO SELL OB-
10 LIGATIONS.—The Secretary may sell, upon such
11 terms and conditions and at such price or
12 prices as the Secretary shall determine, any of
13 the obligations acquired under this paragraph.

14 (E) PUBLIC DEBT TRANSACTIONS.—All
15 purchases and sales by the Secretary of such
16 obligations under this paragraph shall be treat-
17 ed as public debt transactions of the United
18 States, and the proceeds from the sale of any
19 obligations acquired by the Secretary under this
20 paragraph shall be deposited into the Treasury
21 of the United States as miscellaneous receipts.

22 (o) RECOVERY OF EXPENDED FUNDS FROM FINAN-
23 CIAL COMPANIES.—

24 (1) RISK-BASED ASSESSMENTS.—

1 (A) IN GENERAL.—The Corporation shall
2 recover the amount of funds expended out of
3 the Fund under subsection (n) and which have
4 not otherwise been recouped.

5 (B) AUTHORIZED ACTION.—Steps to re-
6 cover such amounts shall include one or more
7 risk-based assessments on financial companies,
8 in such amount and manner, and subject to
9 such terms and conditions as the Corporation
10 determines, with the concurrence of the Sec-
11 retary and the Agency, are necessary to pay in
12 full the obligations issued by the Corporation to
13 the Secretary, not later than 60 months after
14 the date of issuance of such obligations.

15 (C) EXTENSIONS AUTHORIZED.—The Cor-
16 poration may, with the approval of the Sec-
17 retary and the Agency for Financial Stability,
18 extend the time period under paragraph (2), if
19 the Corporation determines that an extension is
20 necessary to avoid a serious adverse effect on
21 the financial system or economic conditions in
22 the United States.

23 (2) ASSESSMENT THRESHOLD AND GRADUATED
24 ASSESSMENT RATE.—

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1 (A) IN GENERAL.—The Corporation shall
2 not impose assessments under this subsection
3 on any financial company whose total assets are
4 less than \$10,000,000,000.

5 (B) GRADUATED ASSESSMENTS.—The Cor-
6 poration shall assess any financial company
7 with \$10,000,000,000 or more in total assets
8 on a graduated basis that assesses financial
9 companies with greater assets at a higher rate.

10 (C) CONSIDERATION OF OTHER ASSIST-
11 ANCE.—The Corporation shall impose assess-
12 ments under this subsection at a higher rate on
13 any financial company that received payments
14 or credit pursuant to section 208(d)(3).

15 (3) RISK-BASED ASSESSMENT CONSIDER-
16 ATIONS.—In imposing assessments under para-
17 graphs (1) and (2), the Corporation shall—

18 (A) take into account economic conditions
19 generally affecting financial companies, so as to
20 allow assessments to be lower during less favor-
21 able economic conditions;

22 (B) take into account any assessments im-
23 posed on a subsidiary of a financial company
24 that is—

1 (i) an insured depository institution
2 pursuant to section 7 or section
3 13(c)(4)(G) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1817, 1823(c)(4)(G));

5 (ii) a member of the Securities Inves-
6 tor Protection Corporation pursuant to
7 section 4 of the Securities Investor Protec-
8 tion Act of 1970 (15 U.S.C. 78ddd); or

9 (iii) an insurance company pursuant
10 to applicable State law to cover (or reim-
11 burse payments made to cover) the costs of
12 rehabilitation, liquidation, or other State
13 insolvency proceeding with respect to one
14 or more insurance companies;

15 (C) take into account the risks presented
16 by the financial company to financial stability
17 or the United States economy and the extent to
18 which the financial company has benefitted, or
19 likely would benefit, from the resolution of a fi-
20 nancial company under this title;

21 (D) take into account such other factors as
22 the Corporation deems appropriate;

23 (E) distinguish among different classes of
24 assets or different types of financial companies
25 (including distinguishing among different types

1 of financial companies, based on their levels of
2 capital and leverage) in order to establish com-
3 parable assessment bases among financial com-
4 panies subject to this subsection;

5 (F) establish the parameters for the grad-
6 uated assessment requirement in paragraph (2);
7 and

8 (G) take into account the extent and type
9 of off-balance-sheet exposures of financial com-
10 panies.

11 (4) COLLECTION OF INFORMATION.—The Cor-
12 poration may impose on covered financial companies
13 described in paragraph (2) such collection of infor-
14 mation requirements that the Corporation deems
15 necessary to carry out this subsection, after a deter-
16 mination under section 202.

17 (5) RULEMAKING.—The Corporation shall, in
18 consultation with the Secretary and the Agency, pre-
19 scribe regulations to carry out this subsection.

20 **SEC. 209. CLARIFICATION OF PROHIBITION REGARDING**
21 **CONCEALMENT OF ASSETS FROM RECEIVER**
22 **OR LIQUIDATING AGENT.**

23 (a) IN GENERAL.—Section 1032(1) of title 18,
24 United States Code, is amended by inserting “the Federal
25 Deposit Insurance Corporation acting as receiver for a

1 covered financial company, in accordance with title II of
2 the Restoring American Financial Stability Act of 2009,”
3 before “or the National Credit”.

4 (b) CONFORMING AMENDMENT.—Section 1032 of
5 title 18, United States Code, is amended in the section
6 heading, by striking “**of financial institution**”.

7 **SEC. 210. MISCELLANEOUS PROVISIONS.**

8 (a) BANKRUPTCY CODE AMENDMENT.—Section
9 109(b)(2) of title 11, United States Code, is amended by
10 inserting “covered financial company (as that term is de-
11 fined in section 201 of the Restoring American Financial
12 Stability Act of 2009),” after “domestic insurance com-
13 pany,”.

14 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
15 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12
16 U.S.C. 1823(c)(4)(G)(i)) is amended by inserting before
17 the period at the end the following: “, except that the de-
18 termination with regard to the exercise of authority by the
19 Corporation under this subparagraph shall apply only to
20 an insured depository institution, except where severe fi-
21 nancial conditions exist which threaten the stability of a
22 significant number of insured depository institutions”.

23 (c) FEDERAL DEPOSIT INSURANCE CORPORATION
24 IMPROVEMENT ACT OF 1991.—Section 403(a) of the Fed-
25 eral Deposit Insurance Corporation Improvement Act of

1 1991 (12 U.S.C. 4403(a)) is amended by inserting “sec-
2 tion 208(c) of the Restoring American Financial Stability
3 Act of 2009, section 1367 of the Federal Housing Enter-
4 prises Financial Safety and Soundness Act of 1992 (12
5 U.S.C. 4617(d)),” after “section 11(e) of the Federal De-
6 posit Insurance Act,”.

7 **TITLE III—FINANCIAL INSTITU-**
8 **TIONS REGULATORY ADMIN-**
9 **ISTRATION**

10 **SEC. 301. SHORT TITLE; PURPOSES.**

11 (a) **SHORT TITLE.**—This title may be cited as the
12 “Enhancing Financial Institution Safety and Soundness
13 Act of 2009”.

14 (b) **PURPOSES.**—The purposes of this title are—

15 (1) to provide for the safe and sound operation
16 of the banking system of the United States;

17 (2) to preserve and protect the dual system of
18 Federal and State-chartered depository institutions;

19 (3) to ensure the fair and appropriate super-
20 vision of each depository institution, regardless of
21 the size or type of charter of the depository institu-
22 tion;

23 (4) to streamline and rationalize the supervision
24 of depository institutions and the holding companies
25 of depository institutions; and

1 (5) to improve the supervision of systemically
2 significant financial institutions.

3 **SEC. 302. DEFINITIONS.**

4 In this title—

5 (1) the term “Chairperson” means the Chair-
6 person of FIRA;

7 (2) the term “community bank” means a small
8 national bank, a small State bank, a small Federal
9 savings association, and a small State savings asso-
10 ciation, as determined by FIRA;

11 (3) the term “covered institution” means an in-
12 stitution described in paragraphs (1) through (9) of
13 section 3(q) of the Federal Deposit Insurance Act
14 (12 U.S.C. 1813(q)), as amended by this Act;

15 (4) the term “financial market utility” has the
16 same meaning as in section 803;

17 (5) the term “FIRA Board” means the Board
18 of Directors of the Financial Institutions Regulatory
19 Administration established under section 312;

20 (6) the terms “specified financial company”,
21 “specified foreign nonbank financial company”, and
22 “specified U.S. nonbank financial company” have
23 the same meanings as in section 102;

24 (7) the term “transfer date” means the date es-
25 tablished under section 321;

1 (8) the term “transferred employee” means an
2 employee transferred to FIRA under section 352;
3 and

4 (9) the term “Vice Chairperson” means the
5 Vice Chairperson of FIRA.

6 **Subtitle A—Financial Institutions**
7 **Regulatory Administration Es-**
8 **tablished**

9 **SEC. 311. ESTABLISHMENT OF ADMINISTRATION.**

10 (a) ESTABLISHMENT.—There is established the Fi-
11 nancial Institutions Regulatory Administration, which
12 shall be an independent establishment, as defined in sec-
13 tion 104 of title 5, United States Code.

14 (b) INDEPENDENCE OF FIRA, AGENCY AND
15 CFPA.—

16 (1) FEDERAL INFORMATION POLICY.—Section
17 3502(5) of title 44, United States Code, is amended
18 by inserting “the Financial Institutions Regulatory
19 Administration, Agency for Financial Stability, Con-
20 sumer Financial Protection Agency,” after “the Se-
21 curities and Exchange Commission,”.

22 (2) INDEPENDENCE OF FINANCIAL REGU-
23 LATORY AGENCIES.—Section 111 of Public Law 93-
24 495 (12 U.S.C. 250) is amended by striking “Comp-
25 troller of the Currency, the Director of the Office of

1 Thrift Supervision” and inserting “Financial Insti-
2 tutions Regulatory Administration, Agency for Fi-
3 nancial Stability, Consumer Financial Protection
4 Agency”.

5 **SEC. 312. BOARD OF DIRECTORS OF THE ADMINISTRATION.**

6 (a) FIRA BOARD ESTABLISHED.—The management
7 of FIRA shall be vested in a Board of Directors.

8 (b) MEMBERS.—The members of the FIRA Board
9 shall be—

10 (1) the Chairperson of the Corporation;

11 (2) the Chairman of the Board of Governors;

12 and

13 (3) 3 individuals appointed by the President, by
14 and with the advice and consent of the Senate, from
15 among individuals who are citizens of the United
16 States.

17 (c) POLITICAL AFFILIATION.—Not more than 3 of
18 the members of the FIRA Board may be members of the
19 same political party.

20 (d) CHAIRPERSON AND VICE CHAIRPERSON.—

21 (1) CHAIRPERSON.—One of the appointed
22 members of the FIRA Board shall be designated by
23 the President, by and with the advice and consent
24 of the Senate, to serve as Chairperson of the FIRA
25 Board for a term of 5 years.

1 (2) VICE CHAIRPERSON.—One of the appointed
2 members of the FIRA Board shall be—

3 (A) appointed from among individuals hav-
4 ing experience in the supervision of State
5 banks; and

6 (B) designated by the President, by and
7 with the advice and consent of the Senate, to
8 serve as Vice Chairperson of the FIRA Board.

9 (3) ACTING CHAIRPERSON.—In the event of a
10 vacancy in the position of Chairperson, or during the
11 absence or disability of the Chairperson, the Vice
12 Chairperson shall act as Chairperson.

13 (e) TERMS.—

14 (1) TERM OF APPOINTED MEMBERS.—Each
15 member of the FIRA Board appointed under sub-
16 section (b)(3) shall be appointed for a term of 6
17 years.

18 (2) INTERIM APPOINTMENTS.—An individual
19 appointed to fill a vacancy occurring before the expi-
20 ration of the term of a member shall be appointed
21 only for the remainder of the term of the member.

22 (3) CONTINUATION OF SERVICE.—The Chair-
23 person, Vice Chairperson, and each appointed mem-
24 ber of the FIRA Board may continue to serve after
25 the expiration of the term of office to which such

1 member was appointed until a successor has been
2 appointed and qualified.

3 (f) VACANCY.—

4 (1) IN GENERAL.—Any vacancy on the FIRA
5 Board shall be filled in the manner in which the
6 original appointment was made.

7 (2) ACTING OFFICIALS MAY SERVE.—In the
8 event of a vacancy in the office of the Chairperson
9 of the Corporation or the office of Chairman of the
10 Board of Governors, and pending the appointment of
11 a successor, or during the absence or disability of
12 the Chairperson of the Corporation or the Chairman
13 of the Board of Governors, the acting Chairperson
14 of the Corporation or the acting Chairman of the
15 Board of Governors, as the case may be, shall be a
16 member of the FIRA Board in the place of the
17 Chairperson of the Corporation or the Chairman of
18 the Board of Governors.

19 (g) INELIGIBILITY FOR OTHER OFFICES.—

20 (1) SERVICE RESTRICTIONS.—

21 (A) IN GENERAL.—No member of the
22 FIRA Board may hold any office, position, or
23 employment in any covered institution during—

24 (i) the period of service of such mem-
25 ber on the FIRA Board; and

1 (ii) the 2-year period beginning on the
2 date on which such member ceases to serve
3 on the FIRA Board.

4 (B) EXCEPTION FOR MEMBERS WHO
5 SERVE FULL TERM.—The limitation contained
6 in subparagraph (A)(ii) shall not apply to any
7 member who has ceased to serve on the FIRA
8 Board after serving the full term for which such
9 member was appointed.

10 (2) ADDITIONAL RESTRICTIONS DURING SERV-
11 ICE.—No member of the FIRA Board may—

12 (A) be an officer, director, or employee of
13 any covered institution, Federal reserve bank,
14 or Federal home loan bank; or

15 (B) hold stock in any covered institution.

16 (3) CERTIFICATION.—Upon taking office, each
17 member of the FIRA Board shall—

18 (A) certify under oath that the member
19 has complied with this subsection; and

20 (B) file the certification under subpara-
21 graph (A) with the secretary of the FIRA
22 Board.

23 (h) COMPENSATION.—

24 (1) COMPENSATION OF CHAIRPERSON.—The
25 Chairperson shall receive compensation at the rate

1 prescribed for level II of the Executive Schedule
2 under section 5313 of title 5, United States Code.

3 (2) OTHER BOARD MEMBERS.—The 3 ap-
4 pointed members of the FIRA Board shall each be
5 compensated at the rate prescribed for level III of
6 the Executive Schedule under section 5314 of title
7 5, United States Code.

8 (3) CONFORMING AMENDMENTS.—Title 5,
9 United States Code, is amended—

10 (A) in section 5313, by adding at the end
11 the following:

12 “Chairperson of the Financial Institutions Reg-
13 ulatory Administration.

14 “Director of the Consumer Financial Protection
15 Agency.

16 “Chairperson of the board of directors of the
17 Agency for Financial Stability.”; and

18 (B) in section 5314, by adding at the end
19 the following:

20 “Board members of the Financial Institutions
21 Regulatory Administration (3).

22 “Board members of the Consumer Financial
23 Protection Agency (3).

24 “Board member of the Agency for Financial
25 Stability (1).”.

1 **SEC. 313. STATE BANK ADVISORY BOARD.**

2 (a) ADVISORY BOARD ESTABLISHED.—There is es-
3 tablished within FIRA a State Bank Advisory Board,
4 which shall—

5 (1) make recommendations to the FIRA Board
6 concerning—

7 (A) rules, guidelines, and orders of FIRA;

8 (B) the streamlining of the regulation and
9 supervision of State-chartered community banks
10 that are well managed and well capitalized (as
11 those terms are defined in section 38 of the
12 Federal Deposit Insurance Act (12 U.S.C.
13 1831o)), including the extent to which the
14 States, in lieu of FIRA, are able to carry out
15 additional supervision of small State-chartered
16 community banks, in a manner that is con-
17 sistent with the safe and sound operation of
18 such small State-chartered community banks;
19 and

20 (C) any proposed supervisory, examination,
21 or enforcement policies of FIRA that may af-
22 fect the financial performance, condition, effi-
23 ciency, or competitiveness of State banks; and

24 (2) inform the FIRA Board about developments
25 and issues relating to State banks and the super-
26 vision of State banks.

1 (b) MEMBERS.—

2 (1) NUMBER OF MEMBERS; TERM.—The Advi-
3 sory Board shall have 5 members, who shall serve
4 for terms of 2 years.

5 (2) APPOINTMENT.—The members of the Advi-
6 sory Board shall be appointed by the FIRA Board,
7 in consultation with the Conference of State Bank-
8 ing Supervisors, from among the State bank com-
9 missioners, in rotation.

10 (c) PERSONNEL, ADMINISTRATIVE SERVICES, AND
11 PROPERTY.—FIRA shall provide to the Advisory Board
12 such personnel, administrative services, and property as
13 FIRA, in consultation with the Advisory Board, deter-
14 mines are necessary to carry out this section.

15 (d) FEDERAL ADVISORY COMMITTEE ACT.—The pro-
16 visions of the Federal Advisory Committee Act (5 U.S.C.
17 App.) shall not apply to the Advisory Board.

18 **SEC. 314. DIVISION OF COMMUNITY BANK SUPERVISION.**

19 (a) DIVISION ESTABLISHED.—There is established
20 within FIRA, the Division of Community Bank Super-
21 vision.

22 (b) PURPOSES.—The Division of Community Bank
23 Supervision shall—

1 (1) make recommendations to the FIRA Board
2 for standards appropriate to the supervision of com-
3 munity banks;

4 (2) examine and supervise community banks;
5 and

6 (3) promote a healthy community bank sector.

7 (c) DIRECTOR.—The head of the Division of Commu-
8 nity Bank Supervision shall be the Director of Community
9 Bank Supervision, who shall—

10 (1) be appointed by the Chairperson; and

11 (2) report directly to the Chairperson.

12 (d) STAFF.—FIRA shall—

13 (1) employ such staff as are necessary to carry
14 out this section; and

15 (2) ensure that employees of the Division of
16 Community Bank Supervision have experience or
17 training in community bank supervision.

18 (e) PROHIBITION.—No member of the FIRA Board
19 or other employee of FIRA may promote the conversion
20 of a State bank to a national bank, subject to rules issued
21 by the FIRA Board, in consultation with the Advisory
22 Board.

1 **Subtitle B—Transfer of Powers and**
2 **Duties to FIRA**

3 **SEC. 321. TRANSFER DATE.**

4 (a) TRANSFER DATE.—Except as provided in sub-
5 section (b), the term “transfer date” means the date that
6 is 1 year after the date of enactment of this Act.

7 (b) EXTENSION PERMITTED.—

8 (1) NOTICE REQUIRED.—The Secretary, in con-
9 sultation with the Comptroller of the Currency, the
10 Director of the Office of Thrift Supervision, the
11 Board of Governors, and the Corporation, may des-
12 ignate a transfer date that is not later than 18
13 months after the date of enactment of this Act, if
14 the Secretary transmits to the Committee on Bank-
15 ing, Housing, and Urban Affairs of the Senate and
16 the Committee on Financial Services of the House of
17 Representatives—

18 (A) a written determination that orderly
19 implementation of this title is not feasible be-
20 fore the date that is 1 year after the date of en-
21 actment of this Act;

22 (B) an explanation of why an extension is
23 necessary for the orderly implementation of this
24 title; and

1 (C) a description of the steps that will be
2 taken to effect an orderly and timely implemen-
3 tation of this title within the extended time pe-
4 riod.

5 (2) PUBLICATION OF NOTICE.—Not later than
6 180 days after the date of enactment of this Act, the
7 Secretary shall publish in the Federal Register no-
8 tice of any date designated under paragraph (1).

9 **SEC. 322. POWERS AND DUTIES TRANSFERRED.**

10 (a) EFFECTIVE DATE.—This section, and the amend-
11 ments made by this section, shall take effect on the trans-
12 fer date.

13 (b) OFFICE OF THE COMPTROLLER OF THE CUR-
14 RENCY.—Except as provided in title X, all functions of
15 the Office of the Comptroller of the Currency and of the
16 Comptroller of the Currency are transferred to FIRA.

17 (c) OFFICE OF THRIFT SUPERVISION.—Except as
18 provided in title X, all functions of the Office of Thrift
19 Supervision and the Director of the Office of Thrift Super-
20 vision are transferred to FIRA.

21 (d) CERTAIN FUNCTIONS OF THE CORPORATION.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), all functions of the Corporation (and the
24 Board of Directors of the Corporation) relating to
25 the supervision and regulation of State nonmember

1 banks and insured State branches of foreign banks
2 are transferred to FIRA.

3 (2) FUNCTIONS NOT TRANSFERRED.—No func-
4 tions of the Corporation relating to deposit insur-
5 ance or resolution are transferred to FIRA.

6 (3) CONFORMING AMENDMENTS.—Section 3(q)
7 of the Federal Deposit Insurance Act (12 U.S.C.
8 1813(q)) is amended by striking “means—” and all
9 that follows through the end of the subsection and
10 inserting the following: “means FIRA, in the case of
11 any—

12 “(1) national banking association;

13 “(2) branch or agency of a foreign bank;

14 “(3) State insured bank;

15 “(4) foreign bank that operates a branch in the
16 United States;

17 “(5) agency or commercial lending company,
18 other than a Federal agency;

19 “(6) supervisory or regulatory proceedings aris-
20 ing from the authority given to the Board of Gov-
21 ernors under section 7(c)(1) of the International
22 Banking Act of 1978 (12 U.S.C. 3105(c)(1)), in-
23 cluding such proceedings under the Financial Insti-
24 tutions Supervisory Act of 1966;

1 “(7) bank holding company and any subsidiary
2 of a bank holding company; and

3 “(8) savings association or any savings and
4 loan holding company.”.

5 (e) CERTAIN FUNCTIONS OF THE BOARD OF GOV-
6 ERNORS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), there are transferred to FIRA all func-
9 tions of the Board of Governors (and any Federal
10 reserve bank) relating to the supervision and regula-
11 tion of—

12 (A) national member banks and State
13 member banks;

14 (B) bank holding companies and the affili-
15 ates of bank holding companies, and other com-
16 panies having control over depository institu-
17 tions;

18 (C) foreign banks and branches, agencies,
19 and representative offices of foreign banks (as
20 those terms are defined in section 1 of the
21 International Banking Act of 1978 (12 U.S.C.
22 3101)), and affiliates of foreign banks;

23 (D) commercial lending companies, as that
24 term is defined in section 1 of the International
25 Banking Act of 1978 (12 U.S.C. 3101); and

1 (E) companies operating under the Inter-
2 national Banking Act of 1978 (12 U.S.C. 3101
3 et seq.) or sections 25 or 25A of the Federal
4 Reserve Act (12 U.S.C. 601 et seq. and 611 et
5 seq.).

6 (2) FUNCTIONS NOT TRANSFERRED.—No func-
7 tions of the Board of Governors under this Act or
8 the Federal Reserve Act (12 U.S.C. 221 et seq.) re-
9 lating to monetary policy, open market operations,
10 payment, settlement, or clearing activities, financial
11 market utilities, or advances or extensions of credit
12 under the Federal Reserve Act are transferred to
13 FIRA.

14 **SEC. 323. ABOLISHMENT.**

15 (a) OFFICE OF COMPTROLLER OF THE CURRENCY
16 ABOLISHED.—Effective 90 days after the transfer date,
17 the Office of the Comptroller of the Currency and the posi-
18 tion of Comptroller of the Currency are abolished.

19 (b) OFFICE OF THRIFT SUPERVISION ABOLISHED.—
20 Effective 90 days after the transfer date, the Office of
21 Thrift Supervision and the position of Director of the Of-
22 fice of Thrift Supervision are abolished.

23 **SEC. 324. SAVINGS PROVISIONS.**

24 (a) OFFICE OF THE COMPTROLLER OF THE CUR-
25 RENCY.—

1 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
2 TIONS NOT AFFECTED.—Sections 322(b) and 323
3 shall not affect the validity of any right, duty, or ob-
4 ligation of the United States, the Comptroller of the
5 Currency, the Office of the Comptroller of the Cur-
6 rency, or any other person, that existed on the day
7 before the transfer date.

8 (2) CONTINUATION OF SUITS.—This title shall
9 not abate any action or proceeding commenced by or
10 against the Comptroller of the Currency or the Of-
11 fice of the Comptroller of the Currency before the
12 transfer date, except that the Chairperson or FIRA
13 shall be substituted for the Comptroller of the Cur-
14 rency or the Office of the Comptroller of the Cur-
15 rency, as the case may be, as a party to any such
16 action or proceeding as of the transfer date.

17 (b) OFFICE OF THRIFT SUPERVISION.—

18 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
19 TIONS NOT AFFECTED.—Sections 322(c) and 323
20 shall not affect the validity of any right, duty, or ob-
21 ligation of the United States, the Director of the Of-
22 fice of Thrift Supervision, the Office of Thrift Su-
23 pervision, or any other person, that existed on the
24 day before the transfer date.

1 (2) CONTINUATION OF SUITS.—This Act shall
2 not abate any action or proceeding commenced by or
3 against the Director of the Office of Thrift Super-
4 vision or the Office of Thrift Supervision before the
5 transfer date, except that the Chairperson or FIRA
6 shall be substituted for the Director of the Office of
7 Thrift Supervision or the Office of Thrift Super-
8 vision, as the case may be, as a party to the action
9 or proceeding as of the transfer date.

10 (c) CORPORATION.—

11 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
12 TIONS NOT AFFECTED.—Section 322(d) shall not af-
13 fect the validity of any right, duty, or obligation of
14 the United States, the Corporation, or any other
15 person, that existed on the day before the transfer
16 date.

17 (2) CONTINUATION OF SUITS.—This Act shall
18 not abate any action or proceeding commenced by or
19 against the Corporation before the transfer date, ex-
20 cept that, for any action or proceeding arising out
21 of a function of the Corporation transferred to the
22 Chairperson or FIRA by this title, the Chairperson
23 or FIRA shall be substituted for the Corporation, as
24 the case may be, as a party to the action or pro-
25 ceeding as of the transfer date.

1 (d) BOARD OF GOVERNORS.—

2 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
3 TIONS NOT AFFECTED.—Section 322(e) shall not af-
4 fect the validity of any right, duty, or obligation of
5 the United States, the Board of Governors, any Fed-
6 eral Reserve bank, or any other person, that existed
7 on the day before the transfer date.

8 (2) CONTINUATION OF SUITS.—This Act shall
9 not abate any action or proceeding commenced by or
10 against the Board of Governors or a Federal Re-
11 serve bank before the transfer date, except that, for
12 any action or proceeding arising out of a function of
13 the Board of Governors or a Federal Reserve bank
14 transferred to the Chairperson or FIRA by this title,
15 the Chairperson or FIRA shall be substituted for the
16 Board of Governors or the Federal Reserve bank, as
17 the case may be, as a party to the action or pro-
18 ceeding as of the transfer date.

19 (e) CONTINUATION OF EXISTING ORDERS, RESOLU-
20 TIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS,
21 ETC.—

22 (1) OFFICE OF THE COMPTROLLER OF THE
23 CURRENCY.—All orders, resolutions, determinations,
24 agreements, and regulations, interpretative rules,
25 other interpretations, guidelines, procedures, and

1 other advisory materials that have been issued,
2 made, prescribed, or allowed to become effective by
3 the Office of the Comptroller of the Currency, or by
4 a court of competent jurisdiction, that are in effect
5 on the day before the transfer date, shall continue
6 in effect according to the terms of those orders, res-
7 olutions, determinations, agreements, and regula-
8 tions, interpretative rules, other interpretations,
9 guidelines, procedures, and other advisory materials,
10 and shall be enforceable by or against FIRA until
11 modified, terminated, set aside, or superseded in ac-
12 cordance with applicable law by FIRA, by any court
13 of competent jurisdiction, or by operation of law.

14 (2) OFFICE OF THRIFT SUPERVISION.—All or-
15 ders, resolutions, determinations, agreements, and
16 regulations, interpretative rules, other interpreta-
17 tions, guidelines, procedures, and other advisory ma-
18 terials, that have been issued, made, prescribed, or
19 allowed to become effective by the Office of Thrift
20 Supervision, or by a court of competent jurisdiction,
21 that are in effect on the day before the transfer
22 date, shall continue in effect according to the terms
23 of those orders, resolutions, determinations, agree-
24 ments, and regulations, interpretative rules, other
25 interpretations, guidelines, procedures, and other ad-

1 visory materials, and shall be enforceable by or
2 against FIRA until modified, terminated, set aside,
3 or superseded in accordance with applicable law by
4 FIRA, by any court of competent jurisdiction, or by
5 operation of law.

6 (3) CORPORATION.—All orders, resolutions, de-
7 terminations, agreements, and regulations, interpre-
8 tative rules, other interpretations, guidelines, proce-
9 dures, and other advisory materials, that have been
10 issued, made, prescribed, or allowed to become effec-
11 tive by the Corporation, or by a court of competent
12 jurisdiction, in the performance of functions that are
13 transferred by this title and that are in effect on the
14 day before the transfer date, shall continue in effect
15 according to the terms of those orders, resolutions,
16 determinations, agreements, and regulations, inter-
17 pretative rules, other interpretations, guidelines, pro-
18 cedures, and other advisory materials, and shall be
19 enforceable by or against FIRA until modified, ter-
20 minated, set aside, or superseded in accordance with
21 applicable law by FIRA, by any court of competent
22 jurisdiction, or by operation of law.

23 (4) BOARD OF GOVERNORS.—All orders, resolu-
24 tions, determinations, agreements, and regulations,
25 interpretative rules, other interpretations, guidelines,

1 procedures, and other advisory materials, that have
2 been issued, made, prescribed, or allowed to become
3 effective by the Board of Governors, or by a court
4 of competent jurisdiction, in the performance of
5 functions that are transferred by this title and that
6 are in effect on the day before the transfer date,
7 shall continue in effect according to the terms of
8 those orders, resolutions, determinations, agree-
9 ments, and regulations, interpretative rules, other
10 interpretations, guidelines, procedures, and other ad-
11 visory materials, and shall be enforceable by or
12 against FIRA until modified, terminated, set aside,
13 or superseded in accordance with applicable law by
14 FIRA, by any court of competent jurisdiction, or by
15 operation of law.

16 (f) IDENTIFICATION OF REGULATIONS CONTIN-
17 UED.—Not later than the transfer date, the Chairperson
18 shall—

19 (1) in consultation with the Comptroller of the
20 Currency, the Director of the Office of Thrift Super-
21 vision, the Chairman of the Board of Governors, and
22 the Chairperson of the Corporation, identify the reg-
23 ulations continued under subsection (e) that will be
24 enforced by FIRA; and

1 (2) publish a list of such regulations in the
2 Federal Register.

3 (g) STATUS OF REGULATIONS PROPOSED OR NOT
4 YET EFFECTIVE.—

5 (1) PROPOSED REGULATIONS.—Any proposed
6 regulation of the Office of the Comptroller of the
7 Currency, the Office of Thrift Supervision, the Cor-
8 poration, or the Board of Governors which that
9 agency, in performing functions transferred by this
10 title, has proposed before the transfer date but has
11 not published as a final regulation before that date,
12 shall be deemed to be a proposed regulation of
13 FIRA.

14 (2) REGULATIONS NOT YET EFFECTIVE.—Any
15 interim or final regulation of the Office of the
16 Comptroller of the Currency, the Office of Thrift
17 Supervision, the Corporation, or the Board of Gov-
18 ernors which that agency, in performing functions
19 transferred by this title, has published before the
20 transfer date but which has not become effective be-
21 fore that date, shall become effective as a regulation
22 of FIRA according to the terms of the regulation.

1 **SEC. 325. REFERENCES IN FEDERAL LAW TO FEDERAL**
2 **BANKING AGENCIES.**

3 (a) OFFICE OF THE COMPTROLLER OF THE CUR-
4 RENCY AND THE OFFICE OF THRIFT SUPERVISION.—

5 (1) COMPTROLLER OF THE CURRENCY AND DI-
6 RECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

7 On and after the transfer date, any reference in any
8 Federal law to the Comptroller of the Currency or
9 the Director of the Office of Thrift Supervision shall
10 be deemed to be a reference to the FIRA Board.

11 (2) OFFICE OF THE COMPTROLLER OF THE
12 CURRENCY AND THE OFFICE OF THRIFT SUPER-
13 VISION.—On and after the transfer date, any ref-
14 erence in any Federal law to the Office of the Comp-
15 troller of the Currency or the Office of Thrift Super-
16 vision shall be deemed to be a reference to FIRA.

17 (b) CORPORATION AND BOARD OF GOVERNORS.—

18 (1) CORPORATION.—On and after the transfer
19 date, any reference in any Federal law to the Cor-
20 poration or the Board of Directors of such Corpora-
21 tion in connection with any function of the Corpora-
22 tion or Board of Directors referred to in section
23 322(d) shall be deemed to be a reference to FIRA.

24 (2) BOARD OF GOVERNORS.—On and after the
25 transfer date, any reference in any Federal law to
26 the Board of Governors or any Federal Reserve

1 bank in connection with any function of the Board
2 of Governors or any Federal Reserve bank referred
3 to in section 322(e) shall be deemed to be a ref-
4 erence to FIRA.

5 **Subtitle C—Operations of FIRA**

6 **SEC. 331 TRANSFERRED POWERS, AUTHORITIES, RIGHTS,** 7 **AND DUTIES.**

8 The FIRA Board shall have—

9 (1) all powers, authorities, rights, and duties
10 that, as of the day before the transfer date, were
11 vested in—

12 (A) the Office of the Comptroller of the
13 Currency and the Comptroller of the Currency;
14 and

15 (B) the Office of Thrift Supervision and
16 the Director of the Office of Thrift Supervision;

17 (2) the powers, authorities, rights, and duties
18 relating to the functions described in section 322(d)
19 that were vested in the Corporation, as of the day
20 before the transfer date; and

21 (3) the powers, authorities, rights, and duties
22 relating to the functions described in section 322(e)
23 that were vested in the Board of Governors, as of
24 the day before the transfer date.

1 **SEC. 332. REGULATIONS AND ORDERS.**

2 FIRA may prescribe such regulations and guidelines,
3 and issue such orders, as FIRA determines to be appro-
4 priate to carry out this title, and the powers, authorities,
5 rights, and duties transferred to FIRA under this title.

6 **SEC. 333. ADDITIONAL POWERS AND DUTIES OF THE**
7 **CHAIRPERSON.**

8 (a) **BOARD MEMBERSHIP.**—The Chairperson, in his
9 or her capacity as the Chairperson of FIRA, shall serve
10 as a member of—

11 (1) the Agency for Financial Stability, estab-
12 lished under title I;

13 (2) the Consumer Financial Protection Agency,
14 established under title X; and

15 (3) the Neighborhood Reinvestment Corpora-
16 tion, established under section 603 of the Housing
17 and Community Development Amendments of 1978
18 (42 U.S.C. 8102).

19 (b) **LITIGATION.**—The Chairperson may act in the
20 name of the Chairperson and through the attorneys of the
21 Chairperson—

22 (1) to enforce any provision of this title, or any
23 other provision of law over which the Chairperson
24 has jurisdiction; and

25 (2) in any action, suit, or proceeding, to which
26 the Chairperson is a party.

1 **SEC. 334. ADDITIONAL POWERS OF THE BOARD OF GOV-**
2 **ERNORS AND THE FEDERAL DEPOSIT INSUR-**
3 **ANCE CORPORATION.**

4 (a) DEFINITION.—For purposes of this section, the
5 term “covered institution” means an institution regulated
6 by FIRA under this title.

7 (b) ADDITIONAL POWERS OF THE BOARD OF GOV-
8 ERNORS.—

9 (1) IN GENERAL.—Subject to the limitations
10 described in paragraph (2), the Board of Governors
11 may, if it determines that such action is necessary
12 to carry out the responsibilities of the Board of Gov-
13 ernors (including the Federal reserve banks) relating
14 to monetary policy, open market operations, pay-
15 ment, settlement, or clearing activities, financial
16 market utilities, or advances or extensions of credit
17 under the Federal Reserve Act (12 U.S.C. 221 et
18 seq.) under this Act and otherwise applicable Fed-
19 eral law—

20 (A) request any information from a cov-
21 ered institution;

22 (B) request any information from FIRA,
23 including examination reports; and

24 (C) request that employees of the Board of
25 Governors (including employees of a Federal re-

1 Board of Governors to FIRA for informa-
2 tion relating to a covered institution, FIRA
3 shall promptly provide such information.

4 (B) COORDINATION WITH FIRA ON EXAMI-
5 NATIONS.—Upon a request by the Board of
6 Governors under paragraph (1)(C), FIRA shall
7 coordinate with the Board of Governors to en-
8 able employees of the Board of Governors (in-
9 cluding employees of a Federal reserve bank) to
10 participate in an examination of a covered insti-
11 tution.

12 (c) ADDITIONAL POWERS OF THE CORPORATION.—

13 (1) IN GENERAL.—Subject to the limitations
14 described in paragraph (2), the Chairperson of the
15 Corporation may, if the Chairperson of the Corpora-
16 tion determines that such action is necessary to
17 carry out the responsibilities of the Corporation re-
18 lating to deposit insurance or resolution under this
19 Act and otherwise applicable Federal law—

20 (A) request any information from a cov-
21 ered institution;

22 (B) request any information from FIRA,
23 including examination reports; and

1 (C) request that staff of the Corporation
2 participate with FIRA in any examination by
3 FIRA of a covered institution.

4 (2) USE OF OTHER SOURCES OF INFORMA-
5 TION.—To the fullest extent possible, the Corpora-
6 tion shall use, in lieu of a request for information
7 from a covered institution—

8 (A) reports that a covered institution or
9 any subsidiary of a covered institution has been
10 required to provide to another Federal or State
11 regulatory agency;

12 (B) information that is available from
13 FIRA or a State regulatory agency;

14 (C) information that is otherwise required
15 to be reported publicly; and

16 (D) externally audited financial statements
17 of the covered institution or subsidiary of the
18 covered institution.

19 (3) COMPLIANCE BY FIRA WITH REQUESTS BY
20 CORPORATION.—

21 (A) PROVISION OF INFORMATION.—

22 (i) IN GENERAL.—FIRA shall provide
23 any information requested by the Chair-
24 person of the Corporation under paragraph
25 (1)(B).

1 (ii) INFORMATION FROM COVERED IN-
2 STITUTIONS.—Upon a request by the Cor-
3 poration to FIRA for information relating
4 to a covered institution, FIRA shall
5 promptly provide such information.

6 (B) COORDINATION WITH FIRA ON EXAMI-
7 NATIONS.—Upon a request by the Chairperson
8 of the Corporation under paragraph (1)(C),
9 FIRA shall coordinate with the Corporation to
10 enable staff of the Corporation to participate in
11 an examination of a covered institution.

12 (4) ADDITIONAL SPECIAL EXAMINATION POW-
13 ERS.—Section 10(b) of the Federal Deposit Insur-
14 ance Act (12 U.S.C. 1820(b)) is amended—

15 (A) by striking paragraph (5);

16 (B) by redesignating paragraphs (6) and
17 (7) as paragraphs (5) and (6), respectively; and

18 (C) by adding at the end the following:

19 “(7) PARTICIPATION IN FIRA EXAMINATIONS.—

20 “(A) AUTHORITY TO PARTICIPATE IN FIRA
21 EXAMINATIONS.—The Chairperson may direct
22 an examiner appointed under paragraph (1) to
23 participate in an examination by FIRA of an
24 institution regulated by FIRA under title III of

1 the Restoring American Financial Stability Act
2 of 2009.

3 “(B) COORDINATION.—The Chairperson
4 shall coordinate with FIRA to enable the staff
5 of the Corporation to participate in the exam-
6 ination of an institution described in subpara-
7 graph (A).”.

8 (5) TECHNICAL AND CONFORMING AMEND-
9 MENTS.—Section 10(b) of the Federal Deposit In-
10 surance Act (12 U.S.C. 1820(b)) is amended—

11 (A) in paragraph (2)—

12 (i) by striking subparagraph (A); and

13 (ii) by redesignating subparagraphs
14 (B) and (C) as subparagraphs (A) and
15 (B), respectively; and

16 (B) in paragraph (4)(A), in the matter
17 preceding clause (i), by striking “paragraph (2)
18 or (3)” and inserting “paragraph (2), (3), and
19 (7)”.

20 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) BOARD OF GOVERNORS.—Section 11(a) of
22 the Federal Reserve Act (12 U.S.C. 248(a)) is
23 amended by adding at the end the following:

1 “(3) To exercise the additional powers of the Board
2 under section 334(b) of the Restoring American Financial
3 Stability Act of 2009.”.

4 (2) CORPORATION.—Section 7(a) of the Federal
5 Deposit Insurance Act (12 U.S.C. 1817(a)) is
6 amended by adding at the end the following:

7 “(12) INFORMATION RELATING TO INSTITU-
8 TIONS REGULATED BY FIRA.—For the purposes of
9 appropriately insuring deposits and understanding
10 and monitoring risks to the Deposit Insurance
11 Fund, the Corporation may exercise the additional
12 powers of the Corporation under section 334(c) of
13 the Restoring American Financial Stability Act of
14 2009.”.

15 **SEC. 335. FUNDING.**

16 (a) DEFINITION.—In this section, the term “FIRA
17 Fund” means the Financial Institutions Regulatory Ad-
18 ministration Fund established under subsection (c).

19 (b) AUTHORITY TO COLLECT ASSESSMENTS, FEES,
20 AND OTHER CHARGES, AND TO RECEIVE TRANSFERRED
21 FUNDS.—

22 (1) IN GENERAL.—Effective on the transfer
23 date, except as provided in paragraph (2), the Chair-
24 person may collect an assessment, fee, or other
25 charge from any covered institution (including any

1 affiliate of a covered institution) supervised or regu-
2 lated by FIRA, as the Chairperson determines is
3 necessary or appropriate to carry out this title.

4 (2) AMOUNT OF ASSESSMENTS, FEES, AND
5 OTHER CHARGES.—

6 (A) CONSIDERATIONS.—In establishing the
7 amount of an assessment, fee, or charge col-
8 lected from a covered institution under this sub-
9 section, the Chairperson may take into account
10 the total assets of the covered institution (in-
11 cluding any affiliate of the covered institution),
12 the financial and managerial condition of the
13 covered institution, and the examination rating
14 of a covered institution that is supervised or
15 regulated by FIRA.

16 (B) AMOUNT OF FEES ESTABLISHED.—

17 (i) NATIONAL BANKS, FEDERAL SAV-
18 INGS ASSOCIATIONS, AND FEDERAL
19 BRANCHES AND AGENCIES.—

20 (I) IN GENERAL.—For national
21 banks, Federal savings associations,
22 and Federal branches and agencies
23 that are supervised or regulated by
24 FIRA, the aggregate amount of as-
25 sessments, fees, and charges that are

1 collected by FIRA from all such na-
2 tional banks, savings associations, and
3 Federal branches and agencies shall
4 be not less than the estimated total
5 expenses of FIRA for carrying out all
6 duties of FIRA with respect to such
7 national banks, Federal savings asso-
8 ciations, and Federal branches and
9 agencies.

10 (II) LIMITATION.—The aggregate
11 amount collected by FIRA under this
12 clause from all national banks, Fed-
13 eral savings associations, Federal
14 branches and agencies that have less
15 than \$10,000,000,000 in total assets
16 may not exceed 20 percent of the ag-
17 gregate amount collected by FIRA
18 from all national banks, Federal sav-
19 ings associations, and Federal
20 branches and agencies under this
21 clause.

22 (ii) SMALLER STATE BANKS, STATE
23 SAVINGS ASSOCIATIONS, AND STATE-LI-
24 CENSED BRANCHES AND AGENCIES.—
25 FIRA may not collect an assessment, fee,

1 or charge under this subsection from a
2 State bank, State savings association, or
3 State-licensed branch or agency that—

4 (I) is supervised or regulated by
5 FIRA; and

6 (II) has total assets of less than
7 \$10,000,000,000.

8 (iii) LARGER STATE BANKS.—For
9 State banks, State savings associations,
10 and State-licensed branches and agencies
11 that are supervised or regulated by FIRA
12 and that have total assets of
13 \$10,000,000,000 or more, the aggregate
14 amount of assessments, fees, and charges
15 collected by FIRA from all such State
16 banks, State savings associations, and
17 State-licensed branches and agencies shall
18 be an amount equal to 50 percent of the
19 estimated total expenses of FIRA for car-
20 rying out all duties of FIRA with respect
21 to such State banks, State savings associa-
22 tions, and State-licensed branches and
23 agencies.

24 (iv) SMALLER BANK HOLDING COMPA-
25 NIES AND SAVINGS AND LOAN HOLDING

1 COMPANIES.—FIRA may not collect an as-
2 sessment, fee, or charge under this sub-
3 section from a bank holding company or a
4 savings and loan holding company that is
5 supervised or regulated by FIRA and that
6 has total assets of less than
7 \$10,000,000,000.

8 (v) LARGER BANK HOLDING COMPA-
9 NIES AND SAVINGS AND LOAN HOLDING
10 COMPANIES.—

11 (I) IN GENERAL.—For bank
12 holding companies and savings and
13 loan holding companies that are su-
14 pervised or regulated by FIRA and
15 that have total assets of
16 \$10,000,000,000 or more, the aggre-
17 gate amount of all assessments, fees,
18 and charges collected by FIRA for all
19 such bank holding companies and sav-
20 ings and loan holding companies shall
21 be not less than the estimated total
22 expenses of FIRA for carrying out all
23 duties of FIRA with respect to such
24 bank holding companies and savings
25 and loan holding companies.

1 (II) ESTIMATION OF EX-
2 PENSES.—For purposes of this clause,
3 the estimated expenses of FIRA for
4 carrying out the duties of FIRA with
5 respect to bank holding companies
6 and savings and loan holding compa-
7 nies described in subclause (I) shall
8 not include any estimated expenses of
9 FIRA for carrying out the duties of
10 FIRA with respect to national banks,
11 Federal savings associations, State
12 banks, and State savings associations.

13 (vi) OTHER INSTITUTIONS UNDER
14 THE SUPERVISION OR REGULATION OF
15 FIRA.—For any other covered institutions
16 that are supervised or regulated by FIRA,
17 the aggregate amount collected by FIRA
18 shall be not less than the estimated total
19 expenses of FIRA for carrying out all du-
20 ties of FIRA with respect to such covered
21 institutions.

22 (C) TRANSFER OF FUNDS.—

23 (i) BY BOARD OF GOVERNORS.—

24 (I) FOR DUTIES RELATING TO
25 SMALLER STATE BANKS AND STATE

1 SAVINGS ASSOCIATIONS.—The Board
2 of Governors shall transfer to FIRA
3 an amount equal to 20 percent of the
4 estimated total expenses of FIRA for
5 carrying out all duties of FIRA with
6 respect to State banks and State sav-
7 ings associations having total assets of
8 less than \$10,000,000,000.

9 (II) FOR DUTIES RELATING TO
10 SMALLER STATE-LICENSED BRANCHES
11 AND AGENCIES.—The Board of Gov-
12 ernors shall transfer to FIRA an
13 amount equal to the estimated total
14 expenses of FIRA for carrying out all
15 duties of FIRA with respect to State-
16 licensed branches and agencies having
17 total assets of less than
18 \$10,000,000,000.

19 (III) FOR DUTIES RELATING TO
20 LARGER STATE BANKS.—The Board
21 of Governors shall transfer to FIRA
22 an amount equal to 50 percent of the
23 estimated total expenses of FIRA for
24 carrying out all duties of FIRA with
25 respect to State banks, State savings

1 associations, and State-licensed
2 branches and agencies having total as-
3 sets of \$10,000,000,000 or more.

4 (IV) FOR DUTIES RELATING TO
5 SMALLER BANK HOLDING COMPANIES
6 AND SAVINGS AND LOAN HOLDING
7 COMPANIES.—

8 (aa) IN GENERAL.—The
9 Board of Governors shall transfer
10 to FIRA an amount equal to the
11 total estimated expenses of FIRA
12 for carrying out all duties of
13 FIRA with respect to bank hold-
14 ing companies and savings and
15 loan holding companies having
16 total assets of less than
17 \$10,000,000,000.

18 (bb) ESTIMATION OF EX-
19 PENSES.—For purposes of this
20 subclause, the estimated expenses
21 of FIRA for carrying out all du-
22 ties of FIRA with respect to
23 bank holding companies and sav-
24 ings and loan holding companies
25 described in item (aa) shall not

1 include any estimated expenses
2 incurred by FIRA for carrying
3 out all duties of FIRA with re-
4 spect to national banks, Federal
5 savings associations, State banks,
6 and State savings associations.

7 (ii) BY CORPORATION.—The Corpora-
8 tion shall transfer to FIRA an amount
9 equal to 80 percent of the estimated total
10 expenses incurred by FIRA for carrying
11 out all duties of FIRA with respect to
12 State banks and State savings associations
13 having total assets of less than
14 \$10,000,000,000.

15 (c) FINANCIAL INSTITUTIONS REGULATORY ADMIN-
16 STRATION FUND.—

17 (1) FUND ESTABLISHED.—There is established
18 in the Treasury of the United States a separate fund
19 to be known as the “Financial Institutions Regu-
20 latory Administration Fund” (referred to in this
21 subsection as the “FIRA Fund”).

22 (2) FUND RECEIPTS.—All amounts transferred
23 to FIRA under section 354, and all moneys received
24 by FIRA from any other source, shall be deposited
25 into the FIRA Fund.

1 (3) INVESTMENT AUTHORITY.—

2 (A) AMOUNTS IN FIRA FUND MAY BE IN-
3 VESTED.—FIRA may request the Secretary to
4 invest the portion of the FIRA Fund that is
5 not, in the judgment of FIRA, required to meet
6 the needs of the FIRA Fund.

7 (B) ELIGIBLE INVESTMENTS.—Invest-
8 ments authorized by this paragraph shall be
9 made by the Secretary in obligations of the
10 United States or obligations that are guaran-
11 teed as to principal and interest by the United
12 States, with maturities suitable to the needs of
13 the FIRA Fund, as determined by FIRA.

14 (C) INTEREST AND PROCEEDS CRED-
15 ITED.—The interest on, and the proceeds from
16 the sale or redemption of, any obligations held
17 in the Fund shall be credited to and form a
18 part of the Fund.

19 **SEC. 336. PERSONNEL.**

20 (a) APPOINTMENT.—

21 (1) IN GENERAL.—The Chairperson may fix the
22 number of, and appoint and direct, all employees of
23 FIRA.

1 (2) AMENDMENT.—Section 5240 of the Revised
2 Statutes of the United States (12 U.S.C. 481) is
3 amended—

4 (A) in the first sentence of the first undes-
5 igned paragraph, by striking “The Comp-
6 troller of the Currency, with the approval of the
7 Secretary of the Treasury,” and inserting “The
8 Chairperson of the Financial Institutions Regu-
9 latory Administration (referred to in this sec-
10 tion as the ‘Chairperson’)”;

11 (B) in the second undesignated para-
12 graph—

13 (i) in the fourth sentence, by striking
14 “with the approval of the Secretary of the
15 Treasury”; and

16 (ii) by striking the ninth sentence;

17 (C) by striking “Comptroller of the Cur-
18 rency” each place that term appears and insert-
19 ing “Chairperson”; and

20 (D) by striking “Comptroller” each place
21 that term appears and inserting “Chairperson”.

22 (b) COMPENSATION.—

23 (1) IN GENERAL.—The Chairperson may fix the
24 number of, and appoint and direct, an executive di-
25 rector and all other employees of FIRA. The employ-

1 ment of an executive director shall be subject to con-
2 firmation by the FIRA Board.

3 (2) COMPENSATION.—The Chairperson shall
4 fix, adjust, and administer the pay for the executive
5 director and all other employees of FIRA, without
6 regard to chapter 51 or subchapter III of chapter 53
7 of title 5, United States Code, relating to classifica-
8 tion of positions and General Schedule pay rates.

9 (3) ANNUAL REPORT TO CONGRESS.—The
10 Chairperson shall submit to Congress an annual re-
11 port on the structure of compensation and benefits
12 of the employees of FIRA.

13 **SEC. 337. CONTRACTING AND LEASING AUTHORITY.**

14 Notwithstanding the Federal Property and Adminis-
15 trative Services Act of 1949 (41 U.S.C. 251 et seq.) or
16 any other provision of law, the Chairperson may—

17 (1) enter into and perform contracts, execute
18 instruments, and acquire, in any lawful manner,
19 such goods and services, or personal or real property
20 (or property interest) as the Chairperson deems nec-
21 essary to carry out the duties and responsibilities of
22 FIRA; and

23 (2) hold, maintain, sell, lease, or otherwise dis-
24 pose of the property (or property interest) acquired
25 under paragraph (1).

1 **Subtitle D—Additional FIRA Au-**
2 **thority for Specified Financial**
3 **Companies**

4 **SEC. 341. EXAMINATIONS OF COMPANIES THAT DO NOT**
5 **CONTROL BANKS.**

6 (a) IN GENERAL.—FIRA may make examinations of
7 any specified U.S. nonbank financial company and any
8 subsidiary of such company, and any United States sub-
9 sidiaries, branches, or agencies of a specified foreign
10 nonbank financial company, to determine—

11 (1) the nature of the operations and financial
12 condition of the company and such subsidiaries;

13 (2) the financial, operational, and other risks
14 within the holding company that may pose a threat
15 to the safety and soundness of such holding com-
16 pany or to the stability of the United States finan-
17 cial system;

18 (3) the systems for monitoring and controlling
19 such risks; and

20 (4) compliance with the prudential standards
21 promulgated by the Agency or any provision of Fed-
22 eral law that FIRA has specific jurisdiction to en-
23 force against such company or subsidiary of such
24 company and those governing transactions and rela-

1 tionships between such company and any other spec-
2 ified financial company.

3 (b) USE OF EXAMINATION REPORTS.—FIRA shall,
4 to the extent possible, for purposes of this section, use re-
5 ports of examination of functionally regulated subsidiaries
6 made by their primary financial regulatory agency.

7 (c) ENHANCED PUBLIC DISCLOSURES.—In order to
8 support market evaluation of the risk profile, capital ade-
9 quacy, and risk management capabilities of a specified fi-
10 nancial company, FIRA shall require such company to
11 make such periodic public disclosures as the Agency may,
12 by regulation, prescribe.

13 **SEC. 342. ENFORCEMENT.**

14 (a) IN GENERAL.—Except as provided in subsection
15 (b), a specified U.S. nonbank financial company, a speci-
16 fied foreign nonbank financial company, and any subsidi-
17 aries of such companies shall be subject to the provisions
18 of subsections (b) through (n) of section 8 of the Federal
19 Deposit Insurance Act (12 U.S.C. 1818), in the same
20 manner and to the same extent as if the company were
21 an insured depository institution or a bank holding com-
22 pany and its subsidiaries were insured depository institu-
23 tions, as provided in section 8(b)(3) of the Federal Deposit
24 Insurance Act (12 U.S.C. 1818(b)(3)).

1 (b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY
2 REGULATED SUBSIDIARIES.—

3 (1) REFERRAL.—If FIRA determines that a
4 condition, practice, or activity of a functionally regu-
5 lated subsidiary of a financial company described in
6 subsection (a) does not comply with the regulations
7 or orders prescribed by the Agency under this Act,
8 or otherwise poses a threat to the financial stability
9 of the United States, FIRA may recommend in writ-
10 ing to the primary financial regulatory agency for
11 the subsidiary that such agency initiate a super-
12 visory action or enforcement proceeding. The rec-
13 ommendation shall be accompanied by a written ex-
14 planation of the concerns giving rise to the rec-
15 ommendation.

16 (2) BACKSTOP AUTHORITY.—If the primary fi-
17 nancial regulatory agency does not initiate an action
18 or enforcement proceeding before the end of the 30-
19 day period beginning on the date on which such
20 agency receives a recommendation under paragraph
21 (1), FIRA shall report to the Agency for Financial
22 Stability the failure of the primary financial regu-
23 latory agency to initiate an action or enforcement
24 proceeding.

1 **SEC. 343. ACQUISITIONS.**

2 (a) ACQUISITIONS OF BANKS; TREATMENT AS A
3 BANK HOLDING COMPANY.—For purposes of section 3 of
4 the Bank Holding Company Act of 1956 (12 U.S.C.
5 1842), a specified financial company shall be deemed to
6 be, and shall be treated as, a bank holding company.

7 (b) ACQUISITION OF NONBANK COMPANIES.—

8 (1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—

9 Notwithstanding section 4(k)(6)(B) of the Bank
10 Holding Company Act of 1956 (12 U.S.C.
11 1843(k)(6)(B)), a specified financial company shall
12 not acquire direct or indirect ownership or control of
13 any voting shares of any company engaged in non-
14 banking activities having total consolidated assets of
15 \$10,000,000,000 or more, without providing written
16 notice to FIRA in advance of the transaction.

17 (2) EXEMPTIONS.—The prior notice require-
18 ment in paragraph (1) shall not apply with regard
19 to the acquisition of shares that would qualify for
20 the exemptions in section 4(e) or section 4(k)(4)(E)
21 of the Bank Holding Company Act of 1956 (12
22 U.S.C. 1843(e) and (k)(4)(E)).

23 (3) NOTICE PROCEDURES.—The notice proce-
24 dures set forth in section 4(j)(1) of the Bank Hold-
25 ing Company Act of 1956 (12 U.S.C. 1843(j)(1)),
26 without regard to section 4(j)(3) of that Act, shall

1 apply to an acquisition of any company (other than
2 an insured depository institution) by a specified fi-
3 nancial company, as described in paragraph (1), in-
4 cluding a financial company engaged in activities de-
5 scribed in section 4(k) of that Act.

6 (4) STANDARDS FOR REVIEW.—

7 (A) CRITERIA.—In addition to the stand-
8 ards provided in section 4(j)(2) of the Bank
9 Holding Company Act of 1956 (12 U.S.C.
10 1843(j)(2)), FIRA shall consider the extent to
11 which the proposed acquisition would result in
12 greater or more concentrated risks to global or
13 United States financial stability or the global or
14 United States economy.

15 (B) WELL CAPITALIZED AND WELL MAN-
16 AGED.—FIRA shall deny any proposed acquisi-
17 tion for which notice has been submitted pursu-
18 ant to paragraph (1) by a specified financial
19 company, unless before and immediately after
20 the proposed acquisition, the specified financial
21 company is and will be well capitalized and well
22 managed.

23 (5) APPLICATION OF BANK HOLDING COMPANY
24 REQUIREMENTS.—Nothing in this section is in-
25 tended to, nor shall it be deemed to, annul, alter, or

1 otherwise modify any requirement to which a finan-
2 cial company is otherwise subject as a result of its
3 status as a bank holding company or financial hold-
4 ing company, other than section 4(k)(6)(B) of the
5 Bank Holding Company Act of 1956 (12 U.S.C.
6 1843(k)(6)(B)), which shall be inapplicable to an ac-
7 quisition of voting shares of any company engaged
8 in nonbanking activities by a specified financial com-
9 pany that is subject to the filing requirement in
10 paragraph (1).

11 **SEC. 344. PROHIBITION AGAINST MANAGEMENT INTER-**
12 **LOCKS BETWEEN CERTAIN FINANCIAL HOLD-**
13 **ING COMPANIES.**

14 A specified financial company shall be treated as a
15 bank holding company for purposes of the Depository In-
16 stitutions Management Interlocks Act (12 U.S.C. 3201 et
17 seq.), except that FIRA shall not exercise the authority
18 provided in section 7 of that Act (12 U.S.C. 3207) to per-
19 mit service by a management official of a specified finan-
20 cial company as a management official of any other non-
21 affiliated specified financial company (other than to pro-
22 vide a temporary exemption for interlocks resulting from
23 a merger, acquisition, or consolidation).

1 **Subtitle E—Transitional Provisions**

2 **SEC. 351. INTERIM USE OF FUNDS, PERSONNEL, AND PROP-** 3 **ERTY.**

4 (a) INTERIM AUTHORITY OF CHAIRPERSON.—During
5 the period beginning on the date on which the first Chair-
6 person is appointed under section 312 and ending on the
7 transfer date, the Chairperson shall—

8 (1) consult and cooperate with the Comptroller
9 of the Currency, the Director of the Office of Thrift
10 Supervision, the Chairman of the Board of Gov-
11 ernors, and the Chairperson of the Corporation to
12 facilitate the orderly transfer of functions to FIRA;

13 (2) determine, from time to time—

14 (A) the amount of funds necessary to pay
15 the expenses of FIRA (including expenses for
16 personnel, property, and administrative serv-
17 ices);

18 (B) which personnel are appropriate to fa-
19 cilitate the orderly transfer of functions under
20 this title; and

21 (C) what property and administrative serv-
22 ices are necessary to support FIRA; and

23 (3) take such actions as may be necessary to
24 provide for the orderly implementation of this title.

1 (b) INTERIM RESPONSIBILITIES.—Before the trans-
2 fer date, upon the request of the Chairperson, the Office
3 of the Comptroller of the Currency, the Office of Thrift
4 Supervision, the Board of Governors, and the Corporation
5 shall each—

6 (1) pay to the Chairperson, from funds ob-
7 tained by such agencies through assessments, fees,
8 or other charges, 25 percent of the total amount
9 that the Director determines to be necessary under
10 subsection (a)(2)(A);

11 (2) detail to FIRA such personnel as the Chair-
12 person determines to be appropriate under sub-
13 section (a)(2)(B); and

14 (3) make available to FIRA such property and
15 provide to FIRA such administrative services as the
16 Chairperson determines to be necessary under sub-
17 section (a)(2)(C).

18 (c) NOTICE REQUIRED.—The Chairperson shall give
19 to the Comptroller of the Currency, the Director of the
20 Office of Thrift Supervision, the Chairman of the Board
21 of Governors, and the Chairperson of the Corporation rea-
22 sonable notice of any request that the Chairperson intends
23 to make under subsection (b).

24 **SEC. 352. TRANSFER OF EMPLOYEES.**

25 (a) IN GENERAL.—

1 (1) TRANSFER OF EMPLOYEES.—

2 (A) OFFICE OF THE COMPTROLLER OF
3 THE CURRENCY AND OFFICE OF THRIFT SU-
4 PERVISION.—All employees of the Office of the
5 Comptroller of the Currency and the Office of
6 Thrift Supervision shall be transferred to
7 FIRA.

8 (B) CORPORATION.—

9 (i) DETERMINATION BY CHAIR-
10 PERSON.—The Chairperson, in consulta-
11 tion with the Corporation, shall determine
12 the number and type of employees of the
13 Corporation necessary to carry out the du-
14 ties transferred to FIRA under section
15 322(e) in accordance with this title.

16 (ii) TRANSFER.—The Corporation
17 shall transfer to FIRA the number and
18 type of employees the Chairperson deter-
19 mines are necessary under clause (i).

20 (C) BOARD OF GOVERNORS.—

21 (i) DETERMINATION BY CHAIR-
22 PERSON.—

23 (I) IN GENERAL.—The Chair-
24 person, in consultation with the Board
25 of Governors, shall determine the

1 number and type of employees of the
2 Board of Governors necessary to carry
3 out the duties transferred to FIRA
4 under section 322(d) in accordance
5 with this title.

6 (II) FEDERAL RESERVE BANK
7 EMPLOYEES.—For purposes of this
8 clause, the term “employee of the
9 Board of Governors” includes an em-
10 ployee of a Federal reserve bank who,
11 on the day before the transfer date,
12 performs functions on behalf of the
13 Board of Governors.

14 (ii) TRANSFER.—The Board of Gov-
15 ernors shall transfer to FIRA the number
16 and type of employees the Chairperson de-
17 termines are necessary under clause (i).

18 (D) TRANSFER OF EMPLOYEES PER-
19 FORMING CONSUMER FINANCIAL PROTECTION
20 FUNCTIONS.—Nothing in this paragraph shall
21 affect the transfer of employees performing or
22 supporting consumer financial protection func-
23 tions of the Comptroller of the Currency, the
24 Director of the Office of Thrift Supervision, the
25 Corporation, or the Board of Governors to the

1 Consumer Financial Protection Agency, as pro-
2 vided in title X of this Act.

3 (2) APPOINTMENT AUTHORITY FOR EXCEPTED
4 SERVICE TRANSFERRED.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), any appointment authority
7 of the Office of the Comptroller of the Cur-
8 rency, the Office of Thrift Supervision, the
9 Board of Governors, and the Corporation under
10 Federal law that relates to the functions trans-
11 ferred under section 322, including the regula-
12 tions of the Office of Personnel Management,
13 for filling the positions of employees in the ex-
14 cepted service shall be transferred to the Chair-
15 person.

16 (B) DECLINING TRANSFERS ALLOWED.—
17 The Chairperson may decline to accept a trans-
18 fer of authority under subparagraph (A) (and
19 the employees appointed under that authority)
20 to the extent that such authority relates to posi-
21 tions excepted from the competitive service be-
22 cause of their confidential, policy-making, pol-
23 icy-determining, or policy-advocating character.

1 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
2 MENTS.—Each employee to be transferred under this sec-
3 tion shall—

4 (1) be transferred not later than 90 days after
5 the transfer date; and

6 (2) receive notice of the position assignment of
7 the employee not later than 120 days after the effec-
8 tive date of the transfer.

9 (c) TRANSFER OF FUNCTIONS.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law, the transfer of employees under
12 this title shall be deemed a transfer of functions for
13 the purpose of section 3503 of title 5, United States
14 Code.

15 (2) PRIORITY OF THIS ACT.—If any provision
16 of this title conflicts with any protection provided to
17 a transferred employee under section 3503 of title 5,
18 United States Code, the provisions of this title shall
19 control.

20 (d) EMPLOYEES' STATUS AND ELIGIBILITY.—The
21 transfer of functions and employees under this title, and
22 the abolishment of the Office of the Comptroller of the
23 Currency and the Office of Thrift Supervision under sec-
24 tion 323, shall not affect the status of the transferred em-

1 ployees as employees of an agency of the United States
2 under any provision of law.

3 (e) EQUAL STATUS AND TENURE POSITIONS.—

4 (1) STATUS AND TENURE.—Each transferred
5 employee shall be placed in a position at FIRA with
6 the same status and tenure as the transferred em-
7 ployee held on the day before the date on which the
8 employee was transferred.

9 (2) FUNCTIONS.—To the extent practicable,
10 each transferred employee shall be placed in a posi-
11 tion at FIRA responsible for the same functions and
12 duties as the transferred employee had on the day
13 before the date on which the employee was trans-
14 ferred, in accordance with the expertise and pref-
15 erences of the transferred employee.

16 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
17 MENTS.—An examiner who is a transferred employee shall
18 not be subject to any additional certification requirements
19 before being placed in a comparable position in FIRA, if
20 the examiner carries out examinations of the same type
21 of institutions as an employee of FIRA as the examiner
22 carried out before the date on which the employee was
23 transferred.

24 (g) PERSONNEL ACTIONS LIMITED.—

1 (1) 2-YEAR PROTECTION.—Except as provided
2 in paragraph (2), during the 2-year period beginning
3 on the transfer date, an employee holding a perma-
4 nent position on the day before the date on which
5 the employee was transferred shall not be involun-
6 tarily separated or involuntarily reassigned outside
7 the locality pay area (as defined by the Office of
8 Personnel Management) of the employee.

9 (2) EXCEPTIONS.—The Chairperson may—

10 (A) separate a transferred employee for
11 cause, including for unacceptable performance;
12 or

13 (B) terminate an appointment to a position
14 excepted from the competitive service because of
15 its confidential policy-making, policy-deter-
16 mining, or policy-advocating character.

17 (h) PAY.—

18 (1) 2-YEAR PROTECTION.—Except as provided
19 in paragraph (2), during the 2-year period beginning
20 on the date on which the employee was transferred
21 under this title, a transferred employee shall be paid
22 at a rate that is not less than the basic rate of pay,
23 including any geographic differential, that the trans-
24 ferred employee received during the 2-year period

1 immediately preceding the date on which the em-
2 ployee was transferred.

3 (2) EXCEPTIONS.—The Chairperson may re-
4 duce the rate of basic pay of a transferred em-
5 ployee—

6 (A) for cause, including for unacceptable
7 performance; or

8 (B) with the consent of the transferred
9 employee.

10 (3) PROTECTION ONLY WHILE EMPLOYED.—
11 This subsection shall apply to a transferred em-
12 ployee only during the period that the transferred
13 employee remains employed by FIRA.

14 (4) PAY INCREASES PERMITTED.—Nothing in
15 this subsection shall limit the authority of the Chair-
16 person to increase the pay of a transferred employee.

17 (i) BENEFITS.—

18 (1) RETIREMENT BENEFITS FOR TRANSFERRED
19 EMPLOYEES.—

20 (A) IN GENERAL.—

21 (i) CONTINUATION OF EXISTING RE-
22 TIREMENT PLAN.—Each transferred em-
23 ployee shall remain enrolled in the retire-
24 ment plan of the transferred employee, for

1 as long as the transferred employee is em-
2 ployed by FIRA.

3 (ii) EMPLOYER'S CONTRIBUTION.—

4 The Chairperson shall pay any employer
5 contributions to the existing retirement
6 plan of each transferred employee, as re-
7 quired under each such existing retirement
8 plan.

9 (B) DEFINITION.—In this paragraph, the
10 term “existing retirement plan” means, with re-
11 spect to a transferred employee, the retirement
12 plan (including the Financial Institutions Re-
13 tirement Fund), and any associated thrift sav-
14 ings plan, of the agency from which the em-
15 ployee was transferred in which the employee
16 was enrolled on the day before the date on
17 which the employee was transferred.

18 (2) BENEFITS OTHER THAN RETIREMENT BEN-
19 EFITS.—

20 (A) DURING FIRST YEAR.—

21 (i) EXISTING PLANS CONTINUE.—

22 During the 1-year period following the
23 transfer date, each transferred employee
24 may retain membership in any employee
25 benefit program (other than a retirement

1 benefit program) of the agency from which
2 the employee transferred, including any
3 dental, vision, long term care, or life insur-
4 ance program to which the employee be-
5 longed on the day before the transfer date.

6 (ii) EMPLOYER'S CONTRIBUTION.—
7 The Chairperson shall pay any employer
8 cost required to extend coverage in the
9 benefit program to the transferred em-
10 ployee as required under that program or
11 negotiated agreements.

12 (B) DENTAL, VISION, OR LIFE INSURANCE
13 AFTER FIRST YEAR.—If, after the 1-year period
14 beginning on the transfer date, the Chairperson
15 determines that FIRA will not continue to par-
16 ticipate in any dental, vision, or life insurance
17 program of an agency from which an employee
18 transferred, a transferred employee who is a
19 member of the program may, before the deci-
20 sion of the Chairperson takes effect and without
21 regard to any regularly scheduled open season,
22 elect to enroll in—

23 (i) the enhanced dental benefits pro-
24 gram established under chapter 89A of
25 title 5, United States Code;

1 (ii) the enhanced vision benefits estab-
2 lished under chapter 89B of title 5, United
3 States Code; and

4 (iii) the Federal Employees' Group
5 Life Insurance Program established under
6 chapter 87 of title 5, United States Code,
7 without regard to any requirement of in-
8 surability.

9 (C) LONG TERM CARE INSURANCE AFTER
10 1ST YEAR.—If, after the 1-year period begin-
11 ning on the transfer date, the Chairperson de-
12 termines that FIRA will not continue to partici-
13 pate in any long term care insurance program
14 of an agency from which an employee trans-
15 ferred, a transferred employee who is a member
16 of such a program may, before the decision of
17 Chairperson takes effect, elect to apply for cov-
18 erage under the Federal Long Term Care In-
19 surance Program established under chapter 90
20 of title 5, United States Code, under the under-
21 writing requirements applicable to a new active
22 workforce member, as described in part 875 of
23 title 5, Code of Federal Regulations (or any
24 successor thereto).

1 (D) CONTRIBUTION OF TRANSFERRED EM-
2 PLOYEE.—

3 (i) IN GENERAL.—Subject to clause
4 (ii), a transferred employee who is enrolled
5 in a plan under the Federal Employees
6 Health Benefits Program shall pay any
7 employee contribution required under the
8 plan.

9 (ii) COST DIFFERENTIAL.—The
10 Chairperson shall pay any difference in
11 cost between the employee contribution re-
12 quired under the plan provided to trans-
13 ferred employees by the agency from which
14 the employee transferred on the date of en-
15 actment of this Act and the plan provided
16 by the Chairperson under this section.

17 (iii) FUNDS TRANSFER.—The Chair-
18 person shall transfer to the Employees
19 Health Benefits Fund established under
20 section 8909 of title 5, United States
21 Code, an amount determined by the Direc-
22 tor of the Office of Personnel Manage-
23 ment, after consultation with the Chair-
24 person and the Office of Management and
25 Budget, to be necessary to reimburse the

1 Fund for the cost to the Fund of providing
2 any benefits under this subparagraph that
3 are not otherwise paid for by a transferred
4 employee under clause (i).

5 (E) SPECIAL PROVISIONS TO ENSURE CON-
6 TINUATION OF LIFE INSURANCE BENEFITS.—

7 (i) IN GENERAL.—An annuitant, as
8 defined in section 8901 of title 5, United
9 States Code, who is enrolled in a life insur-
10 ance plan administered by an agency from
11 which employees are transferred under this
12 Act on the day before the transfer date
13 shall be eligible for coverage by a life in-
14 surance plan under sections 8706(b),
15 8714a, 8714b, or 8714c of title 5, United
16 States Code, or by a life insurance plan es-
17 tablished by the Chairperson, without re-
18 gard to any regularly scheduled open sea-
19 son or any requirement of insurability.

20 (ii) CONTRIBUTION OF TRANSFERRED
21 EMPLOYEE.—

22 (I) IN GENERAL.—Subject to
23 subclause (II), a transferred employee
24 enrolled in a life insurance plan under

1 this clause shall pay any employee
2 contribution required by the plan.

3 (II) COST DIFFERENTIAL.—The
4 Chairperson shall pay any difference
5 in cost between the benefits provided
6 by the agency from which the em-
7 ployee transferred on the date of en-
8 actment of this Act and the benefits
9 provided under this section.

10 (III) FUNDS TRANSFER.—The
11 Chairperson shall transfer to the Em-
12 ployees' Life Insurance Fund estab-
13 lished under section 8714 of title 5,
14 United States Code, an amount deter-
15 mined by the Director of the Office of
16 Personnel Management, after con-
17 sultation with the Chairperson and
18 the Office of Management and Budg-
19 et, to be necessary to reimburse the
20 Fund for the cost to the Fund of pro-
21 viding benefits under this subpara-
22 graph not otherwise paid for by a
23 transferred employee under subclause
24 (I).

1 (IV) CREDIT FOR TIME EN-
2 ROLLED IN OTHER PLANS.—For any
3 transferred employee, enrollment in a
4 life insurance plan administered by
5 the agency from which the employee
6 transferred, the Chairperson imme-
7 diately before enrollment in a life in-
8 surance plan under chapter 87 of title
9 5, United States Code, shall be con-
10 sidered as enrollment in a life insur-
11 ance plan under that chapter for pur-
12 poses of section 8706(b)(1)(A) of title
13 5, United States Code.

14 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
15 FICATION SYSTEM.—Not later than 2 years after the
16 transfer date, the Chairperson shall implement a uniform
17 pay and classification system for all transferred employ-
18 ees.

19 (k) EQUITABLE TREATMENT.—In administering the
20 provisions of this section, the Chairperson—

21 (1) may not take any action that would unfairly
22 disadvantage a transferred employee relative to any
23 other transferred employee on the basis of prior em-
24 ployment by the Office of the Comptroller of the
25 Currency, the Office of Thrift Supervision, the Cor-

1 poration, the Board of Governors, or a Federal re-
2 serve bank; and

3 (2) may take such action as is appropriate in
4 an individual case to ensure that a transferred em-
5 ployee receives equitable treatment, with respect to
6 the status, tenure, pay, benefits (other than benefits
7 under programs administered by the Office of Per-
8 sonnel Management), and accrued leave or vacation
9 time for prior periods of service with any Federal
10 agency of the transferred employee.

11 **SEC. 353. PROPERTY TRANSFERRED.**

12 (a) PROPERTY DEFINED.—For purposes of this sec-
13 tion, the term “property” includes all real property (in-
14 cluding leaseholds) and all personal property (including
15 computers, furniture, fixtures, equipment, books, ac-
16 counts, records, reports, files, memoranda, paper, reports
17 of examination, work papers and correspondence related
18 to such reports, and any other information or materials).

19 (b) IN GENERAL.—

20 (1) OTS AND OCC.—Not later than 90 days
21 after the transfer date, all property of the Office of
22 the Comptroller of the Currency and the Office of
23 Thrift Supervision shall be transferred to FIRA.

24 (2) BOARD OF GOVERNORS.—

1 (A) IN GENERAL.—Not later than 90 days
2 after the transfer date, all property of the
3 Board of Governors that FIRA (in consultation
4 with the Board of Governors) determines is
5 used, on the day before the transfer date, to
6 perform or support the functions of the Board
7 of Governors transferred to FIRA under this
8 Act, shall be transferred to FIRA.

9 (B) FEDERAL RESERVE BANKS.—For pur-
10 poses of this paragraph, the term “property of
11 the Board of Governors” includes any property
12 of a Federal reserve bank that FIRA (in con-
13 sultation with the Board of Governors) deter-
14 mines is used, on the day before the transfer
15 date, to perform or support the functions of the
16 Board of Governors transferred to FIRA under
17 this Act.

18 (3) CORPORATION.—Not later than 90 days
19 after the transfer date, all property of the Corpora-
20 tion that FIRA (in consultation with the Corpora-
21 tion) determines is used, on the day before the
22 transfer date, to perform or support the functions of
23 the Corporation transferred to FIRA under this Act,
24 shall be transferred to FIRA.

1 (c) **CONTRACTS RELATED TO PROPERTY TRANS-**
2 **FERRED.**—Each contract, agreement, lease, license, per-
3 mit, and similar arrangement relating to property trans-
4 ferred to the Chairperson by this section shall be trans-
5 ferred to the Chairperson together with the property.

6 (d) **PRESERVATION OF PROPERTY.**—Property identi-
7 fied for transfer under this section shall not be altered,
8 destroyed, or deleted before transfer under this section.

9 **SEC. 354. FUNDS TRANSFERRED.**

10 Except to the extent that funds are necessary to dis-
11 pose of the affairs of the Office of the Comptroller of the
12 Currency and the Office of Thrift Supervision under sec-
13 tion 355, all funds that, on the day before the transfer
14 date, are available to the Comptroller of the Currency and
15 the Director of the Office of Thrift Supervision to pay the
16 expenses of the Office of the Comptroller of the Currency
17 and the Office of Thrift Supervision shall be transferred
18 to FIRA on the transfer date and deposited into the Fi-
19 nancial Institutions Regulatory Administration Fund es-
20 tablished under section 335.

21 **SEC. 355. DISPOSITION OF AFFAIRS.**

22 (a) **IN GENERAL.**—During the 90-day period begin-
23 ning on the transfer date, the Comptroller of the Cur-
24 rency, the Director of the Office of Thrift Supervision, the

1 Board of Governors, and the Board of Directors of the
2 Corporation—

3 (1) shall, solely for the purpose of winding up
4 the affairs of the Office of the Comptroller of the
5 Currency, the Office of Thrift Supervision, the
6 Board of Governors, and the Corporation, respec-
7 tively, relating to any function transferred to FIRA
8 under this title—

9 (A) manage the employees of such agencies
10 and provide for the payment of the compensa-
11 tion and benefits of the employees that accrue
12 before the transfer date; and

13 (B) manage any property of such agencies,
14 until the date that the property is transferred
15 under section 353; and

16 (2) may take any other action necessary to
17 wind up the affairs of the Office of the Comptroller
18 of the Currency, the Office of Thrift Supervision,
19 the Board of Governors, and the Corporation, re-
20 spectively, relating to the functions transferred
21 under this title.

22 (b) AUTHORITY AND STATUS OF COMPTROLLER AND
23 DIRECTOR.—

24 (1) IN GENERAL.—Notwithstanding the trans-
25 fer of functions under this title, during the 90-day

1 period beginning on the transfer date, the Comp-
2 troller of the Currency and the Director of the Of-
3 fice of Thrift Supervision shall retain and may exer-
4 cise any authority vested in the Comptroller of the
5 Currency and the Director of the Office of Thrift
6 Supervision, respectively, on the day before the
7 transfer date, only to the extent necessary—

8 (A) to wind up the Office of the Comp-
9 troller of the Currency and the Office of Thrift
10 Supervision; and

11 (B) to carry out the transfer under this
12 title during such 90-day period.

13 (2) OTHER PROVISIONS.—For purposes of
14 paragraph (1), the Comptroller of the Currency and
15 the Director of the Office of Thrift Supervision
16 shall, during the 90-day period beginning on the
17 transfer date, continue to be—

18 (A) treated as officers of the United
19 States; and

20 (B) entitled to receive compensation at the
21 same annual rate of basic pay that the Comp-
22 troller of the Currency and the Director of the
23 Office of Thrift Supervision, respectively, re-
24 ceived on the day before the transfer date.

1 **SEC. 356. CONTINUATION OF SERVICES.**

2 Any agency, department, or other instrumentality of
3 the United States, and any successor to any such agency,
4 department, or instrumentality, that was, before the trans-
5 fer date, providing support services to the Office of the
6 Comptroller of the Currency, the Office of Thrift Super-
7 vision, the Board of Governors, or the Corporation in con-
8 nection with functions transferred to FIRA under this
9 title, shall—

10 (1) continue to provide such services, subject to
11 reimbursement by FIRA, until the transfer of func-
12 tions under this title is complete; and

13 (2) consult with the Chairperson to coordinate
14 and facilitate a prompt and orderly transition.

15 **Subtitle F—Termination of Federal**
16 **Thrift Charter**

17 **SEC. 361. TERMINATION OF FEDERAL SAVINGS ASSOCIA-**
18 **TIONS.**

19 (a) IN GENERAL.—The Director of the Office of
20 Thrift Supervision, or the Chairperson, as the case may
21 be, may not issue a charter for a Federal savings associa-
22 tion under section 5 of the Home Owners' Loan Act (12
23 U.S.C. 1464).

24 (b) CONFORMING AMENDMENT.—Section 5(a) of the
25 Home Owner's Loan Act (12 U.S.C. 1464(a)) is amended
26 to read as follows:

1 “(a) IN GENERAL.—In order to provide thrift institu-
2 tions for the deposit of funds and for the extension of cred-
3 it for homes and other goods and services, the Director
4 is authorized, under such regulations as the Director may
5 prescribe, to provide for the examination, operation, and
6 regulation of associations to be known as Federal savings
7 associations (including Federal savings banks), giving pri-
8 mary consideration to the best practices of thrift institu-
9 tions in the United States. The lending and investment
10 powers conferred by this section are intended to encourage
11 such institutions to provide credit for housing safely and
12 soundly.”.

13 **SEC. 362. BRANCHING.**

14 Notwithstanding the Federal Deposit Insurance Act
15 (12 U.S.C. 1811 et seq.), the Bank Holding Company Act
16 of 1956 (12 U.S.C. 1841 et seq.), or any other provision
17 of Federal or State law, a savings association that be-
18 comes a bank may continue to operate any branch or
19 agency that the savings association operated before be-
20 coming a bank.

1 **Subtitle G—Additional Powers of**
2 **the Corporation**

3 **SEC. 371. DEPOSIT INSURANCE REFORMS.**

4 (a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Fed-
5 eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is
6 amended—

7 (1) by striking subparagraph (D); and

8 (2) by redesignating subparagraph (C) as sub-
9 paragraph (D).

10 (b) ANNUAL ASSESSMENT RATE.—Section 7(b)(2) of
11 the Federal Deposit Insurance Act (12 U.S.C.
12 1817(b)(2)), as amended by this section, is amended by
13 inserting after subparagraph (B) the following:

14 “(C) ASSESSMENT BASE.—The assessment
15 of any insured depository institution imposed
16 under this subsection shall be an amount equal
17 to the product of—

18 “(i) an assessment rate established by
19 the Corporation; and

20 “(ii) the amount of the average total
21 assets of the insured depository institution
22 during the assessment period, minus the
23 amount of the average tangible equity of
24 the insured depository institution during
25 the assessment period.”.

1 **SEC. 372. MANAGEMENT OF THE FEDERAL DEPOSIT INSUR-**
2 **ANCE CORPORATION.**

3 Section 2(a)(1) of the Federal Deposit Insurance Act
4 (12 U.S.C. 1812(a)(1)) is amended—

5 (1) in subparagraph (A), by striking “Comp-
6 troller of the Currency” and inserting “Chairman of
7 the Board of Governors of the Federal Reserve Sys-
8 tem”; and

9 (2) in subparagraph (B), by striking “Director
10 of the Office of Thrift Supervision” and inserting
11 “the Chairperson of FIRA”.

12 **TITLE IV—REGULATION OF AD-**
13 **VISERS TO HEDGE FUNDS**
14 **AND OTHERS**

15 **SEC. 401. SHORT TITLE.**

16 This title may be cited as the “Private Fund Invest-
17 ment Advisers Registration Act of 2009”.

18 **SEC. 402. DEFINITIONS.**

19 Section 202(a) of the Investment Advisers Act of
20 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
21 end the following:

22 “(29) The term ‘private fund’ means an issuer
23 that—

24 “(A) would be an investment company (as
25 defined in section 3 of the Investment Company

1 Act of 1940 (15 U.S.C. 80a-3)), but for section
2 3(e)(1) or 3(e)(7) of that Act; and

3 “(B) either—

4 “(i) is organized or otherwise created
5 under the laws of the United States or of
6 a State; or

7 “(ii) has 10 percent or more of its
8 outstanding securities owned by United
9 States persons.

10 “(30) The term ‘foreign private adviser’ means
11 any investment adviser who—

12 “(A) has no place of business in the
13 United States;

14 “(B) has fewer than 15 clients who are
15 domiciled in or residents of the United States;

16 “(C) has assets under management attrib-
17 utable to clients who are domiciled in or resi-
18 dents of the United States of less than
19 \$25,000,000, or such higher amount as the
20 Commission may, by rule, deem appropriate in
21 accordance with the purposes of this title; and

22 “(D) neither holds itself out generally to
23 the public in the United States as—

24 “(i) an investment adviser, nor acts as
25 an investment adviser to any investment

1 company registered under the Investment
2 Company Act of 1940; or

3 “(ii) a company which has elected to
4 be a business development company pursu-
5 ant to section 54 of the Investment Com-
6 pany Act of 1940 (15 U.S.C. 80a-53), and
7 has not withdrawn its election.”.

8 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
9 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
10 **ADVISERS; LIMITED INTRASTATE EXEMP-**
11 **TION.**

12 Section 203(b) of the Investment Advisers Act of
13 1940 (15 U.S.C. 80b-3(b)) is amended—

14 (1) in paragraph (1), by inserting “, other than
15 an investment adviser who acts as an investment ad-
16 viser to any private fund,” before “all of whose”;

17 (2) by striking paragraph (3) and inserting the
18 following:

19 “(3) any investment adviser that is a foreign
20 private adviser;”; and

21 (3) in paragraph (6)—

22 (A) in subparagraph (A), by striking “or”
23 at the end;

24 (B) in subparagraph (B), by striking the
25 period at the end and inserting “; or”; and

1 (C) by adding at the end the following:

2 “(C) a private fund.”.

3 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS;**
4 **EXAMINATIONS; DISCLOSURES.**

5 Section 204 of the Investment Advisers Act of 1940
6 (15 U.S.C. 80b–4) is amended—

7 (1) by redesignating subsections (b) and (c) as
8 subsections (c) and (d), respectively; and

9 (2) by inserting after subsection (a) the fol-
10 lowing:

11 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

12 “(1) IN GENERAL.—The Commission may re-
13 quire any investment adviser registered under this
14 title—

15 “(A) to maintain such records of, and file
16 with the Commission such reports regarding,
17 private funds advised by the investment adviser,
18 as necessary and appropriate in the public in-
19 terest and for the protection of investors, or for
20 the assessment of systemic risk by the Agency
21 for Financial Stability; and

22 “(B) to provide or make available to the
23 Agency for Financial Stability those reports or
24 records or the information contained therein.

1 “(2) TREATMENT OF RECORDS.—The records
2 and reports of any private fund provided to an in-
3 vestment adviser registered under this title who pro-
4 vides investment advice to that private fund shall be
5 deemed to be the records and reports of the invest-
6 ment adviser.

7 “(3) REQUIRED INFORMATION.—The records
8 and reports required to be filed with the Commission
9 under this subsection shall include, for each private
10 fund advised by the investment adviser, a description
11 of—

12 “(A) the amount of assets under manage-
13 ment and use of leverage;

14 “(B) counterparty credit risk exposure;

15 “(C) trading and investment positions;

16 “(D) valuation methodologies of the fund;

17 “(E) types of assets held;

18 “(F) side arrangements or side letters,
19 whereby certain investors in a fund obtain more
20 favorable rights or entitlements than other in-
21 vestors;

22 “(G) trading practices; and

23 “(H) such other information as the Com-
24 mission, in consultation with the Agency for Fi-
25 nancial Stability, determines is necessary and

1 appropriate in the public interest and for the
2 protection of investors or for the assessment of
3 systemic risk, which may include the establish-
4 ment of different reporting requirements for
5 different classes of fund advisers, based on the
6 type or size of private fund being advised.

7 “(4) MAINTENANCE OF RECORDS.—An invest-
8 ment adviser registered under this title shall main-
9 tain such records of private funds advised by the in-
10 vestment adviser for such period or periods as the
11 Commission, by rule, may prescribe as necessary and
12 appropriate in the public interest and for the protec-
13 tion of investors, or for the assessment of systemic
14 risk.

15 “(5) EXAMINATION OF RECORDS.—

16 “(A) PERIODIC AND SPECIAL EXAMINA-
17 TIONS.—The Commission—

18 “(i) shall conduct periodic inspections
19 of all records of private funds maintained
20 by an investment adviser registered under
21 this title in accordance with a schedule es-
22 tablished by the Commission; and

23 “(ii) may conduct at any time and
24 from time to time such additional, special,
25 and other examinations as the Commission

1 may prescribe as necessary and appro-
2 priate in the public interest and for the
3 protection of investors, or for the assess-
4 ment of systemic risk.

5 “(B) AVAILABILITY OF RECORDS.—An in-
6 vestment adviser registered under this title shall
7 make available to the Commission any copies or
8 extracts from such records as may be prepared
9 without undue effort, expense, or delay, as the
10 Commission or its representatives may reason-
11 ably request.

12 “(6) INFORMATION SHARING.—The Commission
13 shall make available to the Agency for Financial
14 Stability copies of all reports, documents, records,
15 and information filed with or provided to the Com-
16 mission by an investment adviser under this sub-
17 section as the Agency for Financial Stability may
18 consider necessary for the purpose of assessing the
19 systemic risk posed by a private fund. Information
20 in all such reports, documents, records, and informa-
21 tion in this subsection shall be kept strictly confiden-
22 tial.

23 “(7) CONFIDENTIALITY OF REPORTS.—Not-
24 withstanding any other provision of law, the Com-
25 mission may not be compelled to disclose any super-

1 visory report or information contained therein re-
2 quired to be filed with the Commission under this
3 subsection, except that nothing in this subsection
4 authorizes the Commission—

5 “(A) to withhold information from Con-
6 gress, upon an agreement of confidentiality; or

7 “(B) prevent the Commission from com-
8 plying with—

9 “(i) a request for information from
10 any other Federal department or agency or
11 any self-regulatory organization requesting
12 the report or information for purposes
13 within the scope of its jurisdiction; or

14 “(ii) an order of a court of the United
15 States in an action brought by the United
16 States or the Commission.

17 “(8) PUBLIC INFORMATION EXCEPTION.—For
18 purposes of section 552 of title 5, United States
19 Code, this subsection shall be considered a statute
20 described in subsection (b)(3)(B) of such section
21 552.

22 “(9) REPORT TO CONGRESS.—The Commission
23 shall report annually to Congress on how the Com-
24 mission has used the data collected pursuant to this

1 subsection to monitor the markets for the protection
2 of investors and the integrity of the markets.”.

3 **SEC. 405. DISCLOSURE PROVISION ELIMINATED.**

4 Section 210 of the Investment Advisers Act of 1940
5 (15 U.S.C. 80(b)–10) is amended by striking subsection
6 (c).

7 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

8 Section 211 of the Investment Advisers Act of 1940
9 (15 U.S.C. 80b–11) is amended—

10 (1) in subsection (a)—

11 (A) by striking the second sentence;

12 (B) by inserting before the period at the
13 end of the first sentence the following: “, in-
14 cluding rules and regulations defining technical,
15 trade, and other terms used in this title.”;

16 (C) by inserting “(1) IN GENERAL.—” be-
17 fore “The Commission”; and

18 (D) by adding at the end the following:

19 “(2) COMMISSION AUTHORITY.—For the pur-
20 poses of its rules and regulations, the Commission
21 may—

22 “(A) classify persons and matters within
23 its jurisdiction and prescribe different require-
24 ments for different classes of persons or mat-
25 ters; and

1 provision of investment advice relating to a venture capital
2 fund. Not later than 6 months after the date of enactment
3 of this subsection, the Commission shall issue final rules
4 to define the term ‘venture capital fund’ for purposes of
5 this subsection.”.

6 **SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRI-**
7 **VATE EQUITY FUND ADVISERS.**

8 Section 203 of the Investment Advisers Act of 1940
9 (15 U.S.C. 80b–3) is amended by adding at the end the
10 following:

11 “(m) **EXEMPTION OF AND REPORTING BY PRIVATE**
12 **EQUITY FUND ADVISERS.—**

13 “(1) **IN GENERAL.—**Except as provided in this
14 subsection, no investment adviser shall be subject to
15 the registration or reporting requirements of this
16 title with respect to the provision of investment ad-
17 vice relating to a private equity fund.

18 “(2) **MAINTENANCE OF RECORDS AND ACCESS**
19 **BY COMMISSION.—**Not later than 6 months after the
20 date of enactment of this subsection, the Commis-
21 sion shall issue final rules—

22 “(A) to require investment advisers de-
23 scribed in paragraph (1) to maintain such
24 records and provide to the Commission such an-
25 nual or other reports as the Commission deter-

1 mines necessary and appropriate in the public
2 interest and for the protection of investors; and
3 “(B) to define the term ‘private equity
4 fund’ for purposes of this subsection.”.

5 **SEC. 409. FAMILY OFFICES.**

6 Section 202(a)(11) of the Investment Advisers Act of
7 1940 (15 U.S.C. 80b-2(a)(11)) is amended by striking
8 “or (G)” and inserting the following: “(G) any family of-
9 fice, as defined by rule, regulation, or order of the Com-
10 mission, in accordance with the purposes of this title; or
11 (H)”.

12 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
13 **THRESHOLD FOR FEDERAL REGISTRATION**
14 **OF INVESTMENT ADVISERS.**

15 Section 203A(a)(1)(A) of the Investment Advisers
16 Act of 1940 (15 U.S.C. 80b-3a(a)(1)(A)) is amended by
17 striking “\$25,000,000” and inserting “\$100,000,000”.

18 **SEC. 411. CUSTODY OF CLIENT ASSETS.**

19 The Investment Advisers Act of 1940 (15 U.S.C.
20 80b-1 et seq.) is amended by adding at the end the fol-
21 lowing new section:

22 **“SEC. 223. INDEPENDENT CUSTODY OF CLIENT ASSETS.**

23 “The Commission shall prescribe rules requiring in-
24 vestment advisers registered under this title to use an
25 independent custodian to hold client assets, where nec-

1 essary and appropriate in the public interest and for the
2 protection of investors.”.

3 **SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STAND-**
4 **ARD FOR INFLATION.**

5 The Commission shall, by rule—

6 (1) increase the financial threshold for an ac-
7 credited investor, as set forth in the rules of the
8 Commission under the Securities Act of 1933, by
9 calculating an amount that is greater than the
10 amount in effect on the date of enactment of this
11 Act of \$200,000 income for a natural person (or
12 \$300,000 for a couple) and \$1,000,000 in assets, as
13 the Commission determines is appropriate and in the
14 public interest, in light of price inflation since those
15 figures were determined; and

16 (2) adjust that threshold not less frequently
17 than once every 5 years, to reflect the percentage in-
18 crease in the cost of living.

19 **SEC. 413. STUDIES AND REPORTS.**

20 The Comptroller General of the United States shall
21 conduct a study on—

22 (1) the appropriate criteria for determining the
23 financial thresholds or other criteria needed to qual-
24 ify for accredited investor status and eligibility to in-
25 vest in hedge funds, and shall submit a report to

1 Congress on the results of such study not later than
2 1 year after the date of enactment of this Act;

3 (2) the feasibility of forming a self-regulatory
4 organization to oversee hedge funds, private equity
5 funds, and venture capital funds, and shall submit
6 a report to Congress on the results of such study not
7 later than 1 year after the date of enactment of this
8 Act; and

9 (3) the state of short selling in the stock mar-
10 ket, with particular attention to the impact of recent
11 rule changes and the incidence of the failure to de-
12 liver shares sold short, and shall submit a report to
13 Congress on the results of such study not later than
14 2 years after the date of enactment of this Act.

15 **SEC. 414. TRANSITION PERIOD.**

16 This subtitle and the amendments made by this sub-
17 title shall become effective 1 year after the date of enact-
18 ment of this Act, except that any investment adviser may,
19 at the discretion of the investment adviser, register with
20 the Commission under the Investment Advisers Act of
21 1940 during that 1-year period, subject to rules of the
22 Commission.

1 **TITLE V—INSURANCE**
2 **Subtitle A—Office of National**
3 **Insurance**

4 **SEC. 501. SHORT TITLE.**

5 This subtitle may be cited as the “Office of National
6 Insurance Act of 2009”.

7 **SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL IN-**
8 **SURANCE.**

9 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
10 chapter 3 of subtitle I of title 31, United States Code,
11 is amended—

12 (1) by redesignating section 312 as section 315;

13 (2) by redesignating section 313 as section 312;

14 and

15 (3) by inserting after section 312 (as so reded-
16 igned) the following new sections:

17 **“SEC. 313. OFFICE OF NATIONAL INSURANCE.**

18 “(a) ESTABLISHMENT.—There is established within
19 the Department of the Treasury the Office of National
20 Insurance.

21 “(b) LEADERSHIP.—The Office shall be headed by a
22 Director, who shall be appointed by the Secretary of the
23 Treasury. The position of Director shall be a career re-
24 served position in the Senior Executive Service, as that

1 position is defined under section 3132 of title 5, United
2 States Code.

3 “(c) FUNCTIONS.—

4 “(1) AUTHORITY PURSUANT TO DIRECTION OF
5 SECRETARY.—The Office, pursuant to the direction
6 of the Secretary, shall have the authority—

7 “(A) to monitor all aspects of the insur-
8 ance industry, including identifying issues or
9 gaps in the regulation of insurers that could
10 contribute to a systemic crisis in the insurance
11 industry or the United States financial system;

12 “(B) to recommend to the Agency for Fi-
13 nancial Stability that it designate an insurer,
14 including the affiliates of such insurer, as an
15 entity subject to regulation as a specified finan-
16 cial company, as such term is defined under
17 title I of the Restoring American Financial Sta-
18 bility Act of 2009;

19 “(C) to assist the Secretary in admin-
20 istering the Terrorism Insurance Program es-
21 tablished in the Department of the Treasury
22 under the Terrorism Risk Insurance Act of
23 2002 (15 U.S.C. 6701 note);

24 “(D) to coordinate Federal efforts and de-
25 velop Federal policy on prudential aspects of

1 international insurance matters, including rep-
2 resenting the United States, as appropriate, in
3 the International Association of Insurance Su-
4 pervisors (or a successor entity) and assisting
5 the Secretary in negotiating International In-
6 surance Agreements on Prudential Measures;

7 “(E) to determine, in accordance with sub-
8 section (f), whether State insurance measures
9 are preempted by International Insurance
10 Agreements on Prudential Measures;

11 “(F) to consult with the States (including
12 State insurance regulators) regarding insurance
13 matters of national importance and prudential
14 insurance matters of international importance;
15 and

16 “(G) to perform such other related duties
17 and authorities as may be assigned to the Of-
18 fice by the Secretary.

19 “(2) ADVISORY FUNCTIONS.—The Office shall
20 advise the Secretary on major domestic and pruden-
21 tial international insurance policy issues.

22 “(d) SCOPE.—The authority of the Office shall ex-
23 tend to all lines of insurance except health insurance, as
24 such insurance is determined by the Secretary based on

1 section 2791 of the Public Health Service Act (42 U.S.C.
2 300gg-91).

3 “(e) GATHERING OF INFORMATION.—

4 “(1) IN GENERAL.—In carrying out the func-
5 tions required under subsection (c), the Office
6 may—

7 “(A) receive and collect data and informa-
8 tion on and from the insurance industry and in-
9 surers;

10 “(B) enter into information-sharing agree-
11 ments;

12 “(C) analyze and disseminate data and in-
13 formation; and

14 “(D) issue reports regarding all lines of in-
15 surance except health insurance.

16 “(2) COLLECTION OF INFORMATION FROM IN-
17 SURERS AND AFFILIATES.—Except as provided in
18 paragraph (3), the Office may require an insurer, or
19 any affiliate of an insurer, to submit such data or
20 information that the Office may reasonably require
21 in carrying out the functions described under sub-
22 section (c).

23 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
24 graph (2) shall not apply with respect to any insurer
25 or affiliate thereof that meets a minimum size

1 threshold that the Office may establish, whether by
2 order or rule.

3 “(4) ADVANCE COORDINATION.—Before col-
4 lecting any data or information under paragraph (2)
5 from an insurer, or any affiliate of an insurer, the
6 Office shall coordinate with each relevant State in-
7 surance regulator (or other relevant Federal or State
8 regulatory agency, if any, in the case of an affiliate
9 of an insurer) to determine if the information to be
10 collected is available from, or may be obtained in a
11 timely manner by, such State insurance regulator,
12 individually or collectively, another regulatory agen-
13 cy, or publicly available sources. Notwithstanding
14 any other provision of law, each such relevant State
15 insurance regulator or other Federal or State regu-
16 latory agency is authorized to provide to the Office
17 such data or information.

18 “(5) CONFIDENTIALITY.—

19 “(A) RETENTION OF PRIVILEGE.—The
20 submission of any nonpublicly available data
21 and information to the Office under this sub-
22 section shall not constitute a waiver of, or oth-
23 erwise affect, any privilege arising under Fed-
24 eral or State law (including the rules of any

1 Federal or State court) to which the data or in-
2 formation is otherwise subject.

3 “(B) CONTINUED APPLICATION OF PRIOR
4 CONFIDENTIALITY AGREEMENTS.—Any require-
5 ment under Federal or State law to the extent
6 otherwise applicable, or any requirement pursu-
7 ant to a written agreement in effect between
8 the original source of any nonpublicly available
9 data or information and the source of such data
10 or information to the Office, regarding the pri-
11 vacy or confidentiality of any data or informa-
12 tion in the possession of the source to the Of-
13 fice, shall continue to apply to such data or in-
14 formation after the data or information has
15 been provided pursuant to this subsection to the
16 Office.

17 “(C) INFORMATION SHARING AGREE-
18 MENT.—Any data or information obtained by
19 the Office may be made available to State in-
20 surance regulators, individually or collectively,
21 through an information sharing agreement
22 that—

23 “(i) shall comply with applicable Fed-
24 eral law; and

1 “(ii) shall not constitute a waiver of,
2 or otherwise affect, any privilege under
3 Federal or State law (including the rules
4 of any Federal or State Court) to which
5 the data or information is otherwise sub-
6 ject.

7 “(D) AGENCY DISCLOSURE REQUIRE-
8 MENTS.—Section 552 of title 5, United States
9 Code, shall apply to any data or information
10 submitted to the Office by an insurer or an af-
11 filiate of an insurer.

12 “(6) SUBPOENAS AND ENFORCEMENT.—The
13 Director shall have the power to require by subpoena
14 the production of the data or information requested
15 under paragraph (2), but only upon a written find-
16 ing by the Director that such data or information is
17 required to carry out the functions described under
18 subsection (c) and that the Office has coordinated
19 with such regulator or agency as required under
20 paragraph (4). Subpoenas shall bear the signature of
21 the Director and shall be served by any person or
22 class of persons designated by the Director for that
23 purpose. In the case of contumacy or failure to obey
24 a subpoena, the subpoena shall be enforceable by
25 order of any appropriate district court of the United

1 States. Any failure to obey the order of the court
2 may be punished by the court as a contempt of
3 court.

4 “(f) PREEMPTION OF STATE INSURANCE MEAS-
5 URES.—

6 “(1) STANDARD.—A State insurance measure
7 shall be preempted if, and only to the extent that the
8 Director determines, in accordance with this sub-
9 section, that the measure—

10 “(A) results in less favorable treatment of
11 a non-United States insurer domiciled in a for-
12 eign jurisdiction that is subject to an inter-
13 national insurance agreement on prudential
14 measures than a United States insurer domi-
15 ciled, licensed, or otherwise admitted in that
16 State; and

17 “(B) is inconsistent with an International
18 Insurance Agreement on Prudential Measures.

19 “(2) DETERMINATION.—

20 “(A) NOTICE OF POTENTIAL INCONSIST-
21 ENCY.—Before making any determination
22 under paragraph (1), the Director shall—

23 “(i) notify and consult with the appro-
24 priate State regarding any potential incon-
25 sistency or preemption;

1 “(ii) cause to be published in the Fed-
2 eral Register notice of the issue regarding
3 the potential inconsistency or preemption,
4 including a description of each State insur-
5 ance measure at issue and any applicable
6 International Insurance Agreement on
7 Prudential Measures;

8 “(iii) provide interested parties a rea-
9 sonable opportunity to submit written com-
10 ments to the Office; and

11 “(iv) consider any comments received.

12 “(B) SCOPE OF REVIEW.—For purposes of
13 this subsection, the determination of the Direc-
14 tor regarding State insurance measures shall be
15 limited to the subject matter contained within
16 the international insurance agreement on pru-
17 dential measure involved.

18 “(C) NOTICE OF DETERMINATION OF IN-
19 CONSISTENCY.—Upon making any determina-
20 tion under paragraph (1), the Director shall—

21 “(i) notify the appropriate State of
22 the determination and the extent of the in-
23 consistency;

24 “(ii) establish a reasonable period of
25 time, which shall not be less than 30 days,

1 before the determination shall become ef-
2 fective; and

3 “(iii) notify the Committee on Bank-
4 ing, Housing, and Urban Affairs of the
5 Senate and the Committee on Financial
6 Services of the House of Representatives of
7 the inconsistency.

8 “(3) NOTICE OF EFFECTIVENESS.—Upon the
9 conclusion of the period referred to in paragraph
10 (2)(C)(ii), if the basis for such determination still
11 exists, the determination shall become effective and
12 the Director shall—

13 “(A) cause to be published a notice in the
14 Federal Register that the preemption has be-
15 come effective, as well as the effective date; and

16 “(B) notify the appropriate State.

17 “(4) LIMITATION.—No State may enforce a
18 State insurance measure to the extent that such
19 measure has been preempted under this subsection.

20 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
21 DURES ACT.—Determinations of inconsistency made pur-
22 suant to subsection (f)(2) shall be subject to the applicable
23 provisions of subchapter II of chapter 5 of title 5, United
24 States Code (relating to administrative procedure), and
25 chapter 7 of such title (relating to judicial review).

1 “(h) REGULATIONS, POLICIES, AND PROCEDURES.—
2 The Secretary may issue orders, regulations, policies, and
3 procedures to implement this section.

4 “(i) CONSULTATION.—The Director shall consult
5 with State insurance regulators, individually or collec-
6 tively, to the extent the Director determines appropriate,
7 in carrying out the functions of the Office.

8 “(j) SAVINGS PROVISIONS.—Nothing in this section
9 shall—

10 “(1) preempt—

11 “(A) any State insurance measure that
12 governs any insurer’s rates, premiums, under-
13 writing, or sales practices;

14 “(B) any State coverage requirements for
15 insurance;

16 “(C) the application of the antitrust laws
17 of any State to the business of insurance; or

18 “(D) any State insurance measure gov-
19 erning the capital or solvency of an insurer, ex-
20 cept to the extent that such State insurance
21 measure results in less favorable treatment of a
22 non-United State insurer than a United States
23 insurer;

1 “(2) be construed to alter, amend, or limit any
2 provision of the Consumer Financial Protection
3 Agency Act of 2009; or

4 “(3) affect the preemption of any State insur-
5 ance measure otherwise inconsistent with and pre-
6 empted by Federal law.

7 “(k) RETENTION OF EXISTING STATE REGULATORY
8 AUTHORITY.—Nothing in this section or section 314 shall
9 be construed to establish or provide the Office or the De-
10 partment of the Treasury with general supervisory or reg-
11 ulatory authority over the business of insurance.

12 “(l) ANNUAL REPORT TO CONGRESS.—Beginning
13 September 30, 2011, the Director shall submit a report
14 on or before September 30 of each calendar year to the
15 President and to the Committee on Banking, Housing,
16 and Urban Affairs of the Senate and the Committee on
17 Financial Services of the House of Representatives on the
18 insurance industry, any actions taken by the Office pursu-
19 ant to subsection (f) (regarding preemption of inconsistent
20 State insurance measures), and any other information as
21 deemed relevant by the Director or as requested by such
22 Committees.

23 “(m) STUDY AND REPORT ON REGULATION OF IN-
24 SURANCE.—

1 “(1) IN GENERAL.—Not later than 18 months
2 after the date of enactment of this section, the Di-
3 rector shall conduct a study and submit a report to
4 Congress on how to modernize and improve the sys-
5 tem of insurance regulation in the United States.

6 “(2) CONSIDERATIONS.—The study and report
7 required under paragraph (1) shall be based on and
8 guided by the following considerations:

9 “(A) Systemic risk regulation with respect
10 to insurance.

11 “(B) Capital standards and the relation-
12 ship between capital allocation and liabilities,
13 including standards relating to liquidity and du-
14 ration risk.

15 “(C) Consumer protection for insurance
16 products and practices, including gaps in state
17 regulation.

18 “(D) The degree of national uniformity of
19 state insurance regulation.

20 “(E) The regulation of insurance compa-
21 nies and affiliates on a consolidated basis.

22 “(F) International coordination of insur-
23 ance regulation.

1 “(3) ADDITIONAL FACTORS.—The study and
2 report required under paragraph (1) shall also exam-
3 ine the following factors:

4 “(A) The costs and benefits of potential
5 Federal regulation of insurance across various
6 lines of insurance (except health insurance).

7 “(B) The feasibility of regulating only cer-
8 tain lines of insurance at the Federal level,
9 while leaving other lines of insurance to be reg-
10 ulated at the State level.

11 “(C) The ability of any potential Federal
12 regulation or Federal regulators to eliminate or
13 minimize regulatory arbitrage.

14 “(D) The impact that developments in the
15 regulation of insurance in foreign jurisdictions
16 might have on the potential Federal regulation
17 of insurance.

18 “(E) The ability of any potential Federal
19 regulation or Federal regulator to provide ro-
20 bust consumer protection for policyholders.

21 “(F) Such other factors as the Director
22 determines necessary or appropriate, consistent
23 with the principles set forth in paragraph (2).

24 “(4) REQUIRED RECOMMENDATIONS.—The
25 study and report required under paragraph (1) shall

314

1 also contain any legislative, administrative, or regu-
2 latory recommendations, as the Director determines
3 appropriate, to carry out or effectuate the findings
4 set forth in such report.

5 “(5) CONSULTATION.—With respect to the
6 study and report required under paragraph (1), the
7 Director shall consult with the National Association
8 of Insurance Commissioners, consumer organiza-
9 tions, representatives of the insurance industry and
10 policyholders, and other organizations and experts,
11 as appropriate.

12 “(n) USE OF EXISTING RESOURCES.—To carry out
13 this section, the Office may employ personnel, facilities,
14 and any other resource of the Department of the Treasury
15 available to the Secretary.

16 “(o) DEFINITIONS.—In this section and section 314,
17 the following definitions shall apply:

18 “(1) AFFILIATE.—The term ‘affiliate’ means,
19 with respect to an insurer, any person who controls,
20 is controlled by, or is under common control with the
21 insurer.

22 “(2) INSURER.—The term ‘insurer’ means any
23 person engaged in the business of insurance, includ-
24 ing reinsurance.

1 “(3) INTERNATIONAL INSURANCE AGREEMENT
2 ON PRUDENTIAL MEASURES.—The term ‘Inter-
3 national Insurance Agreement on Prudential Meas-
4 ures’ means a written bilateral or multilateral agree-
5 ment entered into between the United States and a
6 foreign government, authority, or regulatory entity
7 regarding prudential measures applicable to the
8 business of insurance or reinsurance.

9 “(4) NON-UNITED STATES INSURER.—The term
10 ‘non-United States insurer’ means an insurer that is
11 organized under the laws of a jurisdiction other than
12 a State, but does not include any United States
13 branch of such an insurer.

14 “(5) OFFICE.—The term ‘Office’ means the Of-
15 fice of National Insurance established by this sec-
16 tion.

17 “(6) STATE INSURANCE MEASURE.—The term
18 ‘State insurance measure’ means any State law, reg-
19 ulation, administrative ruling, bulletin, guideline, or
20 practice relating to or affecting prudential measures
21 applicable to insurance or reinsurance.

22 “(7) STATE INSURANCE REGULATOR.—The
23 term ‘State insurance regulator’ means any State
24 regulatory authority responsible for the supervision
25 of insurers.

1 “(8) UNITED STATES INSURER.—The term
2 ‘United States insurer’ means—

3 “(A) an insurer that is organized under
4 the laws of a State; or

5 “(B) a United States branch of a non-
6 United States insurer.

7 “(p) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated for the Office for each
9 fiscal year such sums as may be necessary.

10 **“SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**
11 **PRUDENTIAL MEASURES.**

12 “(a) IN GENERAL.—The Secretary of the Treasury
13 is authorized to negotiate and enter into International In-
14 surance Agreements on Prudential Measures on behalf of
15 the United States.

16 “(b) SAVINGS PROVISION.—Nothing in this section or
17 section 313 shall be construed to affect the development
18 and coordination of United States international trade pol-
19 icy or the administration of the United States trade agree-
20 ments program. It is to be understood that the negotiation
21 of International Insurance Agreements on Prudential
22 Measures under such sections is consistent with the re-
23 quirement of this subsection.

24 “(c) CONSULTATION.—The Secretary shall consult
25 with the United States Trade Representative on the nego-

1 tiation of International Insurance Agreements on Pruden-
2 tial Measures, including prior to initiating and concluding
3 any such agreements.”.

4 (b) DUTIES OF SECRETARY.—Section 321(a) of title
5 31, United States Code, is amended—

6 (1) in paragraph (7), by striking “; and” and
7 inserting a semicolon;

8 (2) in paragraph (8)(C), by striking the period
9 at the end and inserting “; and”; and

10 (3) by adding at the end the following new
11 paragraph:

12 “(9) advise the President on major domestic
13 and international prudential policy issues in connec-
14 tion with all lines of insurance except health insur-
15 ance.”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 for subchapter I of chapter 3 of title 31, United States
18 Code, is amended by striking the item relating to section
19 312 and inserting the following new items:

“Sec. 312. Terrorism and financial intelligence.

“Sec. 313. Office of National Insurance.

“Sec. 314. International insurance agreements on prudential measures.

“Sec. 315. Continuing in office.”.

1 **Subtitle B—State-based Insurance**
2 **Reform**

3 **SEC. 511. SHORT TITLE.**

4 This subtitle may be cited as the “Nonadmitted and
5 Reinsurance Reform Act of 2009”.

6 **SEC. 512. EFFECTIVE DATE.**

7 Except as otherwise specifically provided in this sub-
8 title, this subtitle shall take effect upon the expiration of
9 the 12-month period beginning on the date of the enact-
10 ment of this subtitle.

11 **PART I—NONADMITTED INSURANCE**

12 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF**
13 **PREMIUM TAXES.**

14 (a) HOME STATE’S EXCLUSIVE AUTHORITY.—No
15 State other than the home State of an insured may require
16 any premium tax payment for nonadmitted insurance.

17 (b) ALLOCATION OF NONADMITTED PREMIUM
18 TAXES.—

19 (1) IN GENERAL.—The States may enter into a
20 compact or otherwise establish procedures to allocate
21 among the States the premium taxes paid to an in-
22 sured’s home State described in subsection (a).

23 (2) EFFECTIVE DATE.—Except as expressly
24 otherwise provided in such compact or other proce-
25 dures, any such compact or other procedures—

1 (A) if adopted on or before the expiration
2 of the 330-day period that begins on the date
3 of the enactment of this subtitle, shall apply to
4 any premium taxes that, on or after such date
5 of enactment, are required to be paid to any
6 State that is subject to such compact or proce-
7 dures; and

8 (B) if adopted after the expiration of such
9 330-day period, shall apply to any premium
10 taxes that, on or after January 1 of the first
11 calendar year that begins after the expiration of
12 such 330-day period, are required to be paid to
13 any State that is subject to such compact or
14 procedures.

15 (3) REPORT.—Upon the expiration of the 330-
16 day period referred to in paragraph (2), the NAIC
17 may submit a report to the Committee on Financial
18 Services and Committee on the Judiciary of the
19 House of Representatives and the Committee on
20 Banking, Housing, and Urban Affairs of the Senate
21 identifying and describing any compact or other pro-
22 cedures for allocation among the States of premium
23 taxes that have been adopted during such period by
24 any States.

1 (4) NATIONWIDE SYSTEM.—The Congress in-
2 tends that each State adopt nationwide uniform re-
3 quirements, forms, and procedures, such as an inter-
4 state compact, that provides for the reporting, pay-
5 ment, collection, and allocation of premium taxes for
6 nonadmitted insurance consistent with this section.

7 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
8 PORT.—To facilitate the payment of premium taxes
9 among the States, an insured’s home State may require
10 surplus lines brokers and insureds who have independently
11 procured insurance to annually file tax allocation reports
12 with the insured’s home State detailing the portion of the
13 nonadmitted insurance policy premium or premiums at-
14 tributable to properties, risks, or exposures located in each
15 State. The filing of a nonadmitted insurance tax allocation
16 report and the payment of tax may be made by a person
17 authorized by the insured to act as its agent.

18 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**
19 **INSURED’S HOME STATE.**

20 (a) HOME STATE AUTHORITY.—Except as otherwise
21 provided in this section, the placement of nonadmitted in-
22 surance shall be subject to the statutory and regulatory
23 requirements solely of the insured’s home State.

24 (b) BROKER LICENSING.—No State other than an in-
25 sured’s home State may require a surplus lines broker to

1 be licensed in order to sell, solicit, or negotiate non-
2 admitted insurance with respect to such insured.

3 (c) ENFORCEMENT PROVISION.—With respect to sec-
4 tion 521 and subsections (a) and (b) of this section, any
5 law, regulation, provision, or action of any State that ap-
6 plies or purports to apply to nonadmitted insurance sold
7 to, solicited by, or negotiated with an insured whose home
8 State is another State shall be preempted with respect to
9 such application.

10 (d) WORKERS' COMPENSATION EXCEPTION.—This
11 section may not be construed to preempt any State law,
12 rule, or regulation that restricts the placement of workers'
13 compensation insurance or excess insurance for self-fund-
14 ed workers' compensation plans with a nonadmitted in-
15 surer.

16 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**
17 **BASE.**

18 After the expiration of the 2-year period beginning
19 on the date of the enactment of this subtitle, a State may
20 not collect any fees relating to licensing of an individual
21 or entity as a surplus lines broker in the State unless the
22 State has in effect at such time laws or regulations that
23 provide for participation by the State in the national in-
24 surance producer database of the NAIC, or any other

1 equivalent uniform national database, for the licensure of
2 surplus lines brokers and the renewal of such licenses.

3 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
4 **GIBILITY.**

5 A State may not—

6 (1) impose eligibility requirements on, or other-
7 wise establish eligibility criteria for, nonadmitted in-
8 surers domiciled in a United States jurisdiction, ex-
9 cept in conformance with such requirements and cri-
10 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
11 mitted Insurance Model Act, unless the State has
12 adopted nationwide uniform requirements, forms,
13 and procedures developed in accordance with section
14 521(b) of this subtitle that include alternative na-
15 tionwide uniform eligibility requirements; or

16 (2) prohibit a surplus lines broker from placing
17 nonadmitted insurance with, or procuring non-
18 admitted insurance from, a nonadmitted insurer
19 domiciled outside the United States that is listed on
20 the Quarterly Listing of Alien Insurers maintained
21 by the International Insurers Department of the
22 NAIC.

1 **SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL**
2 **PURCHASERS.**

3 A surplus lines broker seeking to procure or place
4 nonadmitted insurance in a State for an exempt commer-
5 cial purchaser shall not be required to satisfy any State
6 requirement to make a due diligence search to determine
7 whether the full amount or type of insurance sought by
8 such exempt commercial purchaser can be obtained from
9 admitted insurers if—

10 (1) the broker procuring or placing the surplus
11 lines insurance has disclosed to the exempt commer-
12 cial purchaser that such insurance may or may not
13 be available from the admitted market that may pro-
14 vide greater protection with more regulatory over-
15 sight; and

16 (2) the exempt commercial purchaser has sub-
17 sequently requested in writing the broker to procure
18 or place such insurance from a nonadmitted insurer.

19 **SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MAR-**
20 **KET.**

21 (a) IN GENERAL.—The Comptroller General of the
22 United States shall conduct a study of the nonadmitted
23 insurance market to determine the effect of the enactment
24 of this part on the size and market share of the non-
25 admitted insurance market for providing coverage typi-
26 cally provided by the admitted insurance market.

1 (b) CONTENTS.—The study shall determine and ana-
2 lyze—

3 (1) the change in the size and market share of
4 the nonadmitted insurance market and in the num-
5 ber of insurance companies and insurance holding
6 companies providing such business in the 18-month
7 period that begins upon the effective date of this
8 subtitle;

9 (2) the extent to which insurance coverage typi-
10 cally provided by the admitted insurance market has
11 shifted to the nonadmitted insurance market;

12 (3) the consequences of any change in the size
13 and market share of the nonadmitted insurance
14 market, including differences in the price and avail-
15 ability of coverage available in both the admitted
16 and nonadmitted insurance markets;

17 (4) the extent to which insurance companies
18 and insurance holding companies that provide both
19 admitted and nonadmitted insurance have experi-
20 enced shifts in the volume of business between ad-
21 mitted and nonadmitted insurance; and

22 (5) the extent to which there has been a change
23 in the number of individuals who have nonadmitted
24 insurance policies, the type of coverage provided

1 under such policies, and whether such coverage is
2 available in the admitted insurance market.

3 (c) CONSULTATION WITH NAIC.—In conducting the
4 study under this section, the Comptroller General shall
5 consult with the NAIC.

6 (d) REPORT.—The Comptroller General shall com-
7 plete the study under this section and submit a report to
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate and the Committee on Financial Services
10 of the House of Representatives regarding the findings of
11 the study not later than 30 months after the effective date
12 of this subtitle.

13 **SEC. 527. DEFINITIONS.**

14 For purposes of this part, the following definitions
15 shall apply:

16 (1) ADMITTED INSURER.—The term “admitted
17 insurer” means, with respect to a State, an insurer
18 licensed to engage in the business of insurance in
19 such State.

20 (2) AFFILIATE.—The term “affiliate” means,
21 with respect to an insured, any entity that controls,
22 is controlled by, or is under common control with the
23 insured.

1 (3) **AFFILIATED GROUP.**—The term “affiliated
2 group” means any group of entities that are all af-
3 filiated.

4 (4) **CONTROL.**—An entity has “control” over
5 another entity if—

6 (A) the entity directly or indirectly or act-
7 ing through 1 or more other persons owns, con-
8 trols, or has the power to vote 25 percent or
9 more of any class of voting securities of the
10 other entity; or

11 (B) the entity controls in any manner the
12 election of a majority of the directors or trust-
13 ees of the other entity.

14 (5) **EXEMPT COMMERCIAL PURCHASER.**—The
15 term “exempt commercial purchaser” means any
16 person purchasing commercial insurance that, at the
17 time of placement, meets the following requirements:

18 (A) The person employs or retains a quali-
19 fied risk manager to negotiate insurance cov-
20 erage.

21 (B) The person has paid aggregate nation-
22 wide commercial property and casualty insur-
23 ance premiums in excess of \$100,000 in the im-
24 mediately preceding 12 months.

1 (C)(i) The person meets at least 1 of the
2 following criteria:

3 (I) The person possesses a net worth
4 in excess of \$20,000,000, as such amount
5 is adjusted pursuant to clause (ii).

6 (II) The person generates annual rev-
7 enues in excess of \$50,000,000, as such
8 amount is adjusted pursuant to clause (ii).

9 (III) The person employs more than
10 500 full-time or full-time equivalent em-
11 ployees per individual insured or is a mem-
12 ber of an affiliated group employing more
13 than 1,000 employees in the aggregate.

14 (IV) The person is a not-for-profit or-
15 ganization or public entity generating an-
16 nual budgeted expenditures of at least
17 \$30,000,000, as such amount is adjusted
18 pursuant to clause (ii).

19 (V) The person is a municipality with
20 a population in excess of 50,000 persons.

21 (ii) Effective on the fifth January 1 occur-
22 ring after the date of the enactment of this sub-
23 title and each fifth January 1 occurring there-
24 after, the amounts in subclauses (I), (II), and
25 (IV) of clause (i) shall be adjusted to reflect the

1 percentage change for such 5-year period in the
2 Consumer Price Index for All Urban Con-
3 sumers published by the Bureau of Labor Sta-
4 tistics of the Department of Labor.

5 (6) HOME STATE.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), the term “home State”
8 means, with respect to an insured—

9 (i) the State in which an insured
10 maintains its principal place of business or,
11 in the case of an individual, the individ-
12 ual’s principal residence; or

13 (ii) if 100 percent of the insured risk
14 is located out of the State referred to in
15 subparagraph (A), the State to which the
16 greatest percentage of the insured’s tax-
17 able premium for that insurance contract
18 is allocated.

19 (B) AFFILIATED GROUPS.—If more than 1
20 insured from an affiliated group are named in-
21 sureds on a single nonadmitted insurance con-
22 tract, the term “home State” means the home
23 State, as determined pursuant to subparagraph
24 (A), of the member of the affiliated group that

1 has the largest percentage of premium attrib-
2 uted to it under such insurance contract.

3 (7) INDEPENDENTLY PROCURED INSURANCE.—

4 The term “independently procured insurance”
5 means insurance procured directly by an insured
6 from a nonadmitted insurer.

7 (8) NAIC.—The term “NAIC” means the Na-
8 tional Association of Insurance Commissioners or
9 any successor entity.

10 (9) NONADMITTED INSURANCE.—The term
11 “nonadmitted insurance” means any property and
12 casualty insurance permitted to be placed directly or
13 through a surplus lines broker with a nonadmitted
14 insurer eligible to accept such insurance.

15 (10) NON-ADMITTED INSURANCE MODEL
16 ACT.—The term “Non-Admitted Insurance Model
17 Act” means the provisions of the Non-Admitted In-
18 surance Model Act, as adopted by the NAIC on Au-
19 gust 3, 1994, and amended on September 30, 1996,
20 December 6, 1997, October 2, 1999, and June 8,
21 2002.

22 (11) NONADMITTED INSURER.—The term
23 “nonadmitted insurer” means, with respect to a
24 State, an insurer not licensed to engage in the busi-
25 ness of insurance in such State.

1 (12) QUALIFIED RISK MANAGER.—The term
2 “qualified risk manager” means, with respect to a
3 policyholder of commercial insurance, a person who
4 meets all of the following requirements:

5 (A) The person is an employee of, or third
6 party consultant retained by, the commercial
7 policyholder.

8 (B) The person provides skilled services in
9 loss prevention, loss reduction, or risk and in-
10 surance coverage analysis, and purchase of in-
11 surance.

12 (C) The person—

13 (i)(I) has a bachelor’s degree or high-
14 er from an accredited college or university
15 in risk management, business administra-
16 tion, finance, economics, or any other field
17 determined by a State insurance commis-
18 sioner or other State regulatory official or
19 entity to demonstrate minimum com-
20 petence in risk management; and

21 (II)(aa) has 3 years of experience in
22 risk financing, claims administration, loss
23 prevention, risk and insurance analysis, or
24 purchasing commercial lines of insurance;
25 or

1 (bb) has 1 of the following designa-
2 tions:

3 (AA) a designation as a Char-
4 tered Property and Casualty Under-
5 writer (in this subparagraph referred
6 to as “CPCU”) issued by the Amer-
7 ican Institute for CPCU/Insurance In-
8 stitute of America;

9 (BB) a designation as an Asso-
10 ciate in Risk Management (ARM)
11 issued by the American Institute for
12 CPCU/Insurance Institute of America;

13 (CC) a designation as Certified
14 Risk Manager (CRM) issued by the
15 National Alliance for Insurance Edu-
16 cation & Research;

17 (DD) a designation as a RIMS
18 Fellow (RF) issued by the Global Risk
19 Management Institute; or

20 (EE) any other designation, cer-
21 tification, or license determined by a
22 State insurance commissioner or other
23 State insurance regulatory official or
24 entity to demonstrate minimum com-
25 petency in risk management;

1 (ii)(I) has at least 7 years of experi-
2 ence in risk financing, claims administra-
3 tion, loss prevention, risk and insurance
4 coverage analysis, or purchasing commer-
5 cial lines of insurance; and

6 (II) has any 1 of the designations
7 specified in subitems (AA) through (EE)
8 of clause (i)(II)(bb);

9 (iii) has at least 10 years of experi-
10 ence in risk financing, claims administra-
11 tion, loss prevention, risk and insurance
12 coverage analysis, or purchasing commer-
13 cial lines of insurance; or

14 (iv) has a graduate degree from an
15 accredited college or university in risk
16 management, business administration, fi-
17 nance, economics, or any other field deter-
18 mined by a State insurance commissioner
19 or other State regulatory official or entity
20 to demonstrate minimum competence in
21 risk management.

22 (13) PREMIUM TAX.—The term “premium tax”
23 means, with respect to surplus lines or independently
24 procured insurance coverage, any tax, fee, assess-
25 ment, or other charge imposed by a government en-

1 tity directly or indirectly based on any payment
2 made as consideration for an insurance contract for
3 such insurance, including premium deposits, assess-
4 ments, registration fees, and any other compensation
5 given in consideration for a contract of insurance.

6 (14) SURPLUS LINES BROKER.—The term “sur-
7 plus lines broker” means an individual, firm, or cor-
8 poration which is licensed in a State to sell, solicit,
9 or negotiate insurance on properties, risks, or expo-
10 sures located or to be performed in a State with
11 nonadmitted insurers.

12 **PART II—REINSURANCE**

13 **SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND** 14 **REINSURANCE AGREEMENTS.**

15 (a) CREDIT FOR REINSURANCE.—If the State of
16 domicile of a ceding insurer is an NAIC-accredited State,
17 or has financial solvency requirements substantially simi-
18 lar to the requirements necessary for NAIC accreditation,
19 and recognizes credit for reinsurance for the insurer’s
20 ceded risk, then no other State may deny such credit for
21 reinsurance.

22 (b) ADDITIONAL PREEMPTION OF
23 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
24 addition to the application of subsection (a), all laws, regu-
25 lations, provisions, or other actions of a State that is not

1 the domiciliary State of the ceding insurer, except those
2 with respect to taxes and assessments on insurance com-
3 panies or insurance income, are preempted to the extent
4 that they—

5 (1) restrict or eliminate the rights of the ceding
6 insurer or the assuming insurer to resolve disputes
7 pursuant to contractual arbitration to the extent
8 such contractual provision is not inconsistent with
9 the provisions of title 9, United States Code;

10 (2) require that a certain State's law shall gov-
11 ern the reinsurance contract, disputes arising from
12 the reinsurance contract, or requirements of the re-
13 insurance contract;

14 (3) attempt to enforce a reinsurance contract
15 on terms different than those set forth in the rein-
16 surance contract, to the extent that the terms are
17 not inconsistent with this part; or

18 (4) otherwise apply the laws of the State to re-
19 insurance agreements of ceding insurers not domi-
20 ciled in that State.

21 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

22 (a) DOMICILIARY STATE REGULATION.—If the State
23 of domicile of a reinsurer is an NAIC-accredited State or
24 has financial solvency requirements substantially similar
25 to the requirements necessary for NAIC accreditation,

1 such State shall be solely responsible for regulating the
2 financial solvency of the reinsurer.

3 (b) NONDOMICILIARY STATES.—

4 (1) LIMITATION ON FINANCIAL INFORMATION
5 REQUIREMENTS.—If the State of domicile of a rein-
6 surer is an NAIC-accredited State or has financial
7 solvency requirements substantially similar to the re-
8 quirements necessary for NAIC accreditation, no
9 other State may require the reinsurer to provide any
10 additional financial information other than the infor-
11 mation the reinsurer is required to file with its
12 domiciliary State.

13 (2) RECEIPT OF INFORMATION.—No provision
14 of this section shall be construed as preventing or
15 prohibiting a State that is not the State of domicile
16 of a reinsurer from receiving a copy of any financial
17 statement filed with its domiciliary State.

18 **SEC. 533. DEFINITIONS.**

19 For purposes of this part, the following definitions
20 shall apply:

21 (1) CEDING INSURER.—The term “ceding in-
22 surer” means an insurer that purchases reinsurance.

23 (2) DOMICILIARY STATE.—The terms “State of
24 domicile” and “domiciliary State” means, with re-
25 spect to an insurer or reinsurer, the State in which

1 the insurer or reinsurer is incorporated or entered
2 through, and licensed.

3 (3) REINSURANCE.—The term “reinsurance”
4 means the assumption by an insurer of all or part
5 of a risk undertaken originally by another insurer.

6 (4) REINSURER.—

7 (A) IN GENERAL.—The term “reinsurer”
8 means an insurer to the extent that the in-
9 surer—

10 (i) is principally engaged in the busi-
11 ness of reinsurance;

12 (ii) does not conduct significant
13 amounts of direct insurance as a percent-
14 age of its net premiums; and

15 (iii) is not engaged in an ongoing
16 basis in the business of soliciting direct in-
17 surance.

18 (B) DETERMINATION.—A determination of
19 whether an insurer is a reinsurer shall be made
20 under the laws of the State of domicile in ac-
21 cordance with this paragraph.

22 **PART III—RULE OF CONSTRUCTION**

23 **SEC. 541. RULE OF CONSTRUCTION.**

24 Nothing in this subtitle or the amendments made by
25 this subtitle shall be construed to modify, impair, or super-

1 sede the application of the antitrust laws. Any implied or
2 actual conflict between this subtitle and any amendments
3 to this subtitle and the antitrust laws shall be resolved
4 in favor of the operation of the antitrust laws.

5 **SEC. 542. SEVERABILITY.**

6 If any section or subsection of this subtitle, or any
7 application of such provision to any person or cir-
8 cumstance, is held to be unconstitutional, the remainder
9 of this subtitle, and the application of the provision to any
10 other person or circumstance, shall not be affected.

11 **TITLE VI—IMPROVEMENTS TO**
12 **REGULATION OF BANK AND**
13 **SAVINGS ASSOCIATION HOLD-**
14 **ING COMPANIES AND DEPOSI-**
15 **TORY INSTITUTIONS**

16 **SEC. 601. SHORT TITLE.**

17 This title may be cited as the “Bank and Savings
18 Association Holding Company and Depository Institution
19 Regulatory Improvements Act of 2009”.

20 **SEC. 602. DEFINITION.**

21 In this title—

22 (1) the term “commercial firm” means any en-
23 tity that derives not less than 15 percent of the con-
24 solidated annual gross revenues of the entity, includ-
25 ing all affiliates of the entity, from engaging, on an

1 on-going basis, in activities that are not financial in
2 nature or incidental to activities that are financial in
3 nature, as provided in section 4(k) of the Bank
4 Holding Company Act of 1956 (12 U.S.C. 1843(k));
5 and

6 (2) the term “transfer date” has the same
7 meaning as in section 302.

8 **SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF**
9 **CREDIT CARD BANKS, INDUSTRIAL LOAN**
10 **COMPANIES, AND CERTAIN OTHER COMPA-**
11 **NIES UNDER THE BANK HOLDING COMPANY**
12 **ACT OF 1956.**

13 (a) MORATORIUM.—

14 (1) DEFINITIONS.—In this subsection—

15 (A) the term “credit card bank” means an
16 institution described in section 2(c)(2)(F) of the
17 Bank Holding Company Act of 1956 (12
18 U.S.C. 1841(c)(2)(F));

19 (B) the term “industrial bank” means an
20 institution described in section 2(c)(2)(H) of
21 the Bank Holding Company Act of 1956 (12
22 U.S.C. 1841(c)(2)(H)); and

23 (C) the term “trust bank” means an insti-
24 tution described in section 2(c)(2)(D) of the

1 Bank Holding Company Act of 1956 (12
2 U.S.C. 1841(c)(2)(D)).

3 (2) MORATORIUM ON PROVISION OF DEPOSIT
4 INSURANCE.—The Corporation may not approve an
5 application for deposit insurance under section 5 of
6 the Federal Deposit Insurance Act (12 U.S.C. 1815)
7 that is received after November 10, 2009, for an in-
8 dustrial bank, a credit card bank, or a trust bank
9 that is directly or indirectly owned or controlled by
10 a commercial firm.

11 (3) CHANGE IN CONTROL.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), the appropriate Federal
14 banking agency shall disapprove a change in
15 control, as provided in section 7(j) of the Fed-
16 eral Deposit Insurance Act (12 U.S.C. 1817(j)),
17 of an industrial bank, a credit card bank, or a
18 trust bank if the change in control would result
19 in direct or indirect control of the industrial
20 bank, credit card bank, or trust bank by a com-
21 mercial firm.

22 (B) EXCEPTIONS.—Subparagraph (A)
23 shall not apply to a change in control of an in-
24 dustrial bank, credit card bank, or trust bank
25 that—

1 (i) is in danger of default, as deter-
2 mined by the appropriate Federal banking
3 agency; or

4 (ii) results from the merger or whole
5 acquisition of a commercial firm that di-
6 rectly or indirectly controls the industrial
7 bank, credit card bank, or trust bank in a
8 bona fide merger with or acquisition by an-
9 other commercial firm, as determined by
10 the appropriate Federal banking agency.

11 (4) SUNSET.—This subsection shall cease to
12 have effect 3 years after the date of enactment of
13 this Act.

14 (b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
15 OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY
16 ACT OF 1956.—

17 (1) STUDY REQUIRED.—The Comptroller Gen-
18 eral of the United States shall carry out a study to
19 determine whether it is necessary, in order to
20 strengthen the safety and soundness of institutions
21 or the stability of the financial system, to eliminate
22 the exceptions under section 2 of the Bank Holding
23 Company Act of 1956 (12 U.S.C. 1841) for institu-
24 tions described in—

1 (A) section 2(a)(5)(E) of the Bank Hold-
2 ing Company Act of 1956 (12 U.S.C.
3 1841(a)(5)(E));

4 (B) section 2(a)(5)(F) of the Bank Hold-
5 ing Company Act of 1956 (12 U.S.C.
6 1841(a)(5)(F));

7 (C) section 2(c)(2)(D) of the Bank Hold-
8 ing Company Act of 1956 (12 U.S.C.
9 1841(c)(2)(D));

10 (D) section 2(c)(2)(F) of the Bank Hold-
11 ing Company Act of 1956 (12 U.S.C.
12 1841(c)(2)(F));

13 (E) section 2(c)(2)(H) of the Bank Hold-
14 ing Company Act of 1956 (12 U.S.C.
15 1841(c)(2)(H)); and

16 (F) section 2(c)(2)(B) of the Bank Hold-
17 ing Company Act of 1956 (12 U.S.C.
18 1841(c)(2)(B)).

19 (2) CONTENT OF STUDY.—

20 (A) IN GENERAL.—The study required
21 under paragraph (1), with respect to the insti-
22 tutions referenced in each of subparagraphs (A)
23 through (E) of paragraph (1), shall—

24 (i) identify each institution excepted
25 from section 2 of the Bank Holding Com-

1 pany Act of 1956 (12 U.S.C. 1841) under
2 each of the subparagraphs described in
3 subparagraphs (A) through (E) of para-
4 graph (1);

5 (ii) describe the size and location of
6 each institution described in clause (i);

7 (iii) determine whether any holding
8 company of each institution described in
9 clause (i) is a commercial firm;

10 (iv) determine whether each institu-
11 tion described in clause (i) has any affili-
12 ates that are commercial firms;

13 (v) identify the Federal banking agen-
14 cy responsible for the supervision of each
15 institution described in clause (i) on and
16 after the transfer date;

17 (vi) determine the adequacy of the
18 Federal bank regulatory framework appli-
19 cable to each category of institution de-
20 scribed in clause (i), including any restric-
21 tions (including limitations on affiliate
22 transactions or cross-marketing) that apply
23 to transactions between an institution, the
24 holding company of the institution, and
25 any other affiliate of the institution; and

1 (vii) evaluate the potential con-
2 sequences of subjecting the institutions de-
3 scribed in clause (i) to the requirements of
4 the Bank Holding Company Act of 1956,
5 including with respect to the availability of
6 credit, the stability of the financial system
7 and the economy, the safe and sound oper-
8 ation of each category of institution, the
9 costs to institutions and their holding com-
10 panies, and the impact on the types of ac-
11 tivities in which such institutions, and the
12 holding companies of such institutions,
13 may engage.

14 (B) SAVINGS ASSOCIATIONS.—With respect
15 to institutions described in paragraph (1)(F),
16 the study required under paragraph (1) shall—

17 (i) determine the adequacy of the
18 Federal bank regulatory framework appli-
19 cable to such institutions, including any re-
20 strictions (including limitations on affiliate
21 transactions or cross-marketing) that apply
22 to transactions between an institution, the
23 holding company of the institution, and
24 any other affiliate of the institution; and

1 (ii) evaluate the potential con-
2 sequences of subjecting the institutions de-
3 scribed in paragraph (1)(F) to the require-
4 ments of the Bank Holding Company Act
5 of 1956, including with respect to the
6 availability of credit, the stability of the fi-
7 nancial system and the economy, the safe
8 and sound operation of such institutions,
9 the costs to institutions and their holding
10 companies, and the impact on the types of
11 activities in which such institutions, and
12 the holding companies of such institutions,
13 may engage.

14 (3) REPORT.—Not later than 18 months after
15 the date of enactment of this Act, the Comptroller
16 General shall submit to the Committee on Banking,
17 Housing and Urban Affairs of the Senate and the
18 Committee on Financial Services of the House of
19 Representatives a report on the study required
20 under paragraph (1).

1 **SEC. 604. REPORTS AND EXAMINATIONS OF BANK HOLDING**
2 **COMPANIES; REGULATION OF FUNCTION-**
3 **ALLY REGULATED SUBSIDIARIES.**

4 (a) REPORTS BY BANK HOLDING COMPANIES.—Sec-
5 tions 5(c)(1) of the Bank Holding Company Act of 1956
6 (12 U.S.C. 1844(c)(1)) is amended—

7 (1) by striking subparagraph (B) and inserting
8 the following:

9 “(B) USE OF EXISTING REPORTS.—FIRA
10 shall, to the fullest extent possible, use—

11 “(i) reports that a bank holding com-
12 pany or any subsidiary thereof has been re-
13 quired to provide to other Federal or State
14 regulatory agencies;

15 “(ii) information that is otherwise re-
16 quired to be reported publicly; and

17 “(iii) externally audited financial
18 statements of such bank holding company
19 or subsidiary.”; and

20 (2) by adding at the end the following:

21 “(C) AVAILABILITY.—Upon the request of
22 FIRA, a bank holding company or a subsidiary
23 of a bank holding company shall promptly pro-
24 vide to FIRA any report described in subpara-
25 graph (B).”.

1 (b) EXAMINATIONS OF BANK HOLDING COMPA-
2 NIES.—Section 5(c)(2) of the Bank Holding Company Act
3 of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as
4 follows:

5 “(2) EXAMINATIONS.—

6 “(A) IN GENERAL.—FIRA may make ex-
7 aminations of each bank holding company and
8 each subsidiary of such a company to carry out
9 the purposes of this Act, or any other provision
10 of Federal law that FIRA has specific jurisdic-
11 tion to enforce against such company or sub-
12 sidiary, to prevent evasions thereof, and to
13 monitor compliance by the bank holding com-
14 pany or subsidiary with applicable provisions of
15 law.

16 “(B) FUNCTIONALLY REGULATED SUB-
17 SIDIARIES.—FIRA shall, to the extent possible,
18 use the examination reports made by other Fed-
19 eral or State regulatory authorities relating to
20 bank holding companies and their functionally
21 regulated subsidiaries.”.

22 (c) AUTHORITY TO REGULATE FUNCTIONALLY REG-
23 ULATED SUBSIDIARIES OF BANK HOLDING COMPA-
24 NIES.—The Bank Holding Company Act of 1956 (12

1 U.S.C. 1841 et seq.) is amended by striking section 10A
2 (12 U.S.C. 1848a).

3 (d) ACQUISITIONS OF BANKS.—Section 3(c) of the
4 Bank Holding Company Act of 1956 (12 U.S.C. 1842(e))
5 is amended by adding at the end the following:

6 “(7) FINANCIAL STABILITY.—In every case,
7 FIRA shall take into consideration the extent to
8 which a proposed acquisition, merger, or consolida-
9 tion would result in greater or more concentrated
10 risks to the stability of the United States banking or
11 financial system.”.

12 (e) ACQUISITIONS OF NONBANKS.—

13 (1) NOTICE PROCEDURES.—Section 4(j)(2)(A)
14 of the Bank Holding Company Act of 1956 (12
15 U.S.C. 1843(j)(2)(A)) is amended by striking “or
16 unsound banking practices” and inserting “unsound
17 banking practices, or risk to the stability of the
18 United States banking or financial system”.

19 (2) ACTIVITIES THAT ARE FINANCIAL IN NA-
20 TURE.—Section 4(k)(6)(B) of the Bank Holding
21 Company Act of 1956 (12 U.S.C. 1843(k)(6)(B) is
22 amended to read as follows:

23 “(B) APPROVAL NOT REQUIRED FOR CER-
24 TAIN FINANCIAL ACTIVITIES.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), a financial holding
3 company may commence any activity or ac-
4 quire any company, pursuant to paragraph
5 (4) or any regulation prescribed or order
6 issued under paragraph (5), without prior
7 approval of FIRA.

8 “(ii) EXCEPTION.—A financial hold-
9 ing company may not commence, without
10 the prior approval of FIRA, a transaction
11 in which the total assets to be acquired by
12 the financial holding company exceed
13 \$25,000,000,000.”.

14 (f) BANK MERGER ACT TRANSACTIONS.—Section
15 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.
16 1828(c)(5)) is amended, in the matter immediately fol-
17 lowing subparagraph (B), by striking “and the conven-
18 ience and needs of the community to be served” and in-
19 serting “the convenience and needs of the community to
20 be served, and the risk to the stability of the United States
21 banking or financial system”.

22 (g) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the transfer date.

1 **SEC. 605. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
2 **PANIES TO REMAIN WELL CAPITALIZED AND**
3 **WELL MANAGED.**

4 (a) AMENDMENT.—Section 4(l)(1) of the Bank Hold-
5 ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is
6 amended—

7 (1) in subparagraph (B), by striking “and” at
8 the end;

9 (2) by redesignating subparagraph (C) as sub-
10 paragraph (D);

11 (3) by inserting after subparagraph (B) the fol-
12 lowing:

13 “(C) the bank holding company is well
14 capitalized and well managed; and”;

15 (4) in subparagraph (D)(ii), as so redesignated,
16 by striking “subparagraphs (A) and (B)” and insert-
17 ing “subparagraphs (A), (B), and (C)”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the transfer date.

20 **SEC. 606. STANDARDS FOR INTERSTATE ACQUISITIONS.**

21 (a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of
22 the Bank Holding Company Act of 1956 (12 U.S.C.
23 1842(d)(1)(A)) is amended by striking “adequately cap-
24 italized and adequately managed” and inserting “well cap-
25 italized and well managed”.

1 (b) INTERSTATE BANK MERGERS.—Section
2 44(b)(4)(B) of the Federal Deposit Insurance Act (12
3 U.S.C. 1831u(b)(4)(B)) is amended by striking “will con-
4 tinue to be adequately capitalized and adequately man-
5 aged” and inserting “will be well capitalized and well man-
6 aged”.

7 (c) EFFECTIVE DATE.—The amendment made by
8 this section shall take effect on the transfer date.

9 **SEC. 607. ENHANCING EXISTING RESTRICTIONS ON BANK**
10 **TRANSACTIONS WITH AFFILIATES.**

11 (a) AFFILIATE TRANSACTIONS.—Section 23A of the
12 Federal Reserve Act (12 U.S.C. 371e) is amended—

13 (1) in subsection (b)—

14 (A) in paragraph (1), by striking subpara-
15 graph (D) and inserting the following:

16 “(D) any investment fund with respect to
17 which a member bank or affiliate thereof is an
18 investment adviser; and”;

19 (B) in paragraph (7)—

20 (i) in subparagraph (A), by inserting
21 before the semicolon at the end the fol-
22 lowing: “, including a purchase of assets
23 subject to an agreement to repurchase”;

1 (ii) in subparagraph (C), by striking
2 “, including assets subject to an agreement
3 to repurchase,”;

4 (iii) in subparagraph (D)—

5 (I) by inserting “or other debt
6 obligations” after “acceptance of secu-
7 rities”; and

8 (II) by striking “or” at the end;
9 and

10 (iv) by adding at the end the fol-
11 lowing:

12 “(F) a transaction with an affiliate that
13 involves the borrowing or lending of securities,
14 to the extent that the transaction causes a
15 member bank to have credit exposure to the af-
16 filiate; or

17 “(G) a derivative transaction, as defined in
18 paragraph (3) of section 5200(b) of the Revised
19 Statutes of the United States (12 U.S.C.
20 84(b)), with an affiliate that causes a member
21 bank to have credit exposure to the affiliate, to
22 the extent of the ascertainable potential credit
23 exposure resulting from the transaction.”;

24 (2) in subsection (c)—

1 (A) in paragraph (1), by striking “the time
2 of the transaction” and inserting “all times”;

3 (B) by striking paragraph (2);

4 (C) by redesignating paragraphs (3)
5 through (5) as paragraphs (2) through (4), re-
6 spectively; and

7 (D) in paragraph (3), as so redesignated,
8 by inserting “or other debt obligations” after
9 “securities”; and

10 (3) in subsection (f)(2), by striking “if it finds”
11 and all that follows through the end of the para-
12 graph and inserting the following: “if—

13 “(A) FIRA finds the exemption to be in
14 the public interest and consistent with the pur-
15 poses of this section, and notifies the Chair-
16 person of the Federal Deposit Insurance Cor-
17 poration of such finding; and

18 “(B) the Chairperson of the Federal De-
19 posit Insurance Corporation does not object to
20 the finding of FIRA under subparagraph (A),
21 in writing, during the 60-day period beginning
22 on the date of receipt of notice of the finding
23 from FIRA, based on a determination that the
24 exemption presents an unacceptable risk to the
25 Deposit Insurance Fund.”;

1 (b) TRANSACTIONS WITH AFFILIATES.—Section
2 23B(e) of the Federal Reserve Act (12 U.S.C. 371e–1(e))
3 is amended—

4 (1) by striking the undesignated matter fol-
5 lowing subparagraph (B);

6 (2) by redesignating subparagraphs (A) and
7 (B) as clauses (i) and (ii), respectively, and adjust-
8 ing the clause margins accordingly;

9 (3) by redesignating paragraphs (1) and (2) as
10 subparagraphs (A) and (B), respectively, and adjust-
11 ing the subparagraph margins accordingly;

12 (4) by striking “The Board” and inserting the
13 following:

14 “(1) IN GENERAL.—FIRA”;

15 (5) in paragraph (1)(B), as so redesignated—

16 (A) in the matter preceding clause (i), by
17 inserting before “regulations” the following: “if
18 FIRA finds that an exemption or exclusion is in
19 the public interest and is consistent with the
20 purposes of this section, and notifies the Chair-
21 person of the Federal Deposit Insurance Cor-
22 poration of such finding,”; and

23 (B) in clause (ii), by striking the comma at
24 the end and inserting a period; and

25 (6) by adding at the end the following:

1 “(2) EXCEPTION.—Notwithstanding paragraph
2 (1)(B), FIRA may not grant an exemption or exclu-
3 sion under this subsection, if, during the 60-day pe-
4 riod beginning on the date of receipt of notice of the
5 finding from FIRA under paragraph (1)(B), the
6 Chairperson of the Federal Deposit Insurance Cor-
7 poration objects, in writing, to such exemption or ex-
8 clusion, based on a determination that the exemption
9 presents an unacceptable risk to the Deposit Insur-
10 ance Fund.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect 1 year after the transfer date.

13 **SEC. 608. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
14 **WITH FINANCIAL SUBSIDIARIES.**

15 (a) AMENDMENT.—Section 23A(e) of the Federal Re-
16 serve Act (12 U.S.C. 371c(e)) is amended—

17 (1) by striking paragraph (3); and

18 (2) by redesignating paragraph (4) as para-
19 graph (3).

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall take effect 1 year after the transfer date.

1 **SEC. 609. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
2 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
3 **PURCHASE AGREEMENTS, REVERSE REPUR-**
4 **CHASE AGREEMENTS, AND SECURITIES**
5 **LENDING AND BORROWING TRANSACTIONS.**

6 (a) AMENDMENT.—Section 5200(b) of the Revised
7 Statutes of the United States (12 U.S.C. 84) is amend-
8 ed—

9 (1) in paragraph (1), by striking “shall in-
10 clude” and all that follows through the end of the
11 paragraph and inserting the following: “shall in-
12 clude—

13 “(A) all direct or indirect advances of
14 funds to a person made on the basis of any ob-
15 ligation of that person to repay the funds or re-
16 payable from specific property pledged by or on
17 behalf of the person;

18 “(B) to the extent specified by FIRA, any
19 liability of a national banking association to ad-
20 vance funds to or on behalf of a person pursu-
21 ant to a contractual commitment; and

22 “(C) any credit exposure to a person aris-
23 ing from a derivative transaction, repurchase
24 agreement, reverse repurchase agreement, secu-
25 rities lending transaction, or securities bor-

1 rowing transaction between the national bank-
2 ing association and the person;”;

3 (2) in paragraph (2), by striking the period at
4 the end and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(3) the term ‘derivative transaction’ means
7 any transaction that is a contract, agreement, swap,
8 warrant, note, or option that is based, in whole or
9 in part, on the value of, any interest in, or any
10 quantitative measure or the occurrence of any event
11 relating to, one or more commodities, securities, cur-
12 rencies, interest or other rates, indices, or other as-
13 sets.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall take effect 1 year after the transfer date.

16 **SEC. 610. APPLICATION OF NATIONAL BANK LENDING LIM-**
17 **ITS TO INSURED STATE BANKS.**

18 (a) AMENDMENT.—Section 18 of the Federal Deposit
19 Insurance Act (12 U.S.C. 1828) is amended by adding at
20 the end the following:

21 “(y) APPLICATION OF LENDING LIMITS TO INSURED
22 STATE BANKS.—Section 5200 of the Revised Statutes of
23 the United States (12 U.S.C. 84) shall apply to each in-
24 sured State bank, in the same manner and to the same

1 extent as if the insured State bank were a national bank-
2 ing association.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall take effect 1 year after the transfer date.

5 **SEC. 611. RESTRICTION ON CONVERSIONS OF TROUBLED**
6 **BANKS.**

7 (a) **CONVERSION OF A NATIONAL BANKING ASSOCIA-**
8 **TION TO A STATE BANK.**—The Act entitled “An Act to
9 provide for the conversion of national banking associations
10 into and their merger or consolidation with State banks,
11 and for other purposes.” (12 U.S.C. 214 et seq.) is amend-
12 ed by adding at the end the following:

13 **“SEC. 10. PROHIBITION ON CONVERSION.**

14 “A national banking association may not convert to
15 a State bank or State savings association during any pe-
16 riod in which the national banking association is subject
17 to a cease and desist order issued by, a memorandum of
18 understanding entered into with, or any other enforcement
19 action by the Comptroller of the Currency or FIRA, as
20 the case may be, with respect to a significant supervisory
21 matter.”.

22 (b) **CONVERSION OF A STATE BANK TO A NATIONAL**
23 **BANK.**—Section 5154 of the Revised Statutes of the
24 United States (12 U.S.C. 35) is amended by adding at
25 the end the following: “The Financial Institutions Regu-

1 latory Administration may not approve the conversion of
2 a State bank or State savings association to a national
3 banking association during any period in which the State
4 bank or State savings association is subject to a cease and
5 desist order issued by, a memorandum of understanding
6 entered into with, or any other enforcement action by, a
7 State supervisor with respect to a significant supervisory
8 matter.”.

9 (c) CONVERSION OF A FEDERAL SAVINGS ASSOCIA-
10 TION TO A NATIONAL OR STATE BANK OR STATE SAVINGS
11 ASSOCIATION.—Section 5(i) of the Home Owners’ Loan
12 Act (12 U.S.C. 1464(i)) is amended by adding at the end
13 the following:

14 “(6) LIMITATION ON CERTAIN CONVERSIONS BY
15 FEDERAL SAVINGS ASSOCIATIONS.—A Federal sav-
16 ings association may not convert to a national bank
17 or State bank or State savings association during
18 any period in which the Federal savings association
19 is subject to a cease and desist order issued by, a
20 memorandum of understanding entered into with, or
21 any other enforcement action by, the Office of Thrift
22 Supervision or FIRA, as the case may be, with re-
23 spect to a significant supervisory matter.”.

1 **SEC. 612. DE NOVO BRANCHING INTO STATES.**

2 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the
3 Revised Statutes of the United States (12 U.S.C.
4 36(g)(1)(A)) is amended to read as follows:

5 “(A) the law of the State in which the
6 branch is located, or is to be located, would per-
7 mit establishment of the branch, if the national
8 bank were a State bank chartered by such
9 State; and”.

10 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)
11 of the Federal Deposit Insurance Act (12 U.S.C.
12 1828(d)(4)(A)(i)) is amended to read as follows:

13 “(i) the law of the State in which the
14 branch is located, or is to be located, would
15 permit establishment of the branch, if the
16 bank were a State bank chartered by such
17 State; and”.

18 **SEC. 613. LENDING LIMITS TO INSIDERS.**

19 (a) AMENDMENTS.—Section 22(h)(9)(D)(i) of the
20 Federal Reserve Act (12 U.S.C. 375b(9)(D)(i)) is amend-
21 ed—

22 (1) by striking the period at the end and insert-
23 ing “; or”;

24 (2) by striking “a person” and inserting “the
25 person”;

1 (3) by striking “extends credit by making” and
2 inserting the following: “extends credit to a person
3 by—

4 “(I) making”; and

5 (4) by adding at the end the following:

6 “(II) having credit exposure to
7 the person arising from a derivative
8 transaction, repurchase agreement, re-
9 verse repurchase agreement, securities
10 lending transaction, or securities bor-
11 rowing transaction between the mem-
12 ber bank and the person.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the transfer date.

15 **SEC. 614. LIMITATIONS ON PURCHASES OF ASSETS FROM**
16 **INSIDERS.**

17 (a) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-
18 ANCE ACT.—Section 18 of the Federal Deposit Insurance
19 Act (12 U.S.C. 1828) is amended by adding at the end
20 the following:

21 “(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

22 “(1) IN GENERAL.—An insured depository in-
23 stitution may not purchase an asset from, or sell an
24 asset to, an executive officer, director, or principal
25 shareholder of the insured depository institution, or

1 any related interest of such person (as such terms
2 are defined in section 22(h) of Federal Reserve Act),
3 unless—

4 “(A) the transaction is on market terms;
5 and

6 “(B) if the transaction represents more
7 than 10 percent of the capital stock and surplus
8 of the insured depository institution, the trans-
9 action has been approved in advance by a ma-
10 jority of the members of the board of directors
11 of the insured depository institution who do not
12 have an interest in the transaction.

13 “(2) RULEMAKING.—FIRA may issue such
14 rules as may be necessary to define terms and to
15 carry out the purposes this subsection.”.

16 (b) AMENDMENTS TO THE FEDERAL RESERVE
17 ACT.—Section 22(d) of the Federal Reserve Act (12
18 U.S.C. 375) is amended to read as follows:

19 “(d) [Reserved]”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the transfer date.

22 **SEC. 615. REGULATIONS REGARDING CAPITAL LEVELS OF**
23 **HOLDING COMPANIES.**

24 (a) CAPITAL LEVELS OF BANK HOLDING COMPA-
25 NIES.—Section 5(b) of the Bank Holding Company Act

1 of 1956 (12 U.S.C. 1844(b)) is amended by inserting after
2 “regulations” the following: “(including regulations relat-
3 ing to the capital levels of bank holding companies)”.

4 (b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLD-
5 ING COMPANIES.—Section 10(g)(1) of the Home Owners’
6 Loan Act (12 U.S.C. 1467a(g)(1)) is amended by insert-
7 ing after “orders” the following: “(including regulations
8 relating to capital requirements for savings and loan hold-
9 ing companies)”.

10 (c) INTERMEDIATE HOLDING COMPANIES.—Section
11 39 of the Federal Deposit Insurance Act (12 U.S.C.
12 1831s) is amended—

13 (1) by redesignating subsections (f) and (g) as
14 subsections (g) and (h), respectively; and

15 (2) by inserting after subsection (e) the fol-
16 lowing:

17 “(f) INTERMEDIATE HOLDING COMPANIES.—FIRA
18 may require a commercial firm (as that term is defined
19 in section 602 of the Restoring American Financial Sta-
20 bility Act of 2009) that directly owns or controls more
21 than 1 insured depository institution to establish an inter-
22 mediate holding company that is solely engaged in activi-
23 ties that are financial in nature or incidental to activities
24 that are financial in nature, as provided in section 4(k)
25 of the Bank Holding Company Act of 1956 (12 U.S.C.

1 1843(k)), to hold the insured depository institutions, in
2 order to provide for the enhanced supervision of the in-
3 sured depository institutions.”.

4 (d) SOURCE OF STRENGTH.—The Federal Deposit
5 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
6 inserting after section 38 (12 U.S.C. 1831o) the following:

7 **“SEC. 38A. SOURCE OF STRENGTH.**

8 “(a) IN GENERAL.—FIRA may require any company
9 that directly or indirectly owns or controls an insured de-
10 pository institution to serve as a source of financial
11 strength for such institution.

12 “(b) REPORTS.—FIRA may, from time to time, re-
13 quire a company that directly or indirectly owns or con-
14 trols an insured depository institution to submit a report,
15 under oath, for the purposes of—

16 “(1) assessing the ability of such company to
17 comply with the requirement under subsection (a);
18 and

19 “(2) enforcing the compliance of such company
20 with the requirement under subsection (a).

21 “(c) RULES.—Not later than 1 year after the trans-
22 fer date, as defined in section 302 of the Restoring Amer-
23 ican Financial Stability Act of 2009, FIRA shall issue
24 final rules to carry out this section.

1 “(d) DEFINITION.—In this section, the term ‘source
2 of financial strength’ means the ability of a company that
3 directly or indirectly owns or controls an insured deposi-
4 tory institution to provide financial assistance to such in-
5 sured depository institution in the event of financial dis-
6 tress.”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the transfer date.

9 **SEC. 616. ELIMINATION OF ELECTIVE INVESTMENT BANK**
10 **HOLDING COMPANY FRAMEWORK.**

11 (a) AMENDMENT.—Section 17 of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78q) is amended—

13 (1) by striking subsection (i); and

14 (2) by redesignating subsections (j) and (k) as
15 subsections (i) and (j), respectively.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall take effect on the transfer date.

18 **TITLE VII—IMPROVEMENTS TO**
19 **REGULATION OF OVER-THE-**
20 **COUNTER DERIVATIVES MAR-**
21 **KETS**

22 **SEC. 701. SHORT TITLE.**

23 This title may be cited as the “Over-the-Counter De-
24 rivatives Markets Act of 2009”.

1 **SEC. 702. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) in recent years, the global over-the-counter
4 derivatives market in notional amounts outstanding
5 has grown rapidly, from \$91 trillion in 1998 to \$592
6 trillion in 2008 according to the Bank for Inter-
7 national Settlements;

8 (2) the interconnectedness of the country's larg-
9 est financial institutions through the unregulated de-
10 rivatives market raised significant concerns about
11 counterparty risk exposures during the recent finan-
12 cial crisis;

13 (3) a substantial amount of American taxpayer
14 money was used to make counterparty payments be-
15 cause there was insufficient margin and capital held
16 by large financial institutions;

17 (4) although derivatives can be used to manage
18 risk, they can also increase leverage and allow exces-
19 sive risk-taking because market participants can
20 take large positions on a relatively small capital
21 base;

22 (5) in the over-the-counter derivatives market,
23 margin requirements are set bilaterally and do not
24 take into account the risk that each trade imposes
25 on the rest of the financial system, thereby allowing
26 systemically important exposures to build up without

1 sufficient capital to mitigate associated risks to
2 American taxpayers and the financial system;

3 (6) in the recent crisis, fears about
4 counterparty risk exposures caused credit markets to
5 freeze, as market participants questioned the viabil-
6 ity of counterparties and the safety of their own as-
7 sets;

8 (7) lack of transparency about counterparty ex-
9 posures and valuation of derivatives positions made
10 it more difficult for regulators to respond to the cri-
11 sis and made resolution of these positions more ex-
12 pensive for the taxpayer;

13 (8) bilaterally-executed derivatives contracts can
14 provide key benefits to certain market participants
15 and should be permitted under comprehensive regu-
16 lation, but all derivatives activities should be accom-
17 panied by appropriate risk management and pruden-
18 tial standards;

19 (9) the derivatives market suffers from a lack
20 of reliable and accurate transaction information that
21 is available to the public, investors, market partici-
22 pants, and regulators, hampering surveillance and
23 oversight of such markets;

24 (10) clearing more derivatives through well-reg-
25 ulated central counterparties will benefit the public

1 by reducing costs and risks to American taxpayers,
2 the financial system, and market participants;

3 (11) trading more derivatives on regulated ex-
4 changes should be encouraged because it will result
5 in more price transparency, efficiency in execution,
6 and liquidity; and

7 (12) the Group of 20 nations agreed that—

8 (A) all standardized over-the-counter deriv-
9 ative contracts should be traded on exchanges
10 or electronic trading platforms, where appro-
11 priate, and cleared through central counterpar-
12 ties by the end of calendar year 2012 at the lat-
13 est;

14 (B) over-the-counter derivative contracts
15 should be reported to trade repositories; and

16 (C) non-centrally cleared contracts should
17 be subject to higher capital requirements.

18 (b) PURPOSES.—The purposes of this title are—

19 (1) to establish well-regulated markets for de-
20 rivatives to increase transparency and reduce costs
21 and risks to American taxpayers, the financial sys-
22 tem, and market participants; and

23 (2) to promote the public interest, the protec-
24 tion of investors, the protection of market partici-

1 pants, and the maintenance of fair and orderly mar-
2 kets to assure—

3 (A) the prompt and accurate clearance and
4 settlement of transactions in derivatives that
5 can be cleared through a central counterparty;

6 (B) the prompt and accurate reporting of
7 transactions to regulators and trade reposi-
8 tories;

9 (C) the availability to the public, investors,
10 market participants, and regulators of reliable
11 and accurate quotation and transaction infor-
12 mation in derivatives;

13 (D) economically efficient execution of
14 transactions in swaps and security-based swaps;
15 and

16 (E) fair competition among markets in the
17 trading of swaps and security-based swaps.

18 **Subtitle A—Regulation of Swap** 19 **Markets**

20 **SEC. 711. DEFINITIONS.**

21 (a) AMENDMENTS TO DEFINITIONS IN THE COM-
22 MODITY EXCHANGE ACT.—Section 1a of the Commodity
23 Exchange Act (7 U.S.C. 1a) is amended—

24 (1) by redesignating paragraphs (9) through
25 (34) as paragraphs (10) through (35), respectively;

1 (2) by adding after paragraph (8) the following:

2 “(9) DERIVATIVE.—The term ‘derivative’
3 means—

4 “(A) a contract of sale of a commodity for
5 future delivery; or

6 “(B) a swap.”;

7 (3) by redesignating paragraph (35) (as redesi-
8 gnated by paragraph (1)) as paragraph (36);

9 (4) by adding after paragraph (34) (as so re-
10 designated) the following:

11 “(35) SWAP.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), the term ‘swap’ means any
14 agreement, contract, or transaction that—

15 “(i) is a put, call, cap, floor, collar, or
16 similar option of any kind for the purchase
17 or sale of, or based on the value of, 1 or
18 more interest or other rates, currencies,
19 commodities, securities, instruments of in-
20 debtedness, indices, quantitative measures,
21 or other financial or economic interests or
22 property of any kind;

23 “(ii) provides for any purchase, sale,
24 payment, or delivery (other than a dividend
25 on an equity security) that is dependent on

1 the occurrence, nonoccurrence, or the ex-
2 tent of the occurrence of an event or con-
3 tingency associated with a potential finan-
4 cial, economic, or commercial consequence;
5 “(iii) provides on an executory basis
6 for the exchange, on a fixed or contingent
7 basis, of 1 or more payments based on the
8 value or level of 1 or more interest or other
9 rates, currencies, commodities, securities,
10 instruments of indebtedness, indices, quan-
11 titative measures, or other financial or eco-
12 nomic interests or property of any kind, or
13 any interest therein or based on the value
14 thereof, and that transfers, as between the
15 parties to the transaction, in whole or in
16 part, the financial risk associated with a
17 future change in any such value or level
18 without also conveying a current or future
19 direct or indirect ownership interest in an
20 asset (including any enterprise or invest-
21 ment pool) or liability that incorporates the
22 financial risk so transferred, including any
23 agreement, contract, or transaction com-
24 monly known as an interest rate swap, a
25 rate floor, rate cap, rate collar, cross-cur-

1 rency rate swap, basis swap, currency
2 swap, total return swap, equity index swap,
3 equity swap, debt index swap, debt swap,
4 credit spread, credit default swap, credit
5 swap, weather swap, energy swap, metal
6 swap, agricultural swap, emissions swap,
7 or commodity swap;

8 “(iv) is an agreement, contract, or
9 transaction that is, or in the future be-
10 comes, commonly known to the trade as a
11 swap; or

12 “(v) is any combination or permuta-
13 tion of, or option on, any agreement, con-
14 tract, or transaction described in any of
15 clauses (i) through (iv).

16 “(B) EXCLUSIONS.—The term ‘swap’ does
17 not include—

18 “(i) any contract of sale of a com-
19 modity for future delivery or security fu-
20 tures product traded on or subject to the
21 rules of any board of trade designated as
22 a contract market under section 5 or 5f;

23 “(ii) any sale of a nonfinancial com-
24 modity or any security for deferred ship-

1 ment or delivery, so long as such trans-
2 action is physically settled;

3 “(iii) any put, call, straddle, option, or
4 privilege on any security, certificate of de-
5 posit, or group or index of securities, in-
6 cluding any interest therein or based on
7 the value thereof;

8 “(iv) any put, call, straddle, option, or
9 privilege relating to foreign currency en-
10 tered into on a national securities exchange
11 registered pursuant to section 6(a) of the
12 Securities Exchange Act of 1934 (15
13 U.S.C. 78f(a));

14 “(v) any agreement, contract, or
15 transaction providing for the purchase or
16 sale of 1 or more securities on a fixed
17 basis;

18 “(vi) any agreement, contract, or
19 transaction providing for the purchase or
20 sale of 1 or more securities on a contingent
21 basis, unless such agreement, contract, or
22 transaction predicates such purchase or
23 sale on the occurrence of a bona fide con-
24 tingency that might reasonably be expected
25 to affect or be affected by the creditworthi-

1 ness of a party other than a party to the
2 agreement, contract, or transaction;

3 “(vii) any note, bond, or evidence of
4 indebtedness that is a security as defined
5 in section 2(a)(1) of the Securities Act of
6 1933 (15 U.S.C. 77b(a)(1)); or

7 “(viii) any agreement, contract, or
8 transaction that is—

9 “(I) based on a security; and

10 “(II) entered into directly or
11 through an underwriter, that term is
12 as defined in section 2(a)(11) of the
13 Securities Act of 1933 (15 U.S.C.
14 77b(a)(11)), by the issuer of such se-
15 curity for the purposes of raising cap-
16 ital, unless such agreement, contract,
17 or transaction is entered into to man-
18 age a risk associated with capital rais-
19 ing;

20 “(ix) any foreign exchange swap;

21 “(x) any foreign exchange forward;

22 “(xi) any agreement, contract, or
23 transaction a counterparty of which is a
24 Federal Reserve bank, the United States
25 Government, or an agency of the United

1 States Government that is expressly
2 backed by the full faith and credit of the
3 United States; and

4 “(xii) any security-based swap, other
5 than a security-based swap as described in
6 paragraph 38(C).

7 “(C) RULE OF CONSTRUCTION REGARDING
8 MASTER AGREEMENTS.—The term ‘swap’ shall
9 be construed to include a master agreement
10 that provides for an agreement, contract, or
11 transaction that is a swap pursuant to subpara-
12 graph (A), together with all supplements to any
13 such master agreement, without regard to
14 whether the master agreement contains an
15 agreement, contract, or transaction that is not
16 a swap pursuant to subparagraph (A), except
17 that the master agreement shall be considered
18 to be a swap only with respect to each agree-
19 ment, contract, or transaction under the master
20 agreement that is a swap pursuant to subpara-
21 graph (A).”;

22 (5) in paragraph (13) (as so redesignated)—

23 (A) in subparagraph (A)—

24 (i) in clause (ii), by striking “deter-
25 mined by the Commission” and inserting

1 “determined jointly by the Commission
2 and the Securities and Exchange Commis-
3 sion”;

4 (ii) in clause (v)—

5 (I) in subclause (I)—

6 (aa) by inserting “net” after
7 “total”; and

8 (bb) by inserting “or” after
9 the semicolon;

10 (II) in subclause (II), by striking
11 “the obligations” and all that follows
12 through “\$1,000,000; and” and in-
13 serting the following:

14 “(II) that—

15 “(aa) has total net assets
16 exceeding \$5,000,000; and”;

17 (iii) in clause (vii), by striking “except
18 that” and all that follows through “section
19 2(c)(2)(B)(ii);” and inserting the following:
20 “except that such term does not include a
21 State or an entity, political subdivision, in-
22 strumentality, agency, or department re-
23 ferred to in subclause (I) or (III) of this
24 clause unless the State, entity, political
25 subdivision, instrumentality, agency, or de-

1 partment owns and invests on a discre-
2 tionary basis \$50,000,000 or more in in-
3 vestments, provided that, with respect to
4 any State or entity, political subdivision,
5 instrumentality, agency or department of a
6 State, such amount is exclusive of any pro-
7 ceeds from any offering of municipal secu-
8 rities as defined in section 3(a)(29) of the
9 Securities Exchange Act of 1934 (15
10 U.S.C. 78c(a)(29));” and

11 (iv) in clause (xi), by striking “total
12 assets in an amount” and inserting
13 “amounts invested on a discretionary
14 basis”;

15 (v) in clause (xi), by striking “an indi-
16 vidual” and all that follows through “of—
17 ” and inserting “a natural person who—”;
18 and

19 (vi) in clause (xi)—

20 (I) in subclause (I), by inserting
21 “owns and invests on a discretionary
22 basis in excess of” before
23 “\$10,000,000”; and

24 (II) in subclause (II), by insert-
25 ing “owns and invests on a discre-

1 tionary basis in excess of” before
2 “\$5,000,000”; and

3 (B) in subparagraph (C), by striking “de-
4 termines” and inserting “and the Securities and
5 Exchange Commission may further jointly de-
6 termine”;

7 (6) in paragraph (30) (as so redesignated)—

8 (A) by redesignating subparagraph (E) as
9 subparagraph (G);

10 (B) in subparagraph (D), by striking
11 “and”; and

12 (C) by inserting after subparagraph (D)
13 the following:

14 “(E) an alternative swap execution facility
15 registered under section 5h;

16 “(F) a swap repository; and”; and

17 (7) by adding after paragraph (36) (as so re-
18 designated) the following:

19 “(37) BOARD.—The term ‘Board’ means the
20 Board of Governors of the Federal Reserve System.

21 “(38) SECURITY-BASED SWAP.—The term ‘se-
22 curity-based swap’ has the same meaning as in sec-
23 tion 3(a)(68) of the Securities Exchange Act of
24 1934 (15 U.S.C. 78c(a)(68)).

25 “(39) SWAP DEALER.—

1 “(A) IN GENERAL.—The term ‘swap deal-
2 er’ means any person engaged in the business
3 of buying and selling swaps for such person’s
4 own account, through a broker or otherwise.

5 “(B) EXCEPTION.—The term ‘swap dealer’
6 does not include a person that buys or sells
7 swaps for such person’s own account, either in-
8 dividually or in a fiduciary capacity, but not as
9 a part of a regular business.

10 “(40) MAJOR SWAP PARTICIPANT.—The term
11 ‘major swap participant’ means any person—

12 “(A) who is not a swap dealer; and

13 “(B) whose outstanding swaps create net
14 counterparty credit exposures (current or poten-
15 tial future exposures) to other market partici-
16 pants that would expose those other market
17 participants to significant credit losses in the
18 event of the person’s default.

19 “(41) MAJOR SECURITY-BASED SWAP PARTICI-
20 PANT.—The term ‘major security-based swap partici-
21 pant’ has the same meaning as in section 3(a)(67)
22 of the Securities Exchange Act of 1934 (15 U.S.C.
23 78c(a)(67)).

24 “(42) APPROPRIATE FEDERAL BANKING AGEN-
25 CY.—The term ‘appropriate Federal banking agency’

1 has the same meaning as in section 3 of the Federal
2 Deposit Insurance Act (12 U.S.C. 1813).

3 “(43) FIRA.—The term ‘FIRA’ means the Fi-
4 nancial Institutions Regulatory Administration.

5 “(44) SECURITY-BASED SWAP DEALER.—The
6 term ‘security-based swap dealer’ has the same
7 meaning as in section 3(a)(71) of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78c(a)(71)).

9 “(45) GOVERNMENT SECURITY.—The term
10 ‘government security’ has the same meaning as in
11 section 3(a)(42) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78c(a)(42)).

13 “(46) FOREIGN EXCHANGE FORWARD.—The
14 term ‘foreign exchange forward’ means a transaction
15 that solely involves the exchange of 2 different cur-
16 rencies on a specific future date at a fixed rate
17 agreed at the inception of the contract.

18 “(47) FOREIGN EXCHANGE SWAP.—The term
19 ‘foreign exchange swap’ means a transaction that
20 solely involves the exchange of 2 different currencies
21 on a specific date at a fixed rate agreed at the incep-
22 tion of the contract, and a reverse exchange of the
23 same 2 currencies at a date further in the future
24 and at a fixed rate agreed at the inception of the
25 contract.

1 “(48) PERSON ASSOCIATED WITH A SECURITY-
2 BASED SWAP DEALER OR MAJOR SECURITY-BASED
3 SWAP PARTICIPANT.—The term ‘person associated
4 with a security-based swap dealer or major security-
5 based swap participant’ has the same meaning as in
6 section 3(a)(70) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78c(a)(70)).

8 “(49) PERSON ASSOCIATED WITH A SWAP
9 DEALER OR MAJOR SWAP PARTICIPANT.—The term
10 ‘person associated with a swap dealer or major swap
11 participant’ or ‘associated person of a swap dealer or
12 major swap participant’ means—

13 “(A) any partner, officer, director, or
14 branch manager of such swap dealer or major
15 swap participant (or any person occupying a
16 similar status or performing similar functions);

17 “(B) any person directly or indirectly con-
18 trolling, controlled by, or under common control
19 with such swap dealer or major swap partici-
20 pant; or

21 “(C) any employee of such swap dealer or
22 major swap participant, except that any person
23 associated with a swap dealer or major swap
24 participant whose functions are solely clerical or
25 ministerial shall not be included in the meaning

1 of such term other than for purposes of section
2 4s(b)(6) of this Act.

3 “(50) SWAP REPOSITORY.—The term ‘swap re-
4 pository’ means any person that collects, calculates,
5 processes, or prepares information with respect to
6 transactions or positions in swaps or security-based
7 swaps.”.

8 (b) JOINT RULEMAKING ON FURTHER DEFINITION
9 OF TERMS.—

10 (1) IN GENERAL.—The Commodity Futures
11 Trading Commission and the Securities and Ex-
12 change Commission shall jointly adopt a rule or
13 rules further defining the terms “swap”, “security-
14 based swap”, “swap dealer”, “security-based swap
15 dealer”, “major swap participant”, “major security-
16 based swap participant”, and “eligible contract par-
17 ticipant” not later than 180 days after the effective
18 date of this title.

19 (2) PREVENTION OF EVASIONS.—The Com-
20 modity Futures Trading Commission and the Securi-
21 ties and Exchange Commission may jointly prescribe
22 rules defining the term “swap” or “security-based
23 swap” to include transactions that have been struc-
24 tured to evade this title.

25 (c) JOINT RULEMAKING UNDER THIS TITLE.—

1 (1) UNIFORM RULES.—Rules and regulations
2 prescribed jointly under this title by the Commodity
3 Futures Trading Commission and the Securities and
4 Exchange Commission shall be uniform.

5 (2) AGENCY FOR FINANCIAL STABILITY.—In
6 the event that the Commodity Futures Trading
7 Commission and the Securities and Exchange Com-
8 mission fail to jointly prescribe uniform rules and
9 regulations under any provision of this title in a
10 timely manner, the Agency for Financial Stability, in
11 consultation with the Commodity Futures Trading
12 Commission and the Securities and Exchange Com-
13 mission, shall prescribe rules and regulations under
14 such provision. A rule prescribed by the Agency for
15 Financial Stability shall be enforced as if prescribed
16 jointly by the Commodity Futures Trading Commis-
17 sion and the Securities and Exchange Commission
18 and shall remain in effect until the Agency for Fi-
19 nancial Stability rescinds the rule or until the effec-
20 tive date of a corresponding rule prescribed jointly
21 by the Commodity Futures Trading Commission and
22 the Securities and Exchange Commission in accord-
23 ance with this section, whichever is later.

24 (3) DEADLINE.—The Agency for Financial Sta-
25 bility shall adopt rules and regulations under para-

1 graph (2) within 180 days of the time that the Com-
2 modity Futures Trading Commission and the Securi-
3 ties and Exchange Commission failed to adopt uni-
4 form rules and regulations.

5 (4) TREATMENT OF SIMILAR PRODUCTS.—In
6 adopting joint rules and regulations under this title,
7 the Commodity Futures Trading Commission and
8 the Securities and Exchange Commission shall treat
9 functionally or economically similar products simi-
10 larly.

11 (5) TREATMENT OF DISSIMILAR PRODUCTS.—
12 Nothing in this title shall be construed to require
13 the Commodity Futures Trading Commission and
14 the Securities and Exchange Commission to adopt
15 joint rules that treat functionally or economically
16 different products identically.

17 (6) JOINT INTERPRETATION.—Any interpreta-
18 tion of, or guidance regarding, a provision of this
19 title, shall be effective only if issued jointly by the
20 Commodity Futures Trading Commission and the
21 Securities and Exchange Commission if this title re-
22 quires the Commodity Futures Trading Commission
23 and the Securities and Exchange Commission to
24 issue joint regulations to implement the provision.

1 (d) EXEMPTIONS.—Section 4(c)(1) of the Commodity
2 Exchange Act (7 U.S.C. 6(c)(1)) is amended by adding
3 at the end the following: “The Commission shall not have
4 the authority to grant exemptions from the swap-related
5 provisions of the Over-the-Counter Derivatives Markets
6 Act of 2009, except as expressly authorized under the pro-
7 visions of that Act.”.

8 **SEC. 712. JURISDICTION.**

9 (a) EXCLUSIVE JURISDICTION.—The first sentence
10 of section 2(a)(1)(A) of the Commodity Exchange Act (7
11 U.S.C. 2(a)(1)(A)) is amended—

12 (1) by inserting “the Over-the-Counter Deriva-
13 tives Markets Act of 2009 and” after “otherwise
14 provided in”;

15 (2) by striking “subsections (c) through (i)”
16 and inserting “subsections (c) and (f)”; and

17 (3) by striking “involving contracts of sale” and
18 inserting “involving swaps, or contracts of sale”.

19 (b) ADDITIONS.—Section 2(c)(2)(A) of the Com-
20 modity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

21 (1) in clause (i), by striking “or”;

22 (2) by redesignating clause (ii) as clause (iii);

23 and

24 (3) by inserting after clause (i) the following:

25 “(ii) a swap; or”.

1 (c) LIMITATION.—Section 2 of the Commodity Ex-
2 change Act (7 U.S.C. 2) is amended by amending sub-
3 section (g) to read as follows:

4 “(g) EXCLUSION FOR SECURITIES.—Notwith-
5 standing any other provision of law, the Over-the-Counter
6 Derivatives Markets Act of 2009 shall not apply to, and
7 the Commodity Futures Trading Commission shall have
8 no jurisdiction under such Act (or any amendments to the
9 Commodity Exchange Act made by such Act) with respect
10 to, any security other than a security-based swap.”.

11 **SEC. 713. CLEARING.**

12 (a) CLEARING REQUIREMENT.—

13 (1) REPEALS.—Subsections (d), (e), (g), and
14 (h) of section 2 of the Commodity Exchange Act (7
15 U.S.C. 2(d), 2(e), 2(g), and 2(h)) are repealed.

16 (2) APPLICABILITY.—Section 2 of the Com-
17modity Exchange Act (7 U.S.C. 2) is further amend-
18ed by inserting after subsection (c) the following:

19 “(d) SWAPS.—Nothing in this Act, other than sub-
20 sections (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(G), (f),
21 and (j), sections 4a, 4b, 4b–1, 4c(a), 4c(b), 4o, 4r, 4s,
22 4t, 4u, 5, 5b, 5c, 5h, 6(c), 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2),
23 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provi-
24 sions of this Act as are applicable by their terms to reg-

1 istered entities and Commission registrants, governs or
2 applies to a swap.

3 “(e) LIMITATION ON PARTICIPATION.—It shall be
4 unlawful for any person, other than an eligible contract
5 participant, to enter into a swap unless the swap is en-
6 tered into on or subject to the rules of a board of trade
7 designated as a contract market under section 5.”.

8 (3) CLEARING REQUIREMENT.—Section 2 of
9 the Commodity Exchange Act (7 U.S.C. 2) is fur-
10 ther amended by adding at the end the following:

11 “(j) CLEARING REQUIREMENT.—

12 “(1) SUBMISSION.—

13 “(A) IN GENERAL.—Except as provided in
14 paragraph (9), any person who is a party to a
15 swap shall submit such swap for clearing to a
16 derivatives clearing organization that is reg-
17 istered under this Act or a derivatives clearing
18 organization that is exempt from registration
19 under section 5b(j) of this Act.

20 “(B) REQUIRED CONDITIONS.—The rules
21 of a derivatives clearing organization described
22 in subparagraph (A) shall—

23 “(i) prescribe that all swaps with the
24 same terms and conditions are fungible
25 and may be offset with each other; and

1 “(ii) provide for nondiscriminatory
2 clearing of a swap executed on or through
3 the rules of an unaffiliated designated con-
4 tract market or an alternative swap execu-
5 tion facility.

6 “(2) COMMISSION APPROVAL.—

7 “(A) IN GENERAL.—A derivatives clearing
8 organization shall submit to the Commission for
9 prior approval any group, category, type, or
10 class of swaps, that the derivatives clearing or-
11 ganization seeks to accept for clearing, which
12 submission the Commission shall make available
13 to the public.

14 “(B) DEADLINE.—The Commission shall
15 take final action on a request submitted pursu-
16 ant to subparagraph (A) not later than 90 days
17 after submission of the request, unless the de-
18 rivatives clearing organization submitting the
19 request agrees to an extension of the time limi-
20 tation established under this subparagraph.

21 “(C) APPROVAL.—The Commission shall
22 approve, unconditionally or subject to such
23 terms and conditions as the Commission deter-
24 mines to be appropriate, any request submitted
25 pursuant to subparagraph (A) if the Commis-

1 sion finds that the request is consistent with
2 section 5b(c)(2). The Commission shall approve
3 any such request if the Commission does not
4 make such finding.

5 “(D) RULES.—Not later than 180 days
6 after the date of the enactment of the Over-the-
7 Counter Derivatives Markets Act of 2009, the
8 Commission shall adopt rules for a derivatives
9 clearing organization’s submission for approval,
10 pursuant to this paragraph, of a swap, or a
11 group, category, type or class of swaps, that the
12 derivative clearing organization seeks to accept
13 for clearing.

14 “(3) STAY OF CLEARING REQUIREMENT.—At
15 any time after issuance of an approval pursuant to
16 paragraph (2):

17 “(A) REVIEW PROCESS.—The Commission,
18 on application of a counterparty to a swap or
19 on its own initiative, may stay the clearing re-
20 quirement of paragraph (1) until the Commis-
21 sion completes a review of the terms of the
22 swap (or the group, category, type, or class of
23 swaps) and the clearing arrangement.

24 “(B) DEADLINE.—The Commission shall
25 complete a review undertaken pursuant to sub-

1 paragraph (A) not later than 90 days after
2 issuance of the stay, unless the derivatives
3 clearing organization that clears the swap, or
4 group, category, type or class of swaps, agrees
5 to an extension of the time limitation estab-
6 lished under this subparagraph.

7 “(C) DETERMINATION.—Upon completion
8 of the review undertaken pursuant to subpara-
9 graph (A)—

10 “(i) the Commission may determine,
11 unconditionally or subject to such terms
12 and conditions as the Commission deter-
13 mines to be appropriate, that the swap, or
14 group, category, type, or class of swaps,
15 must be cleared pursuant to this sub-
16 section if the Commission finds that such
17 clearing—

18 “(I) is consistent with section
19 5b(c)(2); and

20 “(II) is otherwise in the public
21 interest, for the protection of inves-
22 tors, and consistent with the purposes
23 of this title;

24 “(ii) the Commission may determine
25 that the clearing requirement of paragraph

1 (1) shall not apply to the swap, or group,
2 category, type, or class of swaps; or

3 “(iii) if a determination is made that
4 the clearing requirement of paragraph (1)
5 shall no longer apply, then it shall still be
6 permissible to clear such swap, or group,
7 category, type, or class of swaps.

8 “(D) RULES.—Not later than 180 days
9 after the date of the enactment of the Over-the-
10 Counter Derivatives Markets Act of 2009, the
11 Commission shall adopt rules for reviewing,
12 pursuant to this paragraph, a derivatives clear-
13 ing organization’s clearing of a swap, or a
14 group, category, type, or class of swaps, that
15 the Commission has accepted for clearing.

16 “(4) SWAPS REQUIRED TO BE ACCEPTED FOR
17 CLEARING.—

18 “(A) RULEMAKING.—Within 180 days of
19 the date of enactment of the Over-the-Counter
20 Derivatives Markets Act of 2009, the Commis-
21 sion and the Securities and Exchange Commis-
22 sion shall jointly adopt rules to further identify
23 swaps, or any group, category, type, or class of
24 swaps, that although not submitted for approval
25 under paragraph (2) but the Commission and

1 Securities Exchange Commission deem should
2 be accepted for clearing. In adopting such rules,
3 the Commission and the Securities and Ex-
4 change Commission shall take into account the
5 following factors:

6 “(i) The extent to which any of the
7 terms of the swap, including price, are dis-
8 seminated to third parties or are ref-
9 erenced in other agreements, contracts, or
10 transactions.

11 “(ii) The volume of transactions in
12 the swap.

13 “(iii) The extent to which the terms of
14 the swap are similar to the terms of other
15 agreements, contracts, or transactions that
16 are centrally cleared.

17 “(iv) Whether any differences in the
18 terms of the swap, compared to other
19 agreements, contracts, or transactions that
20 are centrally cleared, are of economic sig-
21 nificance.

22 “(v) Whether a derivatives clearing
23 organization is prepared to clear the swap
24 and such derivatives clearing organization

1 has in place effective risk management sys-
2 tems.

3 “(vi) Any other factors the Commis-
4 sion and the Securities and Exchange
5 Commission determine to be appropriate.

6 “(B) OTHER DESIGNATIONS.—The Com-
7 mission may separately designate a particular
8 swap or class of swaps as subject to the clear-
9 ing requirement in paragraph (1), taking into
10 account the factors described in clauses (i)
11 through (vi) of subparagraph (A) and the joint
12 rules adopted under such subparagraph.

13 “(5) PREVENTION OF EVASION.—The Commis-
14 sion and the Securities and Exchange Commission
15 shall have authority to prescribe rules under this
16 subsection, or issue interpretations of such rules, as
17 necessary to prevent evasions of this title provided
18 that any such rules or interpretations shall be issued
19 jointly to be effective.

20 “(6) REQUIRED REPORTING.—

21 “(A) BOTH COUNTERPARTIES.—Both
22 counterparties to a swap that is not accepted
23 for clearing by any derivatives clearing organi-
24 zation shall report such a swap either to a reg-
25 istered swap repository described in section 21

1 or, if there is no repository that would accept
2 the swap, to the Commission pursuant to sec-
3 tion 4r.

4 “(B) TIMING.—Counterparties to a swap
5 shall submit the reports required under sub-
6 paragraph (A) within such time period as the
7 Commission may by rule or regulation pre-
8 scribe.

9 “(7) TRANSITION RULES.—Rules adopted by
10 the Commission under this section shall provide for
11 the reporting of data, as follows:

12 “(A) Swaps that were entered into before
13 the date of enactment of the Over-the-Counter
14 Derivatives Markets Act of 2009 shall be re-
15 ported to a registered swap repository or the
16 Commission not later than the later of —

17 “(i) 180 days after the effective date
18 of the Over-the-Counter Derivatives Mar-
19 kets Act of 2009; or

20 “(ii) such other time after entering
21 into the swap as the Commission may pre-
22 scribe by rule or regulation.

23 “(B) Swaps that were entered into on or
24 after the date of enactment of the Over-the-
25 Counter Derivatives Markets Act of 2009 shall

1 be reported to a registered swap repository or
2 the Commission not later than the later of—

3 “(i) 90 days after the effective date of
4 the Over-the-Counter Derivatives Markets
5 Act of 2009; or

6 “(ii) such other time after entering
7 into the swap as the Commission may pre-
8 scribe by rule or regulation.

9 “(8) TRADE EXECUTION.—

10 “(A) IN GENERAL.—With respect to trans-
11 actions involving swaps subject to the clearing
12 requirement of paragraph (1), counterparties
13 shall—

14 “(i) execute the transaction on a
15 board of trade designated as a contract
16 market under section 5; or

17 “(ii) execute the transaction on an al-
18 ternative swap execution facility registered
19 under section 5h or an alternative swap
20 execution facility that is exempt from reg-
21 istration under section 5h(f) of this Act.

22 “(B) EXCEPTION.—The requirements of
23 clauses (i) and (ii) of subparagraph (A) shall
24 not apply if no board of trade or alternative

1 swap execution facility makes the swap avail-
2 able to trade.

3 “(9) EXEMPTIONS.—

4 “(A) REQUIRED EXEMPTION.—The Com-
5 mission shall exempt a swap from the require-
6 ments of paragraphs (1) and (8), and any rules
7 issued under this subsection, if no derivatives
8 clearing organization registered under this Act
9 or no derivatives clearing organization that is
10 exempt from registration under section 5b(j) of
11 this Act will accept the swap for clearing.

12 “(B) PERMISSIVE EXEMPTION.—The Com-
13 mission by rule or order, as the Commission
14 deems consistent with the public interest, may
15 conditionally or unconditionally exempt a swap
16 dealer or major swap participant from the re-
17 quirements of paragraphs (1) and (8), and any
18 rules issued under this subsection, if 1 of the
19 counterparties to the swap—

20 “(i) is not a swap dealer or major
21 swap participant; and

22 “(ii) does not meet the eligibility re-
23 quirements of any derivatives clearing or-
24 ganization that clears the swap.

1 “(C) DETERMINATION OF THE AGENCY
2 FOR FINANCIAL STABILITY.—The Commission
3 may act by rule or order to exempt a swap deal-
4 er or major swap participant from any require-
5 ment or rule under this subsection only if—

6 “(i) the Commission has provided a
7 written notice to the Agency for Financial
8 Stability describing the proposed exemp-
9 tion; and

10 “(ii) the Agency for Financial Sta-
11 bility has not made a determination and
12 notified the Commission within 60 days of
13 receipt of such notice that such exemption
14 would pose a threat to the stability of the
15 United States financial system.

16 “(D) NONDELEGATION.—Actions by the
17 Agency for Financial Stability under subpara-
18 graph (C) may not be delegated.

19 “(E) REQUESTED CLEARANCE.—If a swap
20 dealer or major swap participant that is exempt
21 from the clearing requirements of paragraph
22 (1) requests that a swap be cleared by a deriva-
23 tives clearing organization, and a derivatives
24 clearing organization registered under this Act
25 or a derivatives clearing organization that is ex-

1 empt from registration under section 5b(j) of
2 this Act will accept such swap for clearing,
3 then—

4 “(i) the exemption shall not apply;

5 and

6 “(ii) the swap shall be cleared by such
7 organization.”.

8 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

9 (1) IN GENERAL.—Subsections (a) and (b) of
10 section 5b of the Commodity Exchange Act (7
11 U.S.C. 7a–1) are amended to read as follows:

12 “(a) REGISTRATION REQUIREMENT.—It shall be un-
13 lawful for a derivatives clearing organization, unless reg-
14 istered with the Commission, directly or indirectly to make
15 use of the mails or any means or instrumentality of inter-
16 state commerce to perform the functions of a derivatives
17 clearing organization described in section 1a(10) with re-
18 spect to—

19 “(1) a contract of sale of a commodity for fu-
20 ture delivery (or option on such a contract) or option
21 on a commodity, in each case unless the contract or
22 option is—

23 “(A) excluded from this Act by section
24 2(a)(1)(C)(i), 2(c), or 2(f); or

1 “(B) a security futures product cleared by
2 a clearing agency registered with the Securities
3 and Exchange Commission under the Securities
4 Exchange Act of 1934 (15 U.S.C. 78a et seq.);
5 or
6 “(2) a swap.

7 “(b) VOLUNTARY REGISTRATION.—

8 “(1) DERIVATIVES CLEARING ORGANIZA-
9 TIONS.—A person that clears agreements, contracts,
10 or transactions that are not required to be cleared
11 under this Act may register with the Commission as
12 a derivatives clearing organization.

13 “(2) CLEARING AGENCIES.—A derivatives clear-
14 ing organization may clear security-based swaps that
15 are required to be cleared by a person who is reg-
16 istered as a clearing agency under the Securities Ex-
17 change Act of 1934 (15 U.S.C. 78a et seq.).”.

18 (2) REQUIRED REGISTRATION.—Section 5b of
19 the Commodity Exchange Act (7 U.S.C. 7a–1) is
20 amended by adding at the end the following:

21 “(g) REQUIRED REGISTRATION FOR BANKS AND
22 CLEARING AGENCIES.—A person that is required to be
23 registered as a derivatives clearing organization under this
24 section shall register with the Commission regardless of
25 whether the person is also a bank or a clearing agency

1 registered with the Securities and Exchange Commission
2 under the Securities Exchange Act of 1934 (15 U.S.C.
3 78a et seq.).

4 “(h) HARMONIZATION OF RULES.—Not later than
5 180 days after the effective date of the Over-the-Counter
6 Derivatives Markets Act of 2009, the Commission and the
7 Securities and Exchange Commission shall jointly adopt
8 uniform rules governing—

9 “(1) the clearing and settlement of swaps, as
10 well as persons that are registered as derivatives
11 clearing organizations for swaps under this sub-
12 section; and

13 “(2) the clearing and settlement of security-
14 based swaps, as well as persons that are registered
15 as clearing agencies for security-based swaps under
16 the Securities Exchange Act of 1934 (15 U.S.C. 78a
17 et seq.).

18 “(i) CONSULTATION.—The Commission and the Se-
19 curities and Exchange Commission shall consult with the
20 appropriate Federal banking agencies prior to adopting
21 rules under this section with respect to swaps.

22 “(j) EXEMPTIONS.—The Commission may exempt,
23 conditionally or unconditionally, a derivatives clearing or-
24 ganization from registration under this section for the
25 clearing of swaps if the Commission finds that such de-

1 derivatives clearing organization is subject to comparable,
2 comprehensive supervision and regulation on a consoli-
3 dated basis by the Securities and Exchange Commission,
4 the Financial Institutions Regulatory Administration, or
5 the appropriate governmental authorities in the organiza-
6 tion's home country.

7 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

8 “(1) IN GENERAL.—Each derivatives clearing
9 organization shall designate an individual to serve as
10 a compliance officer.

11 “(2) DUTIES.—The compliance officer shall
12 perform the following duties:

13 “(A) Report directly to the board or to the
14 senior officer of the derivatives clearing organi-
15 zation.

16 “(B) Review the compliance of the deriva-
17 tives clearing organization with the core prin-
18 ciples established in section 5b(c)(2).

19 “(C) Consult with the board of the deriva-
20 tives clearing organization, a body performing a
21 function similar to that of a board, or the sen-
22 ior officer of the derivatives clearing organiza-
23 tion, to resolve any conflicts of interest that
24 may arise.

1 “(D) Administering the policies and proce-
2 dures of the derivatives clearing organization
3 required to be established pursuant to this sec-
4 tion;

5 “(E) Ensuring compliance with this Act
6 and the rules and regulations issued there-
7 under, including rules prescribed by the Com-
8 mission pursuant to this section.

9 “(F) Establishing procedures for remedi-
10 ation of noncompliance issues found during
11 compliance office reviews, lookbacks, internal or
12 external audit findings, self-reported errors, or
13 through validated complaints. Procedures to be
14 established under this subparagraph include
15 procedures related to the handling, manage-
16 ment response, remediation, retesting, and clos-
17 ing of noncompliance issues.

18 “(3) ANNUAL REPORTS REQUIRED.—

19 “(A) IN GENERAL.—The compliance offi-
20 cer shall annually prepare and sign a report on
21 the compliance of the derivatives clearing orga-
22 nization with this Act and the policies and pro-
23 cedures of the organization, including the code
24 of ethics and conflict of interest policies of the

1 organization, in accordance with rules pre-
2 scribed by the Commission.

3 “(B) SUBMISSION.—The compliance report
4 required under subparagraph (A) shall accom-
5 pany the financial reports of the derivatives
6 clearing organization that are required to be
7 furnished to the Commission pursuant to this
8 section and shall include a certification that,
9 under penalty of law, the report is accurate and
10 complete.”

11 (3) CORE PRINCIPLES.—Section 5b(c)(2) of the
12 Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)) is
13 amended to read as follows:

14 “(2) CORE PRINCIPLES FOR DERIVATIVES
15 CLEARING ORGANIZATIONS.—

16 “(A) COMPLIANCE.—

17 “(i) IN GENERAL.—To be registered
18 and to maintain registration as a deriva-
19 tives clearing organization, a derivatives
20 clearing organization shall comply with the
21 core principles established in this para-
22 graph and any requirement that the Com-
23 mission may impose by rule or regulation
24 pursuant to section 8a(5).

1 “(ii) REASONABLE DISCRETION.—Ex-
2 cept where the Commission determines
3 otherwise by rule or regulation, a deriva-
4 tives clearing organization shall have rea-
5 sonable discretion in establishing the man-
6 ner in which it complies with the core prin-
7 ciples established in this paragraph.

8 “(B) FINANCIAL RESOURCES.—

9 “(i) IN GENERAL.—Each derivatives
10 clearing organization shall have adequate
11 financial, operational, and managerial re-
12 sources to discharge its responsibilities.

13 “(ii) MINIMUM RESOURCES.—The fi-
14 nancial resources of each derivatives clear-
15 ing organization shall, at a minimum, ex-
16 ceed the total amount that would—

17 “(I) enable the organization to
18 meet its financial obligations to its
19 members and participants notwith-
20 standing a default by the member or
21 participant creating the largest finan-
22 cial exposure for that organization in
23 extreme but plausible market condi-
24 tions; and

1 “(II) enable the organization to
2 cover its operating costs for a period
3 of 1 year, calculated on a rolling
4 basis.

5 “(C) PARTICIPANT AND PRODUCT ELIGI-
6 BILITY.—

7 “(i) STANDARDS.—Each derivatives
8 clearing organization shall establish—

9 “(I) appropriate admission and
10 continuing eligibility standards (in-
11 cluding sufficient financial resources
12 and operational capacity to meet obli-
13 gations arising from participation in
14 the derivatives clearing organization)
15 for members of and participants in
16 the organization; and

17 “(II) appropriate standards for
18 determining eligibility of agreements,
19 contracts, or transactions submitted
20 to the organization for clearing.

21 “(ii) ONGOING VERIFICATION.—Each
22 derivatives clearing organization shall have
23 procedures in place to verify that its par-
24 ticipation and membership requirements
25 are met on an ongoing basis.

1 “(iii) FAIR STANDARDS.—Each de-
2 derivatives clearing organization’s partici-
3 pation and membership requirements shall be
4 objective, publicly disclosed, and permit
5 fair and open access.

6 “(D) RISK MANAGEMENT.—

7 “(i) IN GENERAL.—Each derivatives
8 clearing organization shall have the ability
9 to manage the risks associated with dis-
10 charging the responsibilities of a deriva-
11 tives clearing organization through the use
12 of appropriate tools and procedures.

13 “(ii) CREDIT EXPOSURE.—Each de-
14 rivatives clearing organization shall meas-
15 ure its credit exposures to its members and
16 participants at least once each business
17 day and shall monitor such exposures
18 throughout the business day.

19 “(iii) LIMITING EXPOSURE.—Through
20 margin requirements and other risk control
21 mechanisms, a derivatives clearing organi-
22 zation shall limit its exposures to potential
23 losses from defaults by its members and
24 participants so that the operations of the
25 organization would not be disrupted and

1 nondefaulting members or participants
2 would not be exposed to losses that such
3 members or participants cannot anticipate
4 or control.

5 “(iv) MARGIN REQUIREMENTS.—The
6 margin required by a derivatives clearing
7 organization from its members and partici-
8 pants shall be sufficient to cover potential
9 exposures in normal market conditions.

10 “(v) RISK-BASED MARGIN REQUIRE-
11 MENTS.—The models and parameters used
12 by a derivatives clearing organization in
13 setting the margin requirements under
14 clause (iv) shall be risk-based and reviewed
15 regularly.

16 “(E) SETTLEMENT PROCEDURES.—Each
17 derivatives clearing organization shall—

18 “(i) complete money settlements on a
19 timely basis, and not less than once each
20 business day;

21 “(ii) employ money settlement ar-
22 rangements that eliminate or strictly limit
23 the exposure of the organization to settle-
24 ment bank risks, such as credit and liquid-

1 ity risks from the use of banks to effect
2 money settlements;

3 “(iii) ensure money settlements are
4 final when effected;

5 “(iv) maintain an accurate record of
6 the flow of funds associated with each
7 money settlement;

8 “(v) have the ability to comply with
9 the terms and conditions of any permitted
10 netting or offset arrangements with other
11 clearing organizations;

12 “(vi) for physical settlements, estab-
13 lish rules that clearly state the obligations
14 of the organization with respect to physical
15 deliveries; and

16 “(vii) identify and manage the risks
17 from the obligations described under clause
18 (vi).

19 “(F) TREATMENT OF FUNDS.—

20 “(i) SAFETY OF FUNDS.—Each de-
21 rivatives clearing organization shall have
22 standards and procedures designed to pro-
23 tect and ensure the safety of member and
24 participant funds and assets.

1 and liquidity pressures and to continue
2 meeting its obligations.

3 “(iii) PUBLIC AVAILABILITY.—The de-
4 fault procedures of each derivatives clear-
5 ing organization shall be publicly available.

6 “(H) ENFORCEMENT.—Each derivatives
7 clearing organization shall—

8 “(i) maintain adequate arrangements
9 and resources for the effective—

10 “(I) monitoring and enforcement
11 of compliance with the rules of the or-
12 ganization; and

13 “(II) resolution of disputes; and

14 “(ii) have the authority and ability to
15 discipline, limit, suspend, or terminate the
16 activities of a member or participant for
17 violations of the rules of the organization.

18 “(I) SYSTEM SAFEGUARDS.—Each deriva-
19 tives clearing organization shall—

20 “(i) establish and maintain a program
21 of risk analysis and oversight to identify
22 and minimize sources of operational risk
23 through the development of appropriate
24 controls and procedures, and the develop-
25 ment of automated systems, that are reli-

1 able, secure, and have adequate scalable
2 capacity;

3 “(ii) establish and maintain emer-
4 gency procedures, backup facilities, and a
5 plan for disaster recovery that allows for
6 the timely recovery and resumption of op-
7 erations and the fulfillment of the respon-
8 sibilities and obligations of the organiza-
9 tion; and

10 “(iii) periodically conduct tests to
11 verify that backup resources are sufficient
12 to ensure daily processing, clearing, and
13 settlement.

14 “(J) REPORTING.—Each derivatives clear-
15 ing organization shall provide to the Commis-
16 sion all information necessary for the Commis-
17 sion to conduct oversight of the organization.

18 “(K) RECORDKEEPING.—Each derivatives
19 clearing organization shall maintain for a pe-
20 riod of 5 years records of all activities related
21 to the business of the organization as a deriva-
22 tives clearing organization in a form and man-
23 ner acceptable to the Commission.

24 “(L) PUBLIC INFORMATION.—

1 “(i) IN GENERAL.—Each derivatives
2 clearing organization shall provide market
3 participants with sufficient information to
4 identify and evaluate accurately the risks
5 and costs associated with using the serv-
6 ices of the organization.

7 “(ii) AVAILABILITY OF RULES.—Each
8 derivatives clearing organization shall
9 make information concerning the rules and
10 operating procedures governing the clear-
11 ing and settlement systems (including de-
12 fault procedures) of the organization avail-
13 able to market participants.

14 “(iii) ADDITIONAL DISCLOSURES.—
15 Each derivatives clearing organization shall
16 disclose publicly, and to the Commission,
17 information concerning—

18 “(I) the terms and conditions of
19 contracts, agreements, and trans-
20 actions cleared and settled by the or-
21 ganization;

22 “(II) clearing and other fees that
23 the organization charges its members
24 and participants;

1 “(III) the margin-setting method-
2 ology and the size and composition of
3 the financial resource package of the
4 organization;

5 “(IV) other information relevant
6 to participation in the settlement and
7 clearing activities of the organization;
8 and

9 “(V) daily settlement prices, vol-
10 ume, and open interest for all con-
11 tracts settled or cleared by the organi-
12 zation.

13 “(M) INFORMATION-SHARING.—Each de-
14 rivatives clearing organization shall—

15 “(i) enter into and abide by the terms
16 of all appropriate and applicable domestic
17 and international information-sharing
18 agreements; and

19 “(ii) use relevant information obtained
20 from the agreements in carrying out the
21 risk management program of the organiza-
22 tion.

23 “(N) ANTITRUST CONSIDERATIONS.—Un-
24 less appropriate to achieve the purposes of this

1 chapter, a derivatives clearing organization
2 shall avoid—

3 “(i) adopting any rule or taking any
4 action that results in any unreasonable re-
5 straint of trade; or

6 “(ii) imposing any material anti-
7 competitive burden.

8 “(O) GOVERNANCE FITNESS STAND-
9 ARDS.—

10 “(i) TRANSPARENCY.—Each deriva-
11 tives clearing organization shall establish
12 governance arrangements that are trans-
13 parent in order to fulfill public interest re-
14 quirements and to support the objectives of
15 owners and participants.

16 “(ii) FITNESS STANDARDS.—Each de-
17 rivatives clearing organization shall estab-
18 lish and enforce appropriate fitness stand-
19 ards for directors, members of any discipli-
20 nary committee, and members of the orga-
21 nization, and any other persons with direct
22 access to the settlement or clearing activi-
23 ties of the organization, including any par-
24 ties affiliated with any of the persons de-
25 scribed in this clause.

1 “(P) CONFLICTS OF INTEREST.—Each de-
2 derivatives clearing organization shall establish
3 and enforce rules to minimize conflicts of inter-
4 est in the decision-making process of the orga-
5 nization and establish a process for resolving
6 such conflicts of interest.

7 “(Q) COMPOSITION OF THE BOARDS.—
8 Each derivatives clearing organization shall en-
9 sure that the composition of the governing
10 board or committee includes market partici-
11 pants.

12 “(R) LEGAL RISK.—Each derivatives clear-
13 ing organization shall have a well-founded,
14 transparent, and enforceable legal framework
15 for each aspect of its activities.”.

16 (4) REPORTING.—Section 5b of the Commodity
17 Exchange Act (7 U.S.C. 7a-1) is further amended
18 by adding after subsection (j), as added by this sec-
19 tion, the following:

20 “(k) REPORTING.—

21 “(1) TRANSPARENCY.—

22 “(A) IN GENERAL.—A derivatives clearing
23 organization that clears swaps shall provide to
24 the Commission and any swap repository des-
25 ignated by the Commission all information de-

1 terminated by the Commission to be necessary to
2 perform its responsibilities under this Act.

3 “(B) DATA COLLECTION REQUIRE-
4 MENTS.—The Commission shall adopt data col-
5 lection and maintenance requirements for swaps
6 cleared by derivatives clearing organizations
7 that are comparable to the corresponding re-
8 quirements for swaps accepted by swap reposi-
9 tories and swaps traded on alternative swap
10 execution facilities.

11 “(C) REPORTS ON SECURITY-BASED SWAP
12 AGREEMENTS TO BE SHARED WITH THE SECU-
13 RITIES AND EXCHANGE COMMISSION.—A de-
14 rivatives clearing organization that clears secu-
15 rity-based swap agreements (as defined in sec-
16 tion 3(a)(76) of the Securities Exchange Act)
17 shall, upon request for the protection of inves-
18 tors and in the public interest, make available
19 to the Securities and Exchange Commission all
20 information relating to such security-based
21 swap agreements.

22 “(D) SHARING OF INFORMATION.—Subject
23 to section 8, the Commission shall share such
24 information, upon request, with the Board, the
25 Securities and Exchange Commission, the ap-

1 appropriate Federal banking agencies, FIRA, the
2 Agency for Financial Stability, and the Depart-
3 ment of Justice or to other persons the Com-
4 mission deems appropriate, including foreign fi-
5 nancial supervisors (including foreign futures
6 authorities), foreign central banks, and foreign
7 ministries.

8 “(2) PUBLIC INFORMATION.—A derivatives
9 clearing organization that clears swaps shall provide
10 to the Commission, or its designee, such information
11 as is required by, and in a form and at a frequency
12 to be determined by, the Commission, in order to
13 comply with the public reporting requirements con-
14 tained in section 8(j).”.

15 (5) TECHNICAL CHANGE.—Section 8(e) of the
16 Commodity Exchange Act (7 U.S.C. 12(e)) is
17 amended in the last sentence—

18 (A) by inserting “, central bank and min-
19 istries,” after “department” each place that
20 term appears; and

21 (B) by striking “futures authority.” and
22 inserting “futures authority.”.

23 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING
24 PRODUCTS.—

1 (1) REPEAL.—Sections 402(d), 404, 407,
2 408(b), and 408(c)(2) of the Legal Certainty for
3 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,
4 27e, 27f(b), and 27f(c)(2)) are repealed.

5 (2) LEGAL CERTAINTY.—Section 403 of the
6 Legal Certainty for Bank Products Act of 2000 (7
7 U.S.C. 27a) is amended to read as follows:

8 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

9 “(a) EXCLUSION.—Except as provided in subsections
10 (b) or (c), neither of the Commodity Exchange Act, nor
11 the Securities Act of 1933, nor the Securities Exchange
12 Act of 1934 shall apply to, and the Commodity Futures
13 Trading Commission and the Securities and Exchange
14 Commission shall not exercise regulatory authority under
15 such statutes with respect to, an identified banking prod-
16 uct.

17 “(b) EXCEPTION.—An appropriate Federal banking
18 agency may except an identified banking product or a
19 bank under the jurisdiction of such agency from the exclu-
20 sion in subsection (a) if the agency determines, in con-
21 sultation with the Commodity Futures Trading Commis-
22 sion and the Securities and Exchange Commission, that
23 the product—

24 “(1) would meet the definition of swap in sec-
25 tion 1a(35) of the Commodity Exchange Act (7

1 U.S.C. 1a(35)) or security-based swap in section
2 1a(38) of the Commodity Exchange Act (7 U.S.C.
3 1a(38)); and

4 “(2) has become known to the trade as a swap
5 or security-based swap, or otherwise has been struc-
6 tured as an identified banking product for the pur-
7 pose of evading the provisions of the Commodity Ex-
8 change Act (7 U.S.C. 1 et seq.), the Securities Act
9 of 1933 (15 U.S.C. 77a et seq.), or the Securities
10 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

11 “(c) ADDITIONAL EXCEPTIONS.—The exclusion in
12 subsection (a) shall not apply to an identified banking
13 product that—

14 “(1) is a product of a bank that is not under
15 the regulatory jurisdiction of an appropriate Federal
16 banking agency;

17 “(2) is a swap, or satisfies all the requirements
18 for a swap, as such term and requirements are es-
19 tablished in section 1(a)(35) of the Commodity Ex-
20 change Act;

21 “(3) is a security-based swap, or satisfies all
22 the requirements for a security-based swap, as such
23 term and requirements are established in section
24 3(a)(68) of the Securities Exchange Act of 1934; or

25 “(4) has—

1 “(A) become known to the trade as a swap
2 or security-based swap; or

3 “(B) been structured as an identified
4 banking product for the purpose of evading the
5 provisions of the Commodity Exchange Act (7
6 U.S.C. 1 et seq.), the Securities Act of 1933
7 (15 U.S.C. 77a et seq.), or the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78a et seq.)”.

9 **SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

10 Section 8 of the Commodity Exchange Act (7 U.S.C.
11 12) is amended by adding at the end the following:

12 “(j) PUBLIC REPORTING OF AGGREGATE SWAP
13 DATA.—

14 “(1) IN GENERAL.—The Commission, or a per-
15 son designated by the Commission pursuant to para-
16 graph (2), shall make available to the public, in a
17 manner that does not disclose the business trans-
18 actions and market positions of any person, aggre-
19 gate data on swap trading volumes and positions
20 from the sources set forth in paragraph (3).

21 “(2) DESIGNEE OF THE COMMISSION.—The
22 Commission may designate a derivatives clearing or-
23 ganization or a swap repository to carry out the
24 public reporting described in paragraph (1).

1 “(3) SOURCES OF INFORMATION.—The sources
2 of the information to be publicly reported as de-
3 scribed in paragraph (1) are—

4 “(A) derivatives clearing organizations
5 pursuant to section 5b(k)(2);

6 “(B) swap repositories pursuant to section
7 21(c)(3); and

8 “(C) reports received by the Commission
9 pursuant to section 4r.”.

10 **SEC. 715. SWAP REPOSITORIES.**

11 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
12 is amended by inserting after section 20 the following:

13 **“SEC. 21. SWAP REPOSITORIES.**

14 “(a) REGISTRATION REQUIREMENT.—

15 “(1) IN GENERAL.—A person may register as a
16 swap repository by filing with the Commission an
17 application in such form as the Commission, by rule,
18 may prescribe, containing the rules of the swap re-
19 pository and such other information and documenta-
20 tion as the Commission, by rule, may prescribe as
21 necessary or appropriate in the public interest, for
22 the protection of investors, or in the furtherance of
23 the purposes of this section.

24 “(2) INSPECTION AND EXAMINATION.—Reg-
25 istered swap repositories shall be subject to inspec-

1 tion and examination by any representative of the
2 Commission.

3 “(3) SHARING OF INFORMATION WITH SECURI-
4 TIES AND EXCHANGE COMMISSION.—Registered
5 swap repositories shall make available to the Securi-
6 ties and Exchange Commission, upon request, all in-
7 formation relating to security-based swap agree-
8 ments that are maintained by such swap repository.

9 “(b) STANDARD SETTING.—

10 “(1) DATA IDENTIFICATION.—The Commission
11 shall prescribe standards that specify the data ele-
12 ments for each swap that shall be collected and
13 maintained by each registered swap repository.

14 “(2) DATA COLLECTION AND MAINTENANCE.—
15 The Commission shall prescribe data collection and
16 data maintenance standards for swap repositories.

17 “(3) COMPARABILITY.—The standards pre-
18 scribed by the Commission under this subsection
19 shall be comparable to the data standards imposed
20 by the Commission on derivatives clearing organiza-
21 tions that clear swaps.

22 “(c) DUTIES.—A swap repository shall—

23 “(1) accept data prescribed by the Commission
24 for each swap under subsection (b);

1 “(2) maintain such data in such form and man-
2 ner and for such period as may be required by the
3 Commission;

4 “(3) provide to the Commission, or its designee,
5 such information as is required by, and in a form
6 and at a frequency to be determined by, the Com-
7 mission, in order to comply with the public reporting
8 requirements contained in section 8(j); and

9 “(4) make available, on a confidential basis
10 pursuant to section 8, all data obtained by the swap
11 repository, including individual counterparty trade
12 and position data, to the Commission, the appro-
13 priate Federal banking agencies, the Agency for Fi-
14 nancial Stability, the Securities and Exchange Com-
15 mission, and the Department of Justice or to other
16 persons the Commission deems appropriate, includ-
17 ing foreign financial supervisors (including foreign
18 futures authorities), foreign central banks, and for-
19 eign ministries.

20 “(d) REQUIRED REGISTRATION FOR SECURITY-
21 BASED SWAP REPOSITORIES.—Any person that is re-
22 quired to be registered as a swap repository under this
23 section shall register with the Commission regardless of
24 whether that person also is registered with the Securities

1 and Exchange Commission as a security-based swap re-
2 pository.

3 “(e) HARMONIZATION OF RULES.—Not later than
4 180 days after the effective date of the Over-the-Counter
5 Derivatives Markets Act of 2009, the Commission and the
6 Securities and Exchange Commission shall jointly adopt
7 uniform rules governing persons that are registered under
8 this section and persons that are registered as security-
9 based swap repositories under the Securities Exchange
10 Act of 1934 (15 U.S.C. 78a et seq.), including uniform
11 rules that specify the data elements that shall be collected
12 and maintained by each repository.

13 “(f) EXEMPTIONS.—The Commission may exempt,
14 conditionally or unconditionally, a swap repository from
15 the requirements of this section if the Commission finds
16 that such swap repository is subject to comparable, com-
17 prehensive supervision and regulation on a consolidated
18 basis by the Securities and Exchange Commission, the Fi-
19 nancial Institutions Regulatory Administration, or the ap-
20 propriate governmental authorities in the organization’s
21 home country.”.

22 **SEC. 716. REPORTING AND RECORDKEEPING.**

23 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
24 is amended by inserting after section 4q the following:

1 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**
2 **SWAPS.**

3 “(a) IN GENERAL.—Any person who enters into a
4 swap shall satisfy the reporting requirements of subsection
5 (b), if such person—

6 “(1) did not clear the swap in accordance with
7 section 2(j)(1); and

8 “(2) did not have data regarding the swap ac-
9 cepted by a swap repository in accordance with rules
10 (including time frames) adopted by the Commission
11 under section 21.

12 “(b) REPORTS.—Any person described in subsection
13 (a) shall—

14 “(1) make such reports in such form and man-
15 ner and for such period as the Commission shall pre-
16 scribe by rule or regulation regarding the swaps held
17 by the person; and

18 “(2) keep books and records pertaining to the
19 swaps held by the person in such form and manner
20 and for such period as may be required by the Com-
21 mission, which books and records shall be open to
22 inspection by any representative of the Commission,
23 an appropriate Federal banking agency, the Securi-
24 ties and Exchange Commission, the Agency for Fi-
25 nancial Stability, and the Department of Justice.

1 “(c) IDENTICAL DATA.—In adopting rules under this
2 section, the Commission shall require persons described in
3 subsection (a) to report the same or a more comprehensive
4 set of data than the Commission requires swap reposi-
5 tories to collect under section 21.”

6 **SEC. 717. REGISTRATION AND REGULATION OF SWAP DEAL-**
7 **ERS AND MAJOR SWAP PARTICIPANTS.**

8 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
9 is amended by inserting after section 4r (as added by sec-
10 tion 716) the following:

11 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
12 **ERS AND MAJOR SWAP PARTICIPANTS.**

13 “(a) REGISTRATION.—It shall be unlawful for any
14 person—

15 “(1) to act as a swap dealer unless such person
16 is registered as a swap dealer with the Commission;
17 and

18 “(2) to act as a major swap participant unless
19 such person shall have registered as a major swap
20 participant with the Commission.

21 “(b) REQUIREMENTS.—

22 “(1) IN GENERAL.—A person shall register as
23 a swap dealer or major swap participant by filing a
24 registration application with the Commission.

1 “(2) CONTENTS.—The application required
2 under paragraph (1) shall be made in such form and
3 manner as prescribed by the Commission, giving any
4 information and facts as the Commission may deem
5 necessary concerning the business in which the ap-
6 plicant is or will be engaged. Such person, when reg-
7 istered as a swap dealer or major swap participant,
8 shall continue to report and furnish to the Commis-
9 sion such information pertaining to such person’s
10 business as the Commission may require.

11 “(3) EXPIRATION.—Each registration shall ex-
12 pire at such time as the Commission may by rule or
13 regulation prescribe.

14 “(4) RULES.—Except as provided in sub-
15 sections (c), (d), and (e), the Commission may pre-
16 scribe rules applicable to swap dealers and major
17 swap participants, including rules that limit the ac-
18 tivities of swap dealers and major swap participants.

19 “(5) TRANSITION.—Rules adopted under this
20 section shall provide for the registration of swap
21 dealers and major swap participants not later than
22 1 year after the effective date of the Over-the-
23 Counter Derivatives Markets Act of 2009.

24 “(6) STATUTORY DISQUALIFICATION.—Except
25 to the extent otherwise specifically provided by rule,

1 regulation, or order, it shall be unlawful for a swap
2 dealer or a major swap participant to permit any
3 person associated with a swap dealer or a major
4 swap participant who is subject to a statutory dis-
5 qualification to effect or be involved in effecting
6 swaps on behalf of such swap dealer or major swap
7 participant, if such swap dealer or major swap par-
8 ticipant knew, or in the exercise of reasonable care
9 should have known, of such statutory disqualifica-
10 tion.

11 “(c) DUAL REGISTRATION.—

12 “(1) SWAP DEALER.—Any person that is re-
13 quired to be registered as a swap dealer under this
14 section shall register with the Commission regardless
15 of whether that person also is a bank or is registered
16 with the Securities and Exchange Commission as a
17 security-based swap dealer.

18 “(2) MAJOR SWAP PARTICIPANT.—Any person
19 that is required to be registered as a major swap
20 participant under this section shall register with the
21 Commission regardless of whether that person also
22 is a bank or is registered with the Securities and
23 Exchange Commission as a major security-based
24 swap participant.

25 “(d) JOINT RULES.—

1 “(1) IN GENERAL.—Not later than 180 days
2 after the effective date of the Over-the-Counter De-
3 rivatives Markets Act of 2009, the Commission and
4 the Securities and Exchange Commission shall joint-
5 ly adopt uniform rules for persons that are reg-
6 istered—

7 “(A) as swap dealers or major swap par-
8 ticipants under this section; and

9 “(B) as security-based swap dealers or
10 major security-based swap participants under
11 the Securities Exchange Act of 1934 (15
12 U.S.C. 78a et seq.).

13 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
14 MENTS.—The Commission and the Securities and
15 Exchange Commission shall not prescribe rules im-
16 posing prudential requirements (including activity
17 restrictions) on swap dealers, major swap partici-
18 pants, security-based swap dealers, or major secu-
19 rity-based swap participants for which the Financial
20 Institutions Regulatory Administration is the pri-
21 mary financial regulatory agency. This provision
22 shall not be construed as limiting the authority of
23 the Commission and the Securities and Exchange
24 Commission to prescribe appropriate business con-

1 duct, reporting, and recordkeeping requirements to
2 protect investors.

3 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

4 “(1) IN GENERAL.—

5 “(A) BANK SWAP DEALERS AND MAJOR
6 SWAP PARTICIPANTS.—Each registered swap
7 dealer and major swap participant for which
8 the Financial Institutions Regulatory Adminis-
9 tration is the primary financial regulatory agen-
10 cy shall meet such minimum capital require-
11 ments and minimum initial and variation mar-
12 gin requirements as prescribed under paragraph
13 (2)(A) to help ensure the safety and soundness
14 as FIRA shall by rule or regulation prescribe to
15 help ensure the safety and soundness of the
16 swap dealer or major swap participant.

17 “(B) NONBANK SWAP DEALERS AND
18 MAJOR SWAP PARTICIPANTS.—Each registered
19 swap dealer and major swap participant for
20 which the Financial Institutions Regulatory Ad-
21 ministration is not the primary financial regu-
22 latory agency shall meet such minimum capital
23 requirements and minimum initial and variation
24 margin requirements as prescribed under para-
25 graph (2)(B) to help ensure the safety and

1 soundness as the Commission and the Securi-
2 ties and Exchange Commission shall by rule or
3 regulation jointly prescribe to help ensure the
4 safety and soundness of the swap dealer or
5 major swap participant.

6 “(2) JOINT RULES.—

7 “(A) BANK SWAP DEALERS AND MAJOR
8 SWAP PARTICIPANTS.—Within 180 days of the
9 date of the enactment of the Over-the-Counter
10 Derivatives Markets Act of 2009, the Financial
11 Institutions Regulatory Administration, the
12 Commission, and the Securities and Exchange
13 Commission, shall jointly adopt rules imposing
14 capital and margin requirements under this
15 subsection for swap dealers and major swap
16 participants for which FIRA is the primary reg-
17 ulatory agency.

18 “(B) NONBANK SWAP DEALERS AND
19 MAJOR SWAP PARTICIPANTS.—Within 180 days
20 of the date of the enactment of the Over-the-
21 Counter Derivatives Markets Act of 2009, the
22 Commission, the Securities and Exchange Com-
23 mission, and the Financial Institutions Regu-
24 latory Administration, shall jointly adopt rules
25 imposing capital and margin requirements

1 under this subsection for swap dealers and
2 major swap participants for which FIRA is not
3 the primary financial regulatory agency.

4 “(3) CAPITAL.—

5 “(A) BANK SWAP DEALERS AND MAJOR
6 SWAP PARTICIPANTS.—The capital require-
7 ments prescribed under paragraph (2)(A) for
8 bank swap dealers and major swap participants
9 shall contain—

10 “(i) a capital requirement that is
11 greater than zero for swaps that are
12 cleared by a derivatives clearing organiza-
13 tion or a derivatives clearing organization
14 that is exempt from registration under sec-
15 tion 5b(j) of this Act; and

16 “(ii) to offset the greater risk to the
17 swap dealer or major swap participant and
18 to the financial system arising from the
19 use of swaps that are not centrally cleared,
20 substantially higher capital requirements
21 for swaps that are not cleared by a reg-
22 istered derivatives clearing organization or
23 a derivatives clearing organization that is
24 exempt from registration under section

1 5b(j) of this Act than for swaps that are
2 centrally cleared.

3 “(B) NONBANK SWAP DEALERS AND
4 MAJOR SWAP PARTICIPANTS.—The capital re-
5 quirements prescribed under paragraph (2)(B)
6 for nonbank swap dealers and major swap par-
7 ticipants shall be as strict as or stricter than
8 the capital requirements prescribed for bank
9 swap dealers and major swap participants
10 under paragraph (2)(A).

11 “(C) RULE OF CONSTRUCTION.—

12 “(i) IN GENERAL.—Nothing in this
13 section shall limit, or be construed to limit,
14 the authority—

15 “(I) of the Commission to set fi-
16 nancial responsibility rules for a fu-
17 tures commission merchant or intro-
18 ducing broker registered pursuant to
19 section 4f(a) of this title (except for
20 section 4f(a)(3) thereof) in accordance
21 with section 4f(b) of this title; or

22 “(II) the Securities and Ex-
23 change Commission to set financial
24 responsibility rules for a broker or
25 dealer registered pursuant to section

1 15(b) of the Securities Exchange Act
2 of 1934 (except for section 15(b)(11)
3 thereof) in accordance with section
4 15(c)(3) of the Securities and Ex-
5 change Act of 1934.

6 “(ii) FUTURES COMMISSION MER-
7 CHANTS AND OTHER DEALERS.—A futures
8 commission merchant, introducing broker,
9 broker, or dealer shall maintain sufficient
10 capital to comply with the stricter of any
11 applicable capital requirements to which
12 such merchant, introducing broker, broker,
13 or dealer is subject to under this title or
14 the Securities and Exchange Act of 1934.

15 “(4) MARGIN.—

16 “(A) BANK SWAP DEALERS AND MAJOR
17 SWAP PARTICIPANTS.—

18 “(i) IN GENERAL.—The Financial In-
19 stitutions Regulatory Administration shall
20 impose both initial and variation margin
21 requirements in accordance with paragraph
22 (2)(A) for bank swap dealers and major
23 swap participants on all swaps that are not
24 cleared by a registered derivatives clearing
25 organization or a derivatives clearing orga-

1 nization that is exempt from registration
2 under section 5b(j) of this Act.

3 “(ii) EXEMPTION.—The Financial In-
4 stitutions Regulatory Administration by
5 rule or order, as FIRA deems consistent
6 with the public interest, may conditionally
7 or unconditionally exempt a swap dealer or
8 major swap participant for which FIRA is
9 the primary financial regulatory agency
10 from the requirements of this subsection
11 and the rules issued under this subsection
12 with regard to any swap in which 1 of the
13 counterparties is—

14 “(I) not a swap dealer, major
15 swap participant, security-based swap
16 dealer, or a major security-based swap
17 participant;

18 “(II) using the swap as part of
19 an effective hedge under generally ac-
20 cepted accounting principles; and

21 “(III) predominantly engaged in
22 activities that are not financial in na-
23 ture, as defined in section 4(k) of the
24 Bank Holding Company Act of 1956
25 (12 U.S.C. 1843(k)).

1 “(iii) DETERMINATION OF THE AGEN-
2 CY FOR FINANCIAL STABILITY.—The Fi-
3 nancial Institutions Regulatory Adminis-
4 tration may act by rule or order to exempt
5 a swap dealer or major swap participant
6 for which FIRA is the primary financial
7 regulatory agency from any requirement or
8 rule under this subsection only if—

9 “(I) FIRA has provided a written
10 notice to the Agency Financial Sta-
11 bility describing the proposed exemp-
12 tion; and

13 “(II) the Agency Financial Sta-
14 bility has not made a determination
15 and notified FIRA within 60 days of
16 receipt of such notice that such ex-
17 emption would pose a threat to the
18 stability of the United States financial
19 system.

20 “(iv) NONDELEGATION.—Actions by
21 the Agency for Financial Stability under
22 clause (iii) may not be delegated.

23 “(B) NONBANK SWAP DEALERS AND
24 MAJOR SWAP PARTICIPANTS.—

1 dealer, or a major security-based swap
2 participant;

3 “(II) using the swap as part of
4 an effective hedge under generally ac-
5 cepted accounting principles; and

6 “(III) predominantly engaged in
7 activities that are not financial in na-
8 ture, as defined in section 4(k) of the
9 Bank Holding Company Act of 1956
10 (12 U.S.C. 1843(k)).

11 “(iii) DETERMINATION OF THE AGEN-
12 CY FOR FINANCIAL STABILITY.—The Com-
13 mission may act by rule or order to exempt
14 a nonbank swap dealer or major swap par-
15 ticipant from any requirement or rule
16 under this subsection only if —

17 “(I) the Commission has pro-
18 vided a written notice to the Agency
19 for Financial Stability describing the
20 proposed exemption; and

21 “(II) the Agency for Financial
22 Stability has not made a determina-
23 tion and notified the Commission
24 within 60 days of receipt of such no-
25 tice that such exemption would pose a

1 threat to the stability of the United
2 States financial system.

3 “(iv) NONDELEGATION.—Action by
4 the Securities and Exchange Commission
5 or the Agency for Financial Stability under
6 this subparagraph may not be delegated.

7 “(5) MARGIN REQUIREMENTS.—In prescribing
8 margin requirements under this subsection, the Fi-
9 nancial Institutions Regulatory Administration, the
10 Commission, and the Securities Exchange Commis-
11 sion may permit the use of noncash collateral, as
12 FIRA, the Commission, or the Securities Exchange
13 Commission determines to be consistent with—

14 “(A) preserving the financial integrity of
15 markets trading swaps; and

16 “(B) preserving the stability of the United
17 States financial system.

18 “(6) REQUESTED MARGIN.—If any party to a
19 swap that is exempt from the margin requirements
20 of paragraph (4)(A)(i) pursuant to the provisions of
21 paragraph (4)(A)(ii) or from the margin require-
22 ments of paragraph (4)(B)(i) pursuant to the provi-
23 sions of paragraph (4)(B)(ii) requests that such
24 swap be margined, then—

25 “(A) the exemption shall not apply; and

1 “(B) the counterparty to such swap shall
2 provide the requested margin.

3 “(f) REPORTING AND RECORDKEEPING.—

4 “(1) IN GENERAL.—Each registered swap deal-
5 er and major swap participant—

6 “(A) shall make such reports as are pre-
7 scribed by the Commission by rule or regulation
8 regarding the transactions and positions and fi-
9 nancial condition of such dealer or participant;

10 “(B) for which—

11 “(i) the Financial Institutions Regu-
12 latory Administration is the primary finan-
13 cial regulatory agency shall keep books and
14 records of all activities related to its busi-
15 ness as a swap dealer or major swap par-
16 ticipant in such form and manner and for
17 such period as may be prescribed by the
18 Commission by rule or regulation; and

19 “(ii) the Financial Institutions Regu-
20 latory Administration is not the primary fi-
21 nancial regulatory agency shall keep books
22 and records in such form and manner and
23 for such period as may be prescribed by
24 the Commission by rule or regulation; and

1 “(C) shall keep such books and records
2 open to inspection and examination by any rep-
3 resentative of the Commission.

4 “(2) RULES.—Within 1 year of the date of the
5 enactment of the Over-the-Counter Derivatives Mar-
6 kets Act of 2009, the Commission and the Securities
7 and Exchange Commission, in consultation with the
8 appropriate Federal banking agencies, shall jointly
9 adopt rules governing reporting and recordkeeping
10 for swap dealers, major swap participants, security-
11 based swap dealers, and major security-based swap
12 participants.

13 “(g) DAILY TRADING RECORDS.—

14 “(1) IN GENERAL.—Each registered swap deal-
15 er and major swap participant shall, for such period
16 as may be prescribed by the Commission by rule or
17 regulation, maintain daily trading records of that
18 dealer’s or participant’s—

19 “(A) swaps and all related records (includ-
20 ing related cash or forward transactions); and

21 “(B) recorded communications, including
22 the electronic mail, instant messages, and re-
23 cordings of telephone calls.

24 “(2) INFORMATION REQUIREMENTS.—The daily
25 trading records required to be maintained under

1 paragraph (1) shall include such information as the
2 Commission shall prescribe by rule or regulation.

3 “(3) CUSTOMER RECORDS.—Each registered
4 swap dealer and major swap participant shall main-
5 tain daily trading records for each customer or
6 counterparty in such manner and form as to be
7 identifiable with each swap transaction.

8 “(4) AUDIT TRAIL.—

9 “(A) MAINTENANCE OF AUDIT TRAIL.—
10 Each registered swap dealer and major swap
11 participant shall maintain a complete audit trail
12 for conducting comprehensive and accurate
13 trade reconstructions.

14 “(B) PERMISSIBLE COMPLIANCE BY ENTI-
15 TY OTHER THAN DEALER OR PARTICIPANT.—A
16 registered swap repository may, at the request
17 of a registered swap dealer or major swap par-
18 ticipant, satisfy the requirement of subpara-
19 graph (A) on behalf of such registered swap
20 dealer or major swap participant.

21 “(5) RULES.—Within 1 year of the date of the
22 enactment of the Over-the-Counter Derivatives Mar-
23 kets Act of 2009, the Commission and the Securities
24 and Exchange Commission, in consultation with the
25 appropriate Federal banking agencies, shall jointly

1 adopt rules governing daily trading records for swap
2 dealers, major swap participants, security-based
3 swap dealers, and major security-based swap partici-
4 pants.

5 “(h) BUSINESS CONDUCT STANDARDS.—

6 “(1) IN GENERAL.—Each registered swap deal-
7 er and major swap participant shall conform with
8 such business conduct standards as may be pre-
9 scribed by the Commission by rule or regulation, in-
10 cluding any standards addressing—

11 “(A) fraud, manipulation, and other abu-
12 sive practices involving swaps (including swaps
13 that are offered but not entered into);

14 “(B) diligent supervision of its business as
15 a swap dealer;

16 “(C) adherence to all applicable position
17 limits; and

18 “(D) such other matters as the Commis-
19 sion shall determine to be necessary or appro-
20 priate.

21 “(2) BUSINESS CONDUCT REQUIREMENTS.—

22 Business conduct requirements adopted by the Com-
23 mission pursuant to paragraph (1) shall—

24 “(A) establish the standard of care for a
25 swap dealer or major swap participant to verify

1 that any counterparty meets the eligibility
2 standards for an eligible contract participant;

3 “(B) require disclosure by the swap dealer
4 or major swap participant to any counterparty
5 to the transaction (other than a swap dealer,
6 major swap participant, security-based swap
7 dealer, or major security-based swap partici-
8 pant) of—

9 “(i) information about the material
10 risks and characteristics of the swap;

11 “(ii) the source and amount of any
12 fees or other material remuneration that
13 the swap dealer or major swap participant
14 would directly or indirectly expect to re-
15 ceive in connection with the swap; and

16 “(iii) any other material incentives or
17 conflicts of interest that the swap dealer or
18 major swap participant may have in con-
19 nection with the swap;

20 “(C) establish a standard of conduct for a
21 swap dealer or major swap participant to com-
22 municate in a fair and balanced manner based
23 on principles of fair dealing and good faith;

24 “(D) establish a standard of conduct for a
25 swap dealer or major swap participant, with re-

1 spect to a counterparty that is an eligible con-
2 tract participant within the meaning of sub-
3 clause (I) or (II) of clause (vii) of section
4 1a(13) of this Act, to have a reasonable basis
5 to believe that the counterparty has an inde-
6 pendent representative that—

7 “(i) has sufficient knowledge to evalu-
8 ate the transaction and risks;

9 “(ii) is not subject to a statutory dis-
10 qualification;

11 “(iii) is independent of the swap deal-
12 er or major swap participant;

13 “(iv) undertakes a duty to act in the
14 best interests of the counterparty it rep-
15 resents;

16 “(v) makes appropriate disclosures;
17 and

18 “(vi) will provide written representa-
19 tions to the eligible contract participant re-
20 garding fair pricing and the appropriate-
21 ness of the transaction; and

22 “(E) establish such other standards and
23 requirements as the Commission may determine
24 are necessary or appropriate in the public inter-

1 est, for the protection of investors, or otherwise
2 in furtherance of the purposes of this title.

3 “(3) RULES.—Not later than 1 year after the
4 date of enactment of the Over-the-Counter Deriva-
5 tives Markets Act of 2009, the Commission and the
6 Securities and Exchange Commission, in consulta-
7 tion with the appropriate Federal banking agencies,
8 shall jointly prescribe rules under this subsection
9 governing business conduct standards for swap deal-
10 ers, major swap participants, security-based swap
11 dealers, and major security-based swap participants.

12 “(i) DOCUMENTATION AND BACK OFFICE STAND-
13 ARDS.—

14 “(1) IN GENERAL.—Each registered swap deal-
15 er and major swap participant shall conform with
16 standards, as may be prescribed by the Commission
17 by rule or regulation, addressing timely and accurate
18 confirmation, processing, netting, documentation,
19 and valuation of all swaps.

20 “(2) RULES.—Not later than 1 year after the
21 date of the enactment of the Over-the-Counter De-
22 rivatives Markets Act of 2009, the Commission and
23 the Securities and Exchange Commission, in con-
24 sultation with the appropriate Federal banking agen-
25 cies, shall adopt rules governing documentation and

1 back office standards for swap dealers, major swap
2 participants, security-based swap dealers, and major
3 security-based swap participants.

4 “(j) DEALER RESPONSIBILITIES.—Each registered
5 swap dealer and major swap participant shall, at all times,
6 comply with the following requirements:

7 “(1) MONITORING OF TRADING.—The swap
8 dealer or major swap participant shall monitor its
9 trading in swaps to prevent violations of applicable
10 position limits.

11 “(2) DISCLOSURE OF GENERAL INFORMA-
12 TION.—The swap dealer or major swap participant
13 shall disclose to the Commission and to the Finan-
14 cial Institutions Regulatory Administration informa-
15 tion concerning—

16 “(A) terms and conditions of its swaps;

17 “(B) swap trading operations, mechanisms,
18 and practices;

19 “(C) financial integrity protections relating
20 to swaps; and

21 “(D) other information relevant to its trad-
22 ing in swaps.

23 “(3) ABILITY TO OBTAIN INFORMATION.—The
24 swap dealer or major swap participant shall—

1 “(A) establish and enforce internal systems
2 and procedures to obtain any necessary infor-
3 mation to perform any of the functions de-
4 scribed in this section; and

5 “(B) provide the information to the Com-
6 mission and to the Financial Institutions Regu-
7 latory Administration upon request.

8 “(4) CONFLICTS OF INTEREST.—The swap
9 dealer and major swap participant shall implement
10 conflict of interest systems and procedures that—

11 “(A) establish structural and institutional
12 safeguards to assure that the activities of any
13 person within the firm relating to research or
14 analysis of the price or market for any com-
15 modity are separated by appropriate informa-
16 tional partitions within the firm from the re-
17 view, pressure, or oversight of those whose in-
18 volvement in trading or clearing activities might
19 potentially bias their judgment or supervision;
20 and

21 “(B) address such other issues as the
22 Commission determines appropriate.

23 “(5) ANTITRUST CONSIDERATIONS.—Unless
24 necessary or appropriate to achieve the purposes of

1 this Act, a swap dealer or major swap participant
2 shall avoid—

3 “(A) adopting any processes or taking any
4 actions that result in any unreasonable re-
5 straints of trade; or

6 “(B) imposing any material anticompeti-
7 tive burden on trading.

8 “(k) RULES.—The Commission, the Securities and
9 Exchange Commission, and the Financial Institutions
10 Regulatory Administration shall consult with each other
11 prior to adopting any rules under the Over-the-Counter
12 Derivatives Markets Act of 2009.”.

13 **SEC. 718. SEGREGATION OF ASSETS HELD AS COLLATERAL**
14 **IN SWAP TRANSACTIONS.**

15 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
16 is amended by inserting after section 4s (as added by sec-
17 tion 717) the following:

18 **“SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL**
19 **IN SWAP TRANSACTIONS.**

20 “(a) CLEARED SWAPS.—A swap dealer, futures com-
21 mission merchant, or derivatives clearing organization by
22 or through which funds or other property are held to mar-
23 gin, guarantee, or secure the obligations of a counterparty
24 under a swap to be cleared by or through a derivatives
25 clearing organization shall segregate, maintain, and use

1 the funds or other property for the benefit of the
2 counterparty, in accordance with such rules and regula-
3 tions as the Commission shall prescribe for nonbank swap
4 dealers, futures commission merchants, or derivatives
5 clearing organizations, or the Financial Institutions Regu-
6 latory Administration shall prescribe for bank swap deal-
7 ers. Any such funds or other property shall be treated as
8 customer property under this Act.

9 “(b) OTHER SWAPS.—At the request of a swap
10 counterparty who provides funds or other property to a
11 swap dealer to margin, guarantee, or secure the obliga-
12 tions of the counterparty under a swap between the
13 counterparty and the swap dealer that is not submitted
14 for clearing to a derivatives clearing organization, the
15 swap dealer shall segregate the funds or other property
16 for the benefit of the counterparty, and maintain the funds
17 or other property in an account which is carried by an
18 independent third-party custodian and designated as a
19 segregated account for the counterparty, in accordance
20 with such rules and regulations as the Commission shall
21 prescribe for nonbank swap dealers, futures commission
22 merchants, or derivatives clearing organizations, or the Fi-
23 nancial Institutions Regulatory Administration shall pre-
24 scribe for bank swap dealers. This subsection shall not be
25 interpreted to preclude commercial arrangements regard-

1 ing the investment of the segregated funds or other prop-
2 erty and the related allocation of gains and losses resulting
3 from any such investment, provided, however, that the
4 segregated funds or other property under this subsection
5 may be invested only in such investments as the Commis-
6 sion or the Financial Institutions Regulatory Administra-
7 tion, as applicable, permits by rule or regulation.”.

8 **SEC. 719. CONFLICTS OF INTEREST.**

9 Section 4d of the Commodity Exchange Act (7 U.S.C.
10 6d) is amended by—

11 (1) redesignating subsection (c) as subsection
12 (d); and

13 (2) inserting after subsection (b) the following:

14 “(c) CONFLICTS OF INTEREST.—The Commission
15 shall require that futures commission merchants and in-
16 troducing brokers implement conflict of interest systems
17 and procedures that—

18 “(1) establish structural and institutional safe-
19 guards to assure that the activities of any person
20 within the firm relating to research or analysis of
21 the price or market for any commodity are separated
22 by appropriate informational partitions within the
23 firm from the review, pressure, or oversight of those
24 whose involvement in trading or clearing activities

1 might potentially bias their judgment or supervision;
2 and

3 “(2) address such other issues as the Commis-
4 sion determines appropriate.”.

5 **SEC. 720. ALTERNATIVE SWAP EXECUTION FACILITIES.**

6 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
7 is amended by inserting after section 5g the following:

8 **“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.**

9 “(a) REGISTRATION.—

10 “(1) IN GENERAL.—No person may operate a
11 facility for the trading of swaps unless the facility is
12 registered as an alternative swap execution facility
13 under this section or as a designated contract mar-
14 ket registered under this Act.

15 “(2) DUAL REGISTRATION.—Any person that is
16 required to be registered as an alternative swap exe-
17 cution facility under this section shall register with
18 the Commission regardless of whether that person
19 also is registered with the Securities and Exchange
20 Commission as an alternative swap execution facil-
21 ity.

22 “(b) REQUIREMENTS FOR TRADING.—An alternative
23 swap execution facility that is registered under subsection
24 (a) may trade any swap.

1 “(c) TRADING BY CONTRACT MARKETS.—A board of
2 trade that operates a contract market shall, to the extent
3 that the board of trade also operates an alternative swap
4 execution facility and uses the same electronic trade execu-
5 tion system for trading on the contract market and the
6 alternative swap execution facility, identify whether the
7 electronic trading is taking place on the contract market
8 or the alternative swap execution facility.

9 “(d) CRITERIA FOR REGISTRATION.—

10 “(1) IN GENERAL.—To be registered as an al-
11 ternative swap execution facility, the facility shall be
12 required to demonstrate to the Commission that
13 such facility meets the criteria established under this
14 section.

15 “(2) DETERRENCE OF ABUSES.—Each alter-
16 native swap execution facility shall establish and en-
17 force trading and participation rules that will deter
18 abuses and have the capacity to detect, investigate,
19 and enforce those rules, including—

20 “(A) means to obtain information nec-
21 essary to perform the functions required under
22 this section; or

23 “(B) means to—

24 “(i) provide market participants with
25 impartial access to the market; and

1 “(ii) capture information that may be
2 used in establishing whether any violations
3 of this section have occurred.

4 “(3) TRADING PROCEDURES.—Each alternative
5 swap execution facility shall establish and enforce
6 rules or terms and conditions defining, or specifica-
7 tions detailing, trading procedures to be used in en-
8 tering and executing orders traded on or through its
9 facilities.

10 “(4) FINANCIAL INTEGRITY OF TRANS-
11 ACTIONS.—Each alternative swap execution facility
12 shall establish and enforce rules and procedures for
13 ensuring the financial integrity of swaps entered on
14 or through its facilities, including the clearance and
15 settlement of the swaps pursuant to section 2(j)(1).

16 “(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP
17 EXECUTION FACILITIES.—

18 “(1) COMPLIANCE.—

19 “(A) IN GENERAL.—To maintain its reg-
20 istration as an alternative swap execution facil-
21 ity, the facility shall comply with the core prin-
22 ciples established in this subsection and any re-
23 quirement that the Commission may impose by
24 rule or regulation pursuant to section 8a(5).

1 “(B) REASONABLE DISCRETION.—Except
2 where the Commission determines otherwise by
3 rule or regulation, the facility shall have reason-
4 able discretion in establishing the manner in
5 which it complies with the core principles estab-
6 lished in this subsection.

7 “(2) COMPLIANCE WITH RULES.—Each alter-
8 native swap execution facility shall monitor and en-
9 force compliance with any of the rules of the facility,
10 including the terms and conditions of the swaps
11 traded on or through the facility and any limitations
12 on access to the facility.

13 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
14 NIPULATION.—Each alternative swap execution facil-
15 ity shall permit trading only in swaps that are not
16 readily susceptible to manipulation.

17 “(4) MONITORING OF TRADING.—Each alter-
18 native swap execution facility shall monitor trading
19 in swaps to prevent manipulation, price distortion,
20 and disruptions of the delivery or cash settlement
21 process through surveillance, compliance, and dis-
22 ciplinary practices and procedures, including meth-
23 ods for conducting real-time monitoring of trading
24 and comprehensive and accurate trade reconstruc-
25 tions.

1 “(5) ABILITY TO OBTAIN INFORMATION.—Each
2 alternative swap execution facility shall—

3 “(A) establish and enforce rules that will
4 allow the facility to obtain any necessary infor-
5 mation to perform any of the functions de-
6 scribed in this subsection;

7 “(B) provide the information to the Com-
8 mission upon request; and

9 “(C) have the capacity to carry out such
10 international information-sharing agreements as
11 the Commission may require.

12 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

13 “(A) IN GENERAL.—To reduce the poten-
14 tial threat of market manipulation or conges-
15 tion, especially during trading in the delivery
16 month, and to eliminate or prevent excessive
17 speculation as described in section 4a(a), an al-
18 ternative swap execution facility shall adopt for
19 each of its contracts, where necessary and ap-
20 propriate, position limitations or position ac-
21 countability for speculators.

22 “(B) FOR CERTAIN CONTRACTS.—For any
23 contract that is subject to a position limitation
24 established by the Commission pursuant to sec-
25 tion 4a(a), an alternative swap execution facil-

1 ity shall set its position limitation at a level no
2 higher than the Commission limitation.

3 “(7) EMERGENCY AUTHORITY.—Each alter-
4 native swap execution facility shall adopt rules to
5 provide for the exercise of emergency authority, in
6 consultation or cooperation with the Commission,
7 where necessary and appropriate, including the au-
8 thority—

9 “(A) to liquidate or transfer open positions
10 in any swap; or

11 “(B) to suspend or curtail trading in a
12 swap.

13 “(8) TIMELY PUBLICATION OF TRADING INFOR-
14 MATION.—Each alternative swap execution facility
15 shall make public timely information on price, trad-
16 ing volume, and other trading data on swaps to the
17 extent prescribed by the Commission.

18 “(9) RECORDKEEPING AND REPORTING.—

19 “(A) IN GENERAL.—Each alternative swap
20 execution facility shall—

21 “(i) maintain records of all activities
22 related to the business of the facility, in-
23 cluding a complete audit trail, in a form
24 and manner acceptable to the Commission
25 for a period of 5 years;

1 “(ii) report to the Commission all in-
2 formation determined by the Commission
3 to be necessary or appropriate for the
4 Commission to perform its responsibilities
5 under this Act in a form and manner ac-
6 ceptable to the Commission; and

7 “(iii) make available to the Securities
8 and Exchange Commission, upon request,
9 all information, including a complete audit
10 trail, relating to transactions in security-
11 based swap agreements (as such term is
12 defined in section 3(a)(76) of the Securi-
13 ties Exchange Act of 1934).

14 “(B) DATA COLLECTION REQUIRE-
15 MENTS.—The Commission shall adopt data col-
16 lection and reporting requirements for alter-
17 native swap execution facilities that are com-
18 parable to corresponding requirements for de-
19 rivatives clearing organizations and swap re-
20 positories.

21 “(10) ANTITRUST CONSIDERATIONS.—Unless
22 necessary or appropriate to achieve the purposes of
23 this Act, an alternative swap execution facility shall
24 avoid—

1 “(A) adopting any rules or taking any ac-
2 tions that result in any unreasonable restraints
3 of trade; or

4 “(B) imposing any material anticompeti-
5 tive burden on trading on the swap execution
6 facility.

7 “(11) CONFLICTS OF INTEREST.—Each alter-
8 native swap execution facility shall—

9 “(A) establish and enforce rules to mini-
10 mize conflicts of interest in its decision-making
11 process; and

12 “(B) establish a process for resolving any
13 conflicts of interest.

14 “(12) DESIGNATION OF COMPLIANCE OFFI-
15 CER.—

16 “(A) IN GENERAL.—Each alternative swap
17 execution facility shall designate an individual
18 to serve as a compliance officer.

19 “(B) DUTIES.—The compliance officer
20 shall perform the following duties:

21 “(i) Report directly to the board or to
22 the senior officer of the facility.

23 “(ii) Review the compliance of the fa-
24 cility with the core principles established in
25 this subsection.

1 “(iii) Consult with the board of the
2 facility, a body performing a function simi-
3 lar to that of a board, or the senior officer
4 of the facility, to resolve any conflicts of
5 interest that may arise.

6 “(iv) Administering the policies and
7 procedures of the facility required to be es-
8 tablished pursuant to this section.

9 “(v) Ensuring compliance with com-
10 modity laws and the rules and regulations
11 issued thereunder, including any rules pre-
12 scribed by the Commission pursuant to
13 this section.

14 “(vi) Establishing procedures for re-
15 mediation of noncompliance issues found
16 during compliance office reviews,
17 lookbacks, internal or external audit find-
18 ings, self-reported errors, or through vali-
19 dated complaints. Procedures to be estab-
20 lished under this paragraph include proce-
21 dures related to the handling, management
22 response, remediation, retesting, and clos-
23 ing of noncompliance issues.

24 “(C) ANNUAL REPORTS REQUIRED.—

1 “(i) IN GENERAL.—The compliance
2 officer shall annually prepare and sign a
3 report on the compliance of the alternative
4 swap execution facility with the commodity
5 laws and the policies and procedures of the
6 facility, including the code of ethics and
7 conflict of interest policies of the facility,
8 in accordance with rules prescribed by the
9 Commission.

10 “(ii) SUBMISSION.—The compliance
11 report required under clause (i) shall ac-
12 company the financial reports of the alter-
13 native swap execution facility that are re-
14 quired to be furnished to the Commission
15 pursuant to this section and shall include
16 a certification that, under penalty of law,
17 the report is accurate and complete.

18 “(f) EXEMPTIONS.—The Commission may exempt,
19 conditionally or unconditionally, an alternative swap exe-
20 cution facility from registration under this section if the
21 Commission finds that such facility is subject to com-
22 parable, comprehensive supervision and regulation on a
23 consolidated basis by the Securities and Exchange Com-
24 mission, the Financial Institutions Regulatory Adminis-

1 tration, or the appropriate governmental authorities in the
2 organization's home country.

3 “(g) HARMONIZATION OF RULES.—Within 180 days
4 of the date of the enactment of the Over-the-Counter De-
5 rivatives Markets Act of 2009, the Commission and the
6 Securities and Exchange Commission shall jointly pre-
7 scribe rules governing the regulation of alternative swap
8 execution facilities under this section and section 3C of
9 the Securities Exchange Act of 1934.”

10 **SEC. 721. DERIVATIVES TRANSACTION EXECUTION FACILI-**
11 **TIES AND EXEMPT BOARDS OF TRADE.**

12 Sections 5a and 5d of the Commodity Exchange Act
13 (7 U.S.C. 7a and 7a-3) are repealed.

14 **SEC. 722. DESIGNATED CONTRACT MARKETS.**

15 (a) EXECUTION OF TRANSACTIONS.—Section 5(d) of
16 the Commodity Exchange Act (7 U.S.C. 7(d)) is amended
17 by amending paragraph (9) to read as follows:

18 “(9) EXECUTION OF TRANSACTIONS.—

19 “(A) OPEN MARKET.—The board of trade
20 shall provide a competitive, open, and efficient
21 market and mechanism for executing trans-
22 actions that protects the price discovery process
23 of trading in the board of trade's centralized
24 market.

1 “(B) PERMISSIBLE TRANSACTIONS.—The
2 rules may authorize, for bona fide business pur-
3 poses—

4 “(i) transfer trades or office trades;

5 “(ii) an exchange of—

6 “(I) futures in connection with a
7 cash commodity transaction;

8 “(II) futures for cash commod-
9 ities; or

10 “(III) futures for swaps; or

11 “(iii) a futures commission merchant,
12 acting as principal or agent, to enter into
13 or confirm the execution of a contract for
14 the purchase or sale of a commodity for fu-
15 ture delivery if the contract is reported, re-
16 corded, or cleared in accordance with the
17 rules of the contract market or a deriva-
18 tives clearing organization.”.

19 (b) ADDITIONAL PRINCIPLES.—Section 5(d) of the
20 Commodity Exchange Act (7 U.S.C. 7(d)) is amended by
21 adding at the end the following:

22 “(19) FINANCIAL RESOURCES.—The board of
23 trade shall have adequate financial, operational, and
24 managerial resources to discharge the responsibil-
25 ities of a contract market. For the board of trade’s

1 financial resources to be considered adequate, their
2 value shall exceed the total amount that would en-
3 able the contract market to cover its operating costs
4 for a period of 1 year, calculated on a rolling basis.

5 “(20) SYSTEM SAFEGUARDS.—The board of
6 trade shall—

7 “(A) establish and maintain a program of
8 risk analysis and oversight to identify and mini-
9 mize sources of operational risk through the de-
10 velopment of appropriate controls and proce-
11 dures, and the development of automated sys-
12 tems, that are reliable, secure, and give ade-
13 quate scalable capacity;

14 “(B) establish and maintain emergency
15 procedures, backup facilities, and a plan for dis-
16 aster recovery that allow for the timely recovery
17 and resumption of operations and the fulfill-
18 ment of the board of trade’s responsibilities and
19 obligations; and

20 “(C) periodically conduct tests to verify
21 that back-up resources are sufficient to ensure
22 continued order processing and trade matching,
23 price reporting, market surveillance, and main-
24 tenance of a comprehensive and accurate audit
25 trail.”.

1 **SEC. 723. MARGIN.**

2 Section 8a of the Commodity Exchange Act (7 U.S.C.
3 12a) is amended in paragraph (7)(C), by striking “, ex-
4 cepting the setting of levels of margin”.

5 **SEC. 724. POSITION LIMITS.**

6 (a) EXCESSIVE SPECULATION.—Section 4a(a) of the
7 Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

8 (1) by inserting “(1)” after “(a)”;

9 (2) in the first sentence, by striking “on elec-
10 tronic trading facilities with respect to a significant
11 price discovery contract” and inserting “swaps that
12 perform or affect a significant price discovery func-
13 tion with respect to regulated markets”;

14 (3) in the second sentence, by—

15 (A) inserting “, including any group or
16 class of traders,” after “held by any person”;
17 and

18 (B) striking “on an electronic trading fa-
19 cility with respect to a significant price dis-
20 covery contract,” and inserting “swaps that
21 perform or affect a significant price discovery
22 function with respect to regulated markets,”;
23 and

24 (4) inserting at the end the following:

25 “(2) AGGREGATE POSITION LIMITS.—The Com-
26 mission may, by rule or regulation, establish limits

1 (including related hedge exemption provisions) on
2 the aggregate number or amount of positions in con-
3 tracts based upon the same underlying commodity
4 (as defined by the Commission) that may be held by
5 any person, including any group or class of traders,
6 for each month across—

7 “(A) contracts listed by designated con-
8 tract markets;

9 “(B) contracts traded on a foreign board
10 of trade that provides members or other partici-
11 pants located in the United States with direct
12 access to its electronic trading and order
13 matching system; and

14 “(C) swap contracts that perform or affect
15 a significant price discovery function with re-
16 spect to regulated markets.

17 “(3) SIGNIFICANT PRICE DISCOVERY FUNC-
18 TION.—In making a determination under paragraph
19 (2) whether a swap performs or affects a significant
20 price discovery function with respect to regulated
21 markets, the Commission shall consider, as appro-
22 priate the following:

23 “(A) PRICE LINKAGE.—The extent to
24 which the swap uses or otherwise relies on a
25 daily or final settlement price, or other major

1 price parameter, of another contract traded on
2 a regulated market based upon the same under-
3 lying commodity, to value a position, transfer or
4 convert a position, financially settle a position,
5 or close out a position.

6 “(B) ARBITRAGE.—The extent to which
7 the price for the swap is sufficiently related to
8 the price of another contract traded on a regu-
9 lated market based upon the same underlying
10 commodity so as to permit market participants
11 to effectively arbitrage between the markets by
12 simultaneously maintaining positions or exe-
13 cuting trades in the swaps on a frequent and
14 recurring basis.

15 “(C) MATERIAL PRICE REFERENCE.—The
16 extent to which, on a frequent and recurring
17 basis, bids, offers, or transactions in a contract
18 traded on a regulated market are directly based
19 on, or are determined by referencing, the price
20 generated by the swap.

21 “(D) MATERIAL LIQUIDITY.—The extent
22 to which the volume of swaps being traded in
23 the commodity is sufficient to have a material
24 effect on another contract traded on a regulated
25 market.

1 “(E) OTHER MATERIAL FACTORS.—Such
2 other material factors as the Commission speci-
3 fies by rule or regulation as relevant to deter-
4 mine whether a swap serves a significant price
5 discovery function with respect to a regulated
6 market.

7 “(4) EXEMPTIONS.—The Commission, by rule,
8 regulation, or order, may exempt, conditionally or
9 unconditionally, any person or class of persons, any
10 swap or class of swaps, or any transaction or class
11 of transactions from any requirement the Commis-
12 sion may establish under this section with respect to
13 position limits.”.

14 (b) TRACKING POSITION LIMITS.—Section 4a(b) of
15 the Commodity Exchange Act (7 U.S.C. 6a(b)) is amend-
16 ed—

17 (1) in paragraph (1), by striking “or derivatives
18 transaction execution facility or facilities or elec-
19 tronic trading facility” and inserting “or alternative
20 swap execution facility or facilities”; and

21 (2) in paragraph (2), by striking “or derivatives
22 transaction execution facility or facilities or elec-
23 tronic trading facility” and inserting “or alternative
24 swap execution facility”.

1 **SEC. 725. ENHANCED AUTHORITY OVER REGISTERED ENTI-**
2 **TIES.**

3 (a) Section 5(d)(1) of the Commodity Exchange Act
4 (7 U.S.C. 7(d)(1)) is amended by striking “The board of
5 trade shall have” and inserting “Except where the Com-
6 mission otherwise determines by rule or regulation pursu-
7 ant to section 8a(5), the board of trade shall have”.

8 (b) Section 5b(e)(2)(A) of the Commodity Exchange
9 Act (7 U.S.C. 7a–1(e)(2)(A)) is amended by striking “The
10 applicant shall have” and inserting “Except where the
11 Commission otherwise determines by rule or regulation
12 pursuant to section 8a(5), the applicant shall have”.

13 (c) Section 5c(a) of the Commodity Exchange Act (7
14 U.S.C. 7a–2(a)) is amended—

15 (1) in paragraph (1), by striking “5a(d) and
16 5b(c)(2)” and inserting “5b(e)(2) and 5h(e)”; and

17 (2) in paragraph (2), by striking “shall not”
18 and inserting “may”.

19 (d) Section 5c(c)(1) of the Commodity Exchange Act
20 (7 U.S.C. 7a–2(c)(1)) is amended—

21 (1) by striking “(1) IN GENERAL.—Subject to”
22 and inserting the following:

23 “(1) IN GENERAL.—

24 “(A) Subject to”; and

25 (2) by adding at the end the following:

1 “(B) Unless section 805(e) of the Pay-
2 ment, Clearing, and Settlement Supervision Act
3 of 2009 applies, the new contract or instrument
4 or clearing of the new contract or instrument,
5 new rule, or rule amendment shall become ef-
6 fective, pursuant to the registered entity’s cer-
7 tification, 10 business days after the Commis-
8 sion’s receipt of the certification (or such short-
9 er period as may be determined by the Commis-
10 sion by rule or regulation) unless the Commis-
11 sion notifies the registered entity within such
12 time that the Commission is staying the certifi-
13 cation because there exist novel or complex
14 issues that require additional time to analyze,
15 an inadequate explanation by the submitting
16 registered entity, or a potential inconsistency
17 with this Act (including regulations under this
18 Act).

19 “(C) A notification by the Commission
20 pursuant to subparagraph (B) shall stay the
21 certification of the new contract or instrument
22 or clearing of the new contract or instrument,
23 new rule or new amendment for up to an addi-
24 tional 90 days from the date of such notifica-
25 tion.”.

1 (e) Section 5c(d) of the Commodity Exchange Act (7
2 U.S.C. 7a–2(d)) is repealed.

3 **SEC. 726. FOREIGN BOARDS OF TRADE.**

4 (a) TECHNICAL AMENDMENT.—Section 4(b) of the
5 Commodity Exchange Act (7 U.S.C. 6(b)) is amended in
6 the third sentence by striking “No rule or regulation” and
7 inserting “Except as provided in paragraphs (1) and (2),
8 no rule or regulation”.

9 (b) REGISTRATION.—Section 4(b) of the Commodity
10 Exchange Act (7 U.S.C. 6(b)) is further amended by in-
11 serting before “The Commission” the following:

12 “(1) REGISTRATION.—The Commission may
13 adopt rules and regulations requiring registration
14 with the Commission for a foreign board of trade
15 that provides the members of the foreign board of
16 trade or other participants located in the United
17 States direct access to the electronic trading and
18 order matching system of the foreign board of trade,
19 including rules and regulations prescribing proce-
20 dures and requirements applicable to the registration
21 of such foreign boards of trade. For purposes of this
22 paragraph, ‘direct access’ refers to an explicit grant
23 of authority by a foreign board of trade to an identi-
24 fied member or other participant located in the

1 United States to enter trades directly into the trade
2 matching system of the foreign board of trade.

3 “(2) LINKED CONTRACTS.—It shall be unlawful
4 for a foreign board of trade to provide to the mem-
5 bers of the foreign board of trade or other partici-
6 pants located in the United States direct access to
7 the electronic trading and order-matching system of
8 the foreign board of trade with respect to an agree-
9 ment, contract, or transaction that settles against
10 any price (including the daily or final settlement
11 price) of 1 or more contracts listed for trading on
12 a registered entity, unless the Commission deter-
13 mines that—

14 “(A) the foreign board of trade makes pub-
15 lic daily trading information regarding the
16 agreement, contract, or transaction that is com-
17 parable to the daily trading information pub-
18 lished by the registered entity for the 1 or more
19 contracts against which the agreement, con-
20 tract, or transaction traded on the foreign
21 board of trade settles; and

22 “(B) the foreign board of trade (or the for-
23 eign futures authority that oversees the foreign
24 board of trade)—

1 “(i) adopts position limits (including
2 related hedge exemption provisions) for the
3 agreement, contract, or transaction that
4 are comparable to the position limits (in-
5 cluding related hedge exemption provi-
6 sions) adopted by the registered entity for
7 the 1 or more contracts against which the
8 agreement, contract, or transaction traded
9 on the foreign board of trade settles;

10 “(ii) has the authority to require or
11 direct market participants to limit, reduce,
12 or liquidate any position the foreign board
13 of trade (or the foreign futures authority
14 that oversees the foreign board of trade)
15 determines to be necessary to prevent or
16 reduce the threat of price manipulation,
17 excessive speculation as described in sec-
18 tion 4a, price distortion, or disruption of
19 delivery or the cash settlement process;

20 “(iii) agrees to promptly notify the
21 Commission, with regard to the agreement,
22 contract, or transaction that settles against
23 any price (including the daily or final set-
24 tlement price) of 1 or more contracts listed

1 for trading on a registered entity, of any
2 change regarding—

3 “(I) the information that the for-
4 eign board of trade will make publicly
5 available;

6 “(II) the position limits that the
7 foreign board of trade or foreign fu-
8 tures authority will adopt and enforce;

9 “(III) the position reductions re-
10 quired to prevent manipulation, exces-
11 sive speculation as described in sec-
12 tion 4a, price distortion, or disruption
13 of delivery or the cash settlement
14 process; and

15 “(IV) any other area of interest
16 expressed by the Commission to the
17 foreign board of trade or foreign fu-
18 tures authority;

19 “(iv) provides information to the
20 Commission regarding large trader posi-
21 tions in the agreement, contract, or trans-
22 action that is comparable to the large trad-
23 er position information collected by the
24 Commission for the 1 or more contracts
25 against which the agreement, contract, or

1 transaction traded on the foreign board of
2 trade settles; and

3 “(v) provides the Commission with in-
4 formation necessary to publish reports on
5 aggregate trader positions for the agree-
6 ment, contract, or transaction traded on
7 the foreign board of trade that are com-
8 parable to such reports on aggregate trad-
9 er positions for the 1 or more contracts
10 against which the agreement, contract, or
11 transaction traded on the foreign board of
12 trade settles.

13 “(3) EXISTING FOREIGN BOARDS OF TRADE.—
14 Paragraphs (1) and (2) shall not be effective with
15 respect to any foreign board of trade to which the
16 Commission has granted direct access permission be-
17 fore the date of the enactment of this subsection
18 until the date that is 180 days after such date of en-
19 actment.

20 “(4) PERSONS LOCATED IN THE UNITED
21 STATES.—”.

22 (c) LIABILITY OF REGISTERED PERSONS TRADING
23 ON A FOREIGN BOARD OF TRADE.—

24 (1) Section 4(a) of the Commodity Exchange
25 Act (7 U.S.C. 6(a)) is amended by inserting “or by

1 subsection (f)” after “Unless exempted by the Com-
2 mission pursuant to subsection (c)”.

3 (2) Section 4 of the Commodity Exchange Act
4 (7 U.S.C. 6) is further amended by adding at the
5 end the following:

6 “(f) ADDITIONAL EXEMPTION.—A person registered
7 with the Commission, or exempt from registration by the
8 Commission, under this Act may not be found to have vio-
9 lated subsection (a) with respect to a transaction in, or
10 in connection with, a contract of sale of a commodity for
11 future delivery if the person has reason to believe that the
12 transaction and the contract is made on or subject to the
13 rules of a foreign board of trade that has complied with
14 paragraphs (1) and (2) of subsection (b).”.

15 (d) CONTRACT ENFORCEMENT FOR FOREIGN FU-
16 TURES CONTRACTS.—Section 22(a) of the Commodity Ex-
17 change Act (7 U.S.C. 25(a)) is amended by adding at the
18 end the following:

19 “(5) CONTRACT ENFORCEMENT FOR FOREIGN
20 FUTURES CONTRACTS.—A contract of sale of a com-
21 modity for future delivery traded or executed on or
22 through the facilities of a board of trade, exchange,
23 or market located outside the United States for pur-
24 poses of section 4(a) shall not be void, voidable, or
25 unenforceable, and a party to such a contract shall

1 not be entitled to rescind or recover any payment
2 made with respect to the contract, based on the fail-
3 ure of the foreign board of trade to comply with any
4 provision of this Act.”.

5 **SEC. 727. LEGAL CERTAINTY FOR SWAPS.**

6 Section 22(a)(4) of the Commodity Exchange Act (7
7 U.S.C. 25(a)(4)) is amended to read as follows:

8 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
9 GIBLE COUNTERPARTIES.—

10 “(A) HYBRIDS.—No hybrid instrument
11 sold to any investor shall be void, voidable, or
12 unenforceable, and no party to such hybrid in-
13 strument shall be entitled to rescind, or recover
14 any payment made with respect to, such a hy-
15 brid instrument under this section or any other
16 provision of Federal or State law, based solely
17 on the failure of the hybrid instrument to com-
18 ply with the terms or conditions of section 2(f)
19 or regulations of the Commission.

20 “(B) AGREEMENTS BETWEEN CONTRACT
21 PARTICIPANTS.—No agreement, contract, or
22 transaction between eligible contract partici-
23 pants or persons reasonably believed to be eligi-
24 ble contract participants shall be void, voidable,
25 or unenforceable, and no party thereto shall be

1 entitled to rescind, or recover any payment
2 made with respect to, such agreement, contract,
3 or transaction under this section or any other
4 provision of Federal or State law, based solely
5 on the failure of the agreement, contract, or
6 transaction to meet the definition of a swap set
7 forth in section 1a or to be cleared pursuant to
8 section 2(j)(1).”.

9 **SEC. 728. FDICIA AMENDMENTS.**

10 Sections 408 and 409 of the Federal Deposit Insur-
11 ance Corporation Improvement Act of 1991 (12 U.S.C.
12 4421-4422) are hereby repealed.

13 **SEC. 729. PRIMARY ENFORCEMENT AUTHORITY.**

14 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
15 is amended by adding the following new section after sec-
16 tion 4b:

17 **“SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.**

18 “(a) COMMODITIES FUTURES TRADING COMMIS-
19 SION.—Except as provided in subsections (b), (c), and (d),
20 the Commission shall have primary authority to enforce
21 the provisions of subtitle A of the Over-the-Counter De-
22 rivatives Markets Act of 2009 with respect to any person.

23 “(b) FIRA.—The Financial Institutions Regulatory
24 Administration shall have exclusive authority to enforce
25 the provisions of section 4s(e) and other prudential re-

1 requirements of this Act with respect to banks, and branches
2 or agencies of foreign banks that are swap dealers or
3 major swap participants.

4 “(c) REFERRAL.—If the Financial Institutions Regu-
5 latory Administration has cause to believe that a swap
6 dealer or major swap participant for which FIRA is the
7 primary financial regulatory agency may have engaged in
8 conduct that constitutes a violation of the nonprudential
9 requirements of section 4s or rules adopted by the Com-
10 mission thereunder, the Financial Institutions Regulatory
11 Administration may recommend in writing to the Commis-
12 sion that the Commission initiate an enforcement pro-
13 ceeding as authorized under this Act. The recommenda-
14 tion shall be accompanied by a written explanation of the
15 concerns giving rise to the recommendation.

16 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the
17 Commission does not initiate an enforcement proceeding
18 before the end of the 90-day period beginning on the date
19 on which the Commission receives a recommendation
20 under subsection (c), the Financial Institutions Regu-
21 latory Administration may initiate an enforcement pro-
22 ceeding as permitted under Federal law.”.

23 **SEC. 730. ENFORCEMENT.**

24 (a) Section 4b(a)(2) of the Commodity Exchange Act
25 (7 U.S.C. 6b(a)(2)) is amended by striking “or other

1 agreement, contract, or transaction subject to paragraphs
2 (1) and (2) of section 5a(g),” and inserting “or swap,”.

3 (b) Section 4b(b) of the Commodity Exchange Act
4 (7 U.S.C. 6b(b)) is amended by striking “or other agree-
5 ment, contract or transaction subject to paragraphs (1)
6 and (2) of section 5a(g),” and inserting “or swap,”.

7 (c) Section 4c(a) of the Commodity Exchange Act (7
8 U.S.C. 6c(a)) is amended by inserting “or swap” before
9 “if the transaction is used or may be used”.

10 (d) Section 9(a)(2) of the Commodity Exchange Act
11 (7 U.S.C. 13(a)(2)) is amended by inserting “or of any
12 swap,” before “or to corner”.

13 (e) Section 9(a)(4) of the Commodity Exchange Act
14 (7 U.S.C. 13(a)(4)) is amended by inserting “swap reposi-
15 tory,” before “or futures association”.

16 (f) Section 9(e)(1) of the Commodity Exchange Act
17 (7 U.S.C. 13(e)(1)) is amended—

18 (1) by inserting “swap repository,” before “or
19 registered futures association”; and

20 (2) by inserting “, or swaps,” before “on the
21 basis”.

22 (g) Section 8(b) of the Federal Deposit Insurance Act
23 (12 U.S.C. 1818(b)) is amended—

1 (1) by redesignating paragraphs (6), (7), (8),
2 (9), and (10) as paragraphs (7), (8), (9), (10), and
3 (11), respectively; and

4 (2) by inserting after paragraph (5), the fol-
5 lowing:

6 “(6) This section shall apply to any swap deal-
7 er, major swap participant, security-based swap
8 dealer, major security-based swap participant, de-
9 rivatives clearing organization, swap repository, or
10 alternative swap execution facility, whether or not it
11 is an insured depository institution, for which the
12 Financial Institutions Regulatory Administration is
13 the primary financial regulatory agency for purposes
14 of the Over-the-Counter Derivatives Markets Act of
15 2009.”.

16 **SEC. 731. RETAIL COMMODITY TRANSACTIONS.**

17 Section 2(c) of the Commodity Exchange Act (7
18 U.S.C. 2(c)) is amended—

19 (1) in paragraph (1), by striking “(to the extent
20 provided in section 5a(g), 5b, 5d, or 12(e)(2)(B))”
21 and inserting “5b, or 12(e)(2)(B))”; and

22 (2) in paragraph (2), by adding at the end the
23 following:

24 “(D) RETAIL COMMODITY TRANS-
25 ACTIONS.—

1 “(i) This subparagraph shall apply to
2 any agreement, contract, or transaction in
3 any commodity that is—

4 “(I) entered into with, or offered
5 to (even if not entered into with), a
6 person that is not an eligible contract
7 participant or eligible commercial en-
8 tity; and

9 “(II) entered into, or offered
10 (even if not entered into), on a lever-
11 aged or margined basis, or financed
12 by the offeror, the counterparty, or a
13 person acting in concert with the of-
14 feror or counterparty on a similar
15 basis.

16 “(ii) Clause (i) shall not apply to—

17 “(I) an agreement, contract, or
18 transaction described in paragraph (1)
19 or subparagraphs (A), (B), or (C), in-
20 cluding any agreement, contract, or
21 transaction specifically excluded from
22 subparagraph (A), (B), or (C);

23 “(II) any security;

24 “(III) a contract of sale that—

1 “(aa) results in actual deliv-
2 ery within 28 days or such other
3 period as the Commission may
4 determine by rule or regulation
5 based upon the typical commer-
6 cial practice in cash or spot mar-
7 kets for the commodity involved;
8 or

9 “(bb) creates an enforceable
10 obligation to deliver between a
11 seller and a buyer that have the
12 ability to deliver and accept deliv-
13 ery, respectively, in connection
14 with their line of business;

15 “(IV) an agreement, contract, or
16 transaction that is listed on a national
17 securities exchange registered under
18 section 6(a) of the Securities Ex-
19 change Act of 1934 (15 U.S.C.
20 78f(a)); or

21 “(V) an identified banking prod-
22 uct, as defined in section 402(b) of
23 the Legal Certainty for Bank Prod-
24 ucts Act of 2000 (7 U.S.C. 27(b)).

1 “(iii) Sections 4(a), 4(b), and 4b shall
2 apply to any agreement, contract or trans-
3 action described in clause (i), that is not
4 excluded from clause (i) by clause (ii), as
5 if the agreement, contract, or transaction
6 were a contract of sale of a commodity for
7 future delivery.

8 “(iv) This subparagraph shall not be
9 construed to limit any jurisdiction that the
10 Commission may otherwise have under any
11 other provision of this Act over an agree-
12 ment, contract, or transaction that is a
13 contract of sale of a commodity for future
14 delivery.

15 “(v) This subparagraph shall not be
16 construed to limit any jurisdiction that the
17 Commission or the Securities and Ex-
18 change Commission may otherwise have
19 under any other provisions of this Act with
20 respect to security futures products and
21 persons effecting transactions in security
22 futures products.

23 “(vi) For the purposes of this sub-
24 paragraph, an agricultural producer, pack-
25 er, or handler shall be considered an eligi-

1 ble commercial entity for any agreement,
2 contract, or transaction for a commodity in
3 connection with its line of business.”.

4 **SEC. 732. LARGE SWAP TRADER REPORTING.**

5 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
6 is amended by adding after section 4t (as added by section
7 718) the following:

8 **“SEC. 4u. LARGE SWAP TRADER REPORTING.**

9 “(a) MANDATORY REPORTING OF CERTAIN
10 SWAPS.—

11 “(1) IN GENERAL.—A person that enters into
12 any swap shall file or caused to be filed with the
13 properly designated officer of the Commission the
14 reports described in paragraph (2).

15 “(2) REPORTS.—

16 “(A) SWAP REPORTS.—Each person de-
17 scribed in paragraph (1) shall, in accordance
18 with the rules and regulations of the Commis-
19 sion, keep books and records of any swaps or
20 transactions and positions in any related com-
21 modity traded on or subject to the rules of any
22 board of trade.

23 “(B) CASH OR SPOT TRANSACTIONS.—
24 Each person described in paragraph (1) shall,
25 in accordance with the rules and regulations of

1 the Commission, keep books and records of any
2 cash or spot transactions in, inventories of, and
3 purchase and sale commitments of, any related
4 commodity traded on or subject to the rules of
5 any board of trade, if—

6 “(i) such person directly or indirectly
7 enters into such swaps during any 1 day in
8 an amount equal to or in excess of such
9 amount as shall be fixed from time to time
10 by the Commission; and

11 “(ii) such person directly or indirectly
12 has or obtains a position in such swaps
13 equal to or in excess of such amount as
14 shall be fixed from time to time by the
15 Commission.

16 “(b) RECORDKEEPING.—Any books and records re-
17 quired to be kept under subsection (a) shall—

18 “(1) show complete details concerning all trans-
19 actions and positions as the Commission may by rule
20 or regulation prescribe;

21 “(2) be open at all times to inspection and ex-
22 amination by any representative of the Commission;
23 and

24 “(3) be open at all times to inspection and ex-
25 amination by the Securities and Exchange Commis-

1 sion, to the extent such books and records relate to
2 transactions in security-based swap agreements (as
3 that term is defined in section 3(a)(76) of the Secu-
4 rities Exchange Act of 1934).

5 “(c) RULE OF CONSTRUCTION.—For the purpose of
6 this section, the swaps, futures, and cash or spot trans-
7 actions and positions of any person shall include such
8 transactions and positions of any persons directly or indi-
9 rectly controlled by such person.

10 “(d) CONSIDERATIONS.—In making a determination
11 under this section whether a swap performs or affects a
12 significant price discovery function with respect to regu-
13 lated markets, the Commission shall consider the factors
14 set forth in section 4a(a)(3).”.

15 **SEC. 733. OTHER AUTHORITY.**

16 Unless otherwise provided by its terms, this subtitle
17 does not divest any appropriate Federal banking agency,
18 the Commission, the Securities and Exchange Commis-
19 sion, or other Federal or State agency, of any authority
20 derived from any other applicable law.

21 **SEC. 734. ANTITRUST.**

22 Nothing in the amendments made by this subtitle
23 shall be construed to modify, impair, or supersede the op-
24 eration of any of the antitrust laws. For purposes of this
25 subtitle, the term “antitrust laws” has the same meaning

1 given such term in subsection (a) of the first section of
2 the Clayton Act, except that such term includes section
3 5 of the Federal Trade Commission Act to the extent that
4 such section 5 applies to unfair methods of competition.

5 **Subtitle B—Regulation of Security-**
6 **Based Swap Markets**

7 **SEC. 751. DEFINITIONS UNDER THE SECURITIES EX-**
8 **CHANGE ACT OF 1934.**

9 Section 3(a) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78c(a)) is amended—

11 (1) in subparagraphs (A) and (B) of paragraph
12 (5), by inserting “(but not security-based swaps,
13 other than security-based swaps with or for persons
14 that are not eligible contract participants)” after
15 “securities” each place that term appears;

16 (2) in paragraph (10), by inserting “security-
17 based swap,” after “security future,”;

18 (3) in paragraph (13), by adding at the end the
19 following: “For security-based swaps, such terms in-
20 clude the execution, termination (prior to its sched-
21 uled maturity date), assignment, exchange, or simi-
22 lar transfer or conveyance of, or extinguishing of
23 rights or obligations under, a security-based swap,
24 as the context may require.”;

1 (4) in paragraph (14), by adding at the end the
2 following: “For security-based swaps, such terms in-
3 clude the execution, termination (prior to its sched-
4 uled maturity date), assignment, exchange, or simi-
5 lar transfer or conveyance of, or extinguishing of
6 rights or obligations under, a security-based swap,
7 as the context may require.”;

8 (5) in paragraph (39)—

9 (A) by striking “or government securities
10 dealer” and inserting “government securities
11 dealer, security-based swap dealer, or major se-
12 curity-based swap participant” each place that
13 term appears; and

14 (B) in subparagraph (B)(i)(II), by insert-
15 ing “security-based swap dealer, major security-
16 based swap participant,” after “government se-
17 curities dealer,”; and

18 (6) by adding at the end the following:

19 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
20 term ‘eligible contract participant’ has the same
21 meaning as in section 1a(13) of the Commodity Ex-
22 change Act (7 U.S.C. 1a(13)).

23 “(66) MAJOR SWAP PARTICIPANT.—The term
24 ‘major swap participant’ has the same meaning as in

1 section 1a(40) of the Commodity Exchange Act (7
2 U.S.C. 1a(40)).

3 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
4 PANT.—

5 “(A) IN GENERAL.—The term ‘major secu-
6 rity-based swap participant’ means any per-
7 son—

8 “(i) who is not a security-based swap
9 dealer; and

10 “(ii) whose outstanding security-based
11 swaps create net counterparty credit expo-
12 sures (current or potential future expo-
13 sures) to other market participants that
14 would expose those other market partici-
15 pants to significant credit losses in the
16 event of the person’s default.

17 “(68) SECURITY-BASED SWAP.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), the term ‘security-based
20 swap’ means any agreement, contract, or trans-
21 action that would be a swap under section
22 1a(35) of the Commodity Exchange Act (7
23 U.S.C. 1a(35))(without regard to paragraph
24 (35)(B)(xii) of such section), and that is based
25 on—

1 “(i) an index that is a narrow-based
2 security index, including any interest
3 therein or based on the value thereof;

4 “(ii) a single security or loan, includ-
5 ing any interest therein or based on the
6 value thereof; or

7 “(iii) the occurrence, nonoccurrence,
8 or extent of the occurrence of an event re-
9 lating to a single issuer of a security or the
10 issuers of securities in a narrow-based se-
11 curity index, provided that such event di-
12 rectly affects the financial statements, fi-
13 nancial condition, or financial obligations
14 of the issuer.

15 “(B) EXCLUSION.—The term ‘security-
16 based swap’ does not include any agreement,
17 contract, or transaction that meets the defini-
18 tion of security-based swap only because such
19 agreement, contract, or transaction references
20 or is based upon a government security.

21 “(C) MIXED SWAP.—

22 “(i) IN GENERAL.—The term ‘secu-
23 rity-based swap’ includes any agreement,
24 contract, or transaction that is as de-

1 are defined by reference to 1 or more in-
2 terest rates or currencies.

3 “(D) RULE OF CONSTRUCTION REGARDING
4 MASTER AGREEMENTS.—The term ‘security-
5 based swap’ shall be construed to include a
6 master agreement that provides for an agree-
7 ment, contract, or transaction that is a secu-
8 rity-based swap pursuant to subparagraph (A),
9 together with all supplements to any such mas-
10 ter agreement, without regard to whether the
11 master agreement contains an agreement, con-
12 tract, or transaction that is not a security-based
13 swap pursuant to subparagraph (A), except
14 that the master agreement shall be considered
15 to be a security-based swap only with respect to
16 each agreement, contract, or transaction under
17 the master agreement that is a security-based
18 swap pursuant to subparagraph (A).

19 “(69) SWAP.—The term ‘swap’ has the same
20 meaning as in section 1a(35) of the Commodity Ex-
21 change Act (7 U.S.C. 1a(35)).

22 “(70) PERSON ASSOCIATED WITH A SECURITY-
23 BASED SWAP DEALER OR MAJOR SECURITY-BASED
24 SWAP PARTICIPANT.—The term ‘person associated
25 with a security-based swap dealer or major security-

1 based swap participant’ or ‘associated person of a
2 security-based swap dealer or major security-based
3 swap participant’ means—

4 “(A) any partner, officer, director, or
5 branch manager of such security-based swap
6 dealer or major security-based swap participant
7 (or any person occupying a similar status or
8 performing similar functions);

9 “(B) any person directly or indirectly con-
10 trolling, controlled by, or under common control
11 with such security-based swap dealer or major
12 security-based swap participant; or

13 “(C) any employee of such security-based
14 swap dealer or major security-based swap par-
15 ticipant, except that any person associated with
16 a security-based swap dealer or major security-
17 based swap participant whose functions are
18 solely clerical or ministerial shall not be in-
19 cluded in the meaning of such term other than
20 for purposes of section 15F(e)(2).

21 “(71) SECURITY-BASED SWAP DEALER.—

22 “(A) IN GENERAL.—The term ‘security-
23 based swap dealer’ means any person engaged
24 in the business of buying and selling security-

1 based swaps for such person's own account,
2 through a broker or otherwise.

3 “(B) EXCEPTION.—The term ‘security-
4 based swap dealer’ does not include a person
5 that buys or sells security-based swaps for such
6 person's own account, either individually or in
7 a fiduciary capacity, but not as a part of a reg-
8 ular business.

9 “(72) APPROPRIATE FEDERAL BANKING AGEN-
10 CY.—The term ‘appropriate Federal banking agency’
11 has the same meaning as in section 3 of the Federal
12 Deposit Insurance Act (12 U.S.C. 1813).

13 “(73) BOARD.—The term ‘Board’ means the
14 Board of Governors of the Federal Reserve System.

15 “(74) FIRA.—The term ‘FIRA’ means the Fi-
16 nancial Institutions Regulatory Administration.

17 “(75) SWAP DEALER.—The term ‘swap dealer’
18 has the same meaning as in section 1a(39) of the
19 Commodity Exchange Act (7 U.S.C. 1a(39)).

20 “(76) SECURITY-BASED SWAP AGREEMENT.—

21 “(A) IN GENERAL.—For purposes of sec-
22 tions 9, 10, 10B, 16, 20, and 21A of this Act,
23 and section 17 of the Securities Act of 1933,
24 the term ‘security-based swap agreement’
25 means a swap agreement as defined in section

1 206A of the Gramm-Leach-Bliley Act (15
2 U.S.C. 78c note) of which a material term is
3 based on the price, yield, value, or volatility of
4 any security or any group or index of securities,
5 or any interest therein.

6 “(B) EXCLUSIONS.—The term ‘security-
7 based swap agreement’ does not include any se-
8 curity-based swap.”.

9 **SEC. 752. REPEAL OF PROHIBITION ON REGULATION OF SE-**
10 **CURITY-BASED SWAPS.**

11 (a) REPEAL.—Sections 206B and 206C of the
12 Gramm-Leach-Bliley Act (15 U.S.C. 78c note) are hereby
13 repealed.

14 (b) CONFORMING AMENDMENTS TO GRAMM-LEACH-
15 BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley
16 Act (15 U.S.C. 78c note) is amended in the material pre-
17 ceding paragraph (1), by striking “Except as” and all that
18 follows through “that—” and inserting the following: “Ex-
19 cept as provided in subsection (b), as used in this section,
20 the term ‘swap agreement’ means any agreement, con-
21 tract, or transaction that—”

22 (c) CONFORMING AMENDMENTS TO THE SECURITIES
23 ACT OF 1933.—

24 (1) Section 2A(b) of the Securities Act of 1933
25 (15 U.S.C. 77b–1) is amended—

1 (A) by striking subsection (a) and reserv-
2 ing the subsection; and

3 (B) in subsection (b)—

4 (i) by striking “(as defined in section
5 206B of the Gramm-Leach-Bliley Act)”
6 each place that term appears; and

7 (ii) by striking paragraph (1); and

8 (iii) by redesignating paragraphs (2),
9 (3), and (4) as paragraphs (1), (2), and
10 (3), respectively.

11 (2) Section 17 of the Securities Act of 1933 (15
12 U.S.C. 77q) is amended—

13 (A) in subsection (a), by striking “206B of
14 the Gramm-Leach-Bliley Act” and inserting
15 “3(a)(76) of the Securities Exchange Act of
16 1934”; and

17 (B) in subsection (d), by striking “206B of
18 the Gramm-Leach-Bliley Act” and inserting
19 “3(a)(76) of the Securities Exchange Act of
20 1934”.

21 (d) CONFORMING AMENDMENTS TO THE SECURITIES
22 EXCHANGE ACT OF 1934.—The Securities Exchange Act
23 of 1934 (15 U.S.C. 78a et seq.) is amended—

24 (1) in section 3A (15 U.S.C. 78c–1)—

1 (A) by striking “(as defined in section
2 206B of the Gramm-Leach-Bliley Act)” each
3 place that term appears;

4 (B) by striking subsection (a) and reserv-
5 ing the subsection; and

6 (C) in subsection (b)—

7 (i) by striking paragraph (1);

8 (ii) by redesignating paragraphs (2),
9 (3), and (4) as paragraphs (1), (2), and
10 (3), respectively; and

11 (iii) in paragraph (2) (as so redesign-
12 nated), by inserting “or section 9(j) with
13 respect to rulemaking authority to prevent
14 fraudulent, deceptive, or manipulative
15 practices” after “reporting requirements”;

16 (2) in section 9(a) (15 U.S.C. 78i(a)), by strik-
17 ing paragraphs (2) through (5) and inserting the
18 following:

19 “(2) To effect, alone or with 1 or more other
20 persons, a series of transactions in any security reg-
21 istered on a national securities exchange or in con-
22 nection with any security-based swap or security-
23 based swap agreement with respect to such security
24 creating actual or apparent active trading in such
25 security, or raising or depressing the price of such

1 security, for the purpose of inducing the purchase or
2 sale of such security by others.

3 “(3) If a dealer, broker, security-based swap
4 dealer, major security-based swap participant, or
5 other person selling or offering for sale or pur-
6 chasing or offering to purchase the security or secu-
7 rity-based swap or security based-swap agreement
8 with respect to such security to induce the purchase
9 or sale of any security registered on a national secu-
10 rities exchange or any security-based swap or secu-
11 rity-based swap agreement with respect to such se-
12 curity by the circulation or dissemination in the or-
13 dinary course of business of information to the effect
14 that the price of any such security will or is likely
15 to rise or fall because of market operations of any
16 1 or more persons conducted for the purpose of rais-
17 ing or depressing the price of such security.

18 “(4) If a dealer, broker, security-based swap
19 dealer, major security-based swap participant, or
20 other person selling or offering for sale or pur-
21 chasing or offering to purchase the security or a se-
22 curity-based swap or security-based swap agreement
23 with respect to such security, to make, regarding
24 any security registered on a national securities ex-
25 change or any security-based swap or security-based

1 swap agreement with respect to such security, for
2 the purpose of inducing the purchase or sale of such
3 security or such security-based swap or security-
4 based swap agreement, any statement which was at
5 the time and in the light of the circumstances under
6 which it was made, false or misleading with respect
7 to any material fact, and which he or she knew or
8 had reasonable ground to believe was so false or
9 misleading.

10 “(5) For a consideration, received directly or
11 indirectly from a dealer, broker, security-based swap
12 dealer, major security-based swap participant, or
13 other person selling or offering for sale or pur-
14 chasing or offering to purchase the security or secu-
15 rity-based swap agreement with respect to such se-
16 curity, to induce the purchase of any security reg-
17 istered on a national securities exchange or any se-
18 curity-based swap or security-based swap agreement
19 with respect to such security by the circulation or
20 dissemination of information to the effect that the
21 price of any such security will or is likely to rise or
22 fall because of the market operations of any 1 or
23 more persons conducted for the purpose of raising or
24 depressing the price of such security.”;

1 (3) in section 9(i) (15 U.S.C. 78i(i)), by strik-
2 ing “(as defined in section 206B of the Gramm-
3 Leach-Bliley Act)”;

4 (4) in section 10 (15 U.S.C. 78j), by striking
5 “(as defined in section 206B of the Gramm-Leach-
6 Bliley Act)” each place that term appears;

7 (5) in section 15(c)(1) (15 U.S.C. 78o(c)(1))—

8 (A) in subparagraph (A), by striking “, or
9 any security-based swap agreement (as defined
10 in section 206B of the Gramm-Leach-Bliley
11 Act),”; and

12 (B) in subparagraphs (B) and (C), by
13 striking “agreement (as defined in section 206B
14 of the Gramm-Leach-Bliley Act)” each place
15 that term appears;

16 (6) in section 15(i) (15 U.S.C. 78o(i)), as
17 added by section 303(f) of the Commodity Futures
18 Modernization Act of 2000 (Public Law 106–554;
19 114 Stat. 2763A–455)), by striking “(as defined in
20 section 206B of the Gramm-Leach-Bliley Act)”;

21 (7) in section 16 (15 U.S.C. 78p)—

22 (A) in subsection (a)(2)(C), by striking
23 “(as defined in section 206(b) of the Gramm-
24 Leach-Bliley Act)” and inserting “or a security-
25 based swap”;

1 (B) in subsection (a)(3)(B), by inserting
2 “or security-based swaps” after “security-based
3 swap agreements”;

4 (C) in subsection (b)—

5 (i) by striking “(as defined in section
6 206B of the Gramm-Leach-Bliley Act)”
7 each place that term appears; and

8 (ii) inserting “or a security-based
9 swap” after “security-based swap agree-
10 ment” each place that term appears; and

11 (D) in subsection (g), by striking “(as de-
12 fined in section 206B of the Gramm-Leach-Bli-
13 ley Act)”;

14 (8) in section 20 (15 U.S.C. 78t)—

15 (A) in subsection (d), by striking “(as de-
16 fined in section 206B of the Gramm-Leach-Bli-
17 ley Act)”;

18 (B) in subsection (f), by striking “(as de-
19 fined in section 206B of the Gramm-Leach-Bli-
20 ley Act)”;

21 (9) in section 21A (15 U.S.C. 78u-1)—

22 (A) in subsection (a)(1), by striking “(as
23 defined in section 206B of the Gramm-Leach-
24 Bliley Act)”;

1 (B) in subsection (g), by striking “(as de-
2 fined in section 206B of the Gramm-Leach-Bli-
3 ley Act)”.

4 **SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE**
5 **ACT OF 1934.**

6 (a) CLEARING FOR SECURITY-BASED SWAPS.—The
7 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
8 is amended by adding the following section after section
9 3A:

10 **“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

11 **“(a) CLEARING REQUIREMENT.—**

12 **“(1) SUBMISSION.—**

13 **“(A) IN GENERAL.—**Except as provided in
14 paragraph (8), any person who is a party to a
15 security-based swap shall submit such security-
16 based swap for clearing to a clearing agency
17 registered under section 17A of this Act.

18 **“(B) REQUIRED CONDITIONS.—**The rules
19 of a clearing agency described in subparagraph
20 (A) shall—

21 **“(i) prescribe that all security-based**
22 **swaps with the same terms and conditions**
23 **are fungible and may be offset with each**
24 **other; and**

1 “(ii) provide for nondiscriminatory
2 clearing of a security-based swap executed
3 on or through the rules of an unaffiliated
4 national securities exchange or an alter-
5 native swap execution facility.

6 “(2) COMMISSION APPROVAL.—

7 “(A) IN GENERAL.—A clearing agency
8 shall submit to the Commission for prior ap-
9 proval any group, category, type, or class of se-
10 curity-based swaps, that the clearing agency
11 seeks to accept for clearing, which submission
12 the Commission shall make available to the
13 public.

14 “(B) DEADLINE.—The Commission shall
15 take final action on a request submitted pursu-
16 ant to subparagraph (A) not later than 90 days
17 after submission of the request, unless the
18 clearing agency submitting the request agrees
19 to an extension of the time limitation estab-
20 lished under this subparagraph.

21 “(C) APPROVAL.—The Commission shall
22 approve, unconditionally or subject to such
23 terms and conditions as the Commission deter-
24 mines to be appropriate, any request submitted
25 pursuant to subparagraph (A) if the Commis-

1 sion finds that the request is consistent with
2 the requirements of section 17A. The Commis-
3 sion shall approve any such request if the Com-
4 mission does not make such finding.

5 “(D) RULES.—Not later than 180 days
6 after the date of the enactment of the Over-the-
7 Counter Derivatives Markets Act of 2009, the
8 Commission shall adopt rules for a clearing
9 agency’s submission for approval, pursuant to
10 this paragraph, of a security-based swap, or a
11 group, category, type or class of security-based
12 swaps, that the clearing agency seeks to accept
13 for clearing.

14 “(3) STAY OF CLEARING REQUIREMENT.—At
15 any time after issuance of an approval pursuant to
16 paragraph (2):

17 “(A) REVIEW PROCESS.—The Commission,
18 on application of a counterparty to a security-
19 based swap or on its own initiative, may stay
20 the clearing requirement of paragraph (1) until
21 the Commission completes a review of the terms
22 of the security-based swap (or the group, cat-
23 egory, type, or class of security-based swaps)
24 and the clearing arrangement.

1 “(B) DEADLINE.—The Commission shall
2 complete a review undertaken pursuant to sub-
3 paragraph (A) not later than 90 days after
4 issuance of the stay, unless the clearing agency
5 that clears the security-based swap, or group,
6 category, type or class of security-based swaps,
7 agrees to an extension of the time limitation es-
8 tablished under this subparagraph.

9 “(C) DETERMINATION.—Upon completion
10 of the review undertaken pursuant to subpara-
11 graph (A)—

12 “(i) the Commission may determine,
13 unconditionally or subject to such terms
14 and conditions as the Commission deter-
15 mines to be appropriate, that the security-
16 based swap, or group, category, type, or
17 class of security-based swaps, must be
18 cleared pursuant to this subsection if the
19 Commission finds that such clearing—

20 “(I) is consistent with the re-
21 quirements of section 17A; and

22 “(II) is otherwise in the public
23 interest, for the protection of inves-
24 tors, and consistent with the purposes
25 of this title;

1 “(ii) the Commission may determine
2 that the clearing requirement of paragraph
3 (1) shall not apply to the security-based
4 swap, or group, category, type, or class of
5 security-based swaps; or

6 “(iii) if a determination is made that
7 the clearing requirement of paragraph (1)
8 shall no longer apply, then it shall still be
9 permissible to clear such security-based
10 swap, or group, category, type, or class of
11 security-based swaps.

12 “(D) RULES.—Not later than 180 days
13 after the date of the enactment of the Over-the-
14 Counter Derivatives Markets Act of 2009, the
15 Commission shall adopt rules for reviewing,
16 pursuant to this paragraph, a clearing agency’s
17 clearing of a security-based swap, or a group,
18 category, type, or class of security-based swaps,
19 the Commission has accepted for clearing.

20 “(4) SECURITY-BASED SWAPS REQUIRED TO BE
21 ACCEPTED FOR CLEARING.—

22 “(A) RULEMAKING.—Within 180 days of
23 the date of enactment of the Over-the-Counter
24 Derivatives Markets Act of 2009, the Commis-
25 sion and the Commodity Futures Trading Com-

1 mission shall jointly adopt rules to further iden-
2 tify security-based swaps, or any group, cat-
3 egory, type, or class of security-based swaps,
4 that although not submitted for approval under
5 paragraph (2) but the Commission and Com-
6 modities Futures Trading Commission deem
7 should be accepted for clearing. In adopting
8 such rules, the Commission and the Commodity
9 Futures Trading Commission shall take into ac-
10 count the following factors:

11 “(i) The extent to which any of the
12 terms of the security-based swap, including
13 price, are disseminated to third parties or
14 are referenced in other agreements, con-
15 tracts, or transactions.

16 “(ii) The volume of transactions in
17 the security-based swap.

18 “(iii) The extent to which the terms of
19 the security-based swap are similar to the
20 terms of other agreements, contracts, or
21 transactions that are centrally cleared.

22 “(iv) Whether any differences in the
23 terms of the security-based swap, com-
24 pared to other agreements, contracts, or

1 transactions that are centrally cleared, are
2 of economic significance.

3 “(v) Whether a clearing agency is pre-
4 pared to clear the security-based swap and
5 such clearing agency has in place effective
6 risk management systems.

7 “(vi) Any other factors the Commis-
8 sion and the Securities and Exchange
9 Commission determine to be appropriate.

10 “(B) OTHER DESIGNATIONS.—The Com-
11 mission may separately designate a particular
12 security-based swap or class of security-based
13 swaps as subject to the clearing requirement in
14 paragraph (1), taking into account the factors
15 established in clauses (i) through (vi) of sub-
16 paragraph (A) and the joint rules adopted in
17 such subparagraph.

18 “(5) PREVENTION OF EVASION.—The Commis-
19 sion shall have authority to prescribe rules under
20 this section, or issue interpretations of such rules, as
21 necessary to prevent evasions of this section.

22 “(6) REQUIRED REPORTING.—

23 “(A) BOTH COUNTERPARTIES.—Both
24 counterparties to a security-based swap that is
25 not accepted for clearing by any clearing agency

1 shall report such a security-based swap either
2 to a registered security-based swap repository
3 described in section 13(n) or, if there is no re-
4 pository that would accept the security-based
5 swap, to the Commission pursuant to section
6 13A.

7 “(B) TIMING.—Counterparties to a secu-
8 rity-based swap shall submit the reports re-
9 quired under subparagraph (A) within such
10 time period as the Commission may by rule or
11 regulation prescribe.

12 “(7) TRANSITION RULES.—Rules adopted by
13 the Commission under this section shall provide for
14 the reporting of data, as follows:

15 “(A) Security-based swaps that were en-
16 tered into before the date of enactment of the
17 Over-the-Counter Derivatives Markets Act of
18 2009 shall be reported to a registered security-
19 based swap repository or the Commission not
20 later than the later of—

21 “(i) 180 days after the effective date
22 of the Over-the-Counter Derivatives Mar-
23 kets Act of 2009; or

24 “(ii) such other time after entering
25 into the security-based swap as the Com-

1 mission may prescribe by rule or regula-
2 tion.

3 “(B) Security-based swaps that were en-
4 tered into on or after the date of enactment of
5 the Over-the-Counter Derivatives Markets Act
6 of 2009 shall be reported to a registered secu-
7 rity-based swap repository or the Commission
8 not later than the later of—

9 “(i) 90 days after the effective date of
10 the Over-the-Counter Derivatives Markets
11 Act of 2009; or

12 “(ii) such other time after entering
13 into the swap as the Commission may pre-
14 scribe by rule or regulation.

15 “(8) TRADE EXECUTION.—

16 “(A) IN GENERAL.—With respect to trans-
17 actions involving security-based swaps subject
18 to the clearing requirement of paragraph (1),
19 counterparties shall—

20 “(i) execute the transaction on an ex-
21 change; or

22 “(ii) execute the transaction on an al-
23 ternative swap execution facility registered
24 under section 3C or an alternative swap

1 execution facility that is exempt from reg-
2 istration under section 3C(f) of this Act.

3 “(B) EXCEPTION.—The requirements of
4 clauses (i) and (ii) of subparagraph (A) shall
5 not apply if no exchange or alternative swap
6 execution facility makes the swap available to
7 trade.

8 “(9) EXEMPTIONS.—

9 “(A) REQUIRED EXEMPTION.—The Com-
10 mission shall exempt a security-based swap
11 from the requirements of paragraphs (1) and
12 (8), and any rules issued under this subsection,
13 if no clearing agency registered under this Act
14 will accept the security-based swap for clearing.

15 “(B) PERMISSIVE EXEMPTION.—The Com-
16 mission by rule or order, as the Commission
17 deems consistent with the public interest, may
18 conditionally or unconditionally exempt a secu-
19 rity-based swap dealer or major swap partici-
20 pant from the requirements of paragraphs (1)
21 and (8), and any rules issued under this sub-
22 section, if 1 of the counterparties to the secu-
23 rity-based swap—

1 “(i) is not a security-based swap deal-
2 er or major security-based swap partici-
3 pant; and

4 “(ii) does not meet the eligibility re-
5 quirements of any clearing agency that
6 clears the security-based swap.

7 “(C) DETERMINATION OF THE AGENCY
8 FOR FINANCIAL STABILITY.—The Commission
9 may act by rule or order to exempt a security-
10 based swap dealer or major swap participant
11 from any requirement or rule under this sub-
12 section only if—

13 “(i) the Commission has provided a
14 written notice to the Agency for Financial
15 Stability describing the proposed exemp-
16 tion; and

17 “(ii) the Agency for Financial Sta-
18 bility has not made a determination and
19 notified the Commission within 60 days of
20 receipt of such notice that such exemption
21 would pose a threat to the stability of the
22 United States financial system.

23 “(D) NONDELEGATION.—Actions by the
24 Agency for Financial Stability under subpara-
25 graph (C) may not be delegated.

1 “(E) REQUESTED CLEARANCE.—If a secu-
2 rity-based swap dealer or major swap partici-
3 pant that is exempt from the clearing require-
4 ments of paragraph (1) requests that such se-
5 curity-based swap be cleared by a clearing agen-
6 cy, and a clearing agency registered under this
7 Act will accept such security-based swap for
8 clearing, then—

9 “(i) the exemption shall not apply;
10 and
11 “(ii) the swap shall be cleared by such
12 agency.

13 “(10) RELATIONSHIP TO DERIVATIVES CLEAR-
14 ING ORGANIZATIONS.—A clearing agency may clear
15 swaps that are required to be cleared by a person
16 who is registered as a derivatives clearing organiza-
17 tion under the Commodity Exchange Act (7 U.S.C.
18 1 et seq.).

19 “(11) REQUIRED REGISTRATION FOR BANKS
20 AND CLEARING AGENCIES.—A person that is re-
21 quired to be registered as a clearing agency under
22 this title shall register with the Commission regard-
23 less of whether the person is also a bank or a deriva-
24 tives clearing organization registered with the Com-

1 modity Futures Trading Commission under the
2 Commodity Exchange Act (7 U.S.C. 1 et seq.).

3 “(b) REPORTING.—

4 “(1) TRANSPARENCY.—

5 “(A) IN GENERAL.—A clearing agency that
6 clears security-based swaps shall provide to the
7 Commission and any security-based swap repos-
8 itory designated by the Commission all informa-
9 tion determined by the Commission to be nec-
10 essary to perform its responsibilities under this
11 Act.

12 “(B) DATA COLLECTION REQUIRE-
13 MENTS.—The Commission shall adopt data col-
14 lection and maintenance requirements for secu-
15 rity-based swaps cleared by clearing agencies
16 that are comparable to the corresponding re-
17 quirements for security-based swaps accepted
18 by security-based swap repositories and secu-
19 rity-based swaps traded on alternative swap
20 execution facilities.

21 “(C) SHARING OF INFORMATION.—The
22 Commission shall share such information, upon
23 request, with the Board, the Commodity Fu-
24 tures Trading Commission, the appropriate
25 Federal banking agencies, the Agency for Fi-

1 nancial Stability, and the Department of Jus-
2 tice or to other persons the Commission deems
3 appropriate, including foreign financial super-
4 visors (including foreign futures authorities),
5 foreign central banks, and foreign ministries.

6 “(2) PUBLIC INFORMATION.—A clearing agency
7 that clears security-based swaps shall provide to the
8 Commission, or its designee, such information as is
9 required by, and in a form and at a frequency to be
10 determined by, the Commission, in order to comply
11 with the public reporting requirements contained in
12 section 13.

13 “(c) DESIGNATION OF COMPLIANCE OFFICER.—

14 “(1) IN GENERAL.—Each clearing agency that
15 clears security-based swaps shall designate an indi-
16 vidual to serve as a compliance officer.

17 “(2) DUTIES.—The compliance officer shall
18 perform the following duties:

19 “(A) Report directly to the board or to the
20 senior officer of the clearing agency.

21 “(B) Consult with the board of the clear-
22 ing agency, a body performing a function simi-
23 lar to that of a board, or the senior officer of
24 the clearing agency, to resolve any conflicts of
25 interest that may arise.

1 “(C) Administering the policies and proce-
2 dures of the clearing agency required to be es-
3 tablished pursuant to this section.

4 “(D) Ensuring compliance with securities
5 laws and the rules and regulations issued there-
6 under, including rules prescribed by the Com-
7 mission pursuant to this section.

8 “(E) Establishing procedures for remedi-
9 ation of noncompliance issues found during
10 compliance office reviews, lookbacks, internal or
11 external audit findings, self-reported errors, or
12 through validated complaints. Procedures to be
13 established under this subsection include proce-
14 dures related to the handling, management re-
15 sponse, remediation, retesting, and closing of
16 noncompliance issues.

17 “(3) ANNUAL REPORTS REQUIRED.—

18 “(A) IN GENERAL.—The compliance offi-
19 cer shall annually prepare and sign a report on
20 the compliance of the clearing agency with the
21 securities laws and the policies and procedures
22 of the agency, including the code of ethics and
23 conflict of interest policies of the agency, in ac-
24 cordance with rules prescribed by the Commis-
25 sion.

1 “(B) SUBMISSION.—The compliance report
2 required under subparagraph (A) shall accom-
3 pany the financial reports of the clearing agen-
4 cy that are required to be furnished to the
5 Commission pursuant to this section and shall
6 include a certification that, under penalty of
7 law, the report is accurate and complete.

8 “(d) CONSULTATION.—The Commission and the
9 Commodity Futures Trading Commission shall consult
10 with the appropriate Federal banking agencies and each
11 other prior to adopting rules under this section.

12 “(e) HARMONIZATION OF RULES.—Not later than
13 180 days after the effective date of the Over-the-Counter
14 Derivatives Markets Act of 2009, the Commission and the
15 Commodity Futures Trading Commission shall jointly
16 adopt uniform rules governing—

17 “(1) the clearing and settlement of swaps, as
18 well as persons that are registered as derivatives
19 clearing organizations for swaps under the Com-
20 modity Exchange Act (7 U.S.C. 1 et seq.); and

21 “(2) the clearing and settlement of security-
22 based swaps, as well as persons that are registered
23 as clearing agencies for security-based swaps under
24 this Act.”.

1 (b) ALTERNATIVE SWAP EXECUTION FACILITIES.—
2 The Securities Exchange Act of 1934 (15 U.S.C. 78a et
3 seq.) is further amended by adding after section 3B the
4 following:

5 **“SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.**

6 “(a) REGISTRATION.—

7 “(1) IN GENERAL.—No person may operate a
8 facility for the trading of security-based swaps un-
9 less the facility is registered as an alternative swap
10 execution facility under this section or as a securities
11 exchange registered under this Act.

12 “(2) DUAL REGISTRATION.—Any person that is
13 required to be registered as an alternative swap exe-
14 cution facility under this section shall register with
15 the Commission regardless of whether that person
16 also is registered with the Commodity Futures Trad-
17 ing Commission as an alternative swap execution fa-
18 cility.

19 “(b) REQUIREMENTS FOR TRADING.—An alternative
20 swap execution facility that is registered under subsection
21 (a) may trade any security-based swap.

22 “(c) TRADING BY EXCHANGES.—An exchange shall,
23 to the extent that the exchange also operates an alter-
24 native swap execution facility and uses the same electronic
25 trade execution system for trading on the exchange and

1 the alternative swap execution facility, identify whether
2 the electronic trading is taking place on the exchange or
3 the alternative swap execution facility.

4 “(d) CRITERIA FOR REGISTRATION.—

5 “(1) IN GENERAL.—To be registered as an al-
6 ternative swap execution facility, the facility shall be
7 required to demonstrate to the Commission such fa-
8 cility meets the criteria established by this section.

9 “(2) DETERRENCE OF ABUSES.—Each alter-
10 native swap execution facility shall establish and en-
11 force trading and participation rules that will deter
12 abuses and have the capacity to detect, investigate,
13 and enforce those rules, including—

14 “(A) means to obtain information nec-
15 essary to perform the functions required under
16 this section; or

17 “(B) means to—

18 “(i) provide market participants with
19 impartial access to the market; and

20 “(ii) capture information that may be
21 used in establishing whether any violations
22 of this section have occurred.

23 “(3) TRADING PROCEDURES.—Each alternative
24 swap execution facility shall establish and enforce
25 rules or terms and conditions defining, or specifica-

1 tions detailing, trading procedures to be used in en-
2 tering and executing orders traded on or through its
3 facilities.

4 “(4) FINANCIAL INTEGRITY OF TRANS-
5 ACTIONS.—Each alternative swap execution facility
6 shall establish and enforce rules and procedures for
7 ensuring the financial integrity of security-based
8 swaps entered on or through its facilities, including
9 the clearance and settlement of the security-based
10 swaps.

11 “(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP
12 EXECUTION FACILITIES.—

13 “(1) COMPLIANCE.—

14 “(A) IN GENERAL.—To maintain its reg-
15 istration as an alternative swap execution facil-
16 ity, the facility shall comply with the core prin-
17 ciples established in this subsection and any re-
18 quirement that the Commission may impose by
19 rule or regulation.

20 “(B) REASONABLE DISCRETION.—Except
21 where the Commission determines otherwise by
22 rule or regulation, the facility shall have reason-
23 able discretion in establishing the manner in
24 which it complies with the core principles estab-
25 lished in this subsection.

1 “(2) COMPLIANCE WITH RULES.—Each alter-
2 native swap execution facility shall monitor and en-
3 force compliance with any of the rules of the facility,
4 including the terms and conditions of the security-
5 based swaps traded on or through the facility and
6 any limitations on access to the facility.

7 “(3) SECURITY-BASED SWAPS NOT READILY
8 SUSCEPTIBLE TO MANIPULATION.—Each alternative
9 swap execution facility shall permit trading only in
10 security-based swaps that are not readily susceptible
11 to manipulation.

12 “(4) MONITORING OF TRADING.—Each alter-
13 native swap execution facility shall monitor trading
14 in security-based swaps to prevent manipulation and
15 price distortion through surveillance, compliance,
16 and disciplinary practices and procedures, including
17 methods for conducting real-time monitoring of trad-
18 ing and comprehensive and accurate trade recon-
19 structions.

20 “(5) ABILITY TO OBTAIN INFORMATION.—Each
21 alternative swap execution facility shall—

22 “(A) establish and enforce rules that will
23 allow the facility to obtain any necessary infor-
24 mation to perform any of the functions de-
25 scribed in this subsection;

1 “(B) provide the information to the Com-
2 mission upon request; and

3 “(C) have the capacity to carry out such
4 international information-sharing agreements as
5 the Commission may require.

6 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

7 “(A) IN GENERAL.—To reduce the poten-
8 tial threat of market manipulation or conges-
9 tion, an alternative swap execution facility shall
10 adopt for each of its contracts, where necessary
11 and appropriate, position limitations or position
12 accountability.

13 “(B) FOR CERTAIN CONTRACTS.—For any
14 contract that is subject to a position limitation
15 established by the Commission pursuant to sec-
16 tion 10B, an alternative swap execution facility
17 shall set its position limitation at a level no
18 higher than the Commission limitation.

19 “(7) EMERGENCY AUTHORITY.—Each alter-
20 native swap execution facility shall adopt rules to
21 provide for the exercise of emergency authority, in
22 consultation or cooperation with the Commission,
23 where necessary and appropriate, including the au-
24 thority to suspend or curtail trading in a security-
25 based swap.

1 “(8) TIMELY PUBLICATION OF TRADING INFOR-
2 MATION.—Each alternative swap execution facility
3 shall make public timely information on price, trad-
4 ing volume, and other trading data to the extent
5 prescribed by the Commission.

6 “(9) RECORDKEEPING AND REPORTING.—

7 “(A) IN GENERAL.—Each alternative swap
8 execution facility shall—

9 “(i) maintain records of all activities
10 related to the business of the facility, in-
11 cluding a complete audit trail, in a form
12 and manner acceptable to the Commission
13 for a period of 5 years; and

14 “(ii) report to the Commission all in-
15 formation determined by the Commission
16 to be necessary or appropriate for the
17 Commission to perform its responsibilities
18 under this Act in a form and manner ac-
19 ceptable to the Commission.

20 “(B) DATA COLLECTION REQUIRE-
21 MENTS.—The Commission shall adopt data col-
22 lection and reporting requirements for alter-
23 native swap execution facilities that are com-
24 parable to corresponding requirements for clear-

1 ing agencies and security-based swap reposi-
2 tories.

3 “(10) ANTITRUST CONSIDERATIONS.—Unless
4 necessary or appropriate to achieve the purposes of
5 this Act, an alternative swap execution facility shall
6 avoid—

7 “(A) adopting any rules or taking any ac-
8 tions that result in any unreasonable restraints
9 of trade; or

10 “(B) imposing any material anticompeti-
11 tive burden on trading on the swap execution
12 facility.

13 “(11) CONFLICTS OF INTEREST.—Each alter-
14 native swap execution facility shall—

15 “(A) establish and enforce rules to mini-
16 mize conflicts of interest in its decision making
17 process; and

18 “(B) establish a process for resolving any
19 conflicts of interest.

20 “(12) DESIGNATION OF COMPLIANCE OFFI-
21 CER.—

22 “(A) IN GENERAL.—Each alternative swap
23 execution facility shall designate an individual
24 to serve as a compliance officer.

1 “(B) DUTIES.—The compliance officer
2 shall perform the following duties:

3 “(i) Report directly to the board or to
4 the senior officer of the facility.

5 “(ii) Review the compliance of the fa-
6 cility with the core principles established in
7 this subsection.

8 “(iii) Consult with the board of the
9 facility, a body performing a function simi-
10 lar to that of a board, or the senior officer
11 of the facility, to resolve any conflicts of
12 interest that may arise.

13 “(iv) Administering the policies and
14 procedures of the facility required to be es-
15 tablished pursuant to this section.

16 “(v) Ensuring compliance with securi-
17 ties laws and the rules and regulations
18 issued thereunder, including any rules pre-
19 scribed by the Commission pursuant to
20 this section.

21 “(vi) Establishing procedures for re-
22 mediation of noncompliance issues found
23 during compliance office reviews,
24 lookbacks, internal or external audit find-
25 ings, self-reported errors, or through vali-

1 dated complaints. Procedures to be estab-
2 lished under this paragraph include proce-
3 dures related to the handling, management
4 response, remediation, retesting, and clos-
5 ing of noncompliance issues.

6 “(C) ANNUAL REPORTS REQUIRED.—

7 “(i) IN GENERAL.—The compliance
8 officer shall annually prepare and sign a
9 report on the compliance of the alternative
10 swap execution facility with the securities
11 laws and the policies and procedures of the
12 facility, including the code of ethics and
13 conflict of interest policies of the facility,
14 in accordance with rules prescribed by the
15 Commission.

16 “(ii) SUBMISSION.—The compliance
17 report required under clause (i) shall ac-
18 company the financial reports of the alter-
19 native swap execution facility that are re-
20 quired to be furnished to the Commission
21 pursuant to this section and shall include
22 a certification that, under penalty of law,
23 the report is accurate and complete.

24 “(f) EXEMPTIONS.—The Commission may exempt,
25 conditionally or unconditionally, an alternative swap exe-

1 cution facility from registration under this section if the
2 Commission finds that such organization is subject to
3 comparable, comprehensive supervision and regulation on
4 a consolidated basis by the Commodity Futures Trading
5 Commission, the Financial Institutions Regulatory Ad-
6 ministration, or the appropriate governmental authorities
7 in the organization's home country.

8 “(g) HARMONIZATION OF RULES.—Within 180 days
9 of the date of the enactment of the Over-the-Counter De-
10 rivatives Markets Act of 2009, the Commission and the
11 Commodity Futures Trading Commission shall jointly pre-
12 scribe rules governing the regulation of alternative swap
13 execution facilities under this section and section 5h of
14 the Commodity Exchange Act.”.

15 (c) TRADING IN SECURITY-BASED SWAP AGREE-
16 MENTS.—Section 6 of the Securities Exchange Act of
17 1934 (15 U.S.C. 78f) is amended by adding at the end
18 the following:

19 “(l) PROHIBITION.—It shall be unlawful for any per-
20 son to effect a transaction in a security-based swap with
21 or for a person that is not an eligible contract participant
22 unless such transaction is effected on a national securities
23 exchange registered pursuant to subsection (b).”.

24 (d) REGISTRATION AND REGULATION OF SWAP
25 DEALERS AND MAJOR SWAP PARTICIPANTS.—The Secu-

1 rities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
2 amended by inserting after section 15E (15 U.S.C. 78o–
3 7) the following:

4 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
5 **BASED SWAP DEALERS AND MAJOR SECUR-**
6 **RITY-BASED SWAP PARTICIPANTS.**

7 “(a) REGISTRATION.—It shall be unlawful for any
8 person—

9 “(1) to act as a security-based swap dealer un-
10 less such person is registered as a security-based
11 swap dealer with the Commission; and

12 “(2) to act as a major security-based swap par-
13 ticipant unless such person is registered as a major
14 security-based swap participant with the Commis-
15 sion.

16 “(b) REQUIREMENTS.—

17 “(1) IN GENERAL.—A person shall register as
18 a security-based swap dealer or major security-based
19 swap participant by filing a registration application
20 with the Commission.

21 “(2) CONTENTS.—The application required
22 under paragraph (1) shall be made in such form and
23 manner as prescribed by the Commission, giving any
24 information and facts as the Commission may deem
25 necessary concerning the business in which the ap-

1 plicant is or will be engaged. Such person, when reg-
2 istered as a security-based swap dealer or major se-
3 curity-based swap participant, shall continue to re-
4 port and furnish to the Commission such informa-
5 tion pertaining to such person's business as the
6 Commission may require.

7 “(3) EXPIRATION.—Each registration shall ex-
8 pire at such time as the Commission may by rule or
9 regulation prescribe.

10 “(4) RULES.—Except as provided in sub-
11 sections (c), (d), and (e), the Commission may pre-
12 scribe rules applicable to security-based swap dealers
13 and major security-based swap participants, includ-
14 ing rules that limit the activities of security-based
15 swap dealers and major security-based swap partici-
16 pants. Except as provided in subsections (c) and (e),
17 the Commission may provide conditional or uncondi-
18 tional exemptions from rules prescribed under this
19 section for security-based swap dealers and major
20 security-based swap participants that are subject to
21 substantially similar requirements as brokers or
22 dealers.

23 “(5) TRANSITION.—Rules adopted under this
24 section shall provide for the registration of security-
25 based swap dealers and major security-based swap

1 participants not later than 1 year after the effective
2 date of the Over-the-Counter Derivatives Markets
3 Act of 2009.

4 “(c) DUAL REGISTRATION.—

5 “(1) SECURITY-BASED SWAP DEALERS.—Any
6 person that is required to be registered as a secu-
7 rity-based swap dealer under this section shall reg-
8 ister with the Commission regardless of whether that
9 person also is a bank or is registered with the Com-
10modity Futures Trading Commission as a swap deal-
11er.

12 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
13PANTS.—Any person that is required to be reg-
14istered as a major security-based swap participant
15under this section shall register with the Commis-
16sion regardless of whether that person also is a bank
17or is registered with the Commodity Futures Trad-
18ing Commission as a major swap participant.

19 “(d) JOINT RULES.—

20 “(1) IN GENERAL.—Not later than 180 days
21after the effective date of the Over-the-Counter De-
22rivatives Markets Act of 2009, the Commission and
23the Commodity Futures Trading Commission shall
24jointly adopt uniform rules for persons that are reg-
25istered—

1 “(A) as security-based swap dealers or
2 major security-based swap participants under
3 this Act; and

4 “(B) as swap dealers or major swap par-
5 ticipants under the Commodity Exchange Act
6 (7 U.S.C. 1 et seq.).

7 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
8 MENTS.—The Commission and the Commodity Fu-
9 tures Trading Commission shall not prescribe rules
10 imposing prudential requirements (including activity
11 restrictions) on security-based swap dealers or major
12 security-based swap participants for which the Fi-
13 nancial Institutions Regulatory Administration is the
14 primary financial regulatory agency. This provision
15 shall not be construed as limiting the authority of
16 the Commission and the Commodity Futures Trad-
17 ing Commission to prescribe appropriate business
18 conduct, reporting, and recordkeeping requirements
19 to protect investors.

20 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

21 “(1) IN GENERAL.—

22 “(A) BANK SECURITY-BASED SWAP DEAL-
23 ERS AND MAJOR SECURITY-BASED SWAP PAR-
24 TICIPANTS.—Each registered security-based
25 swap dealer and major security-based swap par-

1 ticipant for which the Financial Institutions
2 Regulatory Administration is the primary finan-
3 cial regulatory agency shall meet such minimum
4 capital requirements and minimum initial and
5 variation margin requirements as prescribed
6 under paragraph (2)(A) to help ensure the safe-
7 ty and soundness as FIRA shall by rule or reg-
8 ulation prescribe to help ensure the safety and
9 soundness of the security-based swap dealer or
10 major security-based swap participant.

11 “(B) NONBANK SECURITY-BASED SWAP
12 DEALERS AND MAJOR SECURITY-BASED SWAP
13 PARTICIPANTS.—Each registered security-based
14 swap dealer and major security-based swap par-
15 ticipant for which the Financial Institutions
16 Regulatory Administration is not the primary
17 financial regulatory agency shall meet such
18 minimum capital requirements and minimum
19 initial and variation margin requirements as
20 prescribed under paragraph (2)(B) to help en-
21 sure the safety and soundness as the Commis-
22 sion and the Commodity Futures Trading Com-
23 mission shall by rule or regulation jointly pre-
24 scribe to help ensure the safety and soundness

1 of the security-based swap dealer or major secu-
2 rity-based swap participant.

3 “(2) JOINT RULES.—

4 “(A) BANK SECURITY-BASED SWAP DEAL-
5 ERS AND MAJOR SECURITY-BASED SWAP PAR-
6 TICIPANTS.—Within 180 days of the date of the
7 enactment of the Over-the-Counter Derivatives
8 Markets Act of 2009, the Financial Institutions
9 Regulatory Administration, the Commission,
10 and the Commodity Futures Trading Commis-
11 sion, shall jointly adopt rules imposing capital
12 and margin requirements under this subsection
13 for security-based swap dealers and major secu-
14 rity-based swap participants for which FIRA is
15 the primary financial regulatory agency.

16 “(B) NONBANK SECURITY-BASED SWAP
17 DEALERS AND MAJOR SECURITY-BASED SWAP
18 PARTICIPANTS.—Within 180 days of the date of
19 the enactment of the Over-the-Counter Deriva-
20 tives Markets Act of 2009, the Commission, the
21 Commodity Futures Trading Commission, and
22 the Financial Institutions Regulatory Adminis-
23 tration, shall jointly adopt rules imposing cap-
24 ital and margin requirements under this sub-
25 section for security-based swap dealers and

1 major security-based swap participants for
2 which FIRA is not the primary financial regu-
3 latory agency.

4 “(3) CAPITAL.—

5 “(A) BANK SECURITY-BASED SWAP DEAL-
6 ERS AND MAJOR SECURITY-BASED SWAP PAR-
7 TICIPANTS.—The capital requirements pre-
8 scribed under paragraph (2)(A) for bank secu-
9 rity-based swap dealers and major security-
10 based swap participants shall contain—

11 “(i) a capital requirement that is
12 greater than zero for security-based swaps
13 that are cleared by a clearing agency; and

14 “(ii) to offset the greater risk to the
15 security-based swap dealer or major secu-
16 rity-based swap participant and to the fi-
17 nancial system arising from the use of se-
18 curity-based swaps that are not centrally
19 cleared, substantially higher capital re-
20 quirements for security-based swaps that
21 are not cleared by a clearing agency than
22 for security-based swaps that are centrally
23 cleared.

24 “(B) NONBANK SECURITY-BASED SWAP
25 DEALERS AND MAJOR SECURITY-BASED SWAP

1 PARTICIPANTS.—The capital requirements pre-
2 scribed under paragraph (2)(B) for nonbank se-
3 curity-based swap dealers and major security-
4 based swap participants shall be as strict as or
5 stricter than the capital requirements pre-
6 scribed under paragraph (2)(A).

7 “(C) RULE OF CONSTRUCTION.—

8 “(i) IN GENERAL.—Nothing in this
9 section shall limit, or be construed to limit,
10 the authority—

11 “(I) the Commission to set finan-
12 cial responsibility rules for a broker or
13 dealer registered pursuant to section
14 15(b) (except for section 15(b)(11)
15 thereof) in accordance with section
16 15(c)(3); or

17 “(II) of the Commodity Futures
18 Trading Commission to set financial
19 responsibility rules for a futures com-
20 mission merchant or introducing
21 broker registered pursuant to section
22 4f(a) of the Commodity Exchange Act
23 (except for section 4f(a)(3) thereof) in
24 accordance with section 4f(b) of the
25 Commodity Exchange Act.

1 “(ii) FUTURES COMMISSION MER-
2 CHANTS AND OTHER DEALERS.—A futures
3 commission merchant, introducing broker,
4 broker, or dealer shall maintain sufficient
5 capital to comply with the stricter of any
6 applicable capital requirements to which
7 such merchant, introducing broker, broker,
8 or dealer is subject to under this title or
9 the Commodity Exchange Act.

10 “(4) MARGIN.—

11 “(A) BANK SWAP DEALERS AND MAJOR
12 SWAP PARTICIPANTS.—

13 “(i) IN GENERAL.—The Financial In-
14 stitutions Regulatory Administration shall
15 impose both initial and variation margin
16 requirements in accordance with paragraph
17 (2)(A) for bank security-based swap deal-
18 ers and major security-based swap partici-
19 pants on all security-based swaps that are
20 not cleared by a clearing agency.

21 “(ii) EXEMPTION.—The Financial In-
22 stitutions Regulatory Administration by
23 rule or order, as FIRA deems consistent
24 with the public interest, may conditionally
25 or unconditionally exempt a security-based

1 swap dealer or major security-based swap
2 participant for which FIRA is the primary
3 financial regulatory agency from the re-
4 quirements of this subsection and the rules
5 issued under this subsection with regard to
6 any security-based swap in which 1 of the
7 counterparties is—

8 “(I) not a swap dealer, major
9 swap participant, security-based swap
10 dealer, or a major security-based swap
11 participant;

12 “(II) using the swap as part of
13 an effective hedge under generally ac-
14 cepted accounting principles; and

15 “(III) predominantly engaged in
16 activities that are not financial in na-
17 ture, as defined in section 4(k) of the
18 Bank Holding Company Act of 1956
19 (12 U.S.C. 1843(k)).

20 “(iii) DETERMINATION OF THE AGEN-
21 CY FOR FINANCIAL STABILITY.—The Fi-
22 nancial Institutions Regulatory Adminis-
23 tration may act by rule or order to exempt
24 a bank security-based swap dealer or major
25 security-based swap participant from any

1 requirement or rule under this subsection
2 only if—

3 “(I) FIRA has provided a written
4 notice to the Agency for Financial
5 Stability describing the proposed ex-
6 emption; and

7 “(II) the Agency for Financial
8 Stability has not made a determina-
9 tion and notified FIRA within 60
10 days of receipt of such notice that
11 such exemption would pose a threat to
12 the stability of the United States fi-
13 nancial system.

14 “(iv) NONDELEGATION.—Action by
15 the Agency for Financial Stability under
16 clause (iii) may not be delegated.

17 “(B) NONBANK SECURITY-BASED SWAP
18 DEALERS AND MAJOR SECURITY-BASED SWAP
19 PARTICIPANTS.—

20 “(i) IN GENERAL.—The Commission
21 and the Securities and Exchange Commis-
22 sion shall impose both initial and variation
23 margin requirements in accordance with
24 paragraph (2)(B) on all security-based
25 swaps that are not cleared by a clearing

1 agency. Any such requirements shall be as
2 strict as or stricter than the margin re-
3 quirements prescribed under paragraph
4 (4)(A).

5 “(ii) EXEMPTION.—The Commission
6 by rule or order, as the Commission deems
7 consistent with the public interest, may
8 conditionally or unconditionally exempt a
9 nonbank security-based swap dealer or
10 major security-based swap participant from
11 the requirements of this subparagraph and
12 the rules issued under this subparagraph
13 with regard to any security-based swap in
14 which 1 of the counterparties is—

15 “(I) not a swap dealer, major
16 swap participant, security-based swap
17 dealer, or a major security-based swap
18 participant;

19 “(II) using the swap as part of
20 an effective hedge under generally ac-
21 cepted accounting principles; and

22 “(III) predominantly engaged in
23 activities that are not financial in na-
24 ture, as defined in section 4(k) of the

1 Bank Holding Company Act of 1956
2 (12 U.S.C. 1843(k)).

3 “(iii) DETERMINATION OF THE AGEN-
4 CY FOR FINANCIAL STABILITY.—The Com-
5 mission may act by rule or order to exempt
6 a nonbank security-based swap dealer or
7 major security-based swap participant from
8 any requirement or rule under this sub-
9 section only if—

10 “(I) the Commission has pro-
11 vided a written notice to the Agency
12 for Financial Stability describing the
13 proposed exemption; and

14 “(II) the Agency for Financial
15 Stability has not made a determina-
16 tion and notified the Commission
17 within 60 days of receipt of such no-
18 tice that such exemption would pose a
19 threat to the stability of the United
20 States financial system.

21 “(iv) NONDELEGATION.—Action by
22 the Commodity Futures Trading Commis-
23 sion or the Agency for Financial Stability
24 under this subparagraph may not be dele-
25 gated.

1 “(5) MARGIN REQUIREMENTS.—In prescribing
2 margin requirements under this subsection, the Fi-
3 nancial Institutions Regulatory Administration, the
4 Commission, or the Commodity Futures Trading
5 Commission may permit the use of noncash collat-
6 eral, as FIRA, the Commission, or the Commodity
7 Futures Trading Commission determines to be con-
8 sistent with—

9 “(A) preserving the financial integrity of
10 markets trading security-based swaps; and

11 “(B) preserving the stability of the United
12 States financial system.

13 “(6) REQUESTED MARGIN.—If any party to a
14 security-based swap that is exempt from the margin
15 requirements of paragraph (4)(A)(i) pursuant to the
16 provisions of paragraph (4)(A)(ii) or from the mar-
17 gin requirements of paragraph (4)(B)(i) pursuant to
18 the provisions of paragraph (4)(B)(ii) requests that
19 such security-based swap be margined, then—

20 “(A) the exemption shall not apply; and

21 “(B) the counterparty to such security-
22 based swap shall provide the requested margin.

23 “(f) REPORTING AND RECORDKEEPING.—

1 “(1) IN GENERAL.—Each registered security-
2 based swap dealer and major security-based swap
3 participant—

4 “(A) shall make such reports as are pre-
5 scribed by the Commission by rule or regulation
6 regarding the transactions and positions and fi-
7 nancial condition of such dealer or participant;

8 “(B) for which—

9 “(i) the Financial Institutions Regu-
10 latory Administration is the primary finan-
11 cial regulatory agency shall keep books and
12 records of all activities related to its busi-
13 ness as a security-based swap dealer or
14 major security-based swap participant in
15 such form and manner and for such period
16 as may be prescribed by the Commission
17 by rule or regulation; and

18 “(ii) the Financial Institutions Regu-
19 latory Administration is not the primary fi-
20 nancial regulatory agency shall keep books
21 and records in such form and manner and
22 for such period as may be prescribed by
23 the Commission by rule or regulation; and

1 “(C) shall keep such books and records
2 open to inspection and examination by any rep-
3 resentative of the Commission.

4 “(2) RULES.—Within 1 year of the date of the
5 enactment of the Over-the-Counter Derivatives Mar-
6 kets Act of 2009, the Commission and the Com-
7 modity Futures Trading Commission, in consultation
8 with the appropriate Federal banking agencies, shall
9 jointly adopt rules governing reporting and record-
10 keeping for swap dealers, major swap participants,
11 security-based swap dealers and major security-
12 based swap participants.

13 “(g) DAILY TRADING RECORDS.—

14 “(1) IN GENERAL.—Each registered security-
15 based swap dealer and major security-based swap
16 participant shall, for such period as may be pre-
17 scribed by the Commission by rule or regulation,
18 maintain daily trading records of that dealer’s or
19 participant’s—

20 “(A) security-based swaps and all related
21 records (including related transactions); and

22 “(B) recorded communications, including
23 electronic mail, instant messages, and record-
24 ings of telephone calls.

1 “(2) INFORMATION REQUIREMENTS.—The daily
2 trading records required to be maintained under
3 paragraph (1) shall include such information as the
4 Commission shall prescribe by rule or regulation.

5 “(3) CUSTOMER RECORDS.—Each registered se-
6 curity-based swap dealer or major security-based
7 swap participant shall maintain daily trading records
8 for each customer or counterparty in such manner
9 and form as to be identifiable with each security-
10 based swap transaction.

11 “(4) AUDIT TRAIL.—

12 “(A) MAINTENANCE OF AUDIT TRAIL.—
13 Each registered security-based swap dealer or
14 major security-based swap participant shall
15 maintain a complete audit trail for conducting
16 comprehensive and accurate trade reconstruc-
17 tions.

18 “(B) PERMISSIBLE COMPLIANCE BY ENTI-
19 TY OTHER THAN DEALER OR PARTICIPANT.—A
20 registered security-based swap repository may,
21 at the request of a registered security-based
22 swap dealer or major security-based swap par-
23 ticipant, satisfy the requirement of subpara-
24 graph (A) on behalf of such registered security-

1 based swap dealer or major security-based swap
2 participant.

3 “(5) RULES.—Not later than 1 year after the
4 date of the enactment of the Over-the-Counter De-
5 rivatives Markets Act of 2009, the Commission and
6 the Commodity Futures Trading Commission, in
7 consultation with the appropriate Federal banking
8 agencies, shall jointly adopt rules governing daily
9 trading records for swap dealers, major swap partici-
10 pants, security-based swap dealers, and major secu-
11 rity-based swap participants.

12 “(h) BUSINESS CONDUCT STANDARDS.—

13 “(1) IN GENERAL.—Each registered security-
14 based swap dealer and major security-based swap
15 participant shall conform with such business conduct
16 standards as may be prescribed by the Commission
17 by rule or regulation, including any standards ad-
18 dressing—

19 “(A) fraud, manipulation, and other abu-
20 sive practices involving security-based swaps
21 (including security-based swaps that are offered
22 but not entered into);

23 “(B) diligent supervision of its business as
24 a security-based swap dealer;

1 “(C) adherence to all applicable position
2 limits; and

3 “(D) such other matters as the Commis-
4 sion shall determine to be necessary or appro-
5 priate.

6 “(2) BUSINESS CONDUCT REQUIREMENTS.—
7 Business conduct requirements adopted by the Com-
8 mission pursuant to paragraph (1) shall—

9 “(A) establish a standard of care for a se-
10 curity-based swap dealer or major security-
11 based swap participant to verify that any secu-
12 rity-based swap counterparty meets the eligi-
13 bility standards for an eligible contract partici-
14 pant;

15 “(B) require disclosure by the security-
16 based swap dealer or major security-based swap
17 participant to any counterparty to the security-
18 based swap (other than a swap dealer, major
19 swap participant, security-based swap dealer, or
20 major security-based swap participant) of—

21 “(i) information about the material
22 risks and characteristics of the security-
23 based swap;

24 “(ii) the source and amount of any
25 fees or other material remuneration that

1 the security-based swap dealer or major se-
2 curity-based swap participant would di-
3 rectly or indirectly expect to receive in con-
4 nection with the security-based swap; and

5 “(iii) any other material incentives or
6 conflicts of interest that the security-based
7 swap dealer or major security-based swap
8 participant may have in connection with
9 the security-based swap; and

10 “(C) establish a standard of conduct for a
11 security-based swap dealer or major security-
12 based swap participant to communicate in a
13 fair and balanced manner based on principles of
14 fair dealing and good faith;

15 “(D) establish a standard of conduct for a
16 security-based swap dealer or major security-
17 based swap participant, with respect to a
18 counterparty that is an eligible contract partici-
19 pant within the meaning of subclause (I) or (II)
20 of clause (vii) section 1a(13) of the Commodity
21 Exchange Act (7 U.S.C. 1a(13)), to have a rea-
22 sonable basis to believe that the counterparty
23 has an independent representative that—

24 “(i) has sufficient knowledge to evalu-
25 ate the transaction and risks;

1 “(ii) is not subject to a statutory dis-
2 qualification;

3 “(iii) is independent of the security-
4 based swap dealer or major security-based
5 swap participant;

6 “(iv) undertakes a duty to act in the
7 best interests of the counterparty it rep-
8 resents;

9 “(v) makes appropriate disclosures;
10 and

11 “(vi) will provide written representa-
12 tions to the eligible contract participant re-
13 garding fair pricing and the appropriate-
14 ness of the transaction; and

15 “(E) establish such other standards and
16 requirements as the Commission may determine
17 are necessary or appropriate in the public inter-
18 est, for the protection of investors, or otherwise
19 in furtherance of the purposes of this title.

20 “(3) RULES.—Not later than 1 year after the
21 date of the enactment of the Over-the-Counter De-
22 rivatives Markets Act of 2009, the Commission and
23 the Commodity Futures Trading Commission, in
24 consultation with the appropriate Federal banking
25 agencies, shall jointly prescribe rules under this sub-

1 section governing business conduct standards for
2 swap dealers, major swap participants, security-
3 based swap dealers, and major security-based swap
4 participants.

5 “(i) DOCUMENTATION AND BACK OFFICE STAND-
6 ARDS.—

7 “(1) IN GENERAL.—Each registered security-
8 based swap dealer and major security-based swap
9 participant shall conform with standards, as may be
10 prescribed by the Commission by rule or regulation,
11 addressing timely and accurate confirmation, proc-
12 essing, netting, documentation, and valuation of all
13 security-based swaps.

14 “(2) RULES.—Not later than 1 year after the
15 date of the enactment of the Over-the-Counter De-
16 rivatives Markets Act of 2009, the Commission and
17 the Commodity Futures Trading Commission, in
18 consultation with the appropriate Federal banking
19 agencies, shall jointly adopt rules governing docu-
20 mentation and back office standards for swap deal-
21 ers, major swap participants, security-based swap
22 dealers, and major security-based swap participants.

23 “(j) DEALER RESPONSIBILITIES.—Each registered
24 security-based swap dealer and major security-based swap

1 participant shall, at all times, comply with the following
2 requirements:

3 “(1) MONITORING OF TRADING.—The security-
4 based swap dealer or major security-based swap par-
5 ticipant shall monitor its trading in security-based
6 swaps to prevent violations of applicable position
7 limits.

8 “(2) DISCLOSURE OF GENERAL INFORMA-
9 TION.—The security-based swap dealer or major se-
10 curity-based swap participant shall disclose to the
11 Commission and to the Financial Institutions Regu-
12 latory Administration information concerning—

13 “(A) terms and conditions of its security-
14 based swaps;

15 “(B) security-based swap trading oper-
16 ations, mechanisms, and practices;

17 “(C) financial integrity protections relating
18 to security-based swaps; and

19 “(D) other information relevant to its trad-
20 ing in security-based swaps.

21 “(3) ABILITY TO OBTAIN INFORMATION.—The
22 security-based swap dealer or major swap security-
23 based participant shall—

24 “(A) establish and enforce internal systems
25 and procedures to obtain any necessary infor-

1 mation to perform any of the functions de-
2 scribed in this section; and

3 “(B) provide the information to the Com-
4 mission and to the Financial Institutions Regu-
5 latory Administration upon request.

6 “(4) CONFLICTS OF INTEREST.—The security-
7 based swap dealer and major security-based swap
8 participant shall implement conflict of interest sys-
9 tems and procedures that—

10 “(A) establish structural and institutional
11 safeguards to assure that the activities of any
12 person within the firm relating to research or
13 analysis of the price or market for any security
14 are separated by appropriate informational par-
15 titions within the firm from the review, pres-
16 sure, or oversight of those whose involvement in
17 trading or clearing activities might potentially
18 bias their judgment or supervision; and

19 “(B) address such other issues as the
20 Commission determines appropriate.

21 “(5) ANTITRUST CONSIDERATIONS.—Unless
22 necessary or appropriate to achieve the purposes of
23 this Act, a security-based swap dealer or major secu-
24 rity-based swap participant shall avoid—

1 “(A) adopting any processes or taking any
2 actions that result in any unreasonable re-
3 straints of trade; or

4 “(B) imposing any material anticompeti-
5 tive burden on trading.

6 “(k) RULES.—The Commission, the Commodity Fu-
7 tures Trading Commission, and the Financial Institutions
8 Regulatory Administration shall consult with each other
9 prior to adopting any rules under the Over-the-Counter
10 Derivatives Markets Act of 2009.

11 “(l) STATUTORY DISQUALIFICATION.—Except to the
12 extent otherwise specifically provided by rule, regulation,
13 or order of the Commission, it shall be unlawful for a secu-
14 rity-based swap dealer or a major security-based swap par-
15 ticipant to permit any person associated with a security-
16 based swap dealer or a major security-based swap partici-
17 pant who is subject to a statutory disqualification to effect
18 or be involved in effecting security-based swaps on behalf
19 of such security-based swap dealer or major security-based
20 swap participant, if such security-based swap dealer or
21 major security-based swap participant knew, or in the ex-
22 ercise of reasonable care should have known, of such stat-
23 utory disqualification.

24 “(m) ENFORCEMENT AND ADMINISTRATIVE PRO-
25 CEEDING AUTHORITY.—

1 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

2 “(A) SECURITIES AND EXCHANGE COMMIS-
3 SION.—Except as provided in subsection (b),
4 the Commission shall have primary authority to
5 enforce the provisions of subtitle B of the Over-
6 the-Counter Derivatives Markets Act of 2009
7 with respect to any person.

8 “(B) FIRA.—The Financial Institutions
9 Regulatory Administration shall have exclusive
10 authority to enforce the provisions of section
11 15F(e) and other prudential requirements of
12 this Act with respect to banks, and branches or
13 agencies of foreign banks that are security-
14 based swap dealers or major security-based
15 swap participants.

16 “(C) REFERRAL.—If the Financial Institu-
17 tions Regulatory Administration has cause to
18 believe that such security-based swap dealer or
19 major security-based swap participant for which
20 FIRA is the primary financial regulatory agen-
21 cy may have engaged in conduct that con-
22 stitutes a violation of the nonprudential require-
23 ments of section 15F or rules adopted by the
24 Commission thereunder, the Financial Institu-
25 tions Regulatory Administration may rec-

1 commend in writing to the Commission that the
2 Commission initiate an enforcement proceeding
3 as authorized under this Act. The recommenda-
4 tion shall be accompanied by a written expla-
5 nation of the concerns giving rise to the rec-
6 ommendation.

7 “(D) BACKSTOP ENFORCEMENT AUTHOR-
8 ITY.—If the Commission does not initiate an
9 enforcement proceeding before the end of the
10 90-day period beginning on the date on which
11 the Commission receives a recommendation
12 under subparagraph (C), the Financial Institu-
13 tions Regulatory Administration may initiate an
14 enforcement proceeding as permitted under
15 Federal law.

16 “(2) ENFORCEMENT ACTIONS.—The Commis-
17 sion, by order, shall censure, place limitations on the
18 activities, functions, or operations of, or reject the
19 filing of any security-based swap dealer or major se-
20 curity-based swap participant that has registered
21 with the Commission pursuant to subsection (b) if it
22 finds, on the record after notice and opportunity for
23 hearing, that such censure, placing of limitations, or
24 rejection is in the public interest and that such secu-
25 rity-based swap dealer or major security-based swap

1 participant, or any person associated with such secu-
2 rity-based swap dealer or major security-based swap
3 participant effecting or involved in effecting trans-
4 actions in security-based swaps on behalf of such se-
5 curity-based swap dealer or major security-based
6 swap participant, whether prior or subsequent to be-
7 coming so associated—

8 “(A) has committed or omitted any act, or
9 is subject to an order or finding, described in
10 subparagraph (A), (D), or (E) of paragraph (4)
11 of section 15(b);

12 “(B) has been convicted of any offense
13 specified in subparagraph (B) of such para-
14 graph (4) within 10 years of the commencement
15 of the proceedings under this subsection;

16 “(C) is enjoined from any action, conduct,
17 or practice specified in subparagraph (C) of
18 such paragraph (4);

19 “(D) is subject to an order or a final order
20 specified in subparagraph (F) or (H), respec-
21 tively, of such paragraph (4); or

22 “(E) has been found by a foreign financial
23 regulatory authority to have committed or omit-
24 ted any act, or violated any foreign statute or

1 regulation, described in subparagraph (G) of
2 such paragraph (4).

3 “(3) PERSONNEL ENFORCEMENT ACTIONS.—

4 With respect to any person who is associated, who
5 is seeking to become associated, or, at the time of
6 the alleged misconduct, who was associated or was
7 seeking to become associated with a security-based
8 swap dealer or major security-based swap partici-
9 pant for the purpose of effecting or being involved
10 in effecting security-based swaps on behalf of such
11 security-based swap dealer or major security-based
12 swap participant, the Commission, by order, shall
13 censure, place limitations on the activities or func-
14 tions of such person, or suspend for a period not ex-
15 ceeding 12 months, or bar such person from being
16 associated with a security-based swap dealer or
17 major security-based swap participant, if the Com-
18 mission finds, on the record after notice and oppor-
19 tunity for a hearing, that such censure, placing of
20 limitations, suspension, or bar is in the public inter-
21 est and that such person—

22 “(A) has committed or omitted any act, or
23 is subject to an order or finding, described in
24 subparagraph (A), (D), or (E) of paragraph (4)
25 of section 15(b);

1 “(B) as been convicted of any offense spec-
2 ified in subparagraph (B) of such paragraph
3 (4) within 10 years of the commencement of the
4 proceedings under this subsection;

5 “(C) is enjoined from any action, conduct,
6 or practice specified in subparagraph (C) of
7 such paragraph (4);

8 “(D) is subject to an order or a final order
9 specified in subparagraph (F) or (H), respec-
10 tively, of such paragraph (4); or

11 “(E) has been found by a foreign financial
12 regulatory authority to have committed or omit-
13 ted any act, or violated any foreign statute or
14 regulation, described in subparagraph (G) of
15 such paragraph (4).

16 “(4) NO VIOLATIONS OF ORDERS.—It shall be
17 unlawful—

18 “(A) for any person as to whom an order
19 under paragraph (3) is in effect, without the
20 consent of the Commission, willfully to become,
21 or to be, associated with a security-based swap
22 dealer or major security-based swap participant
23 in contravention of such order; or

24 “(B) for any security-based swap dealer or
25 major security-based swap participant to permit

1 “(2) any transaction in connection with any se-
2 curity with relation to which he has, directly or indi-
3 rectly, any interest in any—

4 “(A) such put, call, straddle, option, or
5 privilege;

6 “(B) such security futures product; or

7 “(C) such security-based swap; or

8 “(3) any transaction in any security for the ac-
9 count of any person who he has reason to believe
10 has, and who actually has, directly or indirectly, any
11 interest in any—

12 “(A) such put, call, straddle, option, or
13 privilege;

14 “(B) such security futures product with re-
15 lation to such security; or

16 “(C) any security-based swap involving
17 such security or the issuer of such security.”.

18 (f) RULEMAKING AUTHORITY TO PREVENT FRAUD,
19 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
20 BASED SWAPS AND SECURITY-BASED SWAP AGREE-
21 MENTS.—Section 9 of the Securities Exchange Act of
22 1934 (15 U.S.C. 78i) is amended by adding at the end
23 the following:

24 “(j) PROHIBITION.—It shall be unlawful for any per-
25 son, directly or indirectly, by the use of any means or in-

1 strumentality of interstate commerce or of the mails, or
2 of any facility of any national securities exchange, to effect
3 any transaction in, or to induce or attempt to induce the
4 purchase or sale of, any security-based swap or any secu-
5 rity-based swap agreement, in connection with which such
6 person engages in any fraudulent, deceptive, or manipula-
7 tive act or practice, makes any fictitious quotation, or en-
8 gages in any transaction, practice, or course of business
9 which operates as a fraud or deceit upon any person. The
10 Commission shall, for the purposes of this paragraph, by
11 rules and regulations define, and prescribe means reason-
12 ably designed to prevent, such transactions, acts, prac-
13 tices, and courses of business as are fraudulent, deceptive,
14 or manipulative, and such quotations as are fictitious.”.

15 (g) POSITION LIMITS AND POSITION ACCOUNT-
16 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
17 Exchange Act of 1934 is amended by inserting after sec-
18 tion 10A (15 U.S.C. 78j–1) the following new section:

19 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
20 **ABILITY FOR SECURITY-BASED SWAPS AND**
21 **LARGE TRADER REPORTING.**

22 “(a) AGGREGATE POSITION LIMITS.—As a means
23 reasonably designed to prevent fraud and manipulation,
24 the Commission may, by rule or regulation, as necessary
25 or appropriate in the public interest or for the protection

1 of investors, establish limits (including related hedge ex-
2 emption provisions) on the aggregate number or amount
3 of positions that may be held by any person or persons
4 across—

5 “(1) securities listed on a national securities ex-
6 change; and

7 “(2) security-based swaps that perform or af-
8 fect a significant price discovery function with re-
9 spect to regulated markets.

10 “(b) EXEMPTIONS.—The Commission, by rule, regu-
11 lation, or order, may conditionally or unconditionally ex-
12 empt any person or class of persons, any security-based
13 swap or class of security-based swaps, or any transaction
14 or class of transactions from any requirement it may es-
15 tablish under this section with respect to position limits.

16 “(c) SELF-REGULATORY ORGANIZATION RULES.—As
17 a means reasonably designed to prevent fraud or manipu-
18 lation, the Commission, by rule, regulation, or order, as
19 necessary or appropriate in the public interest, for the pro-
20 tection of investors, or otherwise in furtherance of the pur-
21 poses of this title, may direct a self-regulatory organiza-
22 tion—

23 “(1) to adopt rules regarding the size of posi-
24 tions in any security-based swap and any security on

1 which such security-based swap is based that may be
2 held by—

3 “(A) any member of such self-regulatory
4 organization; or

5 “(B) any person for whom a member of
6 such self-regulatory organization effects trans-
7 actions in such security-based swap or other se-
8 curity; and

9 “(2) to adopt rules reasonably designed to en-
10 sure compliance with requirements prescribed by the
11 Commission under subsection (a).

12 “(d) LARGE SECURITY-BASED SWAP TRADER RE-
13 PORTING.—

14 “(1) IN GENERAL.—A person that enters into
15 any security-based swap shall file or caused to be
16 filed with the properly designated officer of the
17 Commission the reports described in paragraph (2).

18 “(2) REPORTS.—

19 “(A) SWAP REPORTS.—Each person de-
20 scribed in paragraph (1) shall, in accordance
21 with the rules and regulations of the Commis-
22 sion, keep books and records of any security-
23 based swaps or transactions and positions in
24 any related security traded on or subject to the
25 rules of any national securities exchange.

1 “(B) be open at all times to inspection and
2 examination by any representative of the Com-
3 mission.

4 “(4) RULE OF CONSTRUCTION.—For the pur-
5 pose of this subsection, the security-based swaps,
6 and securities transactions and positions of any per-
7 son shall include such security-based swaps, trans-
8 actions and positions of any persons directly or indi-
9 rectly controlled by such person.”.

10 (h) PUBLIC REPORTING AND REPOSITORIES FOR SE-
11 CURITY-BASED SWAP AGREEMENTS.—Section 13 of the
12 Securities Exchange Act of 1934 (15 U.S.C. 78m) is
13 amended by adding at the end the following:

14 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
15 BASED SWAP DATA.—

16 “(1) IN GENERAL.—The Commission, or a per-
17 son designated by the Commission pursuant to para-
18 graph (2), shall make available to the public, in a
19 manner that does not disclose the business trans-
20 actions and market positions of any person, aggre-
21 gate data on security-based swap trading volumes
22 and positions from the sources set forth in para-
23 graph (3).

24 “(2) DESIGNEE OF THE COMMISSION.—The
25 Commission may designate a clearing agency or a

1 security-based swap repository to carry out the pub-
2 lic reporting requirement described in paragraph (1).

3 “(3) SOURCES OF INFORMATION.—The sources
4 of the information to be publicly reported as de-
5 scribed in paragraph (1) are—

6 “(A) clearing agencies pursuant to section
7 3B;

8 “(B) security-based swap repositories pur-
9 suant to subsection (n); and

10 “(C) reports received by the Commission
11 pursuant to section 13A.

12 “(n) SECURITY-BASED SWAP REPOSITORIES.—

13 “(1) REGISTRATION REQUIREMENT.—

14 “(A) IN GENERAL.—A person may register
15 as a security-based swap repository by filing
16 with the Commission an application in such
17 form as the Commission, by rule, may pre-
18 scribe, containing the rules of the security-
19 based swap repository and such other informa-
20 tion and documentation as the Commission, by
21 rule, may prescribe as necessary or appropriate
22 in the public interest, for the protection of in-
23 vestors, or in the furtherance of the purposes of
24 this section.

1 “(B) INSPECTION AND EXAMINATION.—
2 Registered security-based swap repositories
3 shall be subject to inspection and examination
4 by any representatives of the Commission.

5 “(2) STANDARD SETTING.—

6 “(A) DATA IDENTIFICATION.—The Com-
7 mission shall prescribe standards that specify
8 the data elements for each security-based swap
9 that shall be collected and maintained by each
10 security-based swap repository.

11 “(B) DATA COLLECTION AND MAINTEN-
12 NANCE.—The Commission shall prescribe data
13 collection and data maintenance standards for
14 security-based swap repositories.

15 “(C) COMPARABILITY.—The standards
16 prescribed by the Commission under this sub-
17 section shall be comparable to the data stand-
18 ards imposed by the Commission on clearing
19 agencies that clear security-based swaps.

20 “(3) DUTIES.—A security-based swap reposi-
21 tory shall—

22 “(A) accept data prescribed by the Com-
23 mission for each security-based swap under
24 paragraph (2);

1 “(B) maintain such data in such form and
2 manner and for such period as may be required
3 by the Commission;

4 “(C) provide to the Commission, or its des-
5 ignee, such information as is required by, and
6 in a form and at a frequency to be determined
7 by, the Commission, in order to comply with the
8 public reporting requirements contained in sub-
9 section (m); and

10 “(D) make available, on a confidential
11 basis, all data obtained by the security-based
12 swap repository, including individual
13 counterparty trade and position data, to the
14 Commission, the appropriate Federal banking
15 agencies, the Commodity Futures Trading
16 Commission, the Agency for Financial Stability,
17 and the Department of Justice or to other per-
18 sons the Commission deems appropriate, includ-
19 ing foreign financial supervisors (including for-
20 eign futures authorities), foreign central banks,
21 and foreign ministries.

22 “(4) REQUIRED REGISTRATION FOR SECURITY-
23 BASED SWAP REPOSITORIES.—Any person that is re-
24 quired to be registered as a securities-based swap re-
25 pository under this subsection shall register with the

1 Commission, regardless of whether that person also
2 is registered with the Commodity Futures Trading
3 Commission as a swap repository.

4 “(5) HARMONIZATION OF RULES.—Not later
5 than 180 days after the effective date of the Over-
6 the-Counter Derivatives Markets Act of 2009, the
7 Commission and the Commodity Futures Trading
8 Commission shall jointly adopt uniform rules gov-
9 erning persons that are registered under this section
10 and persons that are registered as swap repositories
11 under the Commodity Exchange Act (7 U.S.C. 1 et
12 seq.), including uniform rules that specify the data
13 elements that shall be collected and maintained by
14 each repository.

15 “(6) EXEMPTIONS.—The Commission may ex-
16 empt, conditionally or unconditionally, a security-
17 based swap repository from the requirements of this
18 section if the Commission finds that such security-
19 based swap repository is subject to comparable, com-
20 prehensive supervision or regulation on a consoli-
21 dated basis by the Commodity Futures Trading
22 Commission, the Financial Institutions Regulatory
23 Administration, or the appropriate governmental au-
24 thorities in the organization’s home country.”.

1 (i) RECORDKEEPING BY SECURITY-BASED SWAP RE-
2 POSITORIES.—Section 17(a)(1) of the Securities Exchange
3 Act of 1934 (15 U.S.C. 78m) is amended by inserting
4 “registered security-based swap repository,” after “reg-
5 istered securities information processor,”.

6 **SEC. 754. SEGREGATION OF ASSETS HELD AS COLLATERAL**
7 **IN SECURITY-BASED SWAP TRANSACTIONS.**

8 The Securities Exchange Act of 1934 (15 U.S.C. 78a
9 et seq.) is further amended by adding after section 3C (as
10 added by section 753) the following:

11 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
12 **IN SECURITY-BASED SWAP TRANSACTIONS.**

13 “(a) CLEARED SECURITY-BASED SWAPS.—A secu-
14 rity-based swap dealer or clearing agency by or through
15 which funds or other property are held to margin, guar-
16 antee, or secure the obligations of a counterparty under
17 a security-based swap to be cleared by or through a clear-
18 ing agency shall segregate, maintain, and use the funds
19 or other property for the benefit of the counterparty, in
20 accordance with such rules and regulations as the Com-
21 mission shall prescribe for nonbank security-based swap
22 dealers or clearing agencies, or the Financial Institutions
23 Regulatory Administration shall prescribe for bank secu-
24 rity-based swap dealers. Any such funds or other property
25 shall be treated as customer property under this Act.

1 “(b) OTHER SECURITY-BASED SWAPS.—At the re-
2 quest of a security-based swap counterparty who provides
3 funds or other property to a security-based swap dealer
4 to margin, guarantee, or secure the obligations of the
5 counterparty under a security-based swap between the
6 counterparty and the security-based swap dealer that is
7 not submitted for clearing to a clearing agency, the secu-
8 rity-based swap dealer shall segregate the funds or other
9 property for the benefit of the counterparty, and maintain
10 the funds or other property in an account which is carried
11 by an independent third-party custodian and designated
12 as a segregated account for the counterparty, in accord-
13 ance with such rules and regulations as the Commission
14 shall prescribe for nonbank security-based swap dealers or
15 clearing agencies, or the Financial Institutions Regulatory
16 Administration shall prescribe for bank security-based
17 swap dealers. This subsection shall not be interpreted to
18 preclude commercial arrangements regarding the invest-
19 ment of the segregated funds or other property and the
20 related allocation of gains and losses resulting from any
21 such investment, provided, however, that the segregated
22 funds or other property under this subsection may be in-
23 vested only in such investments as the Commission or the
24 Financial Institutions Regulatory Administration, as ap-
25 plicable, permits by rule or regulation.”.

1 **SEC. 755. REPORTING AND RECORDKEEPING.**

2 (a) **ADDITIONAL REPORTING REQUIREMENTS.**—The
3 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
4 is amended by inserting after section 13 the following sec-
5 tion:

6 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
7 **TAIN SECURITY-BASED SWAPS.**

8 “(a) **IN GENERAL.**—Any person who enters into a se-
9 curity-based swap shall satisfy the reporting requirements
10 under subsection (b), if such person—

11 “(1) did not clear the security-based swap in
12 accordance with section 3B; and

13 “(2) did not have data regarding the security-
14 based swap accepted by a security-based swap repos-
15 itory in accordance with rules adopted by the Com-
16 mission under section 13(n).

17 “(b) **REPORTS.**—Any person described in subsection
18 (a) shall—

19 “(1) make such reports in such form and man-
20 ner and for such period as the Commission shall pre-
21 scribe by rule or regulation regarding the security-
22 based swaps held by the person; and

23 “(2) keep books and records pertaining to the
24 security-based swaps held by the person in such
25 form and manner and for such period as may be re-
26 quired by the Commission, which books and records

1 shall be open to inspection by any representative of
2 the Commission, an appropriate Federal banking
3 agency, the Commodity Futures Trading Commis-
4 sion, the Agency for Financial Stability, and the De-
5 partment of Justice.

6 “(c) IDENTICAL DATA.—In adopting rules under this
7 section, the Commission shall require persons described in
8 subsection (a) to report the same or more comprehensive
9 data than the Commission requires security-based swap
10 repositories to collect under section 13(n).”.

11 (b) BENEFICIAL OWNERSHIP REPORTING.—

12 (1) Section 13(d)(1) of the Securities Exchange
13 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
14 inserting “or otherwise becomes or is deemed to be-
15 come a beneficial owner of any of the foregoing upon
16 the purchase or sale of a security-based swap or
17 other derivative instrument that the Commission
18 may define by rule, and” after “Alaska Native
19 Claims Settlement Act,”.

20 (2) Section 13(g)(1) of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by
22 inserting “or otherwise becomes or is deemed to be-
23 come a beneficial owner of any security of a class de-
24 scribed in subsection (d)(1) upon the purchase or
25 sale of a security-based swap or other derivative in-

1 strument that the Commission may define by rule”
2 after “subsection (d)(1) of this section”.

3 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
4 AGERS.—Section 13(f) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78m(f)(1)) is amended—

6 (1) in paragraph (1)—

7 (A) by inserting “(A)” after “accounts
8 holding”; and

9 (B) by inserting “or (B) security-based de-
10 rivative instruments or other derivative securi-
11 ties that the Commission may determine by
12 rule, having such values as the Commission, by
13 rule, may determine” after “less than
14 \$10,000,000) as the Commission, by rule, may
15 determine.”; and

16 (2) in paragraph (3), by striking “section
17 13(d)(1) of this title” and inserting “subsection
18 (d)(1) of this section and of security-based swaps or
19 other derivative instrument that the Commission
20 may determine by rule,”.

21 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
22 Section 15(b)(4) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78o(b)(4)) is amended—

1 (1) in subparagraph (C), by inserting “security-
2 based swap dealer, major security-based swap partici-
3 pant,” after “government securities dealer,”; and

4 (2) in subparagraph (F), by inserting “, or se-
5 curity-based swap dealer, or a major security-based
6 swap participant” after “or dealer”.

7 (e) TRANSACTIONS BY CORPORATE INSIDERS.—Sec-
8 tion 16(f) of the Securities Exchange Act of 1934 (15
9 U.S.C. 78p) is amended by inserting “or security-based
10 swaps” after “security futures products”.

11 **SEC. 756. STATE GAMING AND BUCKET SHOP LAWS.**

12 Section 28(a) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78bb(a)) is amended to read as follows:

14 “(a) ADDITIONAL RIGHTS AND REMEDIES; RECOV-
15 ERY OF ACTUAL DAMAGES; STATE SECURITIES COMMIS-
16 SIONS.—Except as provided in subsection (f), the rights
17 and remedies provided by this title shall be in addition
18 to any and all other rights and remedies that may exist
19 at law or in equity, but no person permitted to maintain
20 a suit for damages under the provisions of this title shall
21 recover, through satisfaction of judgment in 1 or more ac-
22 tions, a total amount in excess of his actual damages on
23 account of the act complained of. Except as otherwise spe-
24 cifically provided in this title, nothing in this title shall
25 affect the jurisdiction of the securities commission (or any

1 agency or officer performing like functions) of any State
2 over any security or any person insofar as it does not con-
3 flict with the provisions of this title or the rules and regu-
4 lations thereunder. No State law which prohibits or regu-
5 lates the making or promoting of wagering or gaming con-
6 tracts, or the operation of ‘bucket shops’ or other similar
7 or related activities, shall invalidate—

8 “(1) any put, call, straddle, option, privilege, or
9 other security subject to this title (except a security-
10 based swap agreement and any security that has a
11 pari-mutuel payout or otherwise is determined by
12 the Commission, acting by rule, regulation, or order,
13 to be appropriately subject to such laws), or apply
14 to any activity which is incidental or related to the
15 offer, purchase, sale, exercise, settlement, or closeout
16 of any such security;

17 “(2) any security-based swap between eligible
18 contract participants; or

19 “(3) any security-based swap effected on a na-
20 tional securities exchange registered pursuant to sec-
21 tion 6(b).

22 No provision of State law regarding the offer, sale, or dis-
23 tribution of securities shall apply to any transaction in a
24 security-based swap or a security futures product, except

1 that this sentence shall not be construed as limiting any
2 State antifraud law of general applicability.”.

3 **SEC. 757. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

4 **TREATMENT OF SECURITY-BASED SWAPS.**

5 (a) DEFINITIONS.—Section 2(a) of the Securities Act
6 of 1933 (15 U.S.C. 77b(a)) is amended—

7 (1) in paragraph (1), by inserting “security-
8 based swap,” after “security future,”;

9 (2) in paragraph (3), by adding at the end the
10 following: “Any offer or sale of a security-based
11 swap by or on behalf of the issuer of the securities
12 upon which such security-based swap is based or is
13 referenced, an affiliate of the issuer, or an under-
14 writer, shall constitute a contract for sale of, sale of,
15 offer for sale, or offer to sell such securities,”; and

16 (3) by adding at the end the following:

17 “(17) The terms ‘swap’ and ‘security-based
18 swap’ have the same meanings as provided in sec-
19 tions 1a(35) of the Commodity Exchange Act (7
20 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-
21 ties Exchange Act of 1934 (15 U.S.C. 18(c)(a)(68)),
22 respectively.

23 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
24 rity-based swap shall be deemed to mean the execu-
25 tion, termination (prior to its scheduled maturity

1 date), assignment, exchange, or similar transfer or
2 conveyance of, or extinguishing of rights or obliga-
3 tions under, a security-based swap, as the context
4 may require.”.

5 (b) REGISTRATION OF SECURITY-BASED SWAPS.—
6 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
7 is amended by adding at the end the following:

8 “(d) MANDATORY REGISTRATION: PROHIBITION ON
9 SALE.—Notwithstanding the provisions of section 3 or
10 section 4, except as the Commission shall otherwise ex-
11 empt by rule or regulation pursuant to this title, unless
12 a registration statement meeting the requirements of sub-
13 section (a) of section 10 is in effect as to a security-based
14 swap, it shall be unlawful for any person, directly or indi-
15 rectly, to make use of any means or instruments of trans-
16 portation or communication in interstate commerce or of
17 the mails to offer to sell, offer to buy or purchase or sell
18 a security-based swap to any person who is not an eligible
19 contract participant as defined in section 1a(13) of the
20 Commodity Exchange Act (7 U.S.C. 1a(13)).”.

21 **SEC. 758. OTHER AUTHORITY.**

22 Unless otherwise provided by its terms, this subtitle
23 does not divest any appropriate Federal banking agency,
24 the Commission, the Commodity Futures Trading Com-

1 mission, or other Federal or State agency, of any authority
2 derived from any other applicable law.

3 **SEC. 759. JURISDICTION.**

4 Section 36 of the Securities Exchange Act of 1934
5 (15 U.S.C. 78mm) is amended

6 (1) in subsection (a)(1), by inserting “and (c)
7 and subject to subsection (d)” after “Except as pro-
8 vided in subsection (b)”;

9 (2) by adding at the end the following:

10 “(c) DERIVATIVES.—The Commission shall not have
11 the authority to grant exemptions from the security-based
12 swap provisions of this Act or the Over-the-Counter De-
13 rivatives Markets Act of 2009, except as expressly author-
14 ized under the provisions of that Act.

15 “(d) EXPRESS AUTHORITY.—The Commission is ex-
16 pressly authorized to use any authority granted to the
17 Commission under subsection (a) to exempt any person,
18 security, or transaction, or any class or classes of persons,
19 securities, or transactions from any provision or provisions
20 of this title, or of any rule or regulation thereunder, that
21 applies to such person, security, or transaction solely be-
22 cause a ‘security-based swap’ is a ‘security’ under section
23 3(a).”.

1 **Subtitle C—Other Provisions**

2 **SEC. 761. INTERNATIONAL HARMONIZATION.**

3 In order to promote effective and consistent global
4 regulation of swaps and security-based swaps, the Securi-
5 ties and Exchange Commission, the Commodity Futures
6 Trading Commission, the Financial Institutions Regu-
7 latory Administration, the Agency for Financial Stability,
8 and the Treasury Department—

9 (1) shall, both individually and collectively, con-
10 sult and coordinate with foreign regulatory authori-
11 ties on the establishment of consistent international
12 standards with respect to the regulation of such
13 swaps; and

14 (2) may, both individually and collectively,
15 agree to such information-sharing arrangements as
16 may be deemed to be necessary or appropriate in the
17 public interest or for the protection of investors and
18 swap counterparties.

19 **SEC. 762. INTERAGENCY COOPERATION.**

20 (a) **JOINT ADVISORY COMMITTEE.**—

21 (1) **ESTABLISHMENT.**—The Securities and Ex-
22 change Commission and the Commodity Futures
23 Trading Commission, shall establish a joint advisory
24 committee or work through an established joint advi-
25 sory committee to consider and develop solutions to

1 emerging and ongoing issues of common interest re-
2 lating to the trading and regulation of products reg-
3 ulated by the Securities and Exchange Commission
4 and the Commodity Futures Trading Commission,
5 including securities, commodity futures, swaps and
6 securities-based swaps.

7 (2) MEMBERSHIP.—The joint advisory com-
8 mittee shall—

9 (A) be fairly balanced in terms of the
10 points of view represented and the functions to
11 be performed by the committee;

12 (B) include at least 1 representative from
13 each of the Securities and Exchange Commis-
14 sion and the Commodity Futures Trading Com-
15 mission; and

16 (C) include other individuals with expertise
17 in commodities and securities trading, commod-
18 ities and securities law, investor protection, con-
19 sumer protection, or international markets.

20 (3) REPORTING.—Not later than 6 months
21 after the date of enactment of this title, and every
22 6 months thereafter, the joint advisory committee
23 shall report its findings and recommendations to
24 the—

1 (A) Committee on Banking, Housing, and
2 Urban Affairs of the Senate;

3 (B) Committee on Financial Services of
4 the House of Representatives;

5 (C) Committee on Agriculture, Nutrition,
6 and Forestry of the Senate; and

7 (D) Committee on Agriculture of the
8 House of Representatives.

9 (4) **JOINT FUNDING.**—Notwithstanding any
10 other provision of law, amounts made available to
11 the Commodity Futures Trading Commission and
12 the Securities and Exchange Commission for the
13 current or subsequent fiscal years by a current or
14 future appropriations Act may be used for the inter-
15 agency funding of the joint advisory committee spon-
16 sored by such agencies pursuant to this section.

17 (b) **JOINT ENFORCEMENT TASK FORCE.**—The Secu-
18 rities and Exchange Commission and the Commodity Fu-
19 tures Trading Commission shall jointly establish an inter-
20 agency group to be known as the Joint Enforcement Task
21 Force in order to improve market oversight, enhance en-
22 forcement, and relieve duplicative regulatory burdens. The
23 Task Force shall consist of staff from each agency to co-
24 ordinate and develop processes for conducting joint inves-
25 tigations in response to events that affect both the com-

1 modities and securities markets. The Task Force shall
2 prepare and offer training programs for the staffs of both
3 agencies, develop enforcement and examination standards
4 and protocols, and coordinate information sharing.

5 (c) TRADING AND MARKETS FELLOWSHIP PRO-
6 GRAM.—

7 (1) IN GENERAL.—The Securities and Ex-
8 change Commission, the Commodity Futures Trad-
9 ing Commission, and the Board of Governors of the
10 Federal Reserve System shall jointly establish a
11 Trading and Markets Fellowship Program in order
12 to enhance staff understanding about the inter-
13 actions between financial markets and the economy.

14 (2) SELECTION OF FELLOWS.—On January 1
15 of each calendar year, the Chairmen of the Securi-
16 ties and Exchange Commission, the Commodity Fu-
17 tures Trading Commission, and the Board of Gov-
18 ernors of the Federal Reserve System shall jointly
19 announce the selection of 3 employees from their re-
20 spective agencies to participate in the fellowship pro-
21 gram established under paragraph (1), for a total
22 annual class size of 9 fellows per calendar year.

23 (3) JOINT TRAINING CURRICULUM.—

24 (A) DEVELOPMENT.—The Securities and
25 Exchange Commission, the Commodity Futures

1 Trading Commission, and the Board of Gov-
2 ernors of the Federal Reserve System shall
3 jointly develop a 1-month long training cur-
4 riculum that focuses on the mission and activi-
5 ties of each agency, enforcement matters, and
6 economic and financial analysis.

7 (B) FACULTY.—The training curriculum
8 developed under subparagraph (A) shall be
9 taught by senior officials from each agency, ex-
10 perience academics, and professionals from
11 commodities and securities trading.

12 (C) MANDATORY ATTENDANCE.—Each of
13 the 9 fellows selected under paragraph (2) shall
14 complete the training curriculum developed
15 under this paragraph.

16 (4) CROSS-AGENCY ROTATION.—

17 (A) IN GENERAL.—Following the comple-
18 tion of the 1-month training curriculum devel-
19 oped under paragraph (3), each fellow shall be
20 assigned to serve at each participating agency
21 for 3 months each.

22 (B) SUBMISSION OF PAPER.—Upon com-
23 pletion of the Trading and Markets Fellowship
24 Program, each fellow shall submit a written
25 paper to the Chairmen of the Securities and

1 Exchange Commission, the Commodity Futures
2 Trading Commission, and the Board of Gov-
3 ernors of the Federal Reserve System—

4 (i) summarizing his or her observa-
5 tions from participating in the program;
6 and

7 (ii) providing recommendations for en-
8 hancing the contribution of each agency to
9 the stable functioning of the financial mar-
10 kets and economy of the nation.

11 (d) **CROSS-AGENCY ENFORCEMENT.**—The Securities
12 and Exchange Commission and the Commodity Futures
13 Trading Commission shall jointly establish a cross-agency
14 training and education curriculum for enforcement per-
15 sonnel in order to improve the ability of employees at both
16 agencies to understand and respond to matters where both
17 agencies have enforcement jurisdiction and interest.

18 (e) **DETAILING OF STAFF.**—The Securities and Ex-
19 change Commission and the Commodity Futures Trading
20 Commission shall jointly establish a program for the reg-
21 ular detailing of staff between such agencies.

22 **SEC. 763. STUDY AND REPORT ON IMPLEMENTATION.**

23 (a) **STUDY REQUIRED.**—The Comptroller General of
24 the United States shall conduct a study of—

1 (1) how the Commodity Futures Trading Com-
2 mission and the Securities and Exchange Commis-
3 sion have implemented this title and the amend-
4 ments made by this title;

5 (2) the extent to which jurisdictional disputes
6 have created challenges in the process of imple-
7 menting this title and the amendments made by this
8 title;

9 (3) the benefits and drawbacks of harmonizing
10 laws implemented by the Commodity Futures Trad-
11 ing Commission and the Securities and Exchange
12 Commission, and merging those agencies;

13 (4) the benefits and feasibility of—

14 (A) holding of both futures and securities
15 products in the same account to allow cross-net-
16 ting; and

17 (B) creating the ability to cross-net across
18 securities and futures accounts; and

19 (5) the benefits and feasibility of imposing a
20 uniform fiduciary duty on financial intermediaries
21 who provide similar investment advisory services.

22 (b) REPORT REQUIRED.—Not later than 1 year after
23 the date of enactment of this title, the Comptroller Gen-
24 eral shall submit a report on the results of the study re-
25 quired by this section to Congress, the Commodity Fu-

1 tures Trading Commission, and the Securities and Ex-
2 change Commission.

3 **SEC. 764. RECOMMENDATIONS FOR CHANGES TO INSOL-**
4 **VENCY LAWS.**

5 Not later than 180 days after the date of enactment
6 of this Act, the Securities and Exchange Commission, the
7 Commodity Futures Trading Commission, and FIRA shall
8 transmit to Congress recommendations on legislative
9 changes to the Federal insolvency laws—

10 (1) in order to enhance the legal certainty with
11 respect to swap participants clearing swaps and se-
12 curity-based swaps through a derivatives clearing or-
13 ganization or clearing agency, including , includ-
14 ing—

15 (A) customer rights to cover margin depos-
16 its or custodial property held at or through an
17 insolvent swap clearinghouse or clearing partici-
18 pant; and

19 (B) the enforceability or clearing rules re-
20 lating to the portability of customer swap posi-
21 tions (and associated margins) upon the insol-
22 vency of a clearing participant;

23 (2) to clarify and harmonize the insolvency law
24 framework applicable to entities that are both com-
25 modity brokers (as defined in section 101(6) of title

1 11, United States Code) and registered brokers or
2 dealers (as defined in section 3(a) of the Securities
3 Exchange Act of 1934 (15 U.S.C. 78c(a)); and
4 (3) to facilitate the portfolio margining of secu-
5 rities and commodities futures and options positions
6 held through entities that are both futures commis-
7 sion merchants (as defined in section 1a of the Com-
8 modity Exchange Act) and registered brokers or
9 dealers (as defined in section 3(a) of the Securities
10 Exchange Act of 1934 (15 U.S.C. 78c(a)).

11 **SEC. 765. EFFECTIVE DATE.**

12 Except as specifically provided in the amendments
13 made by this title, this title, and the amendments made
14 by this title, shall take effect 180 days after the date of
15 enactment of this Act.

16 **TITLE VIII—PAYMENT, CLEAR-**
17 **ING, AND SETTLEMENT SU-**
18 **PERVISION**

19 **SEC. 801. SHORT TITLE.**

20 This title may be cited as the “Payment, Clearing,
21 and Settlement Supervision Act of 2009”.

22 **SEC. 802. FINDINGS AND PURPOSES.**

23 (a) FINDINGS.—Congress finds the following:

24 (1) The proper functioning of the financial mar-
25 kets is dependent upon safe and efficient arrange-

1 ments for the clearing and settlement of payment,
2 securities, and other financial transactions.

3 (2) Financial market utilities that conduct or
4 support multilateral payment, clearing, or settlement
5 activities may reduce risks for their participants and
6 the broader financial system, but such utilities may
7 also concentrate and create new risks and thus must
8 be well designed and operated in a safe and sound
9 manner.

10 (3) Payment, clearing, and settlement activities
11 conducted by financial institutions also present im-
12 portant risks to the participating financial institu-
13 tions and to the financial system.

14 (4) Enhancements to the regulation and super-
15 vision of systemically important financial market
16 utilities and the conduct of systemically important
17 payment, clearing, and settlement activities by finan-
18 cial institutions are necessary—

19 (A) to provide consistency;

20 (B) to promote robust risk management
21 and safety and soundness;

22 (C) to reduce systemic risks; and

23 (D) to support the stability of the broader
24 financial system.

1 (b) PURPOSE.—The purpose of this title is to miti-
2 gate systemic risk in the financial system and promote fi-
3 nancial stability by—

4 (1) authorizing the Board of Governors to pre-
5 scribe uniform standards for the—

6 (A) management of risks by systemically
7 important financial market utilities; and

8 (B) conduct of systemically important pay-
9 ment, clearing, and settlement activities by fi-
10 nancial institutions;

11 (2) providing the Board of Governors an en-
12 hanced role in the supervision of risk management
13 standards for systemically important financial mar-
14 ket utilities;

15 (3) strengthening the liquidity of systemically
16 important financial market utilities; and

17 (4) providing the Board of Governors an en-
18 hanced role in the supervision of risk management
19 standards for systemically important payment, clear-
20 ing, and settlement activities by financial institu-
21 tions.

22 **SEC. 803. DEFINITIONS.**

23 In this title, the following definitions shall apply:

24 (1) DESIGNATED ACTIVITY.—The term “des-
25 ignated activity” means a payment, clearing, or set-

1 tlement activity that the Agency has designated as
2 systemically important under section 804.

3 (2) DESIGNATED FINANCIAL MARKET UTIL-
4 ITY.—The term “designated financial market util-
5 ity” means a financial market utility that the Agen-
6 cy has designated as systemically important under
7 section 804.

8 (3) FINANCIAL INSTITUTION.—The term “fi-
9 nancial institution” means—

10 (A) a depository institution, as defined in
11 section 3 of the Federal Deposit Insurance Act
12 (12 U.S.C. 1813);

13 (B) a branch or agency of a foreign bank,
14 as defined in section 1(b) of the International
15 Banking Act of 1978 (12 U.S.C. 3101);

16 (C) an organization operating under sec-
17 tion 25 or 25A of the Federal Reserve Act (12
18 U.S.C. 601–604a and 611 through 631);

19 (D) a credit union, as defined in section
20 101 of the Federal Credit Union Act (12
21 U.S.C. 1752);

22 (E) a broker or dealer, as defined in sec-
23 tion 3 of the Securities Exchange Act of 1934
24 (15 U.S.C. 78c);

1 (F) an investment company, as defined in
2 section 3 of the Investment Company Act of
3 1940 (15 U.S.C. 80a-3);

4 (G) an insurance company, as defined in
5 section 2 of the Investment Company Act of
6 1940 (15 U.S.C. 80a-2);

7 (H) an investment adviser, as defined in
8 section 202 of the Investment Advisers Act of
9 1940 (15 U.S.C. 80b-2);

10 (I) a futures commission merchant, com-
11 modity trading advisor, or commodity pool oper-
12 ator, as defined in section 1a of the Commodity
13 Exchange Act (7 U.S.C. 1a); and

14 (J) any company engaged in activities that
15 are financial in nature or incidental to a finan-
16 cial activity, as described in section 4 of the
17 Bank Holding Company Act of 1956 (12
18 U.S.C. 1843(k)).

19 (4) FINANCIAL MARKET UTILITY.—The term
20 “financial market utility” means any person that
21 manages or operates a multilateral system for the
22 purpose of transferring, clearing, or settling pay-
23 ments, securities, or other financial transactions
24 among financial institutions or between financial in-
25 stitutions and the person.

1 (5) PAYMENT, CLEARING, OR SETTLEMENT AC-
2 TIVITY.—

3 (A) IN GENERAL.—The term “payment,
4 clearing, or settlement activity” means an activ-
5 ity carried out by 1 or more financial institu-
6 tions to facilitate the completion of financial
7 transactions.

8 (B) FINANCIAL TRANSACTION.—For the
9 purposes of subparagraph (A), the term “finan-
10 cial transaction” includes—

- 11 (i) funds transfers;
12 (ii) securities contracts;
13 (iii) contracts of sale of a commodity
14 for future delivery;
15 (iv) forward contracts;
16 (v) repurchase agreements;
17 (vi) swap agreements;
18 (vii) security-based swap agreements;
19 (viii) foreign exchange contracts;
20 (ix) financial derivatives contracts;

21 and

22 (x) any similar transaction that the
23 Agency determines, by rule or order, to be
24 a financial transaction for purposes of this
25 title.

1 (C) INCLUDED ACTIVITIES.—When con-
2 ducted with respect to a financial transaction,
3 payment, clearing, and settlement activities may
4 include—

5 (i) the calculation and communication
6 of unsettled financial transactions between
7 counterparties;

8 (ii) the netting of transactions;

9 (iii) provision and maintenance of
10 trade, contract, or instrument information;

11 (iv) the management of risks and ac-
12 tivities associated with continuing financial
13 transactions;

14 (v) transmittal and storage of pay-
15 ment instructions;

16 (vi) the movement of funds;

17 (vii) the final settlement of financial
18 transactions; and

19 (viii) other similar functions that the
20 Agency may determine by rule or order.

21 (6) SUPERVISORY AGENCY.—

22 (A) IN GENERAL.—The term “Supervisory
23 Agency” means the Federal agency that has
24 primary jurisdiction over a designated financial

1 market utility under Federal banking, securi-
2 ties, or commodity futures laws, including—

3 (i) the Securities and Exchange Com-
4 mission, with respect to a designated fi-
5 nancial market utility that is a clearing
6 agency registered with the Securities and
7 Exchange Commission;

8 (ii) the Commodity Futures Trading
9 Commission, with respect to a designated
10 financial market utility that is a deriva-
11 tives clearing organization registered with
12 the Commodity Futures Trading Commis-
13 sion; and

14 (iii) the Financial Institutions Regu-
15 latory Administration, with respect to a
16 designated financial market utility that
17 is—

18 (I) an insured State nonmember
19 bank or an insured branch of a for-
20 eign bank;

21 (II) a national bank or a Federal
22 branch (other than an insured
23 branch) or a Federal agency of a for-
24 eign bank;

1 (III) a savings association or a
2 savings and loan holding company; or
3 (IV) otherwise not subject to the
4 jurisdiction of any agency listed in
5 clauses (i) and (ii).

6 (B) MULTIPLE AGENCY JURISDICTION.—If
7 a designated financial market utility is subject
8 to the jurisdictional supervision of more than 1
9 agency listed in subparagraph (A), then such
10 agencies should agree on 1 agency to act as the
11 Supervisory Agency, and if such agencies can-
12 not agree on which agency has primary jurisdic-
13 tion, the Agency shall decide which agency is
14 the Supervisory Agency for purposes of this
15 title.

16 (7) SYSTEMICALLY IMPORTANT AND SYSTEMIC
17 IMPORTANCE.—The terms “systemically important”
18 and “systemic importance” mean a situation where
19 the failure of or a disruption to the functioning of
20 a financial market utility or the conduct of a pay-
21 ment, clearing, or settlement activity could create, or
22 increase, the risk of significant liquidity or credit
23 problems spreading among financial institutions or
24 markets and thereby threaten the stability of the fi-
25 nancial system.

1 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

2 (a) DESIGNATION.—

3 (1) AGENCY FOR FINANCIAL STABILITY.—The
4 Agency, on a nondelegable basis, shall designate
5 those financial market utilities or payment, clearing,
6 or settlement activities that the Agency determines
7 are, or are likely to become, systemically important.

8 (2) CONSIDERATIONS.—In determining whether
9 a financial market utility or payment, clearing, or
10 settlement activity is, or is likely to become, system-
11 ically important, the Agency shall take into consider-
12 ation the following:

13 (A) The aggregate monetary value of
14 transactions processed by the financial market
15 utility or carried out through the payment,
16 clearing, or settlement activity.

17 (B) The aggregate exposure of the finan-
18 cial market utility or a financial institution en-
19 gaged in payment, clearing, or settlement activi-
20 ties to its counterparties.

21 (C) The relationship, interdependencies, or
22 other interactions of the financial market utility
23 or payment, clearing, or settlement activity with
24 other financial market utilities or payment,
25 clearing, or settlement activities.

1 (D) The effect that the failure of or a dis-
2 ruption to the financial market utility or pay-
3 ment, clearing, or settlement activity would
4 have on critical markets, financial institutions,
5 or the broader financial system.

6 (E) Any other factors that the Agency
7 deems appropriate.

8 (b) RESCISSION OF DESIGNATION.—

9 (1) IN GENERAL.—The Agency, on a nondele-
10 gable basis, shall rescind a designation of systemic
11 importance for a designated financial market utility
12 or designated activity if the Agency determines that
13 the utility or activity no longer meets the standards
14 for systemic importance.

15 (2) EFFECT OF RESCISSION.—Upon rescission,
16 the financial market utility or financial institutions
17 conducting the activity will no longer be subject to
18 the provisions of this title or any rules or orders pre-
19 scribed by the Agency under this title.

20 (c) CONSULTATION AND NOTICE AND OPPORTUNITY
21 FOR HEARING.—

22 (1) FINANCIAL MARKET UTILITY.—Before mak-
23 ing any determination under subsection (a) or (b)
24 with regard to a financial market utility, the Agency

1 shall consult with the relevant Supervisory Agency
2 and the Board of Governors.

3 (2) ADVANCE NOTICE AND OPPORTUNITY FOR
4 HEARING.—

5 (A) IN GENERAL.—Before making any de-
6 termination under subsection (a) or (b) with re-
7 gard to a financial market utility or a payment,
8 clearing, or settlement activity, the Agency shall
9 provide the financial market utility or, in the
10 case of a payment, clearing, or settlement activ-
11 ity, financial institutions with advance notice of
12 the proposed determination of the Agency.

13 (B) NOTICE IN FEDERAL REGISTER.—The
14 Agency shall provide such advance notice to fi-
15 nancial institutions by publishing a notice in
16 the Federal Register.

17 (C) REQUESTS FOR HEARING.—Within 30
18 days from the date of any notice of the pro-
19 posed determination of the Agency, the finan-
20 cial market utility or, in the case of a payment,
21 clearing, or settlement activity, a financial insti-
22 tution engaged in the designated activity may
23 request in writing an opportunity for a written
24 or oral hearing before the Agency to dem-
25 onstrate that the proposed designation or re-

1 scission of designation is not supported by sub-
2 stantial evidence.

3 (D) WRITTEN SUBMISSIONS.—Upon re-
4 ceipt of a timely request, the Agency shall fix
5 a time, not more than 30 days after receipt of
6 the request, unless extended at the request of
7 the financial market utility or financial institu-
8 tion, and place at which the financial market
9 utility or financial institution may appear, per-
10 sonally or through counsel, to submit written
11 materials, or, at the sole discretion of the Agen-
12 cy, oral testimony or oral argument.

13 (3) EMERGENCY EXCEPTION.—

14 (A) WAIVER OR MODIFICATION BY VOTE
15 OF THE AGENCY.—The Agency may waive or
16 modify the requirements of paragraph (2) if the
17 Agency determines, by an affirmative vote of
18 not less than $\frac{2}{3}$ of all members then serving
19 and available, that the waiver or modification is
20 necessary to prevent or mitigate an immediate
21 threat to the financial system posed by the fi-
22 nancial market utility or the payment, clearing,
23 or settlement activity.

24 (B) NOTICE OF WAIVER OR MODIFICA-
25 TION.—The Agency shall provide notice of the

1 waiver or modification to the financial market
2 utility concerned or, in the case of a payment,
3 clearing, or settlement activity, to financial in-
4 stitutions, as soon as practicable, which shall be
5 no later than 24 hours after the waiver or
6 modification in the case of a financial market
7 utility and 3 business days in the case of finan-
8 cial institutions. The Agency shall provide the
9 notice to financial institutions by posting a no-
10 tice on the website of the Agency and by pub-
11 lishing a notice in the Federal Register.

12 (d) NOTIFICATION OF FINAL DETERMINATION.—

13 (1) AFTER HEARING.—Within 60 days of any
14 hearing under subsection (c)(3), the Agency shall
15 notify the financial market utility or financial insti-
16 tutions of the final determination of the Agency in
17 writing, which shall include findings of fact upon
18 which the determination of the Agency is based.

19 (2) WHEN NO HEARING REQUESTED.—If the
20 Agency does not receive a timely request for a hear-
21 ing under subsection (c)(3), the Agency shall notify
22 the financial market utility or financial institutions
23 of the final determination of the Agency in writing
24 not later than 30 days after the expiration of the
25 date by which a financial market utility or a finan-

1 cial institution could have requested a hearing. All
2 notices to financial institutions under this subsection
3 shall be published in the Federal Register.

4 (e) **EXTENSION OF TIME PERIODS.**—The Agency
5 may extend the time periods established in subsections (c)
6 and (d) as the Agency determines to be necessary or ap-
7 propriate.

8 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**
9 **NANCIAL MARKET UTILITIES AND PAYMENT,**
10 **CLEARING, OR SETTLEMENT ACTIVITIES.**

11 (a) **AUTHORITY TO PRESCRIBE STANDARDS.**—The
12 Board, by rule or order, and in consultation with the
13 Agency and the appropriate Supervisory Agencies, shall
14 prescribe risk management standards, taking into consid-
15 eration relevant international standards and existing pru-
16 dential requirements, governing—

17 (1) the operations of designated financial mar-
18 ket utilities; and

19 (2) the conduct of designated activities by fi-
20 nancial institutions.

21 (b) **OBJECTIVES AND PRINCIPLES.**—The objectives
22 and principles for the risk management standards pre-
23 scribed under subsection (a) shall be to—

24 (1) promote robust risk management;

25 (2) promote safety and soundness;

1 (3) reduce systemic risks; and

2 (4) support the stability of the broader financial
3 system.

4 (c) SCOPE.—The standards prescribed under sub-
5 section (a) may address areas such as—

6 (1) risk management policies and procedures;

7 (2) margin and collateral requirements;

8 (3) participant or counterparty default policies
9 and procedures;

10 (4) the ability to complete timely clearing and
11 settlement of financial transactions;

12 (5) capital and financial resource requirements
13 for designated financial market utilities; and

14 (6) other areas that the Board determines are
15 necessary to achieve the objectives and principles in
16 subsection (b).

17 (d) THRESHOLD LEVEL.—The standards prescribed
18 under subsection (a) governing the conduct of designated
19 activities by financial institutions shall, where appropriate,
20 establish a threshold as to the level or significance of en-
21 gagement in the activity at which a financial institution
22 will become subject to the standards with respect to that
23 activity.

24 (e) COMPLIANCE REQUIRED.—Designated financial
25 market utilities and financial institutions subject to the

1 standards prescribed by the Board of Governors for a des-
2 ignated activity shall conduct their operations in compli-
3 ance with the applicable risk management standards pre-
4 scribed by the Board of Governors.

5 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**
6 **KET UTILITIES.**

7 (a) FEDERAL RESERVE ACCOUNT AND SERVICES.—
8 The Board of Governors may authorize a Federal Reserve
9 Bank to establish and maintain an account for a des-
10 ignated financial market utility and provide services to the
11 designated financial market utility that the Federal Re-
12 serve Bank is authorized under the Federal Reserve Act
13 to provide to a depository institution, subject to any appli-
14 cable rules, orders, standards, or guidelines prescribed by
15 the Board of Governors.

16 (b) ADVANCES.—The Board of Governors may au-
17 thorize a Federal Reserve Bank to provide to a designated
18 financial market utility the same discount and borrowing
19 privileges as the Federal Reserve Bank may provide to a
20 depository institution under the Federal Reserve Act, sub-
21 ject to any applicable rules, orders, standards, or guide-
22 lines prescribed by the Board of Governors.

23 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—
24 A Federal Reserve Bank may pay earnings on balances
25 maintained by or on behalf of a designated financial mar-

1 ket utility in the same manner and to the same extent
2 as the Federal Reserve Bank may pay earnings to a depos-
3 itory institution under the Federal Reserve Act, subject
4 to any applicable rules, orders, standards, or guidelines
5 prescribed by the Board of Governors.

6 (d) RESERVE REQUIREMENTS.—The Board of Gov-
7 ernors may exempt a designated financial market utility
8 from, or modify any, reserve requirements under section
9 19 of the Federal Reserve Act (12 U.S.C. 461) applicable
10 to a designated financial market utility.

11 (e) CHANGES TO RULES, PROCEDURES, OR OPER-
12 ATIONS.—

13 (1) REFERENCE.—For purposes of paragraphs
14 (2) and (3), all references to the phrase “Super-
15 visory Agency or the Board of Governors” mean
16 “Supervisory Agency or, in the absence of a Super-
17 visory Agency, the Board of Governors”.

18 (2) ADVANCE NOTICE.—

19 (A) ADVANCE NOTICE OF PROPOSED
20 CHANGES REQUIRED.—A designated financial
21 market utility shall provide 60-days’ advance
22 notice to its Supervisory Agency and the Board
23 of Governors of any proposed change to its
24 rules, procedures, or operations that could, as
25 defined in rules of the Board of Governors, ma-

1 terially affect, the nature or level of risks pre-
2 sented by the designated financial market util-
3 ity.

4 (B) TERMS AND STANDARDS PRESCRIBED
5 BY THE BOARD OF GOVERNORS.—The Board of
6 Governors shall prescribe regulations that de-
7 fine and describe the standards for determining
8 when notice is required to be provided under
9 subparagraph (A).

10 (C) CONTENTS OF NOTICE.—The notice of
11 a proposed change shall describe—

12 (i) the nature of the change and ex-
13 pected effects on risks to the designated fi-
14 nancial market utility, its participants, or
15 the market; and

16 (ii) how the designated financial mar-
17 ket utility plans to manage any identified
18 risks.

19 (D) ADDITIONAL INFORMATION.—The Su-
20 pervisory Agency or the Board of Governors
21 may require a designated financial market util-
22 ity to provide any information necessary to as-
23 sess the effect the proposed change would have
24 on the nature or level of risks associated with
25 the designated financial market utility's pay-

1 ment, clearing, or settlement activities and the
2 sufficiency of any proposed risk management
3 techniques.

4 (E) NOTICE OF OBJECTION.—The Super-
5 visory Agency or the Board of Governors shall
6 notify the designated financial market utility of
7 any objection regarding the proposed change
8 within 60 days from the later of—

9 (i) the date that the notice of the pro-
10 posed change is received; or

11 (ii) the date any further information
12 requested for consideration of the notice is
13 received.

14 (F) CHANGE NOT ALLOWED IF OBJEC-
15 TION.—A designated financial market utility
16 shall not implement a change to which the
17 Board of Governors or the Supervisory Agency
18 has an objection.

19 (G) CHANGE ALLOWED IF NO OBJECTION
20 WITHIN 60 DAYS.—A designated financial mar-
21 ket utility may implement a change if it has not
22 received an objection to the proposed change
23 within 60 days of the later of—

1 (i) the date that the Supervisory
2 Agency or the Board of Governors receives
3 the notice of proposed change; or

4 (ii) the date the Supervisory Agency
5 or the Board of Governors receives any
6 further information it requests for consid-
7 eration of the notice.

8 (H) REVIEW EXTENSION FOR NOVEL OR
9 COMPLEX ISSUES.—The Supervisory Agency or
10 the Board of Governors may, during the 60-day
11 review period, extend the review period for an
12 additional 60 days for proposed changes that
13 raise novel or complex issues, subject to the Su-
14 pervisory Agency or the Board of Governors
15 providing the designated financial market utility
16 with prompt written notice of the extension.
17 Any extension under this subparagraph will ex-
18 tend the time periods under subparagraphs (D)
19 and (F).

20 (I) CHANGE ALLOWED EARLIER IF NOTI-
21 FIED OF NO OBJECTION.—A designated finan-
22 cial market utility may implement a change in
23 less than 60 days from the date of receipt of
24 the notice of proposed change by the Super-
25 visory Agency or the Board of Governors, or the

1 date the Supervisory Agency or the Board of
2 Governors receives any further information it
3 requested, if the Supervisory Agency or the
4 Board of Governors notifies the designated fi-
5 nancial market utility in writing that it does
6 not object to the proposed change and author-
7 izes the designated financial market utility to
8 implement the change on an earlier date, sub-
9 ject to any conditions imposed by the Super-
10 visory Agency or the Board of Governors.

11 (3) EMERGENCY CHANGES.—

12 (A) IN GENERAL.—A designated financial
13 market utility may implement a change that
14 would otherwise require advance notice under
15 this subsection if it determines that—

- 16 (i) an emergency exists; and
17 (ii) immediate implementation of the
18 change is necessary for the designated fi-
19 nancial market utility to continue to pro-
20 vide its services in a safe and sound man-
21 ner.

22 (B) NOTICE REQUIRED WITHIN 24
23 HOURS.—The designated financial market util-
24 ity shall provide notice of any such emergency
25 change to its Supervisory Agency and the

1 Board of Governors, as soon as practicable,
2 which shall be no later than 24 hours after im-
3 plementation of the change.

4 (C) CONTENTS OF EMERGENCY NOTICE.—

5 In addition to the information required for
6 changes requiring advance notice, the notice of
7 an emergency change shall describe—

8 (i) the nature of the emergency; and

9 (ii) the reason the change was nec-
10 essary for the designated financial market
11 utility to continue to provide its services in
12 a safe and sound manner.

13 (D) MODIFICATION OR RESCISSION OF
14 CHANGE MAY BE REQUIRED.—The Supervisory
15 Agency or the Board of Governors may require
16 modification or rescission of the change if it
17 finds that the change is not consistent with the
18 purposes of this Act or any rules, orders, or
19 standards prescribed by the Board of Governors
20 hereunder.

21 (4) COPYING THE BOARD OF GOVERNORS.—In
22 the case of a designated financial market utility that
23 has a Supervisory Agency, the Supervisory Agency
24 shall provide the Board of Governors concurrently
25 with a complete copy of any notice, request, or other

1 information it issues, submits, or receives under this
2 subsection.

3 (5) CONSULTATION WITH BOARD OF GOV-
4 ERNORS.—Before taking any action on, or com-
5 pleting its review of, a change proposed by a des-
6 ignated financial market utility, the Supervisory
7 Agency shall consult with the Board of Governors.

8 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS**
9 **AGAINST DESIGNATED FINANCIAL MARKET**
10 **UTILITIES.**

11 (a) EXAMINATION.—Notwithstanding any other pro-
12 vision of law and subject to subsection (d), the Supervisory
13 Agency shall conduct examinations of a designated finan-
14 cial market utility at least once annually in order to deter-
15 mine the following:

16 (1) The nature of the operations of, and the
17 risks borne by, the designated financial market util-
18 ity.

19 (2) The financial and operational risks pre-
20 sented by the designated financial market utility to
21 financial institutions, critical markets, or the broad-
22 er financial system.

23 (3) The resources and capabilities of the des-
24 ignated financial market utility to monitor and con-
25 trol such risks.

1 (4) The safety and soundness of the designated
2 financial market utility.

3 (5) The designated financial market utility's
4 compliance with—

5 (A) this title; and

6 (B) the rules and orders prescribed by the
7 Board of Governors under this title.

8 (b) SERVICE PROVIDERS.—Whenever a service inte-
9 gral to the operation of a designated financial market util-
10 ity is performed for the designated financial market utility
11 by another entity, whether an affiliate or non-affiliate and
12 whether on or off the premises of the designated financial
13 market utility, the Supervisory Agency may examine
14 whether the provision of that service is in compliance with
15 applicable law, rules, orders, and standards to the same
16 extent as if the designated financial market utility were
17 performing the service on its own premises.

18 (c) ENFORCEMENT.—For purposes of enforcing the
19 provisions of this section, a designated financial market
20 utility shall be subject to, and the appropriate Supervisory
21 Agency shall have authority under the provisions of sub-
22 sections (b) through (n) of section 8 of the Federal De-
23 posit Insurance Act (12 U.S.C. 1818) in the same manner
24 and to the same extent as if the designated financial mar-
25 ket utility was an insured depository institution and the

1 Supervisory Agency was the appropriate Federal banking
2 agency for such insured depository institution.

3 (d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-
4 NATIONS.—

5 (1) BOARD OF GOVERNORS CONSULTATION ON
6 EXAMINATION PLANNING.—The Supervisory Agency
7 shall consult with the Board of Governors regarding
8 the scope and methodology of any examination con-
9 ducted under subsections (a) and (b).

10 (2) BOARD OF GOVERNORS PARTICIPATION IN
11 EXAMINATION.—The Board of Governors may, in its
12 discretion, participate in any examination led by a
13 Supervisory Agency and conducted under sub-
14 sections (a) and (b).

15 (e) BOARD OF GOVERNORS ENFORCEMENT REC-
16 OMMENDATIONS.—

17 (1) RECOMMENDATION.—The Board of Gov-
18 ernors may at any time recommend to the Super-
19 visory Agency that such agency take enforcement ac-
20 tion against a designated financial market utility.
21 Any such recommendation for enforcement action
22 shall provide a detailed analysis supporting the rec-
23 ommendation of the Board of Governors.

24 (2) CONSIDERATION.—The Supervisory Agency
25 shall consider the recommendation of the Board of

1 Governors and submit a response to the Board of
2 Governors within 30 days.

3 (3) MEDIATION.—If the Supervisory Agency re-
4 jects, in whole or in the part, the recommendation
5 of the Board of Governors, the Board of Governors
6 may dispute the matter by referring the rec-
7 ommendation to the Agency, which shall attempt to
8 resolve the dispute.

9 (4) ENFORCEMENT ACTION.—If the Agency is
10 unable to resolve the dispute under paragraph (3)
11 within 30 days from the date of referral, the Board
12 of Governors may—

13 (A) exercise the enforcement authority ref-
14 erenced in subsection (c) as if it were the Su-
15 pervisory Agency; and

16 (B) take enforcement action against the
17 designated financial market utility.

18 (f) DESIGNATED FINANCIAL MARKET UTILITIES
19 WITHOUT A SUPERVISORY AGENCY.—In the case of a des-
20 ignated financial market utility that is not under the pri-
21 mary jurisdiction of a Supervisory Agency, the Board of
22 Governors shall have examination and enforcement au-
23 thority under subsections (a) through (c) with respect to
24 the designated financial market utility and any service

1 providers in the same manner and to the same extent as
2 if the Board of Governors were the Supervisory Agency.

3 (g) EMERGENCY ENFORCEMENT ACTIONS BY THE
4 BOARD OF GOVERNORS.—

5 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—

6 The Board of Governors may, after consulting with
7 the Agency and the Supervisory Agency, take en-
8 forcement action against a designated financial mar-
9 ket utility if the Board of Governors has reasonable
10 cause to believe that—

11 (A) either—

12 (i) an action engaged in, or con-
13 templated by, a designated financial mar-
14 ket utility (including any change proposed
15 by the designated financial market utility
16 to its rules, procedures, or operations that
17 would otherwise be subject to section
18 806(e)) poses an imminent risk of substan-
19 tial harm to financial institutions, critical
20 markets, or the broader financial system;
21 or

22 (ii) the condition of a designated fi-
23 nancial market utility, poses an imminent
24 risk of substantial harm to financial insti-

1 tutions, critical markets, or the broader fi-
2 nancial system; and

3 (B) the imminent risk of substantial harm
4 precludes the Board of Governors' use of the
5 procedures in subsection (e).

6 (2) ENFORCEMENT AUTHORITY.—For purposes
7 of taking enforcement action under paragraph (1), a
8 designated financial market utility shall be subject
9 to, and the Board of Governors shall have authority
10 under the provisions of subsections (b) through (n)
11 of section 8 of the Federal Deposit Insurance Act
12 (12 U.S.C. 1818) in the same manner and to the
13 same extent as if the designated financial market
14 utility was an insured depository institution and the
15 Board of Governors was the appropriate Federal
16 banking agency for such insured depository institu-
17 tion.

18 (3) PROMPT NOTICE TO SUPERVISORY AGENCY
19 OF ENFORCEMENT ACTION.—Within 24 hours of
20 taking an enforcement action under this subsection,
21 the Board of Governors shall provide written notice
22 to the designated financial market utility's Super-
23 visory Agency containing a detailed analysis of the
24 action of the Board of Governors, with supporting
25 documentation included.

1 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS**
2 **AGAINST FINANCIAL INSTITUTIONS SUBJECT**
3 **TO STANDARDS FOR DESIGNATED ACTIVI-**
4 **TIES.**

5 (a) EXAMINATION.—The primary financial regu-
6 latory agency is authorized to examine a financial institu-
7 tion subject to the standards prescribed by the Board of
8 Governors for a designated activity in order to determine
9 the following:

10 (1) The nature and scope of the designated ac-
11 tivities engaged in by the financial institution.

12 (2) The financial and operational risks the des-
13 igned activities engaged in by the financial institu-
14 tion may pose to the safety and soundness of the fi-
15 nancial institution.

16 (3) The financial and operational risks the des-
17 igned activities engaged in by the financial institu-
18 tion may pose to other financial institutions, critical
19 markets, or the broader financial system.

20 (4) The resources available to and the capabili-
21 ties of the financial institution to monitor and con-
22 trol the risks described in paragraphs (2) and (3).

23 (5) The financial institution's compliance with
24 this title and the rules and orders prescribed by the
25 Board of Governors under this title.

1 (b) ENFORCEMENT.—For purposes of enforcing the
2 provisions of this section, and the rules and orders pre-
3 scribed by the Board of Governors under this section, a
4 financial institution subject to the standards prescribed by
5 the Board of Governors for a designated activity shall be
6 subject to, and the primary financial regulatory agency
7 shall have authority under the provisions of subsections
8 (b) through (n) of section 8 of the Federal Deposit Insur-
9 ance Act (12 U.S.C. 1818) in the same manner and to
10 the same extent as if the financial institution was an in-
11 sured depository institution and the primary financial reg-
12 ulatory agency was the appropriate Federal banking agen-
13 cy for such insured depository institution.

14 (c) TECHNICAL ASSISTANCE.—The Board of Gov-
15 ernors shall consult with and provide such technical assist-
16 ance as may be required by the primary financial regu-
17 latory agencies to ensure that the rules and orders pre-
18 scribed by the Board of Governors under this title are in-
19 terpreted and applied in as consistent and uniform a man-
20 ner as practicable.

21 (d) DELEGATION.—

22 (1) EXAMINATION.—

23 (A) REQUEST TO BOARD OF GOV-
24 ERNORS.—The primary financial regulatory
25 agency may request the Board of Governors to

1 conduct or participate in an examination of a fi-
2 nancial institution subject to the standards pre-
3 scribed by the Board of Governors for a des-
4 ignated activity in order to assess the compli-
5 ance of such financial institution with—

6 (i) this title; or

7 (ii) the rules or orders prescribed by
8 the Board of Governors under this title.

9 (B) EXAMINATION BY BOARD OF GOV-
10 ERNORS.—Upon receipt of an appropriate writ-
11 ten request, the Board of Governors will con-
12 duct the examination under such terms and
13 conditions to which the Board of Governors and
14 the primary financial regulatory agency mutu-
15 ally agree.

16 (2) ENFORCEMENT.—

17 (A) REQUEST TO BOARD OF GOV-
18 ERNORS.—The primary financial regulatory
19 agency may request the Board of Governors to
20 enforce this title or the rules or orders pre-
21 scribed by the Board of Governors under this
22 title against a financial institution that is sub-
23 ject to the standards prescribed by the Board of
24 Governors for a designated activity.

1 (B) ENFORCEMENT BY BOARD OF GOV-
2 ERNORS.—Upon receipt of an appropriate writ-
3 ten request, the Board of Governors shall deter-
4 mine whether an enforcement action is war-
5 ranted, and, if so, it shall enforce compliance
6 with this title or the rules or orders prescribed
7 by the Board of Governors under this title and,
8 if so, the financial institution shall be subject
9 to, and the Board of Governors shall have au-
10 thority under the provisions of subsections (b)
11 through (n) of section 8 of the Federal Deposit
12 Insurance Act (12 U.S.C. 1818) in the same
13 manner and to the same extent as if the finan-
14 cial institution was an insured depository insti-
15 tution and the Board of Governors was the ap-
16 propriate Federal banking agency for such in-
17 sured depository institution

18 (e) BACK-UP AUTHORITY OF THE BOARD OF GOV-
19 ERNORS.—

20 (1) EXAMINATION AND ENFORCEMENT.—Not-
21 withstanding any other provision of law, the Board
22 of Governors may—

23 (A) conduct an examination of any finan-
24 cial institution that is subject to the standards

1 prescribed by the Board of Governors for a des-
2 ignated activity; and

3 (B) enforce the provisions of this title or
4 any rules or orders prescribed by the Board of
5 Governors under this title against any financial
6 institution that is subject to the standards pre-
7 scribed by the Board of Governors for a des-
8 ignated activity.

9 (2) LIMITATIONS.—

10 (A) EXAMINATION.—The Board of Gov-
11 ernors may exercise the authority described in
12 paragraph (1)(A) only if the Board of Gov-
13 ernors has—

14 (i) reasonable cause to believe that a
15 financial institution is not in compliance
16 with this title or the rules or orders pre-
17 scribed by the Board of Governors under
18 this title with respect to a designated activ-
19 ity;

20 (ii) notified, in writing, the primary fi-
21 nancial regulatory agency and the Agency
22 of its belief under clause (i) with sup-
23 porting documentation included;

1 (iii) requested the primary financial
2 regulatory agency to conduct a prompt ex-
3 amination of the financial institution; and

4 (iv) either—

5 (I) not been afforded a reason-
6 able opportunity to participate in an
7 examination of the financial institu-
8 tion by the primary financial regu-
9 latory agency within 30 days after the
10 date of the Board's notification under
11 clause (ii); or

12 (II) reasonable cause to believe
13 that the financial institution's non-
14 compliance with this title or the rules
15 or orders prescribed by the Board of
16 Governors under this title poses a
17 substantial risk to other financial in-
18 stitutions, critical markets, or the
19 broader financial system, subject to
20 the Board of Governors affording the
21 primary financial regulatory agency a
22 reasonable opportunity to participate
23 in the examination.

24 (B) ENFORCEMENT.—The Board of Gov-
25 ernors may exercise the authority described in

1 paragraph (1)(B) only if the Board of Gov-
2 ernors has—

3 (i) reasonable cause to believe that a
4 financial institution is not in compliance
5 with this title or the rules or orders pre-
6 scribed by the Board of Governors under
7 this title with respect to a designated activ-
8 ity;

9 (ii) notified, in writing, the primary fi-
10 nancial regulatory agency and the Agency
11 of its belief under clause (i) with sup-
12 porting documentation included and with a
13 recommendation that the primary financial
14 regulatory agency take 1 or more specific
15 enforcement actions against the financial
16 institution; and

17 (iii) either—

18 (I) not been notified, in writing,
19 by the primary financial regulatory
20 agency of the commencement of an
21 enforcement action recommended by
22 the Board of Governors against the fi-
23 nancial institution within 30 days
24 from the date of the notification
25 under clause (ii); or

1 (II) reasonable cause to believe
2 that the financial institution's non-
3 compliance with this title or the rules
4 or orders prescribed by the Board of
5 Governors under this title poses a
6 substantial risk to other financial in-
7 stitutions, critical markets, or the
8 broader financial system, subject to
9 the Board of Governors notifying the
10 primary financial regulatory agency of
11 the Board's enforcement action.

12 (3) ENFORCEMENT PROVISIONS.—For purposes
13 of taking enforcement action under paragraph (1),
14 the financial institution shall be subject to, and the
15 Board of Governors shall have authority under the
16 provisions of subsections (b) through (n) of section
17 8 of the Federal Deposit Insurance Act (12 U.S.C.
18 1818) in the same manner and to the same extent
19 as if the financial institution was an insured deposi-
20 tory institution and the Board of Governors was the
21 appropriate Federal banking agency for such insured
22 depository institution.

1 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR**
2 **RECORDS.**

3 (a) INFORMATION TO ASSESS SYSTEMIC IMPOR-
4 TANCE.—

5 (1) FINANCIAL MARKET UTILITIES.—The Agen-
6 cy is authorized to require any financial market util-
7 ity to submit such information as the Agency may
8 require for the sole purpose of assessing whether
9 that financial market utility is systemically impor-
10 tant, but only if the Agency has reasonable cause to
11 believe that the financial market utility meets the
12 standards for systemic importance set forth in sec-
13 tion 804.

14 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAY-
15 MENT, CLEARING, OR SETTLEMENT ACTIVITIES.—
16 The Agency is authorized to require any financial in-
17 stitution to submit such information as the Agency
18 may require for the sole purpose of assessing wheth-
19 er any payment, clearing, or settlement activity en-
20 gaged in or supported by a financial institution is
21 systemically important, but only if the Agency has
22 reasonable cause to believe that the activity meets
23 the standards for systemic importance set forth in
24 section 804.

25 (b) REPORTING AFTER DESIGNATION.—

1 (1) DESIGNATED FINANCIAL MARKET UTILI-
2 TIES.—The Board of Governors and the Agency may
3 require a designated financial market utility to sub-
4 mit reports or data to the Board of Governors and
5 the Agency in such frequency and form as deemed
6 necessary by the Board of Governors and the Agency
7 in order to assess the safety and soundness of the
8 utility and the systemic risk that the utility’s oper-
9 ations pose to the financial system.

10 (2) FINANCIAL INSTITUTIONS SUBJECT TO
11 STANDARDS DESIGNATED ACTIVITIES.—The Board
12 of Governors and the Agency may require 1 or more
13 financial institutions subject to the standards pre-
14 scribed by the Board of Governors for a designated
15 activity to submit, in such frequency and form as
16 deemed necessary by the Board of Governors and
17 the Agency, reports and data to the Board of Gov-
18 ernors and the Agency solely with respect to the con-
19 duct of the designated activity and solely to assess
20 whether—

21 (A) the rules, orders, or standards pre-
22 scribed by the Board of Governors with respect
23 to the designated activity appropriately address
24 the risks to the financial system presented by
25 such activity; and

1 (B) the financial institutions are in compli-
2 ance with this title and the rules and orders
3 prescribed by the Board of Governors under
4 this title with respect to the designated activity.

5 (c) COORDINATION WITH APPROPRIATE FEDERAL
6 SUPERVISORY AGENCY.—

7 (1) ADVANCE COORDINATION.—Before directly
8 requesting any material information from, or impos-
9 ing reporting or recordkeeping requirements on, any
10 financial market utility or any financial institution
11 engaged in a payment, clearing, or settlement activ-
12 ity, the Board of Governors and the Agency shall co-
13 ordinate with the Supervisory Agency for a financial
14 market utility or the primary financial regulatory
15 agency for a financial institution to determine if the
16 information is available from or may be obtained by
17 the agency in the form, format, or detail required by
18 the Board of Governors and the Agency.

19 (2) SUPERVISORY REPORTS.—Notwithstanding
20 any other provision of law, the Supervisory Agency,
21 the primary financial regulatory agency, and the
22 Board of Governors are authorized to disclose to
23 each other and the Agency a copy of any examina-
24 tion report a copy of any examination report or simi-
25 lar report regarding any financial market utility or

1 any financial institution engaged in payment, clear-
2 ing, or settlement activities.

3 (d) TIMING OF RESPONSE FROM APPROPRIATE FED-
4 ERAL SUPERVISORY AGENCY.—If the information, report,
5 records, or data requested by the Board of Governors or
6 the Agency under subsection (c)(1) are not provided in
7 full by the Supervisory Agency or the primary financial
8 regulatory agency in less than 15 days after the date on
9 which the material is requested, the Board of Governors
10 or the Agency may request the information or impose rec-
11 ordkeeping or reporting requirements directly on such per-
12 sons as provided in subsections (a) and (b) with notice
13 to the agency.

14 (e) SHARING OF INFORMATION.—

15 (1) MATERIAL CONCERNS.—Notwithstanding
16 any other provision of law, the Board of Governors,
17 the Agency, the primary financial regulatory agency,
18 and any Supervisory Agency are authorized to—

19 (A) promptly notify each other of material
20 concerns about a designated financial market
21 utility or any financial institution engaged in
22 designated activities; and

23 (B) share appropriate reports, information
24 or data relating to such concerns.

1 (2) OTHER INFORMATION.—Notwithstanding
2 any other provision of law, the Board of Governors,
3 the Agency, the primary financial regulatory agency,
4 or any Supervisory Agency may, under such terms
5 and conditions as it deems appropriate, provide con-
6 fidential supervisory information and other informa-
7 tion obtained under this title to other persons it
8 deems appropriate, including the Secretary, State fi-
9 nancial institution supervisory agencies, foreign fi-
10 nancial supervisors, foreign central banks, and for-
11 eign finance ministries, subject to reasonable assur-
12 ances of confidentiality.

13 (f) PRIVILEGE MAINTAINED.—The Board of Gov-
14 ernors, the Agency, the primary financial regulatory agen-
15 cy, and any Supervisory Agency providing reports or data
16 under this section shall not be deemed to have waived any
17 privilege applicable to those reports or data, or any portion
18 thereof, by providing the reports or data to the other party
19 or by permitting the reports or data, or any copies thereof,
20 to be used by the other party.

21 (g) DISCLOSURE EXEMPTION.—Information obtained
22 by the Board of Governors or the Agency under this sec-
23 tion and any materials prepared by the Board of Gov-
24 ernors or the Agency regarding its assessment of the sys-
25 temic importance of financial market utilities or any pay-

1 ment, clearing, or settlement activities engaged in by fi-
2 nancial institutions, and in connection with its supervision
3 of designated financial market utilities and designated ac-
4 tivities, shall be confidential supervisory information ex-
5 empt from disclosure under section 552 of title 5, United
6 States Code. For purposes of such section 552, this sub-
7 section shall be considered a statute described in sub-
8 section (b)(3) of such section 552.

9 **SEC. 810. RULEMAKING.**

10 The Board of Governors and the Agency are author-
11 ized to prescribe such rules and issue such orders as may
12 be necessary to administer and carry out the authorities
13 and duties granted to the Board of Governors or the Agen-
14 cy, respectively, and prevent evasions thereof.

15 **SEC. 811. OTHER AUTHORITY.**

16 Unless otherwise provided by its terms, this title does
17 not divest any primary financial regulatory agency, any
18 Supervisory Agency, or any other Federal or State agency,
19 of any authority derived from any other applicable law,
20 except that any standards prescribed by the Board of Gov-
21 ernors under section 805 shall supersede any less strin-
22 gent requirements established under other authority to the
23 extent of any conflict.

1 **SEC. 812. EFFECTIVE DATE.**

2 This title is effective as of the date of enactment of
3 this Act.

4 **TITLE IX—INVESTOR PROTEC-**
5 **TIONS AND IMPROVEMENTS**
6 **TO THE REGULATION OF SE-**
7 **CURITIES**

8 **Subtitle A—Increasing Investor**
9 **Protection**

10 **SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

11 Title I of the Securities Exchange Act of 1934 (15
12 U.S.C. 78a et seq.) is amended by adding at the end the
13 following:

14 **“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

15 **“(a) ESTABLISHMENT AND PURPOSE.—**

16 **“(1) ESTABLISHMENT.—**There is established
17 within the Commission the Investor Advisory Com-
18 mittee (referred to in this section as the ‘Com-
19 mittee’).

20 **“(2) PURPOSE.—**The Committee shall—

21 **“(A) advise and consult with the Commis-**
22 **sion on—**

23 **“(i) regulatory priorities of the Com-**
24 **mission;**

25 **“(ii) issues relating to the regulation**
26 **of securities products, trading strategies,**

1 and fee structures, and the effectiveness of
2 disclosure;

3 “(iii) initiatives to protect investor in-
4 terest; and

5 “(iv) initiatives to promote investor
6 confidence and the integrity of the securi-
7 ties marketplace; and

8 “(B) submit to the Commission such find-
9 ings and recommendations as the Committee
10 determines are appropriate, including rec-
11 ommendations for proposed legislative changes.

12 “(b) MEMBERSHIP.—

13 “(1) IN GENERAL.—The members of the Com-
14 mittee shall be—

15 “(A) the Investor Advocate;

16 “(B) a representative of State securities
17 commissions; and

18 “(C) not fewer than 13, and not more than
19 23, members appointed by the Commission,
20 from among individuals who—

21 “(i) represent the interests of indi-
22 vidual equity and debt investors;

23 “(ii) represent the interests of institu-
24 tional investors;

1 “(iii) represent the interests of pen-
2 sion funds;

3 “(iv) are knowledgeable about invest-
4 ment issues; and

5 “(v) have reputations of integrity.

6 “(2) TERM.—Each member of the Commission
7 appointed under paragraph (1)(B) shall serve for a
8 term of 4 years.

9 “(3) MEMBERS NOT COMMISSION EMPLOY-
10 EES.—Members appointed under paragraph (1)(B)
11 shall not be deemed to be employees or agents of the
12 Commission solely because of membership on the
13 Committee.

14 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
15 SISTANT SECRETARY.—

16 “(1) IN GENERAL.—The members of the Com-
17 mittee shall elect, from among the members of the
18 Committee—

19 “(A) a chairman, who may not be em-
20 ployed by an issuer;

21 “(B) a vice chairman, who may not be em-
22 ployed by an issuer;

23 “(C) a secretary; and

24 “(D) an assistant secretary.

1 “(2) TERM.—Each member elected under para-
2 graph (1) shall serve for a term of 3 years in the
3 capacity for which the member was elected under
4 paragraph (1).

5 “(d) MEETINGS.—

6 “(1) FREQUENCY OF MEETINGS.—The Com-
7 mittee shall meet—

8 “(A) not less frequently than twice annu-
9 ally; and

10 “(B) from time to time, at the call of the
11 Commission.

12 “(2) NOTICE.—The chairman of the Committee
13 shall give the members of the Committee notice of
14 each meeting, not later than 2 weeks before the date
15 of the meeting.

16 “(e) COMPENSATION AND TRAVEL EXPENSES.—

17 Each member of the Committee who is not a full-time em-
18 ployee of the United States shall—

19 “(1) be compensated at a rate not to exceed the
20 daily equivalent of the annual rate of basic pay in
21 effect for a position at level V of the Executive
22 Schedule under section 5316 of title 5, United
23 States Code, for each day during which the member
24 is engaged in the actual performance of the duties
25 of the Committee; and

1 “(2) while away from the home or regular place
2 of business of the member in the performance of
3 services for the Committee, be allowed travel ex-
4 penses, including per diem in lieu of subsistence, in
5 the same manner as persons employed intermittently
6 in the Government service are allowed expenses
7 under section 5703(b) of title 5, United States Code.

8 “(f) STAFF.—The Commission shall provide to the
9 Committee such staff as are necessary to carry out this
10 section.

11 “(g) REVIEW BY COMMISSION.—The Commission
12 shall—

13 “(1) review the findings and recommendations
14 of the Committee; and

15 “(2) each time the Committee submits a finding
16 or recommendation to the Commission, issue a pub-
17 lic statement—

18 “(A) assessing the finding or recommenda-
19 tion of the Committee; and

20 “(B) disclosing the action, if any, the Com-
21 mission intends to take with respect to the find-
22 ing or recommendation.

23 “(h) COMMITTEE FINDINGS.—Nothing in this section
24 shall require the Commission to agree to or act upon any
25 finding or recommendation of the Committee.

1 “(i) FEDERAL ADVISORY COMMITTEE ACT.—The
2 Federal Advisory Committee Act (5 U.S.C. App.) shall not
3 apply with respect to the Committee and its activities.

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
5 is authorized to be appropriated to the Commission such
6 sums as are necessary to carry out this section.”.

7 **SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMIS-**
8 **SION TO ENGAGE IN CONSUMER TESTING.**

9 Section 19 of the Securities Act of 1933 (15 U.S.C.
10 77s) is amended by adding at the end the following:

11 “(e) EVALUATION OF RULES OR PROGRAMS.—

12 “(1) IN GENERAL.—For the purpose of evalu-
13 ating any rule or program of the Commission issued
14 or carried out under any provision of the securities
15 laws, as defined in section 3 of the Securities Ex-
16 change Act of 1934 (15 U.S.C.78c), and the pur-
17 poses of considering, proposing, adopting, or engag-
18 ing in any such rule or program or developing new
19 rules or programs, the Commission may—

20 “(A) gather information from and commu-
21 nicate with investors or other members of the
22 public; and

23 “(B) engage in such temporary programs
24 as the Commission determines are in the public
25 interest or would protect investors.

1 “(2) DELEGATION.—The Commission may dele-
2 gate to the staff of the Commission any of the au-
3 thority of the Commission under this subsection.”.

4 **SEC. 913. REGULATION OF BROKERS, DEALERS, AND IN-**
5 **VESTMENT ADVISERS.**

6 (a) DEFINITION OF INVESTMENT ADVISER.—Section
7 202(a)(11) of the Investment Advisers Act of 1940 (15
8 U.S.C. 80b-2(a)(11)) is amended—

9 (1) by striking “any broker” and all that fol-
10 lows through “therefor; (D)”;

11 (2) by striking “(E)” and inserting “(D)”; and

12 (3) by striking “(F)” and inserting “(E)”.

13 (b) EXEMPTION FROM PROHIBITED TRANS-
14 ACTIONS.—Section 206 of the Investment Advisers Act of
15 1940 (15 U.S.C. 80b-6) is amended—

16 (1) by striking “It shall” and inserting the fol-
17 lowing:

18 “(a) IN GENERAL.—Except as provided in subpara-
19 graph (b), it shall”; and

20 (2) by adding at the end the following:

21 “(b) EXCEPTIONS.—The Commission may, by rule,
22 exempt any person or transaction, or any class of persons
23 or transactions from the prohibition under subsection
24 (a)(3), if the Commission determines that—

1 “(1) such exemption is in the public interest
2 and for the protection of investors; and

3 “(2) the adviser protects investors against con-
4 flicts of interest or principal transactions that are
5 not in the best interests of the investors.”.

6 (c) ASSET MANAGEMENT FEES AND OTHER COM-
7 PENSATION.—Section 205 of the Investment Advisers Act
8 of 1940 (15 U.S.C. 80b-5) is amended by adding at the
9 end the following:

10 “(f) ASSET MANAGEMENT FEES AND OTHER COM-
11 PENSATION PERMITTED.—Nothing in this section pro-
12 hibits an investment adviser from entering into an invest-
13 ment advisory relationship that provides for the payment
14 of an asset management fee or a commission.”.

15 (d) DISCLOSURE REQUIRED.—Section 206(a) of the
16 Investment Advisers Act of 1940 (15 U.S.C. 80b-6(a)),
17 as so designated by this subtitle, is amended—

18 (1) in paragraph (4), by striking “paragraph
19 (4)” and inserting “paragraph (5)”;

20 (2) by redesignating paragraph (4) as para-
21 graph (5); and

22 (3) by inserting after paragraph (3) the fol-
23 lowing:

24 “(4) to fail to disclose to any client or prospec-
25 tive client any—

1 in advocating for the interests of investors
2 in securities and investor protection issues
3 from the perspective of investors.

4 “(B) COMPENSATION.—The Commission
5 shall fix the annual compensation of the Inves-
6 tor Advocate at a level equal to that of the most
7 highly paid employee of the Commission.

8 “(C) LIMITATION ON SERVICE.—An indi-
9 vidual who serves as the Investor Advocate may
10 not be employed by the Commission—

11 “(i) during the 2-year period ending
12 on the date of appointment as Investor Ad-
13 vocate; or

14 “(ii) during the 5-year period begin-
15 ning on the date on which the person
16 ceases to serve as the Investor Advocate.

17 “(3) STAFF OF OFFICE.—The Investor Advo-
18 cate may retain or employ independent counsel, re-
19 search staff, and service staff, as the Investor Advo-
20 cate deems necessary to carry out the functions,
21 powers, and duties of the Office.

22 “(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

23 “(A) assist retail investors in resolving sig-
24 nificant problems such investors may have with
25

1 the Commission or with self-regulatory organi-
2 zations;

3 “(B) identify areas in which investors
4 would benefit from changes in the regulations
5 of the Commission or the rules of self-regu-
6 latory organizations;

7 “(C) identify problems that investors have
8 with financial service providers and investment
9 products;

10 “(D) analyze the potential impact on inves-
11 tors of—

12 “(i) proposed regulations of the Com-
13 mission; and

14 “(ii) proposed rules of self-regulatory
15 organizations registered under this title;

16 “(E) to the extent practicable, propose to
17 the Commission changes in the regulations or
18 orders of the Commission and the rules of self-
19 regulatory organizations to mitigate problems
20 identified under this paragraph and to promote
21 the interests of investors; and

22 “(F) recommend to the Commission and to
23 Congress any legislative, administrative, or per-
24 sonnel changes that may be appropriate to miti-

1 gate problems identified under this paragraph
2 and to promote the interests of investors.

3 “(5) ACCESS TO DOCUMENTS.—The Commis-
4 sion shall ensure that the Investor Advocate has full
5 access to the documents of the Commission and any
6 self-regulatory organization, as necessary to carry
7 out the functions of the Office.

8 “(6) ANNUAL REPORTS.—

9 “(A) REPORT ON OBJECTIVES.—

10 “(i) IN GENERAL.—Not later than
11 June 30 of each year after 2009, the In-
12 vestor Advocate shall submit to the Com-
13 mittee on Banking, Housing, and Urban
14 Affairs of the Senate and the Committee
15 on Financial Services of the House of Rep-
16 resentatives a report on the objectives of
17 the Investor Advocate for the following fis-
18 cal year.

19 “(ii) CONTENTS.—Each report re-
20 quired under clause (i) shall contain full
21 and substantive analysis and explanation.

22 “(B) REPORT ON ACTIVITIES.—

23 “(i) IN GENERAL.—Not later than
24 December 31 of each year after 2009, the
25 Investor Advocate shall submit to the Com-

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1 or the self-regulatory organiza-
2 tion and the result of such ac-
3 tion;

4 “(bb) the length of time that
5 each item has remained on such
6 inventory; and

7 “(cc) for items on which no
8 action has been taken, the rea-
9 sons for inaction, and an identi-
10 fication of any official who is re-
11 sponsible for such action;

12 “(V) recommendations for such
13 administrative and legislative actions
14 as may be appropriate to resolve prob-
15 lems encountered by investors; and

16 “(VI) any other information, as
17 determined appropriate by the Inves-
18 tor Advocate.

19 “(iii) INDEPENDENCE.—Each report
20 required under this paragraph shall be pro-
21 vided directly to the Committees listed in
22 clause (i) without any prior review or com-
23 ment from the Commission, any commis-
24 sioner, any other officer or employee of the

1 Commission, or the Office of Management
2 and Budget.

3 “(iv) CONFIDENTIALITY.—No report
4 required under clause (i) may contain con-
5 fidential information.

6 “(7) REGULATIONS.—The Commission shall, by
7 regulation, establish procedures requiring a formal
8 response to all recommendations submitted to the
9 Commission by the Investor Advocate, not later than
10 3 months after the date of such submission.”.

11 **SEC. 915. STREAMLINING OF FILING PROCEDURES FOR**
12 **SELF-REGULATORY ORGANIZATIONS.**

13 (a) FILING PROCEDURES.—Section 19(b) of the Se-
14 curities Exchange Act of 1934 (15 U.S.C. 78s(b)) is
15 amended by striking paragraph (2) (including the undesig-
16 nated matter immediately following subparagraph (B))
17 and inserting the following:

18 “(2) APPROVAL PROCESS.—

19 “(A) APPROVAL PROCESS ESTABLISHED.—

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (ii), not later than 45 days
22 after the date of publication of a proposed
23 rule change under paragraph (1), the Com-
24 mission shall—

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1 “(I) by order, approve the pro-
2 posed rule change; or

3 “(II) institute proceedings under
4 subparagraph (B) to determine wheth-
5 er the proposed rule change should be
6 disapproved.

7 “(ii) EXTENSION OF TIME PERIOD.—
8 The Commission may extend the period es-
9 tablished under clause (i) by not more than
10 an additional 45 days, if—

11 “(I) the Commission determines
12 that a longer period is appropriate
13 and publishes the reasons for such de-
14 termination; or

15 “(II) the self-regulatory organiza-
16 tion that filed the proposed rule
17 change consents to the longer period.

18 “(B) PROCEEDINGS.—

19 “(i) NOTICE AND HEARING.—If the
20 Commission does not approve a proposed
21 rule change under subparagraph (A), the
22 Commission shall provide to the self-regu-
23 latory organization that filed the proposed
24 rule change—

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1 “(I) notice of the grounds for
2 disapproval under consideration; and

3 “(II) opportunity for hearing, to
4 be concluded not later than 180 days
5 of the date of publication of notice of
6 the filing of the proposed rule change.

7 “(ii) ORDER OF APPROVAL OR DIS-
8 APPROVAL.—

9 “(I) IN GENERAL.—Except as
10 provided in subclause (II), not later
11 than 180 days after the date of publi-
12 cation under paragraph (1), the Com-
13 mission shall issue an order approving
14 or disapproving the proposed rule
15 change.

16 “(II) EXTENSION OF TIME PE-
17 RIOD.—The Commission may extend
18 the period for issuance under clause
19 (I) by not more than 60 days, if—

20 “(aa) the Commission deter-
21 mines that a longer period is ap-
22 propriate and publishes the rea-
23 sons for such determination; or

24 “(bb) the self-regulatory or-
25 ganization that filed the proposed

1 rule change consents to the
2 longer period.

3 “(C) STANDARDS FOR APPROVAL AND DIS-
4 APPROVAL.—

5 “(i) APPROVAL.—The Commission
6 shall approve a proposed rule change of a
7 self-regulatory organization if it finds that
8 such proposed rule change is consistent
9 with the requirements of this title and the
10 rules and regulations issued under this
11 title that are applicable to such organiza-
12 tion.

13 “(ii) DISAPPROVAL.—The Commission
14 shall disapprove a proposed rule change of
15 a self-regulatory organization if it does not
16 make a finding described in clause (i).

17 “(iii) TIME FOR APPROVAL.—The
18 Commission may not approve a proposed
19 rule change earlier than 30 days after the
20 date of publication under paragraph (1),
21 unless the Commission finds good cause
22 for so doing and publishes the reason for
23 the finding.

24 “(D) RESULT OF FAILURE TO INSTITUTE
25 OR CONCLUDE PROCEEDINGS.—A proposed rule

1 change shall be deemed to have been approved
2 by the Commission, if—

3 “(i) the Commission does not approve
4 the proposed rule change or begin pro-
5 ceedings under subparagraph (B) within
6 the period described in subparagraph (A);
7 or

8 “(ii) the Commission does not issue
9 an order approving or disapproving the
10 proposed rule change under subparagraph
11 (B) within the period described in subpara-
12 graph (B)(ii).

13 “(E) PUBLICATION DATE BASED ON
14 WEBSITE PUBLISHING.—For purposes of this
15 paragraph, if, after filing a proposed rule
16 change with the Commission pursuant to para-
17 graph (1), a self-regulatory organization pub-
18 lishes a notice of the filing of such proposed
19 rule change, together with the substantive
20 terms of such proposed rule change, on a pub-
21 licly accessible website, the date of publication
22 of notice of the filing of such proposed rule
23 change shall be deemed to be the date on which
24 such website publication is made.”.

25 (b) CLARIFICATION OF FILING DATE.—

1 (1) RULE OF CONSTRUCTION.—Section 19(b) of
2 the Securities Exchange Act of 1934 (15 U.S.C.
3 78s(b)) is amended by adding at the end the fol-
4 lowing:

5 “(10) RULE OF CONSTRUCTION RELATING TO
6 FILING DATE OF PROPOSED RULE CHANGES.—

7 “(A) IN GENERAL.—For purposes of this
8 subsection, the date of filing of a proposed rule
9 change shall be deemed the date on which the
10 Commission receives the proposed rule change.

11 “(B) EXCEPTION.—A proposed rule
12 change has not been received by the Commis-
13 sion for purposes of subparagraph (A) if, not
14 later than 7 days after the date of receipt by
15 the Commission, the Commission notifies the
16 self-regulatory organization that such proposed
17 rule change does not comply with the rules of
18 the Commission relating to the required form of
19 a proposed rule change.”.

20 (2) PUBLICATION.—Section 19(b)(1) of the Se-
21 curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))
22 is amended by striking “upon” and inserting “as
23 soon as practicable after the date of”.

1 (c) EFFECTIVE DATE OF PROPOSED RULES.—Sec-
2 tion 19(b)(3) of the Securities Exchange Act of 1934 (15
3 U.S.C. 78s(b)(3)) is amended—

4 (1) in subparagraph (A)—

5 (A) by striking “may take effect” and in-
6 serting “shall take effect”; and

7 (B) by inserting “ on any person, whether
8 or not the person is a member of the self-regu-
9 latory organization” after “charge imposed by
10 the self-regulatory organization”; and

11 (2) in subparagraph (C)—

12 (A) by amending the second sentence to
13 read as follows: “At any time within the 60-day
14 period beginning on the date of filing of such
15 a proposed rule change in accordance with the
16 provisions of paragraph (1), the Commission
17 summarily may temporarily suspend the change
18 in the rules of the self-regulatory organization
19 made thereby, if it appears to the Commission
20 that such action is necessary or appropriate in
21 the public interest, for the protection of inves-
22 tors, or otherwise in furtherance of the pur-
23 poses of this title.”;

24 (B) by inserting after the second sentence
25 the following: “If the Commission takes such

1 action, the Commission shall institute pro-
2 ceedings under paragraph (2)(B) to determine
3 whether the proposed rule should be approved
4 or disapproved.”; and

5 (C) in the third sentence, by striking “the
6 preceding sentence” and inserting “this sub-
7 paragraph”.

8 (d) CONFORMING CHANGE.—Section 19(b)(4)(D) of
9 the Securities Exchange Act of 1934 (15 U.S.C.
10 78s(b)(4)(D)) is amended to read as follows:

11 “(D)(i) The Commission shall order the
12 temporary suspension of any change in the
13 rules of a clearing agency made by a proposed
14 rule change that has taken effect under para-
15 graph (3), if the appropriate regulatory agency
16 for the clearing agency notifies the Commission
17 not later than 30 days after the date on which
18 the proposed rule change was filed of—

19 “(I) the determination by the appro-
20 priate regulatory agency that the rules of
21 such clearing agency, as so changed, may
22 be inconsistent with the safeguarding of
23 securities or funds in the custody or con-
24 trol of such clearing agency or for which it
25 is responsible; and

1 “(II) the reasons for the determina-
2 tion described in subclause (I).

3 “(ii) If the Commission takes action under
4 clause (i), the Commission shall institute pro-
5 ceedings under paragraph (2)(B) to determine
6 if the proposed rule change should be approved
7 or disapproved.”.

8 **SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG**
9 **INVESTORS.**

10 (a) IN GENERAL.—The Commission shall conduct a
11 study to identify—

12 (1) the existing level of financial literacy among
13 retail investors, including subgroups of investors
14 identified by the Commission;

15 (2) methods to improve the timing, content, and
16 format of disclosures to investors with respect to fi-
17 nancial intermediaries, investment products, and in-
18 vestment services;

19 (3) the most useful and understandable relevant
20 information that retail investors need to make in-
21 formed financial decisions before engaging a finan-
22 cial intermediary or purchasing an investment prod-
23 uct or service that is typically sold to retail inves-
24 tors, including shares of open-end companies, as
25 that term is defined in section 5 of the Investment

1 Company Act of 1940 (15 U.S.C. 80a-5) that are
2 registered under section 8 of that Act;

3 (4) methods to increase the transparency of ex-
4 penses and conflicts of interests in transactions in-
5 volving investment services and products, including
6 shares of open-end companies described in para-
7 graph (3);

8 (5) the most effective existing private and pub-
9 lic efforts to educate investors; and

10 (6) in consultation with the Financial Literacy
11 and Education Commission, a strategy (including, to
12 the extent practicable, measurable goals and objec-
13 tives) to increase the financial literacy of investors
14 in order to bring about a positive change in investor
15 behavior.

16 (b) REPORT.—Not later than 1 year after the date
17 of enactment of this Act, the Commission shall submit a
18 report on the study required under subsection (a) to—

19 (1) the Committee on Banking, Housing, and
20 Urban Affairs of the Senate; and

21 (2) the Committee on Financial Services of the
22 House of Representatives.

1 **SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.**

2 (a) IN GENERAL.—The Comptroller General of the
3 United States shall conduct a study on mutual fund adver-
4 tising to identify—

5 (1) existing and proposed regulatory require-
6 ments for open-end investment company advertise-
7 ments;

8 (2) current marketing practices for the sale of
9 open-end investment company shares, including the
10 use of unsustainable past performance data, funds
11 that have merged, and incubator funds;

12 (3) the impact of such advertising on con-
13 sumers; and

14 (4) recommendations to improve investor pro-
15 tections in mutual fund advertising and additional
16 information necessary to ensure that investors can
17 make informed financial decisions when purchasing
18 shares.

19 (b) REPORT.—Not later than 1 year after the date
20 of enactment of this Act, the Comptroller General of the
21 United States shall submit a report on the results of the
22 study conducted under subsection (a) to—

23 (1) the Committee on Banking, Housing, and
24 Urban Affairs of the United States Senate; and

25 (2) the Committee on Financial Services of the
26 House of Representatives.

1 **SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO**
2 **REQUIRE INVESTOR DISCLOSURES BEFORE**
3 **PURCHASE OF INVESTMENT COMPANY**
4 **SHARES.**

5 Section 24 of the Investment Company Act of 1940
6 (15 U.S.C. 80a–24) is amended by adding at the end the
7 following:

8 “(h) **TIMING OF DISCLOSURE.**—Notwithstanding any
9 other provision of this Act or the Securities Act of 1933,
10 the Commission may promulgate rules designating docu-
11 ments or information that shall be provided to a purchaser
12 of securities issued by a registered investment company.”.

13 **Subtitle B—Increasing Regulatory**
14 **Enforcement and Remedies**

15 **SEC. 921. AUTHORITY TO ISSUE RULES TO RESTRICT MAN-**
16 **DATORY PREDISPUTE ARBITRATION.**

17 (a) **AMENDMENT TO SECURITIES EXCHANGE ACT OF**
18 **1934.**—Section 15 of the Securities Exchange Act of 1934
19 (15 U.S.C. 78o), as amended by section 913, is amended
20 by adding at the end the following:

21 “(l) **AUTHORITY TO RESTRICT MANDATORY**
22 **PREDISPUTE ARBITRATION.**—Not later than 270 days
23 after the date of enactment of this subsection, the Com-
24 mission shall conduct a rulemaking to prohibit, or impose
25 conditions or limitations on the use of, agreements that
26 require customers or clients of any broker, dealer, or mu-

1 nicipal securities dealer to arbitrate any dispute between
2 them that occurs after the effective date of the regulations
3 and that arises under the securities laws or the rules of
4 a self-regulatory organization, if the Commission finds
5 that such prohibition, imposition of conditions, or limita-
6 tions are in the public interest and for the protection of
7 investors.”.

8 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
9 1940.—Section 205 of the Investment Advisers Act of
10 1940 (15 U.S.C. 80b–5) is amended by adding at the end
11 the following:

12 “(f) AUTHORITY TO RESTRICT MANDATORY
13 PREDISPUTE ARBITRATION.—

14 “(1) IN GENERAL.—Not later than 180 days
15 after the date of enactment of this subsection, the
16 Commission shall conduct rulemaking to prohibit, or
17 impose conditions or limitations on the use of, agree-
18 ments that require customers or clients of any in-
19 vestment adviser to arbitrate any dispute between
20 them that occurs after the effective date of the regu-
21 lations and that arises under the securities laws, as
22 defined in section 3 of the Securities Exchange Act
23 of 1934 (15 U.S.C. 78c), or the rules of a self-regu-
24 latory organization, if the Commission finds that
25 such prohibition or imposition of conditions, or limi-

1 tations are in the public interest and for the protec-
2 tion of investors.

3 “(2) EFFECTIVE DATE.—The rules required to
4 be promulgated by the Commission under paragraph
5 (1) shall become effective not later than 270 days
6 after the date of enactment of this subsection.”.

7 **SEC. 922. WHISTLEBLOWER PROTECTION.**

8 The Securities Exchange Act of 1934 (15 U.S.C. 78a
9 et seq.) is amended by inserting after section 21E the fol-
10 lowing:

11 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
12 **PROTECTION.**

13 “(a) DEFINITIONS.—In this section the following def-
14 inition shall apply:

15 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
16 ACTION.—The term ‘covered judicial or administra-
17 tive action’ means any judicial or administrative ac-
18 tion brought by the Commission under the securities
19 laws that results in monetary sanctions exceeding
20 \$1,000,000.

21 “(2) FUND.—The term ‘Fund’ means the Secu-
22 rities and Exchange Commission Investor Protection
23 Fund.

24 “(3) ORIGINAL INFORMATION.—The term
25 ‘original information’ means information that—

1 “(A) is based on the direct and inde-
2 pendent knowledge or analysis of a whistle-
3 blower;

4 “(B) is not known to the Commission from
5 any other source, unless the whistleblower is the
6 original source of the information; and

7 “(C) is not exclusively based on an allega-
8 tion made in a judicial or administrative hear-
9 ing, in a governmental report, hearing, audit, or
10 investigation, or from the news media.

11 “(4) MONETARY SANCTIONS.—The term ‘mone-
12 tary sanctions’, when used with respect to any judi-
13 cial or administrative action, means—

14 “(A) any monies, including penalties,
15 disgorgement, and interest, ordered to be paid;
16 and

17 “(B) any monies deposited into a
18 disgorgement fund or other fund pursuant to
19 section 308(b) of the Sarbanes-Oxley Act of
20 2002 (15 U.S.C. 7246(b)), as a result of such
21 action or any settlement of such action.

22 “(5) RELATED ACTION.—The term ‘related ac-
23 tion’, when used with respect to any judicial or ad-
24 ministrative action brought by the Commission
25 under the securities laws, means any judicial or ad-

1 ministrative action brought by an entity described in
2 subclauses (I) through (IV) of subsection
3 (h)(2)(D)(i) that is based upon the original informa-
4 tion provided by a whistleblower pursuant to sub-
5 section (a) that led to the successful enforcement of
6 the Commission action.

7 “(6) WHISTLEBLOWER.—The term ‘whistle-
8 blower’ means any individual, or 2 or more individ-
9 uals acting jointly, that provides information relat-
10 ing to a violation of the securities laws to the Com-
11 mission, in a manner established, by rule or regula-
12 tion, by the Commission.

13 “(b) AWARDS.—

14 “(1) IN GENERAL.—In any covered judicial or
15 administrative action, the Commission, under regula-
16 tions prescribed by the Commission and subject to
17 subsection (c), may pay an award or awards to 1 or
18 more whistleblowers who voluntarily provided origi-
19 nal information to the Commission that led to the
20 successful enforcement of the covered judicial or ad-
21 ministrative action in an amount—

22 “(A) not less than an amount equal to 10
23 percent, in total, of what has been collected of
24 the monetary sanctions imposed in the action or
25 related actions; and

1 “(B) not exceeding an amount equal to 30
2 percent, in total, of what has been collected of
3 the monetary sanctions imposed in the action or
4 related actions.

5 “(2) PAYMENT OF AWARDS.—Any amount paid
6 under paragraph (1) shall be paid from the Fund.

7 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
8 TERMINATION OF AWARD.—

9 “(1) DETERMINATION OF AMOUNT OF
10 AWARD.—

11 “(A) DISCRETION.—The determination of
12 the amount of an award made under subsection
13 (b) shall be in the sole discretion of the Com-
14 mission.

15 “(B) CRITERIA.—In determining the
16 amount of an award made under subsection (b),
17 the Commission shall take into account—

18 “(i) the significance of the informa-
19 tion provided by the whistleblower to the
20 success of the covered judicial or adminis-
21 trative action;

22 “(ii) the degree of assistance provided
23 by the whistleblower and any legal rep-
24 resentative of the whistleblower in a cov-
25 ered judicial or administrative action;

1 “(iii) the programmatic interest of the
2 Commission in deterring violations of the
3 securities laws by making awards to whis-
4 tleblowers who provide information that
5 lead to the successful enforcement of such
6 laws; and

7 “(iv) such additional relevant factors
8 as the Commission may establish by rule
9 or regulation.

10 “(2) DENIAL OF AWARD.—No award under
11 subsection (b) shall be made—

12 “(A) to any whistleblower who is, or was at
13 the time the whistleblower acquired the original
14 information submitted to the Commission, a
15 member, officer, or employee of—

16 “(i) an appropriate regulatory agency;

17 “(ii) the Department of Justice;

18 “(iii) a self-regulatory organization;

19 “(iv) the Public Company Accounting
20 Oversight Board; or

21 “(v) a law enforcement organization;

22 “(B) to any whistleblower who is convicted
23 of a criminal violation related to the judicial or
24 administrative action for which the whistle-

1 blower otherwise could receive an award under
2 this section; or

3 “(C) to any whistleblower who fails to sub-
4 mit information to the Commission in such
5 form as the Commission may, by rule, require.

6 “(d) REPRESENTATION.—

7 “(1) PERMITTED REPRESENTATION.—Any
8 whistleblower who makes a claim for an award under
9 subsection (b) may be represented by counsel.

10 “(2) REQUIRED REPRESENTATION.—

11 “(A) IN GENERAL.—Any whistleblower
12 who anonymously makes a claim for an award
13 under subsection (b) shall be represented by
14 counsel if the whistleblower anonymously sub-
15 mits the information upon which the claim is
16 based.

17 “(B) DISCLOSURE OF IDENTITY.—Prior to
18 the payment of an award, a whistleblower or
19 the counsel for the whistleblower shall disclose
20 the identity of the whistleblower and provide
21 such other information as the Commission may
22 require.

23 “(e) NO CONTRACT NECESSARY.—No contract with
24 the Commission is necessary for any whistleblower to re-

1 receive an award under subsection (b), unless otherwise re-
2 quired by the Commission by rule or regulation.

3 “(f) APPEALS.—Any determination made under this
4 section, including whether, to whom, or in what amount
5 to make awards, shall be in the sole discretion of the Com-
6 mission, and any such determination may be appealed to
7 the appropriate district court of the United States not
8 more than 30 days after the determination is issued by
9 the Commission.

10 “(g) INVESTOR PROTECTION FUND.—

11 “(1) FUND ESTABLISHED.—There is estab-
12 lished in the Treasury of the United States a fund
13 to be known as the ‘Securities and Exchange Com-
14 mission Investor Protection Fund’.

15 “(2) USE OF FUND.—The Fund shall be avail-
16 able to the Commission, without further appropria-
17 tion or fiscal year limitation, for—

18 “(A) paying awards to whistleblowers as
19 provided in subsection (b); and

20 “(B) funding the activities of the Inspector
21 General of the Commission under section 4(i).

22 “(3) DEPOSITS AND CREDITS.—There shall be
23 deposited into or credited to the Fund—

24 “(A) any monetary sanction collected by
25 the Commission in any judicial or administra-

1 tive action brought by the Commission under
2 the securities laws that is not added to a
3 disgorgement fund or other fund pursuant to
4 section 308 of the Sarbanes-Oxley Act of 2002
5 (15 U.S.C. 7246) or otherwise distributed to
6 victims of a violation of the securities laws, or
7 the rules and regulations thereunder, under-
8 lying such action, unless the balance of the
9 Fund at the time the monetary sanction is col-
10 lected exceeds \$200,000,000;

11 “(B) any monetary sanction added to a
12 disgorgement fund or other fund pursuant to
13 section 308 of the Sarbanes-Oxley Act of 2002
14 (15 U.S.C. 7246) that is not distributed to the
15 victims for whom the disgorgement fund was
16 established, unless the balance of the
17 disgorgement fund at the time the determina-
18 tion is made not to distribute the monetary
19 sanction to such victims exceeds \$100,000,000;
20 and

21 “(C) all income from investments made
22 under paragraph (4).

23 “(4) INVESTMENTS.—

24 “(A) AMOUNTS IN FUND MAY BE IN-
25 VESTED.—The Commission may request the

1 Secretary of the Treasury to invest the portion
2 of the Fund that is not, in the discretion of the
3 Commission, required to meet the current needs
4 of the Fund.

5 “(B) ELIGIBLE INVESTMENTS.—Invest-
6 ments shall be made by the Secretary of the
7 Treasury in obligations of the United States or
8 obligations that are guaranteed as to principal
9 and interest by the United States, with matu-
10 rities suitable to the needs of the Fund as de-
11 termined by the Commission on the record.

12 “(C) INTEREST AND PROCEEDS CRED-
13 ITED.—The interest on, and the proceeds from
14 the sale or redemption of, any obligations held
15 in the Fund shall be credited to the Fund.

16 “(5) REPORTS TO CONGRESS.—Not later than
17 October 30 of each fiscal year beginning after the
18 date of enactment of this subsection, the Commis-
19 sion shall submit to the Committee on Banking,
20 Housing, and Urban Affairs of the Senate, and the
21 Committee on Financial Services of the House of
22 Representatives a report on—

23 “(A) the whistleblower award program, es-
24 tablished under this section, including—

1 “(A) IN GENERAL.—No employer may dis-
2 charge, demote, suspend, threaten, harass, di-
3 rectly or indirectly, or in any other manner dis-
4 criminate against, a whistleblower in the terms
5 and conditions of employment because of any
6 lawful act done by the whistleblower—

7 “(i) in providing information to the
8 Commission in accordance with subsection
9 (a); or

10 “(ii) in assisting in any investigation
11 or judicial or administrative action of the
12 Commission based upon or related to such
13 information.

14 “(B) ENFORCEMENT.—

15 “(i) CAUSE OF ACTION.—An indi-
16 vidual who alleges discharge or other dis-
17 crimination in violation of subparagraph
18 (A) may bring an action under this sub-
19 section in the appropriate district court of
20 the United States for the relief provided in
21 subparagraph (C).

22 “(ii) SUBPOENAS.—A subpoena re-
23 quiring the attendance of a witness at a
24 trial or hearing conducted under this sec-

1 tion may be served at any place in the
2 United States.

3 “(iii) STATUTE OF LIMITATIONS.—

4 “(I) IN GENERAL.—An action
5 under this subsection may not be
6 brought—

7 “(aa) more than 6 years
8 after the date on which the viola-
9 tion of subparagraph (A) oc-
10 curred;

11 “(bb) or more than 3 years
12 after the date when facts mate-
13 rial to the right of action are
14 known or reasonably should have
15 been known by the employee al-
16 leging a violation of subpara-
17 graph (A).

18 “(II) REQUIRED ACTION WITHIN
19 10 YEARS.—Notwithstanding sub-
20 clause (I), an action under this sub-
21 section may not in any circumstance
22 be brought more than 10 years after
23 the date on which the violation occurs.

1 “(C) RELIEF.—Relief for an individual
2 prevailing in an action brought under subpara-
3 graph (B) shall include—

4 “(i) reinstatement with the same se-
5 niority status that the individual would
6 have had, but for the discrimination;

7 “(ii) 2 times the amount of back pay
8 otherwise owed to the individual, with in-
9 terest; and

10 “(iii) compensation for any special
11 damages sustained as a result of the dis-
12 crimination, including litigation costs, ex-
13 pert witness fees, and reasonable attor-
14 neys’ fees.

15 “(2) CONFIDENTIALITY.—

16 “(A) IN GENERAL.—Unless and until re-
17 quired to be disclosed to a defendant or re-
18 spondent in connection with a proceeding insti-
19 tuted by the Commission or any entity de-
20 scribed in subparagraph (D), all information
21 provided to the Commission by a whistle-
22 blower—

23 “(i) in any proceeding in any Federal
24 or State court or administrative agency—

1 “(I) shall be confidential and
2 privileged as an evidentiary matter;
3 and

4 “(II) shall not be subject to civil
5 discovery or other legal process; and

6 “(ii) shall not be subject to disclosure
7 under section 552 of title 5, United States
8 Code (commonly referred to as the Free-
9 dom of Information Act) or under any pro-
10 ceeding under that section.

11 “(B) EXEMPTED STATUTE.—For purposes
12 of section 552 of title 5, United States Code,
13 this paragraph shall be considered a statute de-
14 scribed in subsection (b)(3)(B) of such section
15 552.

16 “(C) RULE OF CONSTRUCTION.—Nothing
17 in this section is intended to limit, or shall be
18 construed to limit, the ability of the Attorney
19 General to present such evidence to a grand
20 jury or to share such evidence with potential
21 witnesses or defendants in the course of an on-
22 going criminal investigation.

23 “(D) AVAILABILITY TO GOVERNMENT
24 AGENCIES.—

1 “(i) IN GENERAL.—Without the loss
2 of its status as confidential and privileged
3 in the hands of the Commission, all infor-
4 mation referred to in subparagraph (A)
5 may, in the discretion of the Commission,
6 when determined by the Commission to be
7 necessary to accomplish the purposes of
8 this Act and to protect investors, be made
9 available to—

10 “(I) the Attorney General of the
11 United States;

12 “(II) an appropriate regulatory
13 authority;

14 “(III) a self-regulatory organiza-
15 tion;

16 “(IV) a State attorney general in
17 connection with any criminal inves-
18 tigation;

19 “(V) any appropriate State regu-
20 latory authority;

21 “(VI) the Public Company Ac-
22 counting Oversight Board;

23 “(VII) a foreign securities au-
24 thority; and

1 “(VIII) a foreign law enforce-
2 ment authority.

3 “(ii) CONFIDENTIALITY.—

4 “(I) IN GENERAL.—Each of the
5 entities described in subclauses (I)
6 through (VI) of clause (i) shall main-
7 tain such information as confidential
8 and privileged, in accordance with the
9 requirements established under sub-
10 paragraph (A).

11 “(II) FOREIGN AUTHORITIES.—
12 Each of the entities described in sub-
13 clauses (VII) and (VIII) of clause (i)
14 shall maintain such information in ac-
15 cordance with such assurances of con-
16 fidentiality as the Commission deter-
17 mines appropriate.

18 “(3) RIGHTS RETAINED.—Nothing in this sec-
19 tion shall be deemed to diminish the rights, privi-
20 leges, or remedies of any whistleblower under any
21 Federal or State law, or under any collective bar-
22 gaining agreement.

23 “(i) PROVISION OF FALSE INFORMATION.—A whis-
24 tler shall not be entitled to an award under this sec-
25 tion, and shall be subject to prosecution under section

1 1001 of title 18, United States Code, if the whistle-
2 blower—

3 “(1) knowingly and willfully makes any false,
4 fictitious, or fraudulent statement or representation;
5 or

6 “(2) uses any false writing or document know-
7 ing the writing or document contains any false, ficti-
8 tious, or fraudulent statement or entry.

9 “(j) RULEMAKING AUTHORITY.—The Commission
10 shall have the authority to issue such rules and regulations
11 as may be necessary or appropriate to implement the pro-
12 visions of this section consistent with the purposes of this
13 section.”.

14 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-**
15 **BLOWER PROTECTION.**

16 (a) IN GENERAL.—

17 (1) SECURITIES ACT OF 1933.—Section
18 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C.
19 77t(d)(3)(A)) is amended by inserting “and section
20 21F of the Securities Exchange Act of 1934” after
21 “the Sarbanes-Oxley Act of 2002”.

22 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-
23 tion 42(e)(3)(A) of the Investment Company Act of
24 1940 (15 U.S.C. 80a-41(e)(3)(A)) is amended by
25 inserting “and section 21F of the Securities Ex-

1 change Act of 1934” after “the Sarbanes-Oxley Act
2 of 2002”.

3 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-
4 tion 209(e)(3)(A) of the Investment Advisers Act of
5 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by in-
6 sserting “and section 21F of the Securities Exchange
7 Act of 1934” after “the Sarbanes-Oxley Act of
8 2002”.

9 (b) SECURITIES EXCHANGE ACT.—

10 (1) SECTION 21.—Section 21(d)(3)(C)(i) of the
11 Securities Exchange Act of 1934 (15 U.S.C.
12 78u(d)(3)(C)(i)) is amended by inserting “and sec-
13 tion 21F of this title” after “the Sarbanes-Oxley Act
14 of 2002”.

15 (2) SECTION 21A.—Section 21A of the Securi-
16 ties Exchange Act of 1934 (15 U.S.C. 78u–1) is
17 amended—

18 (A) in subsection (d)(1) by—

19 (i) striking “(subject to subsection
20 (e))”; and

21 (ii) inserting “and section 21F of this
22 title” after “the Sarbanes-Oxley Act of
23 2002”;

24 (B) by striking subsection (e); and

1 (C) by redesignating subsections (f) and
2 (g) as subsections (e) and (f), respectively.

3 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**
4 **FOR WHISTLEBLOWER PROTECTION.**

5 (a) **IMPLEMENTING RULES.**—The Securities and Ex-
6 change Commission shall issue final regulations imple-
7 menting the provisions of section 21F of the Securities
8 Exchange Act of 1934, as added by this subtitle, not later
9 than 270 days after the date of enactment of this Act.

10 (b) **ORIGINAL INFORMATION.**—Information provided
11 to the Commission by a whistleblower in accordance with
12 the regulations referenced in subsection (a) shall not lose
13 the status of original information (as defined in section
14 21F(i)(1) of the Securities Exchange Act of 1934, as
15 added by this subtitle) solely because the whistleblower
16 provided the information prior to the effective date of the
17 regulations, provided the information was—

18 (1) provided by the whistleblower after the date
19 of enactment of this subtitle; or

20 (2) related to a violation for which an award
21 under section 21F of the Securities Exchange Act of
22 1934, as added by this subtitle, could have been paid
23 at the time the information was provided by the
24 whistleblower.

1 (c) AWARDS.—A whistleblower may receive an award
2 pursuant to section 21F of the Securities Exchange Act
3 of 1934, as added by this subtitle, regardless of whether
4 any violation of a provision of the securities laws, or a
5 rule or regulation thereunder, underlying the judicial or
6 administrative action upon which the award is based, oc-
7 curred prior to the date of enactment of this subtitle.

8 **SEC. 925. COLLATERAL BARS.**

9 (a) SECURITIES EXCHANGE ACT OF 1934.—

10 (1) SECTION 15.—Section 15(b)(6)(A) of the
11 Securities Exchange Act of 1934 (15 U.S.C.
12 78o(b)(6)(A)) is amended by striking “12 months,
13 or bar such person from being associated with a
14 broker or dealer,” and inserting “12 months, or bar
15 any such person from being associated with a
16 broker, dealer, investment adviser, municipal securi-
17 ties dealer, municipal advisor, transfer agent, or na-
18 tionally recognized statistical rating organization,”.

19 (2) SECTION 15B.—Section 15B(c)(4) of the Se-
20 curities Exchange Act of 1934 (15 U.S.C. 78o-
21 4(c)(4)) is amended by striking “twelve months or
22 bar any such person from being associated with a
23 municipal securities dealer,” and inserting “12
24 months or bar any such person from being associ-
25 ated with a broker, dealer, investment adviser, mu-

1 municipal securities dealer, municipal advisor, transfer
2 agent, or nationally recognized statistical rating or-
3 ganization,”.

4 (3) SECTION 17A.—Section 17A(c)(4)(C) of the
5 Securities Exchange Act of 1934 (15 U.S.C. 78q-
6 1(c)(4)(C)) is amended by striking “twelve months
7 or bar any such person from being associated with
8 the transfer agent,” and inserting “12 months or
9 bar any such person from being associated with any
10 transfer agent, broker, dealer, investment adviser,
11 municipal securities dealer, municipal advisor, or na-
12 tionally recognized statistical rating organization,”.

13 (b) INVESTMENT ADVISERS ACT OF 1940.—Section
14 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.
15 80b-3(f)) is amended by striking “twelve months or bar
16 any such person from being associated with an investment
17 adviser,” and inserting “12 months or bar any such per-
18 son from being associated with an investment adviser,
19 broker, dealer, municipal securities dealer, municipal advi-
20 sor transfer agent, or nationally recognized statistical rat-
21 ing organization,”.

1 **SEC. 926. AIDING AND ABETTING AUTHORITY UNDER THE**
2 **SECURITIES ACT AND THE INVESTMENT COM-**
3 **PANY ACT.**

4 (a) UNDER THE SECURITIES ACT OF 1933.—Section
5 15 of the Securities Act of 1933 (15 U.S.C. 77o) is
6 amended to read as follows:

7 **“SEC. 15. LIABILITY OF CONTROLLING PERSONS AND PER-**
8 **SONS WHO AID AND ABET VIOLATIONS.**

9 “(a) CONTROLLING PERSONS.—Any person who, by
10 or through stock ownership, agency, or otherwise, or who,
11 pursuant to or in connection with an agreement or under-
12 standing with 1 or more other persons by or through stock
13 ownership, agency, or otherwise, controls any person liable
14 under section 11 or 12, shall also be liable jointly and sev-
15 erally with and to the same extent as such controlled per-
16 son to any person to which such controlled person is liable,
17 unless the controlling person had no knowledge of or rea-
18 sonable ground to believe in the existence of the facts by
19 reason of which the liability of the controlled person is
20 alleged to exist.

21 “(b) PROSECUTION OF PERSONS WHO AID AND
22 ABET VIOLATIONS.—For purposes of any action brought
23 by the Commission under subsections (b) or (d) of section
24 20, any person that knowingly or recklessly provides sub-
25 stantial assistance to another person in violation of a pro-
26 vision of this Act, or of any rule or regulation issued under

1 this Act, shall be deemed to be in violation of such provi-
2 sion to the same extent as the person to whom such assist-
3 ance is provided.”.

4 (b) UNDER THE INVESTMENT COMPANY ACT OF
5 1940.—Section 48 of the Investment Company Act of
6 1940 (15 U.S.C. 80a–48) is amended to read as follows:

7 **“SEC. 48. LIABILITY OF CONTROLLING PERSONS AND PER-**
8 **SONS WHO AID AND ABET VIOLATIONS; PRE-**
9 **VENTING COMPLIANCE WITH ACT.**

10 “(a) CONTROLLING PERSONS.—It shall be unlawful
11 for any person, directly or indirectly, to cause to be done
12 any act or thing through or by means of any other person
13 which it would be unlawful for such person to do under
14 the provisions of this Act or any rule, regulation, or order
15 thereunder.

16 “(b) PROSECUTION OF PERSONS WHO AID AND
17 ABET VIOLATIONS.—For purposes of any action brought
18 by the Commission under subsections (d) or (e) of section
19 42, any person that knowingly or recklessly provides sub-
20 stantial assistance to another person in violation of a pro-
21 vision of this Act, or of any rule or regulation issued under
22 this Act, shall be deemed to be in violation of such provi-
23 sion to the same extent as the person to whom such assist-
24 ance is provided.

1 “(c) PREVENTING COMPLIANCE WITH ACT.—It shall
2 be unlawful for any person without just cause to hinder,
3 delay, or obstruct the making, filing, or keeping of any
4 information, document, report, record, or account required
5 to be made, filed, or kept under any provision of this Act
6 or any rule, regulation, or order thereunder.”.

7 **SEC. 927. AUTHORITY TO IMPOSE PENALTIES FOR AIDING**
8 **AND ABETTING VIOLATIONS OF THE INVEST-**
9 **MENT ADVISERS ACT.**

10 Section 209 of the Investment Advisers Act of 1940
11 (15 U.S.C. 80b–9) is amended by adding at the end the
12 following:

13 “(f) AIDING AND ABETTING.—For purposes of any
14 action brought by the Commission under subsection (e),
15 any person that knowingly or recklessly aids, abets, coun-
16 sels, commands, induces, or procures another person to
17 commit a violation of a provision of this Act, or of a rule,
18 regulation, or order issued under this Act, shall be deemed
19 to be in violation of such provision, rule, regulation, or
20 order to the same extent as the person that committed
21 such violation.”.

22 **SEC. 928. RESTORING THE AUTHORITY OF STATE REGU-**
23 **LATORS OVER REGULATION D OFFERINGS.**

24 Section 18(b)(4) of the Securities Act of 1933 (15
25 U.S.C. 77r(b)(4)) is amended—

1 (1) in subparagraph (B), by adding “or” at the
2 end;

3 (2) in subparagraph (C), by striking the “or”
4 at the end; and

5 (3) by striking subparagraph (D).

6 **Subtitle C—Improvements to the**
7 **Regulation of Credit Rating**
8 **Agencies**

9 **SEC. 931. FINDINGS.**

10 Congress finds the following:

11 (1) Because of the systemic importance of cred-
12 it ratings and the reliance placed on credit ratings
13 by individual and institutional investors and finan-
14 cial regulators, the activities and performances of
15 credit rating agencies, including nationally recog-
16 nized statistical rating organizations, are matters of
17 national public interest, as credit rating agencies are
18 central to capital formation, investor confidence, and
19 the efficient performance of the United States econ-
20 omy.

21 (2) Credit rating agencies, including nationally
22 recognized statistical rating organizations, play a
23 critical “gatekeeper” role in the debt market that is
24 functionally similar to that of securities analysts,
25 who evaluate the quality of securities in the equity

1 market, and auditors, who review the financial state-
2 ments of firms. Such role justifies a similar level of
3 public oversight and accountability.

4 (3) Because credit rating agencies perform eval-
5 uative and analytical services on behalf of clients,
6 much as other financial “gatekeepers” do, the activi-
7 ties of credit rating agencies are fundamentally com-
8 mercial in character and should be subject to the
9 same standards of liability and oversight as apply to
10 auditors, securities analysts, and investment bank-
11 ers.

12 (4) Because the credit ratings on structured fi-
13 nance products evaluate special purpose entities,
14 which do not have public shareholders or ongoing
15 operations, and because such credit ratings are dis-
16 seminated only to limited numbers of institutional
17 investors, such credit ratings are not matters of pub-
18 lic concern or debate and thus are particularly un-
19 suited for protection under the first amendment to
20 the Constitution of the United States, beyond the
21 protection normally provided to commercial speech.

22 (5) In certain activities, particularly in advising
23 arrangers of structured financial products on poten-
24 tial ratings of such products, credit rating agencies
25 face conflicts of interest that need to be carefully

1 monitored and that therefore should be addressed
2 explicitly in legislation in order to give clearer au-
3 thority to the Securities and Exchange Commission.

4 (6) In the recent credit crisis, the ratings on
5 structured financial products have proven to be inac-
6 curate. This inaccuracy contributed significantly to
7 the mismanagement of risks by financial institutions
8 and investors, which in turn adversely impacted the
9 health of the economy in the United States and
10 around the world. Such inaccuracy necessitates in-
11 creased accountability on the part of credit rating
12 agencies.

13 **SEC. 932. ENHANCED REGULATION OF NATIONALLY REC-**
14 **OGNIZED STATISTICAL RATING ORGANIZA-**
15 **TIONS.**

16 Section 15E of the Securities Exchange Act of 1934
17 (15 U.S.C. 78o-7) is amended—

18 (1) in subsection (c)—

19 (A) in paragraph (2), in the second sen-
20 tence, by inserting “any other provision of this
21 section, or” after “Notwithstanding”; and

22 (B) by adding at the end the following:

23 “(3) INTERNAL CONTROLS OVER PROCESSES
24 FOR DETERMINING CREDIT RATINGS.—

1 “(A) IN GENERAL.—Each nationally recog-
2 nized statistical rating organization shall estab-
3 lish, maintain, enforce, and document an effec-
4 tive internal control structure governing the im-
5 plementation of and adherence to policies, pro-
6 cedures, and methodologies for determining
7 credit ratings, taking into consideration such
8 factors as the Commission may prescribe, by
9 rule.

10 “(B) ATTESTATION REQUIREMENT.—The
11 Commission shall prescribe rules requiring each
12 nationally recognized statistical organization to
13 submit to the Commission an annual internal
14 controls report, which shall contain—

15 “(i) a description of the responsibility
16 of the management of the nationally recog-
17 nized statistical rating organization in es-
18 tablishing and maintaining an effective in-
19 ternal control structure under subpara-
20 graph (A);

21 “(ii) an assessment of the effective-
22 ness of the internal control structure of the
23 national recognized statistical rating orga-
24 nization; and

1 “(iii) the attestation of the chief execu-
2 utive officer, or equivalent individual, of
3 the nationally recognized statistical rating
4 organization.”;

5 (2) in subsection (d)—

6 (A) in the subsection heading, by inserting
7 “FINE,” after “CENSURE,”;

8 (B) by inserting “fine,” after “censure,”
9 each place that term appears;

10 (C) in paragraph (2), by redesignating
11 subparagraphs (A) and (B) as clauses (i) and
12 (ii), respectively, and adjusting the clause mar-
13 gins accordingly;

14 (D) by redesignating paragraphs (1)
15 through (5) as subparagraphs (A) through (E),
16 respectively, and adjusting the subparagraph
17 margins accordingly;

18 (E) in the matter preceding subparagraph
19 (A), as so redesignated, by striking “The Com-
20 mission” and inserting the following:

21 “(1) IN GENERAL.—The Commission”;

22 (F) in subparagraph (D), as so redesi-
23 gnated, by striking “or” at the end;

1 (G) in subparagraph (E), as so redesignig-
2 nated, by striking the period at the end and in-
3 serting a semicolon; and

4 (H) by adding at the end the following:

5 “(F) has failed reasonably to supervise,
6 with a view to preventing a violation of the se-
7 curities laws, an individual who commits such a
8 violation, if the individual is subject to the su-
9 pervision of that person.”.

10 “(2) SUSPENSION OR REVOCATION FOR PAR-
11 TICULAR CLASS OF SECURITIES.—

12 “(A) IN GENERAL.—The Commission may
13 temporarily suspend or permanently revoke the
14 registration of a nationally recognized statistical
15 rating organization with respect to a particular
16 class or subclass of securities, if the Commis-
17 sion finds, on the record after notice and oppor-
18 tunity for hearing, that the nationally recog-
19 nized statistical rating organization does not
20 have adequate financial and managerial re-
21 sources to consistently produce credit ratings
22 with integrity.

23 “(B) CONSIDERATIONS.—In making any
24 determination under subparagraph (A), the
25 Commission shall consider—

1 “(i) whether the nationally recognized
2 statistical rating organization has failed
3 over a sustained period of time, as deter-
4 mined by the Commission, to produce ac-
5 curate ratings for that class or subclass of
6 securities;

7 “(ii) whether the performance of the
8 nationally recognized statistical rating or-
9 ganization has been significantly worse
10 than the performance of other nationally
11 recognized statistical rating organizations
12 during the same time period; and

13 “(iii) such other factors as the Com-
14 mission may determine.”;

15 (3) in subsection (h), by adding at the end the
16 following:

17 “(3) SEPARATION OF RATINGS FROM SALES
18 AND MARKETING.—The Commission shall issue rules
19 to prevent the sales and marketing considerations of
20 a nationally recognized statistical rating organiza-
21 tion from influencing the production of ratings by
22 the nationally recognized statistical rating organiza-
23 tion. Such rules shall provide for exceptions for
24 small nationally recognized statistical rating organi-
25 zations with respect to which the Commission deter-

1 mines that the separation of the production of rat-
2 ings and sales and marketing activities is not appro-
3 priate.”;

4 (4) in subsection (j)—

5 (A) by striking “Each” and inserting the
6 following:

7 “(1) IN GENERAL.—Each”; and

8 (B) by adding at the end the following:

9 “(2) LIMITATIONS.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), an individual designated
12 under paragraph (1) may not, while serving in
13 the designated capacity—

14 “(i) perform credit ratings;

15 “(ii) participate in the development of
16 ratings methodologies or models;

17 “(iii) perform marketing or sales
18 functions; or

19 “(iv) participate in establishing com-
20 pensation levels, other than for employees
21 working for that individual.

22 “(B) EXCEPTION.—The Commission may
23 exempt a small nationally recognized statistical
24 rating organization from the limitations under
25 this paragraph, if the Commission finds that

1 compliance with such limitations would impose
2 an unreasonable burden on the nationally recog-
3 nized statistical rating organization.

4 “(3) OTHER DUTIES.—Each individual des-
5 ignated under paragraph (1) shall establish proce-
6 dures for the receipt, retention, and treatment of—

7 “(A) complaints regarding credit ratings,
8 models, methodologies, and compliance with the
9 securities laws and the policies and procedures
10 developed under this section; and

11 “(B) confidential, anonymous complaints
12 by employees or users of credit ratings.

13 “(4) ANNUAL REPORTS REQUIRED.—

14 “(A) ANNUAL REPORTS REQUIRED.—Each
15 individual designated under paragraph (1) shall
16 submit to the nationally recognized statistical
17 rating organization an annual report on the
18 compliance of the nationally recognized statis-
19 tical rating organization with the securities laws
20 and the policies and procedures of the nation-
21 ally recognized statistical rating organization
22 that includes—

23 “(i) a description of any material
24 changes to the code of ethics and conflict

1 of interest policies of the nationally recog-
2 nized statistical rating organization; and

3 “(ii) a certification that the report is
4 accurate and complete.

5 “(B) SUBMISSION OF REPORTS TO THE
6 COMMISSION.—

7 “(i) IN GENERAL.—Each nationally
8 recognized statistical rating organization
9 shall file the reports required under sub-
10 paragraph (A) together with the financial
11 report that is required to be submitted to
12 the Commission under this section.

13 “(ii) CONFIDENTIALITY.—The Com-
14 mission may not make public any portion
15 of a report filed with the Commission
16 under clause (i) that contains criticism of,
17 or identifies potential defects in, the com-
18 pliance system of a nationally recognized
19 statistical rating organization, if, not later
20 than 1 year after the date on which the re-
21 port is filed under clause (i), the Commis-
22 sion determines that the nationally recog-
23 nized statistical rating organization has
24 addressed such criticism or defects.

1 “(C) REGULATIONS.—The Commission
2 shall issue rules prescribing matters that should
3 be addressed in the reports required under this
4 paragraph.”;

5 (5) in subsection (k)—

6 (A) by striking “, on a confidential basis,”;

7 (B) by striking “Each nationally” and in-
8 serting the following:

9 “(1) IN GENERAL.—Each nationally”; and

10 (C) by adding at the end the following:

11 “(2) EXCEPTION.—The Commission may treat
12 as confidential any information contained in a finan-
13 cial statement furnished to the Commission under
14 paragraph (1), if the Commission determines that
15 the publication of the financial statement may have
16 a harmful effect on a nationally recognized statis-
17 tical rating organization.”; and

18 (6) by striking subsection (p) and inserting the
19 following:

20 “(p) REGULATION OF NATIONALLY RECOGNIZED
21 STATISTICAL RATING ORGANIZATIONS.—

22 “(1) ESTABLISHMENT OF OFFICE OF CREDIT
23 RATINGS.—

24 “(A) OFFICE ESTABLISHED.—The Com-
25 mission shall establish within the Commission

1 an Office of Credit Ratings (referred to in this
2 subsection as the ‘Office’) to administer the
3 rules of the Commission—

4 “(i) with respect to the practices of
5 nationally recognized statistical rating or-
6 ganizations in determining ratings, for the
7 protection of users of credit ratings and in
8 the public interest;

9 “(ii) to promote accuracy in credit
10 ratings issued by nationally recognized sta-
11 tistical rating organizations; and

12 “(iii) to ensure that such ratings are
13 not unduly influenced by conflicts of inter-
14 est.

15 “(B) DIRECTOR OF THE OFFICE.—The
16 head of the Office shall be the Director, who
17 shall report to the Chairman.

18 “(2) STAFFING.—The Office established under
19 this subsection shall be staffed sufficiently to carry
20 out fully the requirements of this section. The staff
21 shall include persons with knowledge of and exper-
22 tise in corporate, municipal, and structured debt fi-
23 nance.

24 “(3) COMMISSION EXAMINATIONS.—

1 “(A) ANNUAL EXAMINATIONS RE-
2 QUIRED.—The Office shall conduct an examina-
3 tion of each nationally recognized statistical
4 rating organization at least annually.

5 “(B) CONDUCT OF EXAMINATIONS.—Each
6 examination under subparagraph (A) shall in-
7 clude a review of—

8 “(i) the policies, procedures, and rat-
9 ing methodologies of the nationally recog-
10 nized statistical rating organization, and
11 whether the nationally recognized statis-
12 tical rating organization conducts business
13 in accordance with such policies, proce-
14 dures, and rating methodologies;

15 “(ii) the management of conflicts of
16 interest by the nationally recognized statis-
17 tical rating organization;

18 “(iii) implementation of ethics policies
19 by the nationally recognized statistical rat-
20 ing organization;

21 “(iv) the internal supervisory controls
22 of the nationally recognized statistical rat-
23 ing organization;

24 “(v) the governance of the nationally
25 recognized statistical rating organization;

1 “(vi) the activities of the individual
2 designated by the nationally recognized
3 statistical rating organization under sub-
4 section (j)(1);

5 “(vii) the processing of complaints by
6 the nationally recognized statistical rating
7 organization; and

8 “(viii) the policies of the nationally
9 recognized statistical rating organization
10 governing the post-employment activities of
11 former staff of the nationally recognized
12 statistical rating organization.

13 “(C) INSPECTION REPORTS.—The Com-
14 mission shall make available to the public a re-
15 port summarizing the essential findings of each
16 examination under subparagraph (A) that is in
17 an easily understandable format, as deemed ap-
18 propriate by the Commission.

19 “(4) RULEMAKING AUTHORITY.—The Commis-
20 sion shall—

21 “(A) establish, by rule, fines, and other
22 penalties applicable to any nationally recognized
23 statistical rating organization that violates the
24 requirements of this subsection and the rules
25 thereunder; and

1 “(B) are clear and informative for inves-
2 tors with varying levels of financial sophistica-
3 tion;

4 “(C) include performance information over
5 a range of years and for a variety of types of
6 credit ratings, in a format determined by the
7 Commission;

8 “(D) are published and made freely avail-
9 able by the nationally recognized statistical rat-
10 ing organization, on an easily accessible portion
11 of its website, and in writing, when requested;
12 and

13 “(E) are appropriate to the business model
14 of a nationally recognized statistical rating or-
15 ganization.

16 “(r) CREDIT RATINGS METHODOLOGIES.—The Com-
17 mission shall prescribe rules, for the protection of inves-
18 tors and in the public interest, with respect to the proce-
19 dures and methodologies, including qualitative and quan-
20 titative inputs and models, used by nationally recognized
21 statistical rating organizations that require each nation-
22 ally recognized statistical rating organization—

23 “(1) to ensure that credit ratings are deter-
24 mined using procedures and methodologies, includ-

1 ing qualitative and quantitative inputs and models,
2 that are—

3 “(A) approved by the board of the nation-
4 ally recognized statistical rating organization, a
5 body performing a function similar to that of a
6 board, or the senior officer of the nationally
7 recognized statistical rating organization; and

8 “(B) in accordance with the policies and
9 procedures of the nationally recognized statis-
10 tical rating organization for the development
11 and modification of credit rating procedures
12 and methodologies;

13 “(2) to ensure that when material changes to
14 credit rating procedures and methodologies, includ-
15 ing changes to qualitative and quantitative inputs
16 and models, are made, that—

17 “(A) the changes are applied consistently
18 to all credit ratings to which the changed proce-
19 dures and methodologies apply;

20 “(B) to the extent that changes are made
21 to credit rating surveillance procedures and
22 methodologies, the changes are applied to then-
23 current credit ratings by the nationally recog-
24 nized statistical rating organization within a

1 reasonable time period determined by the Com-
2 mission, by rule; and

3 “(C) the nationally recognized statistical
4 rating organization publically discloses the rea-
5 son for the change; and

6 “(3) to notify users of credit ratings—

7 “(A) of the version of a procedure or meth-
8 odology, including the qualitative methodology
9 or quantitative inputs, used with respect to a
10 particular credit rating;

11 “(B) when a material change is made to a
12 procedure or methodology, including to a quali-
13 tative model or quantitative inputs;

14 “(C) when a significant error is identified
15 in a procedure or methodology that may result
16 in credit rating actions; and

17 “(D) of the likelihood of the change result-
18 ing in current credit ratings being subject to a
19 change in rating.

20 “(s) TRANSPARENCY OF CREDIT RATING METH-
21 ODOLOGIES AND INFORMATION REVIEWED.—

22 “(1) FORM FOR DISCLOSURES.—The Commis-
23 sion shall require by rule, a nationally recognized
24 statistical rating organization to prescribe a form to

1 include with the publication of each credit rating
2 that discloses—

3 “(A) information relating to—

4 “(i) the assumptions underlying credit
5 rating procedures and methodologies;

6 “(ii) the data that was relied on to de-
7 termine the credit rating; and

8 “(iii) if applicable, how the nationally
9 recognized statistical rating organization
10 used servicer or remittance reports, and
11 with what frequency, to conduct surveil-
12 lance of the credit rating; and

13 “(B) information that can be used by in-
14 vestors and other users of credit ratings to bet-
15 ter understand credit ratings in each class of
16 credit rating issued by the nationally recognized
17 statistical rating organization.

18 “(2) FORMAT.—The form developed under
19 paragraph (1) shall—

20 “(A) be easy to use and helpful for users
21 of credit ratings to understand the information
22 contained in the report; and

23 “(B) require the nationally recognized sta-
24 tistical rating organization to provide the quali-
25 tative and quantitative content described in

1 paragraph (3)(B) in a manner that is directly
2 comparable across types of securities.

3 “(3) CONTENT OF FORM.—

4 “(A) QUALITATIVE CONTENT.—Each na-
5 tionally recognized statistical rating organiza-
6 tion shall disclose on the form developed under
7 paragraph (1)—

8 “(i) the credit ratings produced by the
9 nationally recognized statistical rating or-
10 ganization;

11 “(ii) the main assumptions used in
12 constructing procedures and methodolo-
13 gies, including qualitative methodologies
14 and quantitative inputs and assumptions
15 about the correlation of defaults across ob-
16 ligors used in rating structured products;

17 “(iii) the potential limitations of the
18 credit ratings, and the types of risks ex-
19 cluded from the credit ratings that the na-
20 tionally recognized statistical rating orga-
21 nization does not comment on, including li-
22 quidity, market, and other risks;

23 “(iv) information on the uncertainty
24 of the credit rating, including—

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1 “(I) information on the reli-
2 ability, accuracy, and quality of the
3 data relied on in determining the
4 credit rating; and

5 “(II) a statement relating to the
6 extent to which data essential to the
7 determination of the credit rating
8 were reliable or limited, including—

9 “(aa) any limits on the
10 scope of historical data; and

11 “(bb) any limits in accessi-
12 bility to certain documents or
13 other types of information that
14 would have better informed the
15 credit rating;

16 “(v) whether and to what extent third
17 party due diligence services have been used
18 by the nationally recognized statistical rat-
19 ing organization, a description of the infor-
20 mation that such third party reviewed in
21 conducting due diligence services, and a
22 description of the findings or conclusions
23 of such third party;

24 “(vi) a description of data about any
25 obligor, issuer, security, or money market

1 instrument that were relied upon for the
2 purpose of determining the credit rating;

3 “(vii) a statement containing an over-
4 all assessment of the quality of information
5 available and considered in producing a
6 rating for an obligor, security, or a money
7 market instrument in relation to the qual-
8 ity of information available to the nation-
9 ally recognized statistical rating organiza-
10 tion in rating similar issuances;

11 “(viii) information relating to conflicts
12 of interest of the nationally recognized sta-
13 tistical rating organization; and

14 “(ix) such additional information as
15 the Commission may require.

16 “(B) QUANTITATIVE CONTENT.—Each na-
17 tionally recognized statistical rating organiza-
18 tion shall disclose on the form developed under
19 this subsection—

20 “(i) an explanation or measure of the
21 potential volatility of the credit rating, in-
22 cluding—

23 “(I) any factors that might lead
24 to a change in the credit ratings; and

1 “(II) the extent of the change
2 that a user can expect under different
3 market conditions;

4 “(ii) information on the content of the
5 rating, including—

6 “(I) the historical performance of
7 the rating, or the expected probability
8 of default; and

9 “(II) the historical performance
10 of the rating, or the loss to the user
11 in the event of default;

12 “(iii) information on the sensitivity of
13 the rating to assumptions made by the na-
14 tionally recognized statistical rating orga-
15 nization; and

16 “(iv) such additional information as
17 may be required by the Commission.

18 “(4) DUE DILIGENCE SERVICES.—

19 “(A) PUBLIC DISCLOSURE.—The issuer or
20 underwriter of any asset-backed security shall
21 make publicly available any third-party due dili-
22 gence report obtained by the issuer or under-
23 writer.

24 “(B) CERTIFICATION REQUIRED.—In any
25 case in which third-party due diligence services

1 are employed by a nationally recognized statis-
2 tical rating organization, an issuer, or an un-
3 derwriter, the person providing the due dili-
4 gence services shall provide to any nationally
5 recognized statistical rating organization that
6 produces a rating to which such services relate,
7 written certification, as provided in subpara-
8 graph (C).

9 “(C) **FORMAT AND CONTENT.**—Each na-
10 tionally recognized statistical rating organiza-
11 tion shall establish the appropriate format and
12 content for the written certifications required
13 under subparagraph (B), to ensure that pro-
14 viders of due diligence services have conducted
15 a thorough review of data, documentation, and
16 other relevant information necessary for the na-
17 tionally recognized statistical rating organiza-
18 tion to provide an accurate rating.

19 “(D) **DISCLOSURE OF CERTIFICATION.**—
20 The Commission shall adopt rules requiring a
21 nationally recognized statistical rating organiza-
22 tion, at the time at which the nationally recog-
23 nized statistical rating organization produces a
24 rating, to disclose the certification described in
25 subparagraph (B) to the public in a manner

1 that allows the public to determine the ade-
2 quacy and level of due diligence services pro-
3 vided by a third party.”.

4 **SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.**

5 (a) **ACCOUNTABILITY.**—Section 15E(m) of the Secu-
6 rities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) is
7 amended to read as follows:

8 “(m) **ACCOUNTABILITY.**—

9 “(1) **IN GENERAL.**—The enforcement and pen-
10 alty provisions of this title shall apply to statements
11 made by a nationally recognized statistical rating or-
12 ganization in the same manner and to the same ex-
13 tent as such provisions apply to statements made by
14 a registered public accounting firm or a securities
15 analyst under the securities laws, and such state-
16 ments shall not be deemed forward-looking state-
17 ments for the purposes of section 21E.

18 “(2) **RULEMAKING.**—The Commission shall
19 issue such rules as may be necessary to carry out
20 this subsection.”.

21 (b) **STATE OF MIND.**—Section 21D(b)(2) of the Se-
22 curities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2))
23 is amended—

24 (1) by striking “In any” and inserting the fol-
25 lowing:

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), in any”; and

3 (2) by adding at the end the following:

4 “(B) EXCEPTION.—In the case of an ac-
5 tion for money damages brought against a cred-
6 it rating agency or a controlling person under
7 this title, it shall be sufficient, for purposes of
8 pleading any required state of mind in relation
9 to such action, that the complaint state with
10 particularity facts giving rise to a strong infer-
11 ence that the nationally recognized statistical
12 rating organization knowingly or recklessly
13 failed—

14 “(i) to conduct a reasonable investiga-
15 tion of the rated security with respect to
16 the factual elements relied upon by its own
17 methodology for evaluating credit risk; or

18 “(ii) to obtain reasonable verification
19 of such factual elements (which verification
20 may be based on a sampling technique that
21 does not amount to an audit) from other
22 sources that it considered to be competent
23 and that were independent of the issuer
24 and underwriter.”.

1 **SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR**
2 **REGULATORY AUTHORITIES.**

3 Section 15E of the Securities Exchange Act of 1934
4 (15 U.S.C. 78o-7), as amended by this subtitle, is amend-
5 ed by adding at the end the following:

6 “(t) DUTY TO REPORT TIPS ALLEGING VIOLA-
7 TIONS.—

8 “(1) DUTY TO REPORT.—Each nationally rec-
9 ognized statistical rating organization shall refer to
10 the appropriate law enforcement or regulatory au-
11 thorities any information that the nationally recog-
12 nized statistical rating organization receives and
13 finds credible that alleges that an issuer of securities
14 rated by the nationally recognized statistical rating
15 organization has committed or is committing a viola-
16 tion of law that has not been adjudicated by a Fed-
17 eral or State court.

18 “(2) RULE OF CONSTRUCTION.—Nothing in
19 paragraph (1) may be construed to require a nation-
20 ally recognized statistical rating organization to
21 verify the accuracy of the information described in
22 paragraph (1).”.

1 **SEC. 935. CONSIDERATION OF INFORMATION FROM**
2 **SOURCES OTHER THAN THE ISSUER IN RAT-**
3 **ING DECISIONS.**

4 Section 15E of the Securities Exchange Act of 1934
5 (15 U.S.C. 78o-7), as amended by this subtitle, is amend-
6 ed by adding at the end the following:

7 “(u) INFORMATION FROM SOURCES OTHER THAN
8 THE ISSUER.—In producing a credit rating, a nationally
9 recognized statistical rating organization shall consider in-
10 formation about an issuer that the nationally recognized
11 statistical rating organization has, or receives from a
12 source other than the issuer, that the nationally recog-
13 nized statistical rating organization finds credible and po-
14 tentially significant to a rating decision.”.

15 **SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RAT-**
16 **ING ANALYSTS.**

17 Not later than 1 year after the date of enactment
18 of this Act, the Securities and Exchange Commission (re-
19 ferred to in this subtitle as the “Commission”), or a na-
20 tional securities association designated by the Commis-
21 sion, shall issue rules that are reasonably designed to en-
22 sure that any person employed by a nationally recognized
23 statistical rating organization to perform credit ratings—

24 (1) meets standards of training, experience, and
25 competence necessary to produce accurate ratings;
26 and

1 (2) is tested for knowledge of the credit rating
2 process.

3 **SEC. 937. TIMING OF REGULATIONS.**

4 The Securities and Exchange Commission shall issue
5 final regulations, as required by this title and the amend-
6 ments made by this subtitle, not later than 1 year after
7 the date of enactment of this Act.

8 **SEC. 938. STUDIES AND REPORTS.**

9 (a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
10 ON REQUIRED USES OF NATIONALLY RECOGNIZED STA-
11 TISTICAL RATING ORGANIZATION RATINGS.—

12 (1) STUDY.—The Comptroller General of the
13 United States shall conduct a study of the scope of
14 provisions of Federal, State, and local law that re-
15 quire the use of ratings issued by nationally recog-
16 nized statistical rating organizations (in this section
17 referred to as the “ratings requirements”).

18 (2) SUBJECTS FOR EVALUATION; PROCESS OF
19 EVALUATION.—

20 (A) SUBJECTS FOR EVALUATION.—In con-
21 ducting the study under paragraph (1), the
22 Comptroller General of the United States shall
23 evaluate—

24 (i) the appropriateness of and neces-
25 sity for ratings requirements;

1 (ii) which ratings requirements, if
2 any, could be removed with minimal dis-
3 ruption to the financial markets;

4 (iii) the potential impact on the finan-
5 cial markets and on investors if the ratings
6 requirements identified under clause (ii)
7 were rescinded; and

8 (iv) whether the financial markets and
9 investors would benefit from the rescission
10 of such ratings requirements.

11 (B) PROCESS OF EVALUATION.—In con-
12 ducting the study under paragraph (1), the
13 Comptroller General of the United States shall
14 research and take into consideration the views
15 of—

16 (i) the Federal financial regulatory
17 agencies;

18 (ii) hedge funds;

19 (iii) banks;

20 (iv) brokerage firms;

21 (v) pension funds; and

22 (vi) all other interested parties.

23 (3) REPORT AND RECOMMENDATIONS.—Not
24 later than 1 year after the date of enactment of this
25 Act, the Comptroller General of the United States

1 shall submit to the Committee on Banking, Housing,
2 and Urban Affairs of the Senate and the Committee
3 on Financial Services of the House of Representa-
4 tives a report on the results of the study conducted
5 under paragraph (1), including recommendations
6 on—

7 (A) which ratings requirements, if any,
8 could be removed with minimal disruption to
9 the markets; and

10 (B) whether the financial markets and in-
11 vestors would benefit from the rescission of the
12 ratings requirements identified under subpara-
13 graph (A).

14 (b) SECURITIES AND EXCHANGE COMMISSION STUDY
15 ON STRENGTHENING CREDIT RATING AGENCY INDE-
16 PENDENCE.—

17 (1) STUDY.—The Commission shall conduct a
18 study of—

19 (A) the independence of nationally recog-
20 nized statistical rating organizations; and

21 (B) how the independence of nationally
22 recognized statistical rating organizations im-
23 pacts the ratings issued by the nationally orga-
24 nized statistical rating organizations.

1 (2) SUBJECTS FOR EVALUATION.—In con-
2 ducting the study under paragraph (1), the Commis-
3 sion shall evaluate—

4 (A) the management of conflicts of interest
5 raised by a nationally recognized statistical rat-
6 ing organization providing other services, in-
7 cluding risk management advisory services, an-
8 cillary assistance, or consulting services;

9 (B) the potential impact of rules prohib-
10 iting a nationally recognized statistical rating
11 organization that provided a rating to an issuer
12 from providing other services to the issuer; and

13 (C) any other issue relating to nationally
14 recognized statistical organizations, as the
15 Chairman determines is appropriate.

16 (3) REPORT.—Not later than 1 year after the
17 date of enactment of this Act, the Chairman of the
18 Commission shall submit to the Committee on Bank-
19 ing, Housing, and Urban Affairs of the Senate and
20 the Committee on Financial Services of the House of
21 Representatives a report on the results of the study
22 conducted under paragraph (1), including rec-
23 ommendations, if any, for improving the quality of
24 ratings issued by nationally recognized statistical
25 rating organizations.

1 (c) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
2 ON ALTERNATIVE BUSINESS MODELS.—

3 (1) STUDY.—The Comptroller General of the
4 United States shall conduct a study on alternative
5 means for compensating nationally recognized statis-
6 tical rating organizations in order to create incen-
7 tives for nationally recognized statistical rating orga-
8 nizations to provide more accurate credit ratings, in-
9 cluding any statutory changes that would be re-
10 quired to facilitate the use of an alternative means
11 of compensation.

12 (2) REPORT.—Not later than 1 year after the
13 date of enactment of this Act, the Comptroller Gen-
14 eral shall submit to the Committee on Banking,
15 Housing, and Urban Affairs of the Senate and the
16 Committee on Financial Services of the House of
17 Representatives a report on the results of the study
18 conducted under paragraph (1), including rec-
19 ommendations, if any, for providing incentives to
20 credit rating agencies to provide more accurate cred-
21 it ratings.

22 (d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
23 ON THE CREATION OF AN INDEPENDENT PROFESSIONAL
24 ANALYST ORGANIZATION.—

1 (1) STUDY.—The Comptroller General of the
2 United States shall conduct a study on the
3 feasibility and merits of creating an independent
4 professional organization for rating analysts em-
5 ployed by nationally recognized statistical rating or-
6 ganizations that would be responsible for—

7 (A) establishing independent standards for
8 governing the profession of rating analysts;

9 (B) establishing a code of ethical conduct;
10 and

11 (C) overseeing the profession of rating an-
12 alysts.

13 (2) REPORT.—Not later than 1 year after the
14 date of enactment of this Act, the Comptroller Gen-
15 eral shall submit to the Committee on Banking,
16 Housing, and Urban Affairs of the Senate and the
17 Committee on Financial Services of the House of
18 Representatives a report on the results of the study
19 conducted under paragraph (1).

20 (e) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
21 OF EFFECTIVENESS OF RULES OF THE COMMISSION.—

22 (1) STUDY.—The Comptroller General of the
23 United States shall carry out a study of the extent
24 to which the rules of the Commission have carried

1 out this subtitle, and the amendments made by this
2 subtitle.

3 (2) REPORT.—Not later than 30 months after
4 the date of enactment of this Act, the Comptroller
5 General shall submit to the Committee on Banking,
6 Housing, and Urban Affairs of the Senate and the
7 Committee on Financial Services of the House of
8 Representatives and the Commission, a report con-
9 taining the results of the study required under para-
10 graph (1).

11 (f) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
12 ON THE PERFORMANCE OF RATINGS FOR THE PURPOSES
13 OF REGULATORY USE.—

14 (1) STUDY.—The Comptroller General of the
15 United States shall carry out a study of a represent-
16 ative sample of the credit ratings issued by each na-
17 tionally recognized statistical rating organization to
18 assess—

19 (A) the predictive performance of the ini-
20 tial credit ratings in each such sample; and

21 (B) the predictive performance of any sub-
22 sequent credit rating described in subparagraph

23 (A) that is issued by the nationally recognized
24 statistical rating organization.

1 (2) REPORT.—Not later than 18 months after
2 the date of enactment of this Act, the Comptroller
3 General shall submit to the Committee on Banking,
4 Housing, and Urban Affairs of the Senate and the
5 Committee on Financial Services of the House of
6 Representatives a report that contains—

7 (A) the results of the study required under
8 paragraph (1); and

9 (B) a score card evaluating the predictive
10 performance of the credit ratings of each na-
11 tionally recognized statistical rating organiza-
12 tion.

13 **Subtitle D—Improvements to the**
14 **Asset-Backed Securitization**
15 **Process**

16 **SEC. 941. REGULATION OF CREDIT RISK RETENTION.**

17 (a) DEFINITION OF ASSET-BACKED SECURITY.—Sec-
18 tion 3(a) of the Securities Exchange Act of 1934 (15
19 U.S.C. 78c(a)) is amended by adding at the end the fol-
20 lowing:

21 “(65) ASSET-BACKED SECURITY.—The term
22 ‘asset-backed security’—

23 “(A) means a fixed-income or other secu-
24 rity collateralized by any type of self-liquidating
25 financial asset (including a loan, a lease, a

1 mortgage, or a secured or unsecured receivable)
2 that allows the holder of the security to receive
3 payments that depend primarily on cash flow
4 from the asset, including—

5 “(i) a collateralized mortgage obliga-
6 tion;

7 “(ii) a collateralized debt obligation;

8 “(iii) a collateralized bond obligation;

9 “(iv) a collateralized debt obligation of
10 asset backed-securities;

11 “(v) a collateralized debt obligation of
12 collateralized debt obligations; and

13 “(vi) a security that the Commission,
14 by rule, determines to be an asset-backed
15 security for purposes of this paragraph;
16 and

17 “(B) does not include a security issued by
18 a finance subsidiary held by the parent com-
19 pany or a company controlled by the parent
20 company, if none of the securities issued by the
21 finance subsidiary are held by an entity that is
22 not controlled by the parent company.”.

23 (b) CREDIT RISK RETENTION.—The Securities Ex-
24 change Act of 1934 (15 U.S.C. 78a et seq.) is amended

1 by inserting after section 15F, as added by this Act, the
2 following:

3 **“SEC. 15G. CREDIT RISK RETENTION.**

4 “(a) DEFINITIONS.—In this section—

5 “(1) the term ‘Federal banking agencies’ means
6 the Board of Governors of the Federal Reserve Sys-
7 tem, FIRA, and the Federal Deposit Insurance Cor-
8 poration;

9 “(2) the term ‘insured depository institution’
10 has the same meaning as in section 3(e) of the Fed-
11 eral Deposit Insurance Act (12 U.S.C. 1813(e));

12 “(3) the term ‘securitizer’ means—

13 “(A) an issuer of an asset-backed security;

14 or

15 “(B) a person who organizes and initiates
16 an asset-backed securities transaction by selling
17 or transferring assets, either directly or indi-
18 rectly, including through an affiliate, to the
19 issuer; and

20 “(4) the term ‘originator’ means a person who
21 sells an asset to a securitizer.

22 “(b) IN GENERAL.—Not later than 270 day after the
23 date of enactment of this section, the Federal banking
24 agencies and the Commission shall jointly prescribe regu-
25 lations to require any securitizer to retain an economic

1 interest in a material portion of the credit risk for any
2 asset that the securitizer, through the issuance of an
3 asset-backed security, transfers, sells, or conveys to a third
4 party.

5 “(c) STANDARDS FOR REGULATIONS.—The regula-
6 tions prescribed under subsection (b) shall—

7 “(1) prohibit a securitizer from directly or indi-
8 rectly hedging or otherwise transferring the credit
9 risk that the securitizer is required to retain with re-
10 spect to an asset;

11 “(2) require a securitizer to retain not less than
12 10 percent of the credit risk for any asset that is
13 transferred, sold, or conveyed through the issuance
14 of an asset-backed security by the securitizer;

15 “(3) specify—

16 “(A) the permissible forms of risk reten-
17 tion for purposes of this section; and

18 “(B) the minimum duration of the risk re-
19 tention required under this section;

20 “(4) apply, regardless of whether the securitizer
21 is an insured depository institution; and

22 “(5) provide for—

23 “(A) a total or partial exemption for the
24 securitization of an asset issued or guaranteed
25 by the United States, an agency of the United

1 States, or a Government-sponsored enterprise,
2 as the Federal banking agencies and the Com-
3 mission jointly determine appropriate;

4 “(B) a total or partial exemption of any
5 other securitizations, as may be appropriate in
6 the public interest or for the protection of in-
7 vestors; and

8 “(C) the allocation of risk retention obliga-
9 tions between a securitizer and an originator in
10 the case of a securitizer that purchases assets
11 from an originator, as the Federal banking
12 agencies and the Commission jointly determine
13 appropriate.

14 “(d) EXEMPTIONS, EXCEPTIONS, AND ADJUST-
15 MENTS.—

16 “(1) IN GENERAL.—The Federal banking agen-
17 cies may jointly adopt or issue exemptions, excep-
18 tions, or adjustments to the rules issued under this
19 section, including exemptions, exceptions, or adjust-
20 ments for classes of institutions or assets relating to
21 the risk retention requirement and the prohibition
22 on hedging under subsection (c)(2).

23 “(2) APPLICABLE STANDARDS.—Any exemp-
24 tion, exception, or adjustment adopted or issued by

1 the Federal banking agencies under this paragraph
2 shall—

3 “(A) help ensure high quality underwriting
4 standards for the securitizers and originators of
5 assets; and

6 “(B) encourage appropriate risk manage-
7 ment practices by the securitizers and origina-
8 tors of assets, improve the access of consumers
9 to credit on reasonable terms, or otherwise be
10 in the public interest and for the protection of
11 investors.

12 “(e) ENFORCEMENT.—The regulations issued under
13 this section shall be enforced by—

14 “(1) the appropriate Federal banking agency,
15 with respect to any securitizer that is an insured de-
16 pository institution; and

17 “(2) the Commission, with respect to any
18 securitizer that is not an insured depository institu-
19 tion.

20 “(f) AUTHORITY OF COMMISSION.—The authority of
21 the Commission under this section shall be in addition to
22 the authority of the Commission to otherwise enforce the
23 securities laws.”.

1 **SEC. 942. PERIODIC AND OTHER REPORTING FOR ASSET-**
2 **BACKED SECURITIES.**

3 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
4 15(d) of Securities Exchange Act of 1934 (15 U.S.C.
5 78o(d)) is amended—

6 (1) by striking “(d) Each” and inserting the
7 following:

8 “(d) SUPPLEMENTARY AND PERIODIC INFORMA-
9 TION.—

10 “(1) IN GENERAL.—Each”;

11 (2) in the third sentence, by inserting after “se-
12 curities of each class” the following: “, other any
13 class of asset-backed securities,”;

14 (3) by adding at the end the following:

15 “(2) ASSET-BACKED SECURITIES.—

16 “(A) SUSPENSION OF DUTY TO FILE.—The
17 Commission may, by rule or regulation, provide
18 for the suspension or termination of the duty to
19 file under this subsection for any class of asset-
20 backed security, on such terms and conditions
21 and for such period or periods as the Commis-
22 sion deems necessary or appropriate in the pub-
23 lic interest or for the protection of investors.

24 “(B) CLASSIFICATION OF ISSUERS.—The
25 Commission may, for purposes of this sub-
26 section, classify issuers and prescribe require-

1 “(ii) the nature and extent of the
2 compensation of the broker or originator of
3 the assets backing the security; and

4 “(iii) the amount of risk retention by
5 the originator or the securitizer of such as-
6 sets.”.

7 **SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-**
8 **BACKED OFFERINGS.**

9 Not later than 180 days after the date of enactment
10 of this Act, the Securities and Exchange Commission shall
11 prescribe regulations on the use of representations and
12 warranties in the market for asset-backed securities (as
13 that term is defined in section 3(a)(65) of the Securities
14 Exchange Act of 1934, as added by this subtitle) that—

15 (1) require each credit rating agency to include
16 in any report accompanying a credit rating a de-
17 scription of—

18 (A) the representations, warranties, and
19 enforcement mechanisms available to investors;
20 and

21 (B) how they differ from the representa-
22 tions, warranties, and enforcement mechanisms
23 in issuances of similar securities; and

24 (2) require any originator to disclose fulfilled
25 repurchase requests across all trusts aggregated by

1 the originator, so that investors may identify asset
2 originators with clear underwriting deficiencies.

3 **SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
4 **TIES ACT OF 1933.**

5 (a) EXEMPTION ELIMINATED.—Section 4 of the Se-
6 curities Act of 1933 (15 U.S.C. 77d) is amended—

7 (1) by striking paragraph (5); and

8 (2) by striking “(6) transactions” and inserting
9 the following:

10 “(5) Transactions”.

11 (b) CONFORMING AMENDMENT.—Section
12 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking
14 “4(6)” and inserting “4(5)”.

15 **SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN**
16 **ASSET-BACKED SECURITIES ISSUES.**

17 Section 7 of the Securities Act of 1933 (15 U.S.C.
18 77g), as amended by this subtitle, is amended by adding
19 at the end the following:

20 “(d) REGISTRATION STATEMENT FOR ASSET-
21 BACKED SECURITIES.—Not later than 180 days after the
22 date of enactment of this subsection, the Commission shall
23 issue rules relating to the registration statement required
24 to be filed by any issuer of an asset-backed security (as
25 that term is defined in section 3(a)(65) of the Securities

1 Exchange Act of 1934) that require any issuer of an asset-
2 backed security—

3 “(1) to perform a due diligence analysis of the
4 assets underlying the asset-backed security; and
5 “(2) to disclose the nature of the analysis under
6 paragraph (1).”.

7 **Subtitle E—Accountability and** 8 **Executive Compensation**

9 **SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-** 10 **TION DISCLOSURES.**

11 The Securities Exchange Act of 1934 (15 U.S.C. 78a
12 et seq.) is amended by inserting after section 14 (15
13 U.S.C. 78n) the following:

14 **“SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECU-** 15 **TIVE COMPENSATION.**

16 “(a) SEPARATE RESOLUTION REQUIRED.—Any
17 proxy or consent or authorization for an annual or other
18 meeting of the shareholders occurring after the end of the
19 1-year period beginning on the date of enactment of this
20 section, for which the proxy solicitation rules of the Com-
21 mission require compensation disclosure, shall include a
22 separate resolution subject to shareholder vote to approve
23 the compensation of executives, as disclosed pursuant to
24 section 229.402 of title 17, Code of Federal Regulations,
25 or any successor thereto.

1 “(b) RULE OF CONSTRUCTION.—The shareholder
2 vote referred to in subsection (a) shall not be binding on
3 the issuer or the board of directors of an issuer, and may
4 not be construed—

5 “(1) as overruling a decision by such issuer or
6 board of directors;

7 “(2) to create or imply any change to the fidu-
8 ciary duties of such issuer or board of directors;

9 “(3) to create or imply any additional fiduciary
10 duties for such issuer or board of directors; or

11 “(4) to restrict or limit the ability of share-
12 holders to make proposals for inclusion in proxy ma-
13 terials related to executive compensation.”.

14 **SEC. 952. SHAREHOLDER VOTE ON GOLDEN PARACHUTE**
15 **COMPENSATION POLICY.**

16 (a) AMENDMENT.—The Securities Exchange Act of
17 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
18 section 14A, as added by this Act, the following:

19 **“SEC. 14B. SHAREHOLDER VOTE ON GOLDEN PARACHUTE**
20 **COMPENSATION POLICY.**

21 “(a) DISCLOSURE.—In proxy solicitation material for
22 an annual or other meeting of the shareholders occurring
23 after the end of the 1-year period beginning on the date
24 of enactment of this section, the person making such solici-
25 tation shall disclose in the proxy solicitation material, in

1 a clear and simple form, in accordance with regulations
2 of the Commission, any policy that the issuer has relating
3 to the award of any type of compensation (whether
4 present, deferred, or contingent) to any principal executive
5 officer of the issuer—

6 “(1) upon the acquisition, merger, consolida-
7 tion, sale, or other disposition of the issuer; and

8 “(2) that has not been subject to a shareholder
9 vote under section 14A.

10 “(b) SHAREHOLDER APPROVAL.—

11 “(1) IN GENERAL.—The proxy solicitation ma-
12 terial containing the disclosure required by section
13 14A shall require a separate shareholder vote to ap-
14 prove the policy described in subsection (a).

15 “(2) RULE OF CONSTRUCTION.—A vote by the
16 shareholders referred to in paragraph (1) shall not
17 be binding on the board of directors of an issuer and
18 may not be construed—

19 “(A) as overruling a decision by such
20 board of directors;

21 “(B) to create or imply any change to the
22 current fiduciary duties of such board of direc-
23 tors;

24 “(C) to create or imply any additional fi-
25 duciary duty by such board of directors; or

1 “(D) to restrict or limit the ability of
2 shareholders to make proposals for inclusion in
3 proxy materials related to executive compensa-
4 tion.”.

5 (b) DEADLINE FOR RULEMAKING.—Not later than 1
6 year after the date of enactment of this Act, the Commis-
7 sion shall issue final rules to carry out section 14B of the
8 Securities Exchange Act of 1934, as added by this section.

9 **SEC. 953. COMPENSATION COMMITTEE INDEPENDENCE.**

10 The Securities Exchange Act of 1934 (15 U.S.C. 78
11 et seq.) is amended by inserting after section 10B, as
12 added by section 753, the following:

13 **“SEC. 10C. COMPENSATION COMMITTEES.**

14 “(a) INDEPENDENCE OF COMPENSATION COMMIT-
15 TEES.—

16 “(1) LISTING STANDARDS.—The Commission
17 shall, by rule, direct the national securities ex-
18 changes and national securities associations to pro-
19 hibit the listing of any security of an issuer that
20 does not comply with the requirements of this sub-
21 section.

22 “(2) INDEPENDENCE OF COMPENSATION COM-
23 MITTEES.—The rules of the Commission under para-
24 graph (1) shall require that each member of the

1 compensation committee of the board of directors of
2 an issuer be—

3 “(A) a member of the board of directors of
4 the issuer; and

5 “(B) independent.

6 “(3) INDEPENDENCE.—The rules of the Com-
7 mission under paragraph (1) shall require that, in
8 determining the definition of the term ‘independ-
9 ence’ for purposes of paragraph (2), the national se-
10 curities exchanges and the national securities asso-
11 ciations shall consider relevant factors, including—

12 “(A) the source of compensation of a mem-
13 ber of the board of directors of an issuer, in-
14 cluding any consulting, advisory, or other com-
15 pensatory fee paid by the issuer to such mem-
16 ber of the board of directors; and

17 “(B) whether a member of the board of di-
18 rectors of an issuer is affiliated with the issuer,
19 a subsidiary of the issuer, or an affiliate of a
20 subsidiary of the issuer.

21 “(4) EXEMPTION AUTHORITY.—The rules of
22 the Commission under paragraph (1) shall permit a
23 national securities exchange or a national securities
24 association to exempt a particular relationship from
25 the requirements of paragraph (2), with respect to

1 the members of a compensation committee, as the
2 national securities exchange or national securities
3 association determines is appropriate, taking into
4 consideration the size of an issuer and any other rel-
5 evant factors.

6 “(b) INDEPENDENCE STANDARDS FOR COMPENSA-
7 TION CONSULTANTS AND OTHER COMPENSATION COM-
8 MITTEE ADVISERS.—

9 “(1) IN GENERAL.—Any compensation consult-
10 ant, legal counsel, or other adviser to the compensa-
11 tion committee of an issuer shall be independent.

12 “(2) RULES.—The Commission shall issue rules
13 defining the term ‘independent’ for purposes of this
14 subsection.

15 “(c) COMPENSATION COMMITTEE AUTHORITY RE-
16 LATING TO COMPENSATION CONSULTANTS.—

17 “(1) AUTHORITY TO RETAIN COMPENSATION
18 CONSULTANT.—

19 “(A) IN GENERAL.—The compensation
20 committee of an issuer, in its capacity as a
21 committee of the board of directors, may, in its
22 sole discretion, retain or obtain the advice of a
23 compensation consultant.

24 “(B) DIRECT RESPONSIBILITY OF COM-
25 PENSATION COMMITTEE.—The compensation

1 committee of an issuer shall be directly respon-
2 sible for the appointment, compensation, and
3 oversight of the work of a compensation con-
4 sultant.

5 “(C) RULE OF CONSTRUCTION.—This
6 paragraph may not be construed—

7 “(i) to require the compensation com-
8 mittee to implement or act consistently
9 with the advice or recommendations of the
10 compensation consultant; or

11 “(ii) to affect the ability or obligation
12 of a compensation committee to exercise its
13 own judgment in fulfillment of the duties
14 of the compensation committee.

15 “(2) DISCLOSURE.—In any proxy or consent
16 solicitation material for an annual meeting of the
17 shareholders (or a special meeting in lieu of the an-
18 nual meeting) occurring on or after the date that is
19 1 year after the date of enactment of this section,
20 each issuer shall disclose in the proxy or consent
21 material, in accordance with regulations of the Com-
22 mission, whether—

23 “(A) the compensation committee of the
24 issuer retained or obtained the advice of a com-
25 pensation consultant; and

1 “(B) the work of the compensation com-
2 mittee has raised any conflict of interest and, if
3 so, the nature of the conflict and how the con-
4 flict is being addressed.

5 “(3) STUDY REQUIRED.—

6 “(A) IN GENERAL.—The Commission shall
7 conduct a study and review of—

8 “(i) the use of compensation consult-
9 ants by issuers in accordance with this sec-
10 tion; and

11 “(ii) the effects of the use of com-
12 pensation consultants on the performance
13 of issuers.

14 “(B) REPORT TO CONGRESS.—Not earlier
15 than 3 years or later than 5 years after the
16 date of enactment of this section, the Commis-
17 sion shall submit a report to Congress on the
18 results of the study and review under subpara-
19 graph (A).

20 “(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL
21 COUNSEL AND OTHER ADVISERS.—

22 “(1) IN GENERAL.—The compensation com-
23 mittee of an issuer, in its capacity as a committee
24 of the board of directors, may, in its sole discretion,

1 retain and obtain the advice of independent legal
2 counsel and other advisers.

3 “(2) DIRECT RESPONSIBILITY OF COMPENSA-
4 TION COMMITTEE.—The compensation committee of
5 an issuer shall be directly responsible for the ap-
6 pointment, compensation, and oversight of the work
7 of independent legal counsel and other advisers.

8 “(3) RULE OF CONSTRUCTION.—This sub-
9 section may not be construed—

10 “(A) to require a compensation committee
11 to implement or act consistently with the advice
12 or recommendations of independent legal coun-
13 sel or other advisers under this subsection; or

14 “(B) to affect the ability or obligation of a
15 compensation committee to exercise its own
16 judgment in fulfillment of the duties of the
17 compensation committee.

18 “(e) COMPENSATION OF COMPENSATION CONSULT-
19 ANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER AD-
20 VISORS.—Each issuer shall provide for appropriate fund-
21 ing, as determined by the compensation committee in its
22 capacity as a committee of the board of directors, for pay-
23 ment of reasonable compensation—

24 “(1) to a compensation consultant; and

1 “(2) to independent legal counsel or any other
2 adviser to the compensation committee.

3 “(f) COMMISSION RULES.—

4 “(1) IN GENERAL.—Not later than 360 days
5 after the date of enactment of this section, the Com-
6 mission shall, by rule, direct the national securities
7 exchanges and national securities associations to
8 prohibit the listing of any security of an issuer that
9 is not in compliance with the requirements of this
10 section.

11 “(2) OPPORTUNITY TO CURE DEFECTS.—The
12 rules of the Commission under paragraph (1) shall
13 provide for appropriate procedures for an issuer to
14 have a reasonable opportunity to cure any defects
15 that would be the basis for the prohibition under
16 paragraph (1), before the imposition of such prohibi-
17 tion.

18 “(3) EXEMPTION AUTHORITY.—

19 “(A) IN GENERAL.—The rules of the Com-
20 mission under paragraph (1) shall permit a na-
21 tional securities exchange or a national securi-
22 ties association to exempt a category of issuers
23 from the requirements under this section, as
24 the national securities exchange or the national
25 securities association determines is appropriate.

1 “(B) CONSIDERATIONS.—In determining
2 appropriate exemptions under subparagraph
3 (A), the national securities exchange or the na-
4 tional securities association shall take into ac-
5 count the potential impact of the requirements
6 of this section on smaller reporting issuers.”.

7 **SEC. 954. EXECUTIVE COMPENSATION DISCLOSURES.**

8 Section 14 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78n), as amended by this title, is amended by
10 adding at the end the following:

11 “(j) DISCLOSURE OF EXECUTIVE COMPENSATION.—
12 The Commission shall, by rule, require each issuer to dis-
13 close in the annual proxy statement of the issuer a clear
14 description of any compensation required to be disclosed
15 by the issuer under section 229.402 of title 17, Code of
16 Federal Regulations (or any successor thereto), includ-
17 ing—

18 “(1) information that shows the relationship be-
19 tween executive compensation and the financial per-
20 formance of the issuer; and

21 “(2) a graphic or pictorial comparison of the
22 amount of executive compensation and the financial
23 performance of the issuer or return to investors of
24 the issuer during a 5-year period, or such other pe-
25 riod, as determined by the Commission.”.

1 **SEC. 955. CLAWBACK.**

2 Section 16 of the Securities Exchange Act of 1934
3 (15 U.S.C. 78p) is amended by adding at the end the fol-
4 lowing:

5 “(h) CLAWBACK POLICY.—

6 “(1) LISTING STANDARDS.—The Commission
7 shall, by rule, direct the national securities ex-
8 changes and national securities associations to pro-
9 hibit the listing of any security of an issuer that
10 does not comply with the requirements of this sub-
11 section.

12 “(2) RECOVERY OF FUNDS.—The rules of the
13 Commission under paragraph (1) shall require each
14 issuer to develop and implement a policy providing
15 that, in the event that the issuer is required to pre-
16 pare an accounting restatement due to the material
17 noncompliance of the issuer with any financial re-
18 porting requirement under the securities laws, the
19 issuer will recover from any current or former execu-
20 tive officer of the issuer who received incentive-based
21 compensation (including stock options awarded as
22 compensation) during the 3-year period preceding
23 the date on which the issuer is required to prepare
24 an accounting restatement, based on the erroneous
25 data, in excess of what would have been paid to the
26 executive officer under the accounting restatement.”.

1 **SEC. 956. DISCLOSURE REGARDING EMPLOYEE HEDGING.**

2 Section 14 of the Securities Exchange Act of 1934
3 (15 U.S.C. 78n), as amended by this title, is amended by
4 adding at the end the following:

5 “(l) DISCLOSURE OF HEDGING BY EMPLOYEES.—

6 The Commission shall, by rule, require each issuer to dis-
7 close in the annual proxy statement of the issuer whether
8 the employees of the issuer are permitted to purchase fi-
9 nancial instruments (including prepaid variable forward
10 contracts, equity swaps, collars, and exchange funds) that
11 are designed to hedge or offset any decrease in the market
12 value of equity securities granted to employees by the
13 issuer as part of an employee compensation.”.

14 **SEC. 957. EXCESSIVE COMPENSATION BY HOLDING COMPA-**
15 **NIES OF DEPOSITORY INSTITUTIONS.**

16 Section 5 of the Bank Holding Company Act of 1956
17 (12 U.S.C. 1844) is amended by adding at the end the
18 following:

19 “(h) EXCESSIVE COMPENSATION.—

20 “(1) IN GENERAL.—Not later than 180 days
21 after the transfer date established under section 321
22 of the Restoring American Financial Stability Act of
23 2009, FIRA shall, by rule, establish standards pro-
24 hibiting as an unsafe and unsound practice any com-
25 pensation plan of a bank holding company that—

1 “(A) provides an executive officer, em-
2 ployee, director, or principal shareholder of the
3 bank holding company with excessive compensa-
4 tion, fees, or benefits; or

5 “(B) could lead to material financial loss
6 to the bank holding company.

7 “(2) CONSIDERATIONS.—In establishing the
8 standards under paragraph (1), FIRA shall take
9 into consideration the compensation standards de-
10 scribed in section 39(e) of the Federal Deposit In-
11 surance Act (12 U.S.C. 1831p-1(e)).”.

12 **SEC. 958. HIGHER CAPITAL CHARGES.**

13 Section 18 of the Federal Deposit Insurance Act (12
14 U.S.C. 1828) is amended by adding at the end the fol-
15 lowing:

16 “(y) COMPENSATION PRACTICES OF DEPOSITORY IN-
17 STITUTIONS.—The appropriate Federal banking agency
18 may impose higher capital standards for an insured depos-
19 itory institution with compensation practices that the ap-
20 propriate Federal banking agency determines pose a risk
21 of harm to the depository institution.”.

22 **SEC. 959. COMPENSATION STANDARDS FOR HOLDING COM-**
23 **PANIES OF DEPOSITORY INSTITUTIONS.**

24 The appropriate Federal banking agency, as defined
25 in section 3 of the Federal Deposit Insurance Act (12

1 U.S.C. 1813), shall prohibit the payment by a depository
2 institution holding company of executive compensation
3 that is excessive or could lead to material financial loss
4 to the institution controlled by the depository institution
5 holding company, or to the consolidated depository institu-
6 tion holding company.

7 **Subtitle F—Improvements to the**
8 **Management of the Securities**
9 **and Exchange Commission**

10 **SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SU-**
11 **PERVISORY CONTROLS.**

12 (a) ANNUAL REPORTS AND CERTIFICATION.—Not
13 later than 90 days after end of each fiscal year, the Com-
14 mission shall submit a report to the Committee on Bank-
15 ing, Housing, and Urban Affairs of the Senate and the
16 Committee on Financial Services of the House of Rep-
17 resentatives on the conduct by the Commission of exami-
18 nations of registered entities, enforcement investigations,
19 and review of corporate financial securities filings.

20 (b) CONTENTS OF REPORTS.—Each report under
21 subsection (a) shall contain—

22 (1) an assessment, as of the end of the most re-
23 cent fiscal year, of the effectiveness of—

24 (A) the internal supervisory controls of the
25 Commission; and

1 (B) the procedures of the Commission ap-
2 plicable to the staff of the Commission who per-
3 form examinations of registered entities, en-
4 forcement investigations, and reviews of cor-
5 poration financial securities filings;

6 (2) a certification that the Commission has ade-
7 quate internal supervisory controls to carry out the
8 duties of the Commission described in paragraph
9 (1)(B); and

10 (3) a summary by the Comptroller General of
11 the United States of the assessment carried out
12 under subsection (d).

13 (c) CERTIFICATION.—

14 (1) SIGNATURE.—The certification under sub-
15 section (b)(2) shall be signed by the Director of the
16 Division of Enforcement, the Director of the Divi-
17 sion of Corporation Finance, and the Director of the
18 Office of Compliance Inspections and Examinations
19 (or the head of any successor division or office).

20 (2) CONTENT OF CERTIFICATION.—Each indi-
21 vidual described in paragraph (1) shall certify that
22 the individual—

23 (A) is directly responsible for establishing
24 and maintaining the internal supervisory con-

1 trolls of the Division or Office of which the indi-
2 vidual is the head;

3 (B) has designed the internal supervisory
4 controls of the Division or Office of which the
5 individual is the head;

6 (C) has evaluated the effectiveness of the
7 internal supervisory controls during the 90-day
8 period ending on the final day of the fiscal year
9 to which the report relates; and

10 (D) has disclosed to the Commission any
11 significant deficiencies in the design or oper-
12 ation of internal supervisory controls that could
13 adversely affect the ability of the Division or
14 Office to consistently conduct inspections, or in-
15 vestigations, or reviews of filings with profes-
16 sional competence and integrity.

17 (d) **ATTESTATION BY THE COMPTROLLER GEN-**
18 **ERAL.**—The Comptroller General of the United States
19 shall attest to the adequacy and effectiveness of the inter-
20 nal supervisory control structure and procedures described
21 in subsection (b)(1).

22 **SEC. 962. BIENNIAL REPORT ON PERSONNEL MANAGE-**
23 **MENT.**

24 (a) **BIENNIAL REPORT REQUIRED.**—The Comp-
25 troller General of the United States shall submit a bian-

1 nual report to the Committee on Banking, Housing, and
2 Urban Affairs of the Senate and the Committee on Finan-
3 cial Services of the House of Representatives on the qual-
4 ity of personnel management by the Commission.

5 (b) CONTENTS OF REPORT.—Each report under sub-
6 section (a) shall include—

7 (1) an evaluation of—

8 (A) the effectiveness of supervisors in
9 using the skills, talents, and motivation of the
10 employees of the Commission to achieve the
11 goals of the Commission;

12 (B) the criteria for promoting employees of
13 the Commission to supervisory positions;

14 (C) the fairness of the promotion decisions
15 of the Commission, as perceived by the employ-
16 ees of the Commission;

17 (D) the competence the professional staff
18 of the Commission;

19 (E) the efficiency of communication be-
20 tween the units of the Commission regarding
21 the work of the Commission (including commu-
22 nication between divisions and between subunits
23 of a division) and the efforts by the Commission
24 to promote such communication;

1 (F) the turnover within subunits of the
2 Commission, including the identification of su-
3 pervisors whose subordinates have an unusually
4 high rate of turnover;

5 (G) whether there are excessive numbers of
6 low- and mid-level managers;

7 (H) any initiatives of the Commission that
8 increase the competence of the staff of the
9 Commission;

10 (I) the actions taken by the Commission
11 regarding employees of the Commission who
12 have failed to perform their duties; and

13 (J) such other factors relating to the man-
14 agement of the Commission as the Comptroller
15 General determines are appropriate;

16 (2) an evaluation of any improvements made
17 with respect to the areas described in paragraph (1)
18 since the date of submission of the previous report;
19 and

20 (3) recommendations for how the Commission
21 can use the human resources of the Commission
22 more effectively and efficiently to carry out the mis-
23 sion of the Commission.

24 (c) CONSULTATION.—In preparing the report under
25 subsection (a), the Comptroller General shall consult with

1 current employees of the Commission, retired employees
2 and other former employees of the Commission, persons
3 that have business before the Commission, any collective
4 bargaining unit representing the employees of the Com-
5 mission, private management consultants, academics, and
6 any other source that the Comptroller General deems ap-
7 propriate.

8 (d) REPORT BY COMMISSION.—Not later than 90
9 days after the date on which the Comptroller General sub-
10 mits each report under subsection (a), the Commission
11 shall submit to the Committee on Banking, Housing, and
12 Urban Affairs of the Senate and the Committee on Finan-
13 cial Services of the House of Representatives a report de-
14 scribing the actions taken by the Commission in response
15 to the recommendations contained in the report under
16 subsection (a).

17 (e) REIMBURSEMENTS FOR COST OF REPORTS.—

18 (1) REIMBURSEMENTS REQUIRED.—The Com-
19 mission shall reimburse the Government Account-
20 ability Office for the full cost of making the reports
21 under this section, as billed therefor by the Comp-
22 troller General.

23 (2) CREDITING AND USE OF REIMBURSE-
24 MENTS.—Such reimbursements shall—

1 (A) be credited to the appropriation ac-
2 count “Salaries and Expenses, Government Ac-
3 countability Office” current when the payment
4 is received; and

5 (B) remain available until expended.

6 **SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.**

7 (a) REPORTS OF COMMISSION.—

8 (1) ANNUAL REPORTS REQUIRED.—Not later
9 than 6 months after the end of each fiscal year, the
10 Commission shall publish and submit to Congress a
11 report that—

12 (A) describes the responsibility of the man-
13 agement of the Commission for establishing and
14 maintaining an adequate internal control struc-
15 ture and procedures for financial reporting; and

16 (B) contains an assessment of the effec-
17 tiveness of the internal control structure and
18 procedures for financial reporting of the Com-
19 mission during that fiscal year.

20 (2) ATTESTATION.—The reports required under
21 paragraph (1) shall be attested to by the Chairman
22 and chief financial officer of the Commission.

23 (b) REPORT BY COMPTROLLER GENERAL.—

24 (1) REPORT REQUIRED.—Not later than 6
25 months after the end of each fiscal year, the Comp-

1 **SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURI-**
2 **TIES ASSOCIATIONS.**

3 (a) STUDY AND REPORT.—Not later than September
4 30, 2010, and every 3 years thereafter, the Comptroller
5 General of the United States shall submit to Congress a
6 report on the oversight by the Commission of national se-
7 curities associations registered under section 15A of the
8 Securities Exchange Act of 1934 (15 U.S.C. 78o-3) that
9 includes an evaluation of—

10 (1) the governance of such national securities
11 associations, including the identification and man-
12 agement of conflicts of interest by such national se-
13 curities associations;

14 (2) the examinations by the Commission of
15 such national securities associations, including the
16 expertise of the examiners;

17 (3) the oversight by the Commission of the ex-
18 ecutive compensation practices of such national secu-
19 rities associations;

20 (4) arbitration services provided by the national
21 securities associations;

22 (5) the review performed by national securities
23 associations of advertising by the members of the
24 national securities associations; and

25 (6) any other issue that has an impact, as de-
26 termined by the Comptroller General on—

1 (A) the effectiveness of such national secu-
2 rities associations in performing the mission of
3 the national securities associations;

4 (B) the public confidence in such national
5 securities associations; and

6 (C) the confidence of the members of such
7 national securities associations in the national
8 securities associations.

9 **SEC. 965. COMPLIANCE EXAMINERS.**

10 Section 4 of the Securities Exchange Act of 1934 (15
11 U.S.C. 78d) is amended by adding at the end the fol-
12 lowing:

13 “(h) EXAMINERS.—

14 “(1) DIVISION OF TRADING AND MARKETS.—

15 The Division of Trading and Markets of the Com-
16 mission, or any successor organizational unit, shall
17 have a staff of examiners who shall—

18 “(A) perform compliance inspections and
19 examinations of entities under the jurisdiction
20 of that Division; and

21 “(B) report to the Director of that Divi-
22 sion.

23 “(2) DIVISION OF INVESTMENT MANAGE-
24 MENT.—The Division of Investment Management of

1 the Commission, or any successor organizational
2 unit, shall have a staff of examiners who shall—

3 “(A) perform compliance inspections and
4 examinations of entities under the jurisdiction
5 of that Division; and

6 “(B) report to the Director of that Divi-
7 sion.”.

8 **SEC. 966. WHISTLEBLOWER AND SUGGESTION PROGRAM**
9 **FOR EMPLOYEES OF THE COMMISSION.**

10 Section 4 of the Securities Exchange Act of 1934 (15
11 U.S.C. 78d) is amended by adding at the end the fol-
12 lowing:

13 “(i) **ADDITIONAL DUTIES OF INSPECTOR GEN-**
14 **ERAL.—**

15 “(1) **REPORTS OF MISCONDUCT BY EMPLOYEES**
16 **OF COMMISSION.—**

17 “(A) **HOTLINE ESTABLISHED.—**The In-
18 spector General of the Commission shall estab-
19 lish and maintain a telephone hotline or other
20 electronic means for the receipt of—

21 “(i) suggestions by employees of the
22 Commission for improvements in the work
23 effectiveness and the use of the resources
24 of the Commission; and

1 “(ii) allegations by employees of the
2 Commission of waste, abuse, misconduct,
3 and ineffectiveness within the Commission.

4 “(B) CONFIDENTIALITY.—The Inspector
5 General shall maintain the confidentiality of
6 any information received by the means estab-
7 lished under subparagraph (A).

8 “(2) CONSIDERATION OF REPORTS.—The In-
9 specter General shall consider any suggestions or al-
10 legations received by the means established under
11 subparagraph (A) and take appropriate action in re-
12 lation to such suggestions or allegations.

13 “(3) REWARD.—

14 “(A) IN GENERAL.—The Inspector General
15 may, as the Inspector General determines ap-
16 propriate, pay a monetary award to any em-
17 ployee who makes a suggestion or allegation by
18 the means established under paragraph (1) that
19 results in—

20 “(i) action by the Commission that in-
21 creases work effectiveness; or

22 “(ii) a reduction of waste, abuse, mis-
23 conduct, or ineffectiveness within the Com-
24 mission.

1 “(B) LIMITATION ON AMOUNT OF
2 AWARD.—No award paid by the Inspector Gen-
3 eral under this paragraph may exceed \$50,000,
4 unless the Inspector General determines that
5 the suggestion or allegation has extraordinary
6 merit.

7 “(C) NO APPEAL.—Any determination of
8 the Inspector General under this paragraph, in-
9 cluding whether, to whom, or in what amount
10 to make an award, shall be—

11 “(i) in the sole discretion of the In-
12 spector General; and

13 “(ii) final and not subject to judicial
14 review.

15 “(4) REPORT.—The Inspector General of the
16 shall submit to Congress an annual report con-
17 taining a description of—

18 “(A) the nature, number, and seriousness
19 of any allegations received under paragraph (1);

20 “(B) any action the Inspector General has
21 taken in response to substantiated allegations
22 received under paragraph (1); and

23 “(C) any action the Commission has taken
24 in response to suggestions and allegations re-
25 ceived under paragraph (1).

1 “(5) FUNDING.—The activities of the Inspector
2 General under this subsection shall be funded by the
3 Securities and Exchange Commission Investor Pro-
4 tection Fund established under section 21F.”.

5 **Subtitle G—Strengthening**
6 **Corporate Governance**

7 **SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN**
8 **UNCONTESTED ELECTIONS.**

9 The Securities Exchange Act of 1934 (15 U.S.C. 78a
10 et seq.) is amended by inserting after section 14 (15
11 U.S.C. 78n) the following:

12 **“SEC. 14A. CORPORATE GOVERNANCE.**

13 “(a) CORPORATE GOVERNANCE STANDARDS.—

14 “(1) LISTING STANDARDS.—

15 “(A) IN GENERAL.—Not later than 1 year
16 after the date of enactment of this subsection,
17 the Commission shall, by rule, direct the na-
18 tional securities exchanges and national securi-
19 ties associations to prohibit the listing of any
20 security of an issuer that is not in compliance
21 with any of the requirements of this subsection.

22 “(B) OPPORTUNITY TO COMPLY AND
23 CURE.—The rules established under this para-
24 graph shall allow an issuer to have an oppor-
25 tunity to come into compliance with the require-

1 ments of this subsection, and to cure any defect
2 that would be the basis for a prohibition under
3 subparagraph (A), before the imposition of such
4 prohibition.

5 “(C) AUTHORITY TO EXEMPT.—The Com-
6 mission may, by rule or order, exempt an issuer
7 from any or all of the requirements of this sub-
8 section and the rules issued under this sub-
9 section, based on the size of the issuer, the
10 market capitalization of the issuer, the number
11 of shareholders of record of the issuer, or any
12 other criteria, as the Commission deems nec-
13 essary and appropriate in the public interest or
14 for the protection of investors.

15 “(2) COMMISSION RULES ON ELECTIONS.—In
16 an election for membership on the board of directors
17 of an issuer—

18 “(A) that is uncontested, each director who
19 receives a majority of the votes cast shall be
20 deemed to be elected;

21 “(B) that is contested, if the number of
22 nominees exceeds the number of directors to be
23 elected, each director shall be elected by the
24 vote of a plurality of the shares represented at
25 a meeting and entitled to vote; and

1 “(C) if a director of an issuer receives less
2 than a majority of the votes cast in an
3 uncontested election—

4 “(i) the director shall tender the res-
5 ignation of the director to the board of di-
6 rectors; and

7 “(ii) the board of directors—

8 “(I) shall—

9 “(aa) accept the resignation
10 of the director;

11 “(bb) determine a date on
12 which the resignation will take
13 effect, within a reasonable period
14 of time, as established by the
15 Commission; and

16 “(cc) make the date under
17 item (bb) public within a reason-
18 able period of time, as estab-
19 lished by the Commission; or

20 “(II) shall, upon a unanimous
21 vote of the board, decline to accept
22 the resignation and, not later than 30
23 days after the date of the vote (or
24 within such shorter period as the

1 Commission may establish), make
2 public the reasons that—

3 “(aa) the board chose not to
4 accept the resignation; and

5 “(bb) the decision was in the
6 best interests of the issuer and
7 the shareholders of the issuer.”.

8 **SEC. 972. PROXY ACCESS.**

9 (a) PROXY ACCESS.—Section 14(a) of the Securities
10 Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

11 (1) by inserting “(1)” after “(a)”; and

12 (2) by adding at the end the following:

13 “(2) The rules and regulations prescribed by the
14 Commission under paragraph (1) may include—

15 “(A) a requirement that a solicitation of proxy,
16 consent, or authorization by (or on behalf of) an
17 issuer include a nominee submitted by a shareholder
18 to serve on the board of directors of the issuer; and

19 “(B) a requirement that an issuer follow a cer-
20 tain procedure in relation to a solicitation described
21 in subparagraph (A).”.

22 (b) REGULATIONS.—Not later than 180 days after
23 the date of enactment of this Act, the Commission shall
24 issue rules permitting the use by shareholders of proxy
25 solicitation materials supplied by an issuer of securities

1 for the purpose of nominating individuals to membership
2 on the board of directors of the issuer, under such terms
3 and conditions as the Commission determines are in the
4 interests of shareholders and for the protection of inves-
5 tors.

6 **SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO**
7 **STRUCTURES.**

8 Section 14A of the Securities Exchange Act of 1934,
9 as added by section 971, is amended by adding at the end
10 the following:

11 “(b) DISCLOSURES REGARDING CHAIRMAN AND CEO
12 STRUCTURES.—Not later than 180 days after the date of
13 enactment of this subsection, the Commission shall issue
14 rules that require an issuer to disclose in the annual proxy
15 sent to investors the reasons why the issuer has chosen—

16 “(1) the same person to serve as chairman of
17 the board of directors and chief executive officer (or
18 in equivalent positions); or

19 “(2) different individuals to serve as chairman
20 of the board of directors and chief executive officer
21 (or in equivalent positions of the issuer).”.

1 **SEC. 974. SHAREHOLDER VOTE ON STAGGERED TERMS OF**
2 **DIRECTORS.**

3 Section 14 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78n), as amended by this subtitle, is amended
5 by adding at the end the following:

6 “(k) SHAREHOLDER VOTE ON STAGGERED BOARD
7 OF DIRECTORS.—

8 “(1) LISTING STANDARDS.—Not later than 1
9 year after the date of enactment of this subsection,
10 the Commission shall, by rule, direct the national se-
11 curities exchanges and the national securities asso-
12 ciations to prohibit the listing of any security of an
13 issuer that is not in compliance with any of the re-
14 quirements of this subsection.

15 “(2) SHAREHOLDER VOTE REQUIRED.—

16 “(A) IN GENERAL.—No issuer may have a
17 board of directors with staggered terms of serv-
18 ice, unless the issuer has obtained the approval
19 or ratification of the shareholders of the issuer,
20 in accordance with subparagraph (B), before
21 the adoption of such board of directors with
22 staggered terms of service.

23 “(B) SHAREHOLDER VOTE.—The percent-
24 age of shareholders required to approve or rat-
25 ify the board of directors with staggered terms

1 of service of an issuer shall be the percentage
2 required by the issuer for an amendment to—

3 “(i) the certificate of incorporation of
4 the issuer, in the case of a board of direc-
5 tors with staggered terms of service adopt-
6 ed pursuant to a certificate of incorpora-
7 tion of the issuer; or

8 “(ii) the bylaws of the issuer, in the
9 case of a board of directors with staggered
10 terms of service adopted pursuant to the
11 bylaws of the issuer.

12 “(C) TRANSITION PERIOD.—In the case of
13 any issuer having a board of directors with
14 staggered terms of service that, on the effective
15 date of the rule promulgated by the Commis-
16 sion under paragraph (1), was not approved or
17 ratified by a vote of the shareholders of the
18 issuer, the issuer shall not be deemed to be in
19 violation of this subsection if such issuer—

20 “(i) seeks the approval of the share-
21 holders of the issuer at the first annual
22 meeting immediately following the date on
23 which the Commission promulgates rules
24 under paragraph (1); or

1 (B) by adding at the end the following:

2 “(B) It shall be unlawful for a municipal
3 advisor to provide advice to or on behalf of an
4 issuer of municipal securities with respect to
5 municipal financial products or the issuance of
6 municipal securities unless the municipal advi-
7 sor is registered in accordance with this sub-
8 section.”;

9 (2) in paragraph (2), by inserting “or municipal
10 advisor” after “municipal securities dealer” each
11 place that term appears;

12 (3) in paragraph (3), by inserting “or municipal
13 advisor” after “municipal securities dealer” each
14 place that term appears;

15 (4) in paragraph (4), by striking “dealer, or
16 municipal securities dealer or class of brokers, deal-
17 ers, or municipal securities dealers” and inserting
18 “dealer, municipal securities dealer, or municipal ad-
19 visor, or class of brokers, dealers, municipal securi-
20 ties dealers, or municipal advisors”; and

21 (5) by adding at the end the following:

22 “(5) No municipal advisor shall make use of the
23 mails or any means or instrumentality of interstate
24 commerce in connection with which such municipal

1 advisor engages in any fraudulent, deceptive, or ma-
2 nipulative act or practice.”.

3 (b) MUNICIPAL SECURITIES RULEMAKING BOARD.—

4 Section 15B(b) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78o-4(b)) is amended—

6 (1) in paragraph (1)—

7 (A) in the first sentence, by striking “Not
8 later than” and all that follows through “ap-
9 pointed by the Commission” and inserting “The
10 Municipal Securities Rulemaking Board shall be
11 composed of 15 members, or such other number
12 of members as specified by rules of the Board
13 pursuant to paragraph (2)(B),”;

14 (B) by striking the second sentence and in-
15 serting the following: “The members of the
16 Board shall serve as members for a term of 3
17 years or for such other terms as specified by
18 rules of the Board pursuant to paragraph
19 (2)(B), and shall consist of (A) 8 individuals
20 who are not associated with any broker, dealer,
21 municipal securities dealer, or municipal advisor
22 (other than by reason of being under common
23 control with, or indirectly controlling, any
24 broker or dealer which is not a municipal secu-
25 rities broker or municipal securities dealer), at

1 least 1 of whom shall be representative of insti-
2 tutional or retail investors in municipal securi-
3 ties, at least 1 of whom shall be representative
4 of issuers of municipal securities, and at least
5 1 of whom shall be a member of the public with
6 knowledge of or experience in the municipal in-
7 dustry (which members are hereinafter referred
8 to as ‘public representatives’); and (B) 7 indi-
9 viduals who are associated with a broker, deal-
10 er, municipal securities dealer, or municipal ad-
11 visor, including at least 1 individual who is as-
12 sociated with and representative of brokers,
13 dealers, or municipal securities dealers that are
14 not banks or subsidiaries or departments or di-
15 visions of banks (which members are herein-
16 after referred to as ‘broker-dealer representa-
17 tives’), at least 1 individual who is associated
18 with and representative of municipal securities
19 dealers which are banks or subsidiaries or de-
20 partments or divisions of banks (which mem-
21 bers are hereinafter referred to as ‘bank rep-
22 resentatives’), and at least 1 individual who is
23 associated with a municipal advisor (which
24 member is hereinafter referred to as the ‘advi-
25 sor representative’).”;

1 (C) in the third sentence, by striking “ini-
2 tial”;

3 (2) in paragraph (2)—

4 (A) in the matter preceding subparagraph
5 (A)—

6 (i) by inserting before the period at
7 the end of the first sentence the following:
8 “and advice provided to or on behalf of an
9 issuer of municipal securities by brokers,
10 dealers, municipal securities dealers, and
11 municipal advisors with respect to munic-
12 ipal financial products or the issuance of
13 municipal securities”; and

14 (ii) by striking the second sentence;

15 (B) in subparagraph (A)—

16 (i) in the matter preceding clause

17 (i)—

18 (I) by inserting “, and no broker,
19 dealer, municipal securities dealer, or
20 municipal advisor shall provide advice
21 to or on behalf of an issuer of munic-
22 ipal securities with respect to munic-
23 ipal financial products or the issuance
24 of municipal securities” after “sale of,
25 any municipal security”; and

1 (II) by inserting “and issuers of
2 municipal securities” after “protection
3 of investors”;

4 (ii) in clause (i), by striking “municipal securities brokers and municipal securities dealers” each place that term appears and inserting “municipal securities brokers, municipal securities dealers, and municipal advisors”;

10 (iii) in clause (ii), by adding “and” at
11 the end;

12 (iv) in clause (iii), by striking “; and”
13 and inserting a period; and

14 (v) by striking clause (iv);

15 (C) in subparagraph (B), by striking
16 “nominations and elections” and all that follows
17 through “specify” and inserting “nominations
18 and elections of public representatives, broker-dealer representatives, bank representatives,
19 and advisor representatives. Such rules shall
20 provide that the membership of the Board shall
21 at all times be as evenly divided in number as
22 possible between entities or individuals who are
23 subject to regulation by the Board and entities
24 or individuals not subject to regulation by the
25

1 Board, provided, however, that a majority of
2 the members of the Board shall at all times be
3 public representatives. Such rules shall also
4 specify”;

5 (D) in subparagraph (C)—

6 (i) by inserting “and municipal finan-
7 cial products” after “municipal securities”
8 the first two times that term appears;

9 (ii) by inserting “, issuers,” before
10 “and the public interest”;

11 (iii) by striking “between” and insert-
12 ing “among”;

13 (iv) by striking “or municipal securi-
14 ties dealers, to fix” and inserting “munic-
15 ipal securities dealers, or municipal advi-
16 sors, to fix”; and

17 (v) by striking “brokers or municipal
18 securities dealers, to regulate” and insert-
19 ing “brokers, municipal securities dealers,
20 or municipal advisors, to regulate”;

21 (E) in subparagraph (D)—

22 (i) by inserting “and advice con-
23 cerning municipal financial products” after
24 “transactions in municipal securities”;

1 (ii) by striking “That no” and insert-
2 ing “that no”;

3 (iii) by inserting “municipal advisor,”
4 before “or person associated”; and

5 (iv) by striking “a municipal securi-
6 ties broker or municipal securities dealer
7 may be compelled” and inserting “a mu-
8 nicipal securities broker, municipal securi-
9 ties dealer, or municipal advisor may be
10 compelled”;

11 (F) in subparagraph (E)—

12 (i) by striking “municipal securities
13 brokers and municipal securities dealers”
14 and inserting “municipal securities bro-
15 kers, municipal securities dealers, and mu-
16 nicipal advisors”; and

17 (ii) by striking “municipal securities
18 broker or municipal securities dealer” and
19 inserting “municipal securities broker, mu-
20 nicipal securities dealer, or municipal advi-
21 sor”;

22 (G) in subparagraph (G), by striking “mu-
23 nicipal securities brokers and municipal securi-
24 ties dealers” and inserting “municipal securities

1 brokers, municipal securities dealers, and mu-
2 nicipal advisors”;

3 (H) in subparagraph (J)—

4 (i) by striking “municipal securities
5 broker and each municipal securities deal-
6 er” and inserting “municipal securities
7 broker, municipal securities dealer, and
8 municipal advisor”; and

9 (ii) by striking the period at the end
10 of the second sentence and inserting “,
11 which may include charges for failure to
12 submit to the Board required information
13 or documents to any information system
14 operated by the Board in a full, accurate,
15 or timely manner, or any other failure to
16 comply with the rules of the Board.”; and

17 (I) in subparagraph (K)—

18 (i) by inserting “broker, dealer, or”
19 before “municipal securities dealer” each
20 place that term appears; and

21 (ii) by striking “municipal securities
22 investment portfolio” and inserting “re-
23 lated account of a broker, dealer, or mu-
24 nicipal securities dealer”;

1 (3) by redesignating paragraph (3) as para-
2 graph (7); and

3 (4) by inserting after paragraph (2) the fol-
4 lowing:

5 “(3) The Board, in conjunction with or on be-
6 half of FIRA or any other Federal financial regu-
7 lators or self-regulatory organizations, may—

8 “(A) establish information systems; and

9 “(B) assess such reasonable fees and
10 charges for the submission of information to, or
11 the receipt of information from, such systems
12 from any persons which systems may be devel-
13 oped for the purposes of serving as a repository
14 of information from municipal market partici-
15 pants or otherwise in furtherance of the pur-
16 poses of the Board, FIRA, other Federal finan-
17 cial regulator, or self-regulatory organization.

18 “(4) The Board shall provide guidance and as-
19 sistance in the enforcement of, and examination for,
20 compliance with the rules of the Board to the Com-
21 mission, a registered securities association under
22 section 15A, or any other appropriate regulatory
23 agency, as applicable.”.

24 (c) DISCIPLINE OF DEALERS AND MUNICIPAL ADVI-
25 SORS AND OTHER MATTERS.—Section 15B(c) of the Se-

1 curities Exchange Act of 1934 (15 U.S.C. 78o-4(c)) is
2 amended—

3 (1) in paragraph (1), by inserting “, and no
4 broker, dealer, municipal securities dealer, or munic-
5 ipal advisor shall provide advice to or on behalf of
6 an issuer of municipal securities with respect to mu-
7 nicipal financial products or the issuance of munic-
8 ipal securities,” after “any municipal security”;

9 (2) in paragraph (2), by inserting “or municipal
10 advisor” after “municipal securities dealer” each
11 place that term appears;

12 (3) in paragraph (3)—

13 (A) by inserting “or issuers” after “protec-
14 tion of investors” each place that term appears;
15 and

16 (B) by inserting “or municipal advisor”
17 after “municipal securities dealer” each place
18 that term appears;

19 (4) in paragraph (4), by inserting “or municipal
20 advisor” after “municipal securities dealer” each
21 place that term appears;

22 (5) in paragraph (6)(B), by inserting “or
23 issuers” after “protection of investors”;

24 (6) in paragraph (7)—

25 (A) in subparagraph (A)—

1 (i) in clause (i), by striking “; and”
2 and inserting a semicolon;

3 (ii) in clause (ii), by striking the pe-
4 riod and inserting “; and”; and

5 (iii) by adding at the end the fol-
6 lowing:

7 “(iii) the Commission, or its designee,
8 in the case of municipal advisors.”.

9 (B) in subparagraph (B), by inserting “or
10 issuers” after “protection of investors”; and

11 (7) by adding at the end the following:

12 “(9)(A) Fines collected by the Commission for
13 violations of the rules of the Board shall be equally
14 divided between the Commission and the Board.

15 “(B) Fines collected by a registered securities
16 association under section 15A(7) with respect to vio-
17 lations of the rules of the Board shall be accounted
18 for by such registered securities association sepa-
19 rately from other fines collected under section
20 15A(7) and shall be allocated between such reg-
21 istered securities association and the Board at the
22 direction of the Commission.”.

23 (d) ISSUANCE OF MUNICIPAL SECURITIES.—Section
24 15B(d)(2) of the Securities Exchange Act of 1934 (15
25 U.S.C. 78o-4(d)) is amended—

1 (1) by striking “through a municipal securities
2 broker or municipal securities dealer or otherwise”
3 and insert “through a municipal securities broker,
4 municipal securities dealer, municipal advisor, or
5 otherwise”; and

6 (2) by inserting “or municipal advisors” before
7 “to furnish”.

8 (e) DEFINITIONS.—Section 15B of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78o-4) is amended by add-
10 ing at the end the following:

11 “(e) DEFINITIONS.—For purposes of this section—

12 “(1) the term ‘Board’ means the Municipal Se-
13 curities Rulemaking Board established under sub-
14 section (b)(1);

15 “(2) the term ‘guaranteed investment contract’
16 includes any investment that has specified with-
17 drawal or reinvestment provisions and a specifically
18 negotiated or bid interest rate, and also includes any
19 agreement to supply investments on 2 or more fu-
20 ture dates, such as a forward supply contract;

21 “(3) the term ‘investment strategies’ means
22 plans or programs for the investment of the proceeds
23 of municipal securities that are not municipal de-
24 rivatives, including guaranteed investment contracts

1 and the recommendation of and brokerage of munic-
2 ipal escrow investments;

3 “(4) the term ‘municipal advisor’ means a per-
4 son (who is not an issuer of municipal securities or
5 an employee of an issuer of municipal securities)
6 that provides advice to or on behalf of an issuer of
7 municipal securities with respect to municipal finan-
8 cial products or the issuance of municipal securities,
9 including advice with respect to the structure, tim-
10 ing, terms, and other similar matters concerning
11 such financial products or issues, but who is not a
12 broker, dealer, or municipal securities dealer (includ-
13 ing financial advisors, guaranteed investment con-
14 tract brokers, third-party marketers, placement
15 agents, solicitors, finders, and swap advisors, but not
16 including attorneys offering legal advice or providing
17 services that are of a traditional legal nature and en-
18 gineers providing engineering advice);

19 “(5) the term ‘municipal derivative’ means any
20 financial instrument contract designed to hedge a
21 risk (including interest rate swaps, basis swaps,
22 caps, floors, and collars);

23 “(6) the term ‘municipal financial product’
24 means municipal derivatives and investment strate-
25 gies;

1 “(7) the term ‘rules of the Board’ means the
2 rules proposed and adopted by the Board under sub-
3 section (b)(2); and

4 “(8) the term ‘person associated with a munic-
5 ipal advisor’ or ‘associated person of an advisor’
6 means any partner, officer, director, or branch man-
7 ager of such municipal advisor (or any person occu-
8 pying a similar status or performing similar func-
9 tions), and any other employee of such municipal ad-
10 visor who is engaged in the management, direction,
11 supervision, or performance of any activities relating
12 to the provision of advice to or on behalf of an issuer
13 of municipal securities with respect to municipal fi-
14 nancial products or the issuance of municipal securi-
15 ties, and any person directly or indirectly control-
16 ling, controlled by, or under common control with
17 such municipal advisor.”.

18 (f) REGISTERED SECURITIES ASSOCIATION.—Section
19 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.
20 78o-3(b)) is amended by adding at the end the following:

21 “(15) The rules of the association provide that
22 the association shall—

23 “(A) request guidance from the Municipal
24 Securities Rulemaking Board in interpretation

1 of the rules of the Municipal Securities Rule-
2 making Board; and

3 “(B) provide information to the Municipal
4 Securities Rulemaking Board about the enforce-
5 ment actions and examinations of the associa-
6 tion under section 15B(b)(2)(E), so that the
7 Municipal Securities Rulemaking Board may—

8 “(i) assist in such enforcement actions
9 and examinations; and

10 “(ii) evaluate the ongoing effective-
11 ness of the rules of the Board.”.

12 (g) REGISTRATION AND REGULATION OF BROKERS
13 AND DEALERS.—Section 15(b)(4) of the Securities Ex-
14 change Act of 1934 is amended by inserting “municipal
15 advisor,” after “municipal securities dealer” each place
16 that term appears.

17 (h) ACCOUNTS AND RECORDS, REPORTS, EXAMINA-
18 TIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Sec-
19 tion 17(a)(1) of the Securities Exchange Act of 1934 is
20 amended by inserting “municipal advisor,” after “munic-
21 ipal securities dealer”.

22 (i) SAVINGS CLAUSE.—Notwithstanding any provi-
23 sion of the Over-the-Counter Derivatives Markets Act of
24 2009, or any amendment made pursuant to such Act, the
25 provisions of this section, and the amendments made pur-

1 suant to this section, shall apply to any municipal deriva-
2 tive.

3 (j) EFFECTIVE DATE.—This section, and the amend-
4 ments made by this section, shall take effect on October
5 1, 2010.

6 **SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
7 **OF INCREASED DISCLOSURE TO INVESTORS.**

8 (a) STUDY.—The Comptroller General of the United
9 States shall conduct a study and review of the disclosure
10 required to be made by issuers of municipal securities.

11 (b) SUBJECTS FOR EVALUATION.—In conducting the
12 study under subsection (a), the Comptroller General of the
13 United States shall—

14 (1) broadly describe the size of the municipal
15 securities markets and the issuers and investors;

16 (2) compare the amount of disclosure issuers of
17 municipal bonds are required by law to provide for
18 the benefit of municipal bondholders, including the
19 amount of and frequency of disclosure actually pro-
20 vided by issuers of municipal bonds, with the
21 amount of and frequency of disclosure issuers of cor-
22 porate bonds provide for the benefit of corporate
23 bondholders;

24 (3) evaluate the costs and benefits to issuers of
25 municipal securities of requiring issuers of municipal

1 bonds to provide additional financial disclosures for
2 the benefit of investors; and

3 (4) make recommendations relating to the ad-
4 visability of the repeal of section 15B(d) of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78o-4(d))
6 (commonly known as the “Tower Amendment”).

7 (c) REPORT.—Not later than 1 year after the date
8 of enactment of this Act, the Comptroller General of the
9 United States shall submit a report to Congress on the
10 results of the study conducted under subsection (a), in-
11 cluding recommendations for how to improve disclosure by
12 issuers of municipal securities.

13 **SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
14 **ON TRANSPARENCY OF TRADING IN THE MU-**
15 **NICIPAL SECURITIES.**

16 (a) STUDY.—The Comptroller General of the United
17 States shall conduct a study of the transparency of trading
18 in the municipal securities market.

19 (b) REPORT.—Not later than 1 year after the date
20 of enactment of this Act, the Comptroller General of the
21 United States shall submit a report to Congress on the
22 results of the study conducted under subsection (a), in-
23 cluding—

24 (1) the history of trade reporting;

25 (2) the impact of recent innovations; and

1 (3) recommendations for how to improve the
2 transparency of trading in the municipal securities
3 market.

4 **SEC. 978. STUDY OF FUNDING FOR GOVERNMENT AC-**
5 **COUNTING STANDARDS BOARD.**

6 (a) STUDY.—The Commission shall conduct a study
7 that evaluates—

8 (1) the role and importance of the Government
9 Accounting Standards Board in the municipal secu-
10 rities markets;

11 (2) the manner in which the Government Ac-
12 counting Standards Board is funded, and how such
13 manner of funding affects the financial information
14 available to securities investors;

15 (3) the advisability of changes to the manner in
16 which the Government Accounting Standards Board
17 is funded; and

18 (4) whether legislative changes to the manner
19 in which the Government Accounting Standards
20 Board is funded are necessary for the benefit of in-
21 vestors and in the public interest.

22 (b) REPORT.—Not later than 180 days after the date
23 of enactment of this Act, the Commission shall submit to
24 the Committee on Banking, Housing, and Urban Affairs
25 of the Senate and the Committee on Financial Services

1 of the House of Representatives a report on the study re-
2 quired under subsection (a).

3 **Subtitle I—Public Company Ac-**
4 **counting Oversight Board, Aid-**
5 **ing and Abetting, and Other**
6 **Matters**

7 **SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION**
8 **WITH FOREIGN AUTHORITIES.**

9 (a) DEFINITION.—Section 2(a) of the Sarbanes-
10 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
11 adding at the end the following:

12 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
13 ITY.—The term ‘foreign auditor oversight authority’
14 means any governmental body or other entity em-
15 powered by a foreign government to conduct inspec-
16 tions of public accounting firms or otherwise to ad-
17 minister or enforce laws related to the regulation of
18 public accounting firms.”.

19 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
20 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15
21 U.S.C. 7215(b)(5)) is amended by adding at the end the
22 following:

23 “(C) AVAILABILITY TO FOREIGN OVER-
24 SIGHT AUTHORITIES.—Without the loss of its
25 status as confidential and privileged in the

1 hands of the Board, all information referred to
2 in subparagraph (A) that relates to a public ac-
3 counting firm that a foreign government has
4 empowered a foreign auditor oversight authority
5 to inspect or otherwise enforce laws with re-
6 spect to, may, at the discretion of the Board, be
7 made available to the foreign auditor oversight
8 authority, if—

9 “(i) the Board finds that it is nec-
10 essary to accomplish the purposes of this
11 Act or to protect investors;

12 “(ii) the foreign auditor oversight au-
13 thority provides—

14 “(I) such assurances of confiden-
15 tiality as the Board may request;

16 “(II) a description of the applica-
17 ble information systems and controls
18 of the foreign auditor oversight au-
19 thority; and

20 “(III) a description of the laws
21 and regulations of the foreign govern-
22 ment of the foreign auditor oversight
23 authority that are relevant to informa-
24 tion access; and

1 “(iii) the Board determines that it is
2 appropriate to share such information.”.

3 (c) CONFORMING AMENDMENT.—Section
4 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15
5 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-
6 graph (B)” and inserting “subparagraphs (B) and (C)”.

7 **SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.**

8 (a) DEFINITIONS.—

9 (1) DEFINITIONS AMENDED.—Title I of the
10 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et
11 seq.) is amended by adding at the end the following
12 new section:

13 **“SEC. 110. DEFINITIONS.**

14 “For the purposes of this title, the following defini-
15 tions shall apply:

16 “(1) AUDIT.—The term ‘audit’ means an exam-
17 ination of the financial statements, reports, docu-
18 ments, procedures, controls, or notices of any issuer,
19 broker, or dealer by an independent public account-
20 ing firm in accordance with the rules of the Board
21 or the Commission, for the purpose of expressing an
22 opinion on the financial statements or providing an
23 audit report.

24 “(2) AUDIT REPORT.—The term ‘audit report’
25 means a document, report, notice, or other record—

1 “(A) prepared following an audit per-
2 formed for purposes of compliance by an issuer,
3 broker, or dealer with the requirements of the
4 securities laws; and

5 “(B) in which a public accounting firm ei-
6 ther—

7 “(i) sets forth the opinion of that firm
8 regarding a financial statement, report, no-
9 tice, or other document, procedures, or
10 controls; or

11 “(ii) asserts that no such opinion can
12 be expressed.

13 “(3) **BROKER.**—The term ‘broker’ means a
14 broker (as such term is defined in section 3(a)(4) of
15 the Securities Exchange Act of 1934 (15 U.S.C.
16 78c(a)(4))) that is required to file a balance sheet,
17 income statement, or other financial statement
18 under section 17(e)(1)(A) of such Act (15 U.S.C.
19 78q(e)(1)(A)), where such balance sheet, income
20 statement, or financial statement is required to be
21 certified by a registered public accounting firm.

22 “(4) **DEALER.**—The term ‘dealer’ means a
23 dealer (as such term is defined in section 3(a)(5) of
24 the Securities Exchange Act of 1934 (15 U.S.C.
25 78c(a)(5))) that is required to file a balance sheet,

1 income statement, or other financial statement
2 under section 17(e)(1)(A) of such Act (15 U.S.C.
3 78q(e)(1)(A)), where such balance sheet, income
4 statement, or financial statement is required to be
5 certified by a registered public accounting firm.

6 “(5) PROFESSIONAL STANDARDS.—The term
7 ‘professional standards’ means—

8 “(A) accounting principles that are—

9 “(i) established by the standard set-
10 ting body described in section 19(b) of the
11 Securities Act of 1933, as amended by this
12 Act, or prescribed by the Commission
13 under section 19(a) of that Act (15 U.S.C.
14 17a(s)) or section 13(b) of the Securities
15 Exchange Act of 1934 (15 U.S.C. 78a(m));
16 and

17 “(ii) relevant to audit reports for par-
18 ticular issuers, brokers, or dealers, or dealt
19 with in the quality control system of a par-
20 ticular registered public accounting firm;
21 and

22 “(B) auditing standards, standards for at-
23 testation engagements, quality control policies
24 and procedures, ethical and competency stand-
25 ards, and independence standards (including

1 rules implementing title II) that the Board or
2 the Commission determines—

3 “(i) relate to the preparation or
4 issuance of audit reports for issuers, bro-
5 kers, or dealers; and

6 “(ii) are established or adopted by the
7 Board under section 103(a), or are pro-
8 mulgated as rules of the Commission.

9 “(6) SELF-REGULATORY ORGANIZATION.—The
10 term ‘self-regulatory organization’ has the same
11 meaning as in section 3(a) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78c(a)).”.

13 (2) CONFORMING AMENDMENT.—Section 2(a)
14 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
15 7201(a)) is amended in the matter preceding para-
16 graph (1), by striking “In this” and inserting “Ex-
17 cept as otherwise specifically provided in this Act, in
18 this”.

19 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
20 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
21 Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
22 7211) is amended—

23 (1) by striking “issuers” each place that term
24 appears and inserting “issuers, brokers, and deal-
25 ers”; and

1 (2) in subsection (a)—

2 (A) by striking “public companies” and in-
3 serting “companies”; and

4 (B) by striking “for companies the securi-
5 ties of which are sold to, and held by and for,
6 public investors”.

7 (c) REGISTRATION WITH THE BOARD.—Section 102
8 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is
9 amended—

10 (1) in subsection (a)—

11 (A) by striking “Beginning 180” and all
12 that follows through “101(d), it” and inserting
13 “It”; and

14 (B) by striking “issuer” and inserting
15 “issuer, broker, or dealer”;

16 (2) in subsection (b)—

17 (A) in paragraph (2)(A), by striking
18 “issuers” and inserting “issuers, brokers, and
19 dealers”; and

20 (B) by striking “issuer” each place that
21 term appears and inserting “issuer, broker, or
22 dealer”.

23 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
24 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a))
25 is amended—

1 (1) in paragraph (1), by striking “and such eth-
2 ics standards” and inserting “such ethics standards,
3 and such independence standards”;

4 (2) in paragraph (2)(A)(iii), by striking “de-
5 scribe in each audit report” and inserting “in each
6 audit report for an issuer, describe”; and

7 (3) in paragraph (2)(B)(i), by striking
8 “issuers” and inserting “issuers, brokers, and deal-
9 ers”.

10 (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-
11 ING FIRMS.—Section 104 of the Sarbanes-Oxley Act of
12 2002 (15 U.S.C. 7214) is amended—

13 (1) in subsection (a), by striking “issuers” and
14 inserting “issuers, brokers, and dealers”; and

15 (2) in subsection (b)(1)—

16 (A) by striking “audit reports for” each
17 place that term appears and inserting “audit
18 reports on annual financial statements for”;

19 (B) in subparagraph (A), by striking
20 “and” at the end;

21 (C) in subparagraph (B), by striking the
22 period at the end and inserting “; and”; and

23 (D) by adding at the end the following:

24 “(C) with respect to each registered public
25 accounting firm that regularly provides audit

1 reports and that is not described in subpara-
2 graph (A) or (B), on a basis determined by the
3 Board, by rule, that is consistent with the pub-
4 lic interest and protection of investors.”.

5 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
6 CEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley
7 Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

8 (1) in the subparagraph heading, by inserting
9 “, BROKER, OR DEALER” after “ISSUER”;

10 (2) by striking “any issuer” each place that
11 term appears and inserting “any issuer, broker, or
12 dealer”; and

13 (3) by striking “an issuer under this sub-
14 section” and inserting “a registered public account-
15 ing firm under this subsection”.

16 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
17 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
18 7216(a)) is amended—

19 (1) in paragraph (1), by striking “issuer” and
20 inserting “issuer, broker, or dealer”; and

21 (2) in paragraph (2), by striking “issuers” and
22 inserting “issuers, brokers, or dealers”.

23 (h) FUNDING.—Section 109 of the Sarbanes-Oxley
24 Act of 2002 (15 U.S.C. 7219) is amended—

1 (1) in subsection (c)(2), by striking “subsection
2 (i)” and inserting “subsection (j)”;

3 (2) in subsection (d)—

4 (A) in paragraph (2), by striking “allowing
5 for differentiation among classes of issuers, as
6 appropriate” and inserting “and among brokers
7 and dealers, in accordance with subsection (h),
8 and allowing for differentiation among classes
9 of issuers, brokers and dealers, as appropriate”;
10 and

11 (B) by adding at the end the following:

12 “(3) **BROKERS AND DEALERS.**—The Board
13 shall begin the allocation, assessment, and collection
14 of fees under paragraph (2) with respect to brokers
15 and dealers with the payment of support fees to
16 fund the first full fiscal year beginning after the ef-
17 fective date of this paragraph.”;

18 (3) by redesignating subsections (h), (i), and (j)
19 as subsections (i), (j), and (k), respectively; and

20 (4) by inserting after subsection (g) the fol-
21 lowing:

22 “(h) **ALLOCATION OF ACCOUNTING SUPPORT FEES**
23 **AMONG BROKERS AND DEALERS.**—

24 “(1) **OBLIGATION TO PAY.**—Each broker or
25 dealer shall pay to the Board the annual accounting

1 support fee allocated to such broker or dealer under
2 this section.

3 “(2) ALLOCATION.—Any amount due from a
4 broker or dealer (or from a particular class of bro-
5 kers and dealers) under this section shall be allo-
6 cated among brokers and dealers and payable by the
7 broker or dealer (or the brokers and dealers in the
8 particular class, as applicable).

9 “(3) PROPORTIONALITY.—The amount due
10 from a broker or dealer shall be in proportion to the
11 net capital of the broker or dealer, compared to the
12 total net capital of all brokers and dealers, in ac-
13 cordance with rules issued by the Board.”.

14 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-
15 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the
16 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B))
17 is amended—

18 (1) by redesignating clauses (ii) and (iii) as
19 clauses (iii) and (iv), respectively; and

20 (2) by inserting after clause (i) the following:

21 “(ii) to a self-regulatory organization,
22 in the case of an investigation that con-
23 cerns an audit report for a broker or deal-
24 er that is under the jurisdiction of such
25 self-regulatory organization;”.

1 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-
2 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the
3 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii))
4 is amended—

5 (1) in subclause (III), by striking “and” at the
6 end;

7 (2) in subclause (IV), by striking the comma
8 and inserting “; and”; and

9 (3) by inserting after subclause (IV) the fol-
10 lowing:

11 “(V) a self-regulatory organiza-
12 tion, with respect to an audit report
13 for a broker or dealer that is under
14 the jurisdiction of such self-regulatory
15 organization,”.

16 (k) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect 180 days after the date of
18 enactment of this Act.

19 **SEC. 983. PORTFOLIO MARGINING.**

20 (a) ADVANCES.—Section 9(a)(1) of the Securities In-
21 vestor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1))
22 is amended by inserting “or options on commodity futures
23 contracts” after “claim for securities”.

1 (b) DEFINITIONS.—Section 16 of the Securities In-
2 vestor Protection Act of 1970 (15 U.S.C. 78*lll*) is amend-
3 ed—

4 (1) by striking paragraph (2) and inserting the
5 following:

6 “(2) CUSTOMER.—

7 “(A) IN GENERAL.—The term ‘customer’
8 of a debtor means any person (including any
9 person with whom the debtor deals as principal
10 or agent) who has a claim on account of securi-
11 ties received, acquired, or held by the debtor in
12 the ordinary course of its business as a broker
13 or dealer from or for the securities accounts of
14 such person for safekeeping, with a view to sale,
15 to cover consummated sales, pursuant to pur-
16 chases, as collateral, security, or for purposes of
17 effecting transfer.

18 “(B) INCLUDED PERSONS.—The term
19 ‘customer’ includes—

20 “(i) any person who has deposited
21 cash with the debtor for the purpose of
22 purchasing securities;

23 “(ii) any person who has a claim
24 against the debtor for cash, securities, fu-
25 tures contracts, or options on futures con-

1 tracts received, acquired, or held in a port-
2 folio margining account carried as a secu-
3 rities account pursuant to a portfolio mar-
4 gining program approved by the Commis-
5 sion; and

6 “(iii) any person who has a claim
7 against the debtor arising out of sales or
8 conversions of such securities.

9 “(C) EXCLUDED PERSONS.—The term
10 ‘customer’ does not include any person, to the
11 extent that—

12 “(i) the claim of such person arises
13 out of transactions with a foreign sub-
14 sidiary of a member of SIPC; or

15 “(ii) such person has a claim for cash
16 or securities which by contract, agreement,
17 or understanding, or by operation of law,
18 is part of the capital of the debtor, or is
19 subordinated to the claims of any or all
20 creditors of the debtor, notwithstanding
21 that some ground exists for declaring such
22 contract, agreement, or understanding void
23 or voidable in a suit between the claimant
24 and the debtor.”;

25 (2) in paragraph (4)—

1 (A) in subparagraph (C), by striking
2 “and” at the end;

3 (B) by redesignating subparagraph (D) as
4 subparagraph (E); and

5 (C) by inserting after subparagraph (C)
6 the following:

7 “(D) in the case of a portfolio margining
8 account of a customer that is carried as a secu-
9 rities account pursuant to a portfolio margining
10 program approved by the Commission, a futures
11 contract or an option on a futures contract re-
12 ceived, acquired, or held by or for the account
13 of a debtor from or for such portfolio margining
14 account, and the proceeds thereof; and”;

15 (3) in paragraph (9), in the matter following
16 subparagraph (L), by inserting after “Such term”
17 the following: “includes revenues earned by a broker
18 or dealer in connection with a transaction in the
19 portfolio margining account of a customer carried as
20 securities accounts pursuant to a portfolio margining
21 program approved by the Commission. Such term”;
22 and

23 (4) in paragraph (11)

24 (A) in subparagraph (A)—

1 (i) by striking “filing date, all” and
2 all that follows through the end of the sub-
3 paragraph and inserting the following: “fil-
4 ing date—

5 “(i) all securities positions of such
6 customer (other than customer name secu-
7 rities reclaimed by such customer); and

8 “(ii) all positions in futures contracts
9 and options on futures contracts held in a
10 portfolio margining account carried as a
11 securities account pursuant to a portfolio
12 margining program approved by the Com-
13 mission; minus”; and

14 (B) in the matter following subparagraph
15 (C), by striking “In determining” and inserting
16 the following: “A claim for a commodity futures
17 contract received, acquired, or held in a port-
18 folio margining account pursuant to a portfolio
19 margining program approved by the Commis-
20 sion or a claim for a security futures contract,
21 shall be deemed to be a claim with respect to
22 such contract as of the filing date, and such
23 claim shall be treated as a claim for cash. In
24 determining”.

1 **SEC. 984. PRIVATE CIVIL ACTION FOR AIDING AND ABET-**
2 **TING.**

3 Section 21D of the Securities Exchange Act of 1934
4 (15 U.S.C. 78u-4) is amended by adding at the end the
5 following:

6 “(g) PRIVATE CIVIL ACTIONS.—For purposes of any
7 private civil action implied under this title, any person that
8 knowingly or recklessly provides substantial assistance to
9 another person in violation of this title, or of any rule or
10 regulation issued under this title, shall be deemed to be
11 in violation of this title to the same extent as the person
12 to whom such assistance is provided.”.

13 **SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURI-**
14 **TIES LAWS.**

15 (a) SECURITIES ACT OF 1933.—The Securities Act
16 of 1933 (15 U.S.C. 77a et seq.) is amended—

17 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
18 striking “individual;” and inserting “individual;”;

19 (2) in section 18 (15 U.S.C. 77r)—

20 (A) in subsection (b)(1)(C), by striking “is
21 a security” and inserting “a security”; and

22 (B) in subsection (c)(2)(B)(i), by striking
23 “State, or” and inserting “State or”;

24 (3) in section 19(d)(6)(A) (15 U.S.C.
25 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
26 and inserting “in paragraph (1) or (3)”; and

1 (4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–
2 2(c)(1)(B)(ii)), by striking “business entity;” and in-
3 sserting “business entity;”.

4 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
6 is amended—

7 (1) in section 2 (15 U.S.C. 78b), by striking
8 “affected” and inserting “effected”;

9 (2) in section 3 (15 U.S.C. 78c)—

10 (A) in subsection (a)(55)(A), by striking
11 “section 3(a)(12) of the Securities Exchange
12 Act of 1934” and inserting “section 3(a)(12) of
13 this title”; and

14 (B) in subsection (g), by striking “com-
15 pany, account person, or entity” and inserting
16 “company, account, person, or entity”;

17 (3) in section 10A(i)(1)(B) (15 U.S.C. 78j–
18 1(i)(1)(B))—

19 (A) in the subparagraph heading, by strik-
20 ing “MINIMUS” and inserting “MINIMIS”; and

21 (B) in clause (i), by striking “nonaudit”
22 and inserting “non-audit”;

23 (4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
24 by striking “earning statement” and inserting
25 “earnings statement”;

1 (5) in section 15 (15 U.S.C. 78o)—

2 (A) in subsection (b)(1)—

3 (i) in subparagraph (B), by striking
4 “The order granting” and all that follows
5 through “from such membership.”; and

6 (ii) in the undesignated matter imme-
7 diately following subparagraph (B), by in-
8 serting after the first sentence the fol-
9 lowing: “The order granting registration
10 shall not be effective until such broker or
11 dealer has become a member of a reg-
12 istered securities association, or until such
13 broker or dealer has become a member of
14 a national securities exchange, if such
15 broker or dealer effects transactions solely
16 on that exchange, unless the Commission
17 has exempted such broker or dealer, by
18 rule or order, from such membership.”;

19 (6) in section 15C(a)(2) (15 U.S.C. 78o-
20 5(a)(2))—

21 (A) by redesignating clauses (i) and (ii) as
22 subparagraphs (A) and (B), respectively, and
23 adjusting the subparagraph margins accord-
24 ingly;

1 (B) in subparagraph (B), as so redesignig-
2 nated, by striking “The order granting” and all
3 that follows through “from such membership.”;
4 and

5 (C) in the matter following subparagraph
6 (B), as so redesignated, by inserting after the
7 first sentence the following: “The order grant-
8 ing registration shall not be effective until such
9 government securities broker or government se-
10 curities dealer has become a member of a na-
11 tional securities exchange registered under sec-
12 tion 6 of this title, or a securities association
13 registered under section 15A of this title, unless
14 the Commission has exempted such government
15 securities broker or government securities deal-
16 er, by rule or order, from such membership.”;

17 (7) in section 16(a)(2)(C) (15 U.S.C.
18 78p(a)(2)(C)), by striking “section 206(b)” and in-
19 serting “section 206B”;

20 (8) in section 17(b)(1)(B) (15 U.S.C.
21 78q(b)(1)(B)), by striking “15A(k) gives” and in-
22 serting “15A(k), give”; and

23 (9) in section 21C(c)(2) (15 U.S.C. 78u-
24 3(c)(2)), by striking “paragraph (1) subsection” and
25 inserting “Paragraph (1)”.

1 (c) TRUST INDENTURE ACT OF 1939.—The Trust
2 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
3 amended—

4 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
5 striking “section 2 of such Act” and inserting “sec-
6 tion 2(a) of such Act”; and

7 (2) in section 317(a)(1) (15 U.S.C.
8 77qqq(a)(1)), by striking “, in the” and inserting
9 “in the”.

10 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
11 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
12 is amended—

13 (1) in section 2(a)(19) (15 U.S.C. 80a–
14 2(a)(19)), in the matter following subparagraph
15 (B)(vii)—

16 (A) by striking “clause (vi)” each place
17 that term appears and inserting “clause (vii)”;
18 and

19 (B) in each of subparagraphs (A)(vi) and
20 (B)(vi), by adding and at the end of subclause
21 (III);

22 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
23 9(b)(4)(B)), by adding “or” after the semicolon at
24 the end;

1 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
2 12(d)(1)(J)), by striking “any provision of this sub-
3 section” and inserting “any provision of this para-
4 graph”;

5 (4) in section 17(f) (15 U.S.C. 80a–17(f))—

6 (A) in paragraph (4), by striking “No such
7 member” and inserting “No member of a na-
8 tional securities exchange”; and

9 (B) in paragraph (6), by striking “com-
10 pany may serve” and inserting “company, may
11 serve”; and

12 (5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
13 60(a)(3)(B)(iii))—

14 (A) by striking “paragraph (1) of section
15 205” and inserting “section 205(a)(1)”; and

16 (B) by striking “clause (A) or (B) of that
17 section” and inserting “paragraph (1) or (2) of
18 section 205(b)”.

19 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
20 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
21 is amended—

22 (1) in section 203 (15 U.S.C. 80b–3)—

23 (A) in subsection (c)(1)(A), by striking
24 “principal business office and” and inserting

1 “principal office, principal place of business,
2 and”; and

3 (B) in subsection (k)(4)(B), in the matter
4 following clause (ii), by striking “principal place
5 of business” and inserting “principal office or
6 place of business”;

7 (2) in section 206(3) (15 U.S.C. 80b–6(3)), by
8 adding “or” after the semicolon at the end;

9 (3) in section 213(a) (15 U.S.C. 80b–13(a)), by
10 striking “principal place of business” and inserting
11 “principal office or place of business”; and

12 (4) in section 222 (15 U.S.C. 80b–18a), by
13 striking “principal place of business” each place that
14 term appears and inserting “principal office and
15 place of business”.

16 **SEC. 986. CONFORMING AMENDMENTS RELATING TO RE-**
17 **PEAL OF THE PUBLIC UTILITY HOLDING**
18 **COMPANY ACT OF 1935.**

19 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
20 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
21 amended—

22 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
23 by striking “the Public Utility Holding Company
24 Act of 1935 (15 U.S.C. 79a et seq.)”;

1 (2) in section 12(k) (15 U.S.C. 78l(k)), by
2 amending paragraph (7) to read as follows:

3 “(7) DEFINITION.—For purposes of this sub-
4 section, the term ‘emergency’ means—

5 “(A) a major market disturbance charac-
6 terized by or constituting—

7 “(i) sudden and excessive fluctuations
8 of securities prices generally, or a substan-
9 tial threat thereof, that threaten fair and
10 orderly markets; or

11 “(ii) a substantial disruption of the
12 safe or efficient operation of the national
13 system for clearance and settlement of
14 transactions in securities, or a substantial
15 threat thereof; or

16 “(B) a major disturbance that substan-
17 tially disrupts, or threatens to substantially dis-
18 rupt—

19 “(i) the functioning of securities mar-
20 kets, investment companies, or any other
21 significant portion or segment of the secu-
22 rities markets; or

23 “(ii) the transmission or processing of
24 securities transactions.”; and

1 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
2 by striking “section 18(c) of the Public Utility Hold-
3 ing Company Act of 1935,”.

4 (b) TRUST INDENTURE ACT OF 1939.—The Trust
5 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
6 amended—

7 (1) in section 303 (15 U.S.C. 77ccc), by strik-
8 ing paragraph (17) and inserting the following:

9 “(17) The terms ‘Securities Act of 1933’ and
10 ‘Securities Exchange Act of 1934’ shall be deemed
11 to refer, respectively, to such Acts, as amended,
12 whether amended prior to or after the enactment of
13 this title.”;

14 (2) in section 308 (15 U.S.C. 77hhh), by strik-
15 ing “Securities Act of 1933, the Securities Exchange
16 Act of 1934, or the Public Utility Holding Company
17 Act of 1935” each place that term appears and in-
18 serting “Securities Act of 1933 or the Securities Ex-
19 change Act of 1934”;

20 (3) in section 310 (15 U.S.C. 77jjj), by striking
21 subsection (c);

22 (4) in section 311 (15 U.S.C. 77kkk), by strik-
23 ing subsection (c);

24 (5) in section 323(b) (15 U.S.C. 77www(b)), by
25 striking “Securities Act of 1933, or the Securities

1 Exchange Act of 1934, or the Public Utility Holding
2 Company Act of 1935” and inserting “Securities Act
3 of 1933 or the Securities Exchange Act of 1934”;
4 and

5 (6) in section 326 (15 U.S.C. 77zzz), by strik-
6 ing “Securities Act of 1933, or the Securities Ex-
7 change Act of 1934, or the Public Utility Holding
8 Company Act of 1935,” and inserting “Securities
9 Act of 1933 or the Securities Exchange Act of
10 1934”.

11 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
12 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
13 is amended—

14 (1) in section 2(a)(44) (15 U.S.C. 80a–
15 2(a)(44)), by striking “‘Public Utility Holding Com-
16 pany Act of 1935’,”;

17 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
18 striking paragraph (8) and inserting the following:

19 “(8) [Repealed]”;

20 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
21 striking “the Public Utility Holding Company Act of
22 1935,”; and

23 (4) in section 50 (15 U.S.C. 80a–49), by strik-
24 ing “the Public Utility Holding Company Act of
25 1935,”.

1 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
2 202(a)(21) of the Investment Advisers Act of 1940 (15
3 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
4 Utility Holding Company Act of 1935’”.

5 **SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
6 **AND NONMATERIAL LOSSES TO THE DEPOSIT**
7 **INSURANCE FUND FOR PURPOSES OF IN-**
8 **SPECTOR GENERAL REVIEWS.**

9 (a) IN GENERAL.—Section 38(k) of the Federal De-
10 posit Insurance Act (U.S.C. 1831o(k)) is amended—

11 (1) in paragraph (2), by striking subparagraph
12 (B) and inserting the following:

13 “(B) MATERIAL LOSS DEFINED.—The
14 term ‘material loss’ means any estimated loss in
15 excess of—

16 “(i) \$100,000,000, if the loss occurs
17 during the period beginning on September
18 30, 2009, and ending on December 31,
19 2010;

20 “(ii) \$75,000,000, if the loss occurs
21 during the period beginning on January 1,
22 2011, and ending on December 31, 2011;
23 and

24 “(iii) \$50,000,000, if the loss occurs
25 on or after January 1, 2012.”;

1 (2) in paragraph (4)(A) by striking “the re-
2 port” and inserting “any report on losses required
3 under this subsection,”;

4 (3) by striking paragraph (6);

5 (4) by redesignating paragraph (5) as para-
6 graph (6); and

7 (5) by inserting after paragraph (4) the fol-
8 lowing:

9 “(5) LOSSES THAT ARE NOT MATERIAL.—

10 “(A) SEMIANNUAL REPORT.—For the 6-
11 month period ending on March 31, 2010, and
12 each 6-month period thereafter, the Inspector
13 General of each Federal banking agency shall—

14 “(i) identify losses that the Inspector
15 General estimates have been incurred by
16 the Deposit Insurance Fund during that 6-
17 month period, with respect to the insured
18 depository institutions supervised by the
19 Federal banking agency;

20 “(ii) for each loss incurred by the De-
21 posit Insurance Fund that is not a mate-
22 rial loss, determine—

23 “(I) the grounds identified by the
24 Federal banking agency or State bank
25 supervisor for appointing the Corpora-

1 tion as receiver under section
2 11(c)(5); and

3 “(II) whether any unusual cir-
4 cumstances exist that might warrant
5 an in-depth review of the loss; and

6 “(iii) prepare and submit a written re-
7 port to the appropriate Federal banking
8 agency and to Congress on the results of
9 any determination by the Inspector Gen-
10 eral, including—

11 “(I) an identification of any loss
12 that warrants an in-depth review, to-
13 gether with the reasons why such re-
14 view is warranted, or, if the Inspector
15 General determines that no review is
16 warranted, an explanation of such de-
17 termination; and

18 “(II) for each loss identified
19 under subclause (I) that warrants an
20 in-depth review, the date by which
21 such review, and a report on such re-
22 view prepared in a manner consistent
23 with reports under paragraph (1)(A),
24 will be completed and submitted to

1 the Federal banking agency and Con-
2 gress.

3 “(B) DEADLINE FOR SEMIANNUAL RE-
4 PORT.—The Inspector General of each Federal
5 banking agency shall—

6 “(i) submit each report required
7 under paragraph (A) expeditiously, and not
8 later than 90 days after the end of the 6-
9 month period covered by the report; and

10 “(ii) provide a copy of the report re-
11 quired under paragraph (A) to any Mem-
12 ber of Congress, upon request.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENT.—
14 The heading for subsection (k) of section 38 of the Fed-
15 eral Deposit Insurance Act (U.S.C. 1831o(k)) is amended
16 to read as follows:

17 “(k) REVIEWS REQUIRED WHEN DEPOSIT INSUR-
18 ANCE FUND INCURS LOSSES.—”.

1 **SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
2 **AND NONMATERIAL LOSSES TO THE NA-**
3 **TIONAL CREDIT UNION SHARE INSURANCE**
4 **FUND FOR PURPOSES OF INSPECTOR GEN-**
5 **ERAL REVIEWS.**

6 (a) IN GENERAL.—Section 216(j) of the Federal
7 Credit Union Act (12 U.S.C. 1790d(j)) is amended to read
8 as follows:

9 “(j) REVIEWS REQUIRED WHEN SHARE INSURANCE
10 FUND EXPERIENCES LOSSES.—

11 “(1) IN GENERAL.—If the Fund incurs a mate-
12 rial loss with respect to an insured credit union, the
13 Inspector General of the Board shall—

14 “(A) submit to the Board a written report
15 reviewing the supervision of the credit union by
16 the Administration (including the implementa-
17 tion of this section by the Administration),
18 which shall include—

19 “(i) a description of the reasons why
20 the problems of the credit union resulted
21 in a material loss to the Fund; and

22 “(ii) recommendations for preventing
23 any such loss in the future; and

24 “(B) submit a copy of the report under
25 subparagraph (A) to—

1 “(i) the Comptroller General of the
2 United States;

3 “(ii) the Corporation;

4 “(iii) in the case of a report relating
5 to a State credit union, the appropriate
6 State supervisor; and

7 “(iv) to any Member of Congress,
8 upon request.

9 “(2) MATERIAL LOSS DEFINED.—For purposes
10 of determining whether the Fund has incurred a ma-
11 terial loss with respect to an insured credit union, a
12 loss is material if it exceeds the sum of—

13 “(A) \$25,000,000; and

14 “(B) an amount equal to 10 percent of the
15 total assets of the credit union on the date on
16 which the Board initiated assistance under sec-
17 tion 208 or was appointed liquidating agent.

18 “(3) PUBLIC DISCLOSURE REQUIRED.—

19 “(A) IN GENERAL.—The Board shall dis-
20 close a report under this subsection, upon re-
21 quest under section 552 of title 5, United
22 States Code, without excising—

23 “(i) any portion under section
24 552(b)(5) of title 5, United States Code; or

1 appointing the Board as the liqui-
2 dating agent for any Federal or State
3 credit union; and

4 “(II) whether any unusual cir-
5 cumstances exist that might warrant
6 an in-depth review of the loss; and

7 “(iii) prepare and submit a written re-
8 port to the Board and to the Congress on
9 the results of the determinations of the In-
10 spector General that includes—

11 “(I) an identification of any loss
12 that warrants an in-depth review, and
13 the reasons such review is warranted,
14 or if the Inspector General determines
15 that no review is warranted, an expla-
16 nation of such determination; and

17 “(II) for each loss identified in
18 subclause (I) that warrants an in-
19 depth review, the date by which such
20 review, and a report on the review
21 prepared in a manner consistent with
22 reports under paragraph (1)(A), will
23 be completed.

1 “(B) DEADLINE FOR SEMIANNUAL RE-
2 PORT.—The Inspector General of the Board
3 shall—

4 “(i) submit each report required
5 under subparagraph (A) expeditiously, and
6 not later than 90 days after the end of the
7 6-month period covered by the report; and

8 “(ii) provide a copy of the report re-
9 quired under subparagraph (A) to any
10 Member of Congress, upon request.

11 “(5) GAO REVIEW.—The Comptroller General
12 of the United States shall, under such conditions as
13 the Comptroller General determines to be appro-
14 priate—

15 “(A) review each report made under para-
16 graph (1), including the extent to which the In-
17 specter General of the Board complied with the
18 requirements under section 8L of the Inspector
19 General Act of 1978 (5 U.S.C. App.) with re-
20 spect to each such report; and

21 “(B) recommend improvements to the su-
22 pervision of insured credit unions (including im-
23 provements relating to the implementation of
24 this section).”.

1 **SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **ON PROPRIETARY TRADING.**

3 (a) DEFINITIONS.—In this section—

4 (1) the term “covered entity” means—

5 (A) an insured depository institution, an
6 affiliate of an insured depository institution, a
7 bank holding company, a financial holding com-
8 pany, or a subsidiary of a bank holding com-
9 pany or a financial holding company, as those
10 terms are defined in the Bank Holding Com-
11 pany Act of 1956 (12 U.S.C. 1841 et seq.); and

12 (B) any other entity, as the Comptroller
13 General of the United States may determine;
14 and

15 (2) the term “proprietary trading” means the
16 act of a covered entity investing as a principal in se-
17 curities, commodities, derivatives, hedge funds, pri-
18 vate equity firms, or such other financial products or
19 entities as the Comptroller General may determine.

20 (b) STUDY.—

21 (1) IN GENERAL.—The Comptroller General of
22 the United States shall conduct a study regarding
23 the risks and conflicts associated with proprietary
24 trading by and within covered entities, including an
25 evaluation of—

1 (A) whether proprietary trading presents a
2 material systemic risk to the stability of the
3 United States financial system, and if so, the
4 costs and benefits of options for mitigating such
5 systemic risk;

6 (B) whether proprietary trading presents
7 material risks to the safety and soundness of
8 the covered entities that engage in such activi-
9 ties, and if so, the costs and benefits of options
10 for mitigating such risks;

11 (C) whether proprietary trading present
12 material conflicts of interest between covered
13 entities that engage in proprietary trading and
14 the clients of the institutions who use the firm
15 to execute trades or who rely on the firm to
16 manage assets, and if so, the costs and benefits
17 of options for mitigating such conflicts of inter-
18 est;

19 (D) whether adequate disclosure regarding
20 the risks and conflicts of proprietary trading is
21 provided to the depositors, trading and asset
22 management clients, and investors of covered
23 entities that engage in proprietary trading, and
24 if not, the costs and benefits of options for the
25 improvement of such disclosure; and

1 (E) whether the banking, securities, and
2 commodities regulators of institutions that en-
3 gage in proprietary trading have in place ade-
4 quate systems and controls to monitor and con-
5 tain any risks and conflicts of interest related
6 to proprietary trading, and if not, the costs and
7 benefits of options for the improvement of such
8 systems and controls.

9 (2) CONSIDERATIONS.—In carrying out the
10 study required under paragraph (1), the Comptroller
11 General shall consider—

12 (A) current practice relating to proprietary
13 trading;

14 (B) the advisability of a complete ban on
15 proprietary trading;

16 (C) limitations on the scope of activities
17 that covered entities may engage in with respect
18 to proprietary trading;

19 (D) the advisability of additional capital
20 requirements for covered entities that engage in
21 proprietary trading;

22 (E) enhanced restrictions on transactions
23 between affiliates related to proprietary trading;

24 (F) enhanced accounting disclosures relat-
25 ing to proprietary trading;

1 (G) enhanced public disclosure relating to
2 proprietary trading; and

3 (H) any other options the Comptroller
4 General deems appropriate.

5 (c) REPORT TO CONGRESS.—Not later than 15
6 months after the date of enactment of this Act, the Comp-
7 troller General shall submit a report to Congress on the
8 results of the study conducted under subsection (b).

9 (d) ACCESS BY COMPTROLLER GENERAL.—For pur-
10 poses of conducting the study required under subsection
11 (b), the Comptroller General shall have access, upon re-
12 quest, to any information, data, schedules, books, ac-
13 counts, financial records, reports, files, electronic commu-
14 nications, or other papers, things, or property belonging
15 to or in use by a covered entity that engages in proprietary
16 trading, and to the officers, directors, employees, inde-
17 pendent public accountants, financial advisors, staff, and
18 agents and representatives of a covered entity (as related
19 to the activities of the agent or representative on behalf
20 of the covered entity), at such reasonable times as the
21 Comptroller General may request. The Comptroller Gen-
22 eral may make and retain copies of books, records, ac-
23 counts, and other records, as the Comptroller General
24 deems appropriate.

25 (e) CONFIDENTIALITY OF REPORTS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the Comptroller General may not disclose
3 information regarding—

4 (A) any proprietary trading activity of a
5 covered entity, unless such information is dis-
6 closed at a level of generality that does not re-
7 veal the investment or trading position or strat-
8 egy of the covered entity for any specific secu-
9 rity, commodity, derivative, or other investment
10 or financial product; or

11 (B) any individual interviewed by the
12 Comptroller General for purposes of the study
13 under subsection (b), unless such information is
14 disclosed at a level of generality that does not
15 reveal—

16 (i) the name of or identifying details
17 relating to such individual; or

18 (ii) in the case of an individual who is
19 an employee of a third party that provides
20 professional services to a covered entity be-
21 lieved to be engaged in proprietary trading,
22 the name of or any identifying details re-
23 lating to such third party.

1 (2) EXCEPTIONS.—The Comptroller General
2 may disclose the information described in paragraph
3 (1)—

4 (A) to a department, agency, or official of
5 the Federal Government, for official use, upon
6 request;

7 (B) to a committee of Congress, upon re-
8 quest; and

9 (C) to a court, upon an order of such
10 court.

11 **SEC. 989A. SENIOR INVESTOR PROTECTIONS.**

12 (a) DEFINITIONS.—As used in this section—

13 (1) the term “misleading designation”—

14 (A) means the use of a purported certifi-
15 cation, professional designation, or other cre-
16 dential, that indicates or implies that a sales-
17 person or adviser has special certification or
18 training in advising or servicing seniors; and

19 (B) does not include any legitimate certifi-
20 cation, professional designation, license, or
21 other credential, if—

22 (i) such credential has been offered by
23 an academic institution having regional ac-
24 creditation; or

1 (ii) such credential meets the stand-
2 ards for certifications, licenses, and profes-
3 sional designations outlined by the North
4 American Securities Administrators Asso-
5 ciation (in this section referred to as the
6 “NASAA”) Model Rule on the Use of Sen-
7 ior-Specific Certifications and Professional
8 Designations in the Sale of Life Insurance
9 and Annuities, adopted by the National
10 Association of Insurance Commissioners,
11 as in effect on the date of enactment of
12 this Act, or any successor thereto, or it
13 was issued by or obtained from any State;

14 (2) the term “financial product” means securi-
15 ties, insurance products (including insurance prod-
16 ucts which pay a return, whether fixed or variable),
17 and bank and loan products;

18 (3) the term “misleading or fraudulent mar-
19 keting” means the use of a misleading designation
20 in selling to or advising a senior in the sale of a fi-
21 nancial product; and

22 (4) the term “senior” means any individual who
23 has attained the age of 62 years or older.

24 (b) GRANTS TO STATES FOR ENHANCED PROTEC-
25 TION OF SENIORS FROM BEING MISLED BY FALSE DES-

1 IGNATIONS.—The Office of Financial Literacy within the
2 CFPA (in this section referred to as the “Office”)—

3 (1) shall establish a program in accordance with
4 this section to provide grants to States—

5 (A) to investigate and prosecute misleading
6 and fraudulent marketing practices; or

7 (B) to develop educational materials and
8 training aimed at reducing misleading and
9 fraudulent marketing of financial products to-
10 ward seniors; and

11 (2) may establish such performance objectives,
12 reporting requirements, and application procedures
13 for States and State agencies receiving grants under
14 this section as the Office determines are necessary
15 to carry out and assess the effectiveness of the pro-
16 gram under this section.

17 (c) USE OF GRANT AMOUNTS.—A grant under this
18 section may be used (including through subgrants) by the
19 State or the appropriate State agency designated by the
20 State—

21 (1) to fund additional staff to identify, inves-
22 tigate, and prosecute (through civil, administrative,
23 or criminal enforcement actions) cases involving mis-
24 leading or fraudulent marketing of financial prod-
25 ucts to seniors;

1 (2) to fund technology, equipment, and training
2 for regulators, prosecutors, and law enforcement in
3 order to identify salespersons and advisers who tar-
4 get seniors through the use of misleading designa-
5 tions;

6 (3) to fund technology, equipment, and training
7 for prosecutors to increase the successful prosecution
8 of those targeting seniors with the use of misleading
9 designations;

10 (4) to provide educational materials and train-
11 ing to regulators on the appropriateness of the use
12 of designations by salespersons and advisers of fi-
13 nancial products;

14 (5) to provide educational materials and train-
15 ing to seniors to increase their awareness and under-
16 standing of designations;

17 (6) to develop comprehensive plans to combat
18 misleading or fraudulent marketing of financial
19 products to seniors; and

20 (7) to enhance provisions of State law that
21 could offer additional protection for seniors against
22 misleading or fraudulent marketing of financial
23 products.

24 (d) GRANT REQUIREMENTS.—

1 (1) MAXIMUM.—The amount of a grant under
2 this section may not exceed \$500,000 per fiscal year
3 per State, if all requirements of paragraphs (2), (3),
4 (4), and (5) are met. Such amount shall be limited
5 to \$100,000 per fiscal year per State in any case in
6 which the State meets the requirements of—

7 (A) paragraphs (2) and (3), but not each
8 of paragraphs (4) and (5); or

9 (B) paragraphs (4) and (5), but not each
10 of paragraphs (2) and (3).

11 (2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of enactment of this Act, or any successor thereto, as determined by the Office.

20 (3) SUITABILITY RULES FOR SECURITIES.—A
21 State shall have adopted standard rules on the suitability requirements in the sale of securities, which
22 shall, to the extent practicable, conform to the minimum requirements on suitability imposed by self-regulatory organization rules under the securities

1 laws (as defined in section 3 of the Securities Ex-
2 change Act of 1934), as determined by the Office.

3 (4) STANDARD DESIGNATION RULES FOR IN-
4 SURANCE PRODUCTS.—A State shall have adopted
5 standard rules on the appropriate use of designa-
6 tions in the sale of insurance products, which shall,
7 to the extent practicable, conform to the minimum
8 requirements of the National Association of Insur-
9 ance Commissioners Model Regulation on the Use of
10 Senior-Specific Certifications and Professional Des-
11 ignations in the Sale of Life Insurance and Annu-
12 ities, as in effect on the date of enactment of this
13 Act, or any successor thereto, as determined by the
14 Office.

15 (5) SUITABILITY AND SUPERVISION RULES FOR
16 ANNUITY PRODUCTS.—

17 (A) IN GENERAL.—A State shall have
18 adopted rules governing insurer supervision of,
19 suitability of, and insurer and insurance pro-
20 ducer conduct relating to, the sale of annuity
21 products, including fixed and index annuities,
22 notwithstanding any delayed effective date for
23 such rules.

24 (B) ANNUITY PRODUCTS CRITERIA.—The
25 rules required by subparagraph (A) shall, to the

1 extent practicable (as determined by the Of-
2 fice), provide—

3 (i) that insurers, and insurance pro-
4 ducers are responsible for, and liable for
5 penalties for, the suitability of each rec-
6 ommended annuity transaction;

7 (ii) that insurers and insurance pro-
8 ducers are required to apply a standard for
9 determining the suitability of each rec-
10 ommended annuity transaction, including
11 fixed and index annuities, that is at least
12 as protective of the interests of the con-
13 sumer as rule 2821(b) of the Financial In-
14 dustry Regulatory Authority (in this para-
15 graph referred to as “FINRA”), as in ef-
16 fect on the date of enactment of this Act,
17 or any successor to such rule;

18 (iii) that insurers and insurance pro-
19 ducers are required to maintain a process
20 for review of the suitability, and approval
21 or disapproval, of each recommended annu-
22 ity transaction that is at least as protective
23 of the interests of the consumer as the
24 principal review required under rule
25 2821(c) of FINRA, as in effect on the date

1 of enactment of this Act, or any successor
2 to such rule;

3 (iv) that insurers and insurance pro-
4 ducers are required to maintain processes
5 for the supervision of direct annuity sales
6 and insurance producer-recommended an-
7 nuity sales (including procedures for the
8 insurer to obtain and confirm consumer
9 suitability information and for the insurer
10 to confirm consumer understanding of the
11 annuity transaction) that are at least as
12 protective of the interests of the consumer
13 as member broker and dealer supervision
14 requirements of FINRA, as in effect on
15 the date of enactment of this Act, or any
16 successor to such requirements;

17 (v) that insurers are required to verify
18 that each insurance producer successfully
19 completes, and each insurance producer is
20 required to receive, training designed to
21 ensure that the insurance producer is com-
22 petent to recommend each class of annuity;

23 (vi) that insurers are required to
24 verify that insurance producers receive,
25 and insurance producers are required to

1 receive, training regarding the features of
2 each offered annuity product, to an extent
3 that is at least as protective of the inter-
4 ests of the consumer as the FINRA firm
5 element training requirements, as in effect
6 on the date of enactment of this Act, or
7 any successor to such requirements;

8 (vii) for coordination of such rules
9 with the rules of FINRA governing mem-
10 ber brokers, dealers, and security rep-
11 resentatives, to the extent appropriate,
12 consistent with protecting the interests of
13 consumers, for State insurance regulators
14 to rely on, or to avoid duplication of
15 FINRA rules; and

16 (viii) for exemption from such rules
17 only if such exemption is consistent with
18 the protection of consumers.

19 (e) ELIGIBLE ENTITIES.—The following State agen-
20 cies shall be eligible to receive a grant under this section:

21 (1) A securities commission (or any agency or
22 office performing like functions) of any State, which
23 commission has adopted standard designation rules
24 for securities, as described in subsection (d)(2) and

1 suitability rules for securities, as described in sub-
2 section (d)(3).

3 (2) The insurance commission (or any agency
4 or office performing like functions) of any State,
5 which commission has adopted standard designation
6 rules for insurance products, as described in sub-
7 section (d)(2) and suitability and supervision rules
8 for annuity products, as described in subsection
9 (d)(5).

10 (3) Any State consumer protection agency, if ei-
11 ther the securities commission or the insurance com-
12 mission in that State has met the requirements of
13 paragraph (1) or (2), as applicable.

14 (f) APPLICATIONS.—To be eligible for a grant under
15 this section, the State or appropriate State agency shall
16 submit to the Office a proposal to use the grant money
17 to protect seniors from misleading or fraudulent mar-
18 keting techniques in the offer and sale of financial prod-
19 ucts, which application shall—

20 (1) identify the scope of the problem;

21 (2) describe how the proposed program will help
22 to protect seniors from misleading or fraudulent
23 marketing in the sale of financial products, includ-
24 ing, at a minimum—

1 (A) by proactively identifying senior vic-
2 tims of misleading and fraudulent marketing in
3 the offer and sale of financial products;

4 (B) how the proposed program can assist
5 in the investigation and prosecution of those
6 using misleading or fraudulent marketing in the
7 offer and sale of financial products to seniors;
8 and

9 (C) how the proposed program can help
10 discourage and reduce future cases of mis-
11 leading or fraudulent marketing in the offer
12 and sale of financial products to seniors; and

13 (3) describe how the proposed program is to be
14 integrated with other existing State efforts.

15 (g) LENGTH OF PARTICIPATION.—A State receiving
16 a grant under this section shall be provided assistance
17 funds for a period of 3 years, after which the State may
18 reapply for additional funding.

19 (h) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to carry out this section,
21 \$8,000,000 for each of the fiscal years 2010 through
22 2014.

1 **Subtitle J—Self-funding of the Se-**
2 **curities and Exchange Commis-**
3 **sion**

4 **SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-**
5 **FUNDING.**

6 (a) SELF-FUNDING AUTHORITY.—Section 4 of the
7 Securities Exchange Act of 1934 (15 U.S.C. 78d) is
8 amended—

9 (1) in subsection (e), in the second sentence, by
10 striking “credited to the appropriated funds of the
11 Commission” and inserting “deposited in the ac-
12 count described in subsection (j)(4)”;

13 (2) in subsection (f), in the second sentence, by
14 striking “considered a reimbursement to the appro-
15 priated funds of the Commission” and inserting “de-
16 posited in the account described in subsection
17 (j)(4)”;

18 (3) by adding at the end the following:

19 “(j) FUNDING OF THE COMMISSION.—

20 “(1) BUDGET.—For each fiscal year, the Chair-
21 man of the Commission shall prepare and submit to
22 Congress a budget to Congress. Such budget shall be
23 submitted at the same time the President submits a
24 budget of the United States to Congress for such
25 fiscal year. The budget submitted by the Chairman

1 of the Commission pursuant to this paragraph shall
2 not be considered a request for appropriations.

3 “(2) TREASURY PAYMENT.—

4 “(A) On the first day of each fiscal year,
5 the Treasury shall pay into the account de-
6 scribed in paragraph (4) an amount equal to
7 the budget submitted by the Chairman of the
8 Commission pursuant to paragraph (1) for such
9 fiscal year.

10 “(B) At or prior to the end of each fiscal
11 year, the Commission shall pay to the Treasury
12 from fees and assessments deposited in the ac-
13 count described in paragraph (4) an amount
14 equal to the amount paid by the Treasury pur-
15 suant to subparagraph (A) for such fiscal year,
16 unless there are not sufficient fees and assess-
17 ments deposited in such account at or prior to
18 the end of the fiscal year to make such pay-
19 ment, in which case the Commission shall make
20 such payment in a subsequent fiscal year.

21 “(3) OBLIGATIONS AND EXPENSES.—

22 “(A) IN GENERAL.—The Commission shall
23 determine and prescribe the manner in which—

24 “(i) the obligations of the Commission
25 shall be incurred; and

1 “(ii) the disbursements and expenses
2 of the Commission allowed and paid.

3 “(B) INSUFFICIENT FUNDS.—If, in the
4 course of any fiscal year, the Chairman of the
5 Commission determines that, due to unforeseen
6 circumstances, the obligations of the Commis-
7 sion will exceed those provided for in the budget
8 submitted under paragraph (1), the Chairman
9 of the Commission may notify Congress of the
10 amount and expected uses of the additional ob-
11 ligations.

12 “(C) AUTHORITY TO INCUR EXCESS OBLI-
13 GATIONS.—The Commission may incur obliga-
14 tions in excess of the budget submitted under
15 paragraph (1) from amounts available in the
16 account described in paragraph (4).

17 “(D) RULE OF CONSTRUCTION.—Any noti-
18 fication to Congress under this paragraph shall
19 not be considered a request for appropriations.

20 “(4) ACCOUNT.—

21 “(A) ESTABLISHMENT.—Fees and assess-
22 ments collected under this title, section 6(b) of
23 the Securities Act of 1933 (15 U.S.C. 77f(b)),
24 and section 24(f) of the Investment Company
25 Act of 1940 (15 U.S.C. 80a–24(f)) and pay-

1 ments made by the Treasury pursuant to para-
2 graph (2)(A) for any fiscal year shall be depos-
3 ited into an account established at any regular
4 Government depository or any State or national
5 bank.

6 “(B) RULE OF CONSTRUCTION.—Any
7 amounts deposited into the account established
8 under subparagraph (A) shall not be construed
9 to be Government funds or appropriated mon-
10 ies.

11 “(C) NO APPORTIONMENT.—Any amounts
12 deposited into the account established under
13 subparagraph (A) shall not be subject to appor-
14 tionment for the purpose of chapter 15 of title
15 31, United States Code, or under any other au-
16 thority.

17 “(5) USE OF ACCOUNT FUNDS.—

18 “(A) PERMISSIBLE USES.—Amounts avail-
19 able in the account described in paragraph (4)
20 may be withdrawn by the Commission and used
21 for the purposes described in paragraphs (2)
22 and (3).

23 “(B) IMPERMISSIBLE USE.—Except as
24 provided in paragraph (6), no amounts available
25 in the account described in paragraph (4) shall

1 be deposited and credited as general revenue of
2 the Treasury.

3 “(6) EXCESS FUNDS.—If, at the end of any fis-
4 cal year and after all payments have been made to
5 the Treasury pursuant to paragraph (2)(B) for such
6 fiscal year and all prior fiscal years, the balance of
7 the account described in paragraph (4) exceeds 25
8 percent of the budget of the Commission for the fol-
9 lowing fiscal year, the amount by which the balance
10 exceeds 25 percent of such budget shall be credited
11 as general revenue of the Treasury.”.

12 (b) CONFORMING AMENDMENTS TO TRANSACTION
13 FEE PROVISIONS.—Section 31 of the Securities Exchange
14 Act of 1934 (15 U.S.C. 78ee) is amended—

15 (1) by amending subsection (a) to read as fol-
16 lows:

17 “(a) RECOVERY OF COSTS AND EXPENSES.—

18 “(1) IN GENERAL.—The Commission shall, in
19 accordance with this section, collect transaction fees
20 and assessments that are designed—

21 “(A) to recover the reasonable costs and
22 expenses of the Commission, as set forth in the
23 annual budget of the Commission; and

24 “(B) to provide funds necessary to main-
25 tain a reserve.

1 “(2) OVERPAYMENTS.—The authority to collect
2 transaction fees and assessments in accordance with
3 this section shall include the authority to offset from
4 such collection any overpayment of transactions fees
5 or assessments, regardless of the fiscal year in which
6 such overpayment is made.”;

7 (2) in subsection (e)(2), by striking “September
8 30” and inserting “September 25”;

9 (3) in subsection (g), by striking “April 30”
10 and inserting “August 31”;

11 (4) by amending subsection (i) to read as fol-
12 lows:

13 “(i) FEE COLLECTIONS.—Fees and assessments col-
14 lected pursuant to this section shall be deposited and cred-
15 ited in accordance with section 4(g) of this title.”;

16 (5) by amending subsection (j) to read as fol-
17 lows:

18 “(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—

19 “(1) ANNUAL ADJUSTMENT.—For each fiscal
20 year, the Commission shall by order adjust each of
21 the rates applicable under subsections (b) and (c)
22 for such fiscal year to a uniform adjusted rate that,
23 when applied to the baseline estimate of the aggre-
24 gate dollar amount of sales for such fiscal year, is
25 reasonably likely to produce aggregate fee collections

1 under this section (including assessments collected
2 under subsection (d)) that are equal to the budget
3 of the Commission for such fiscal year, plus amounts
4 necessary to maintain a reserve.

5 “(2) MID-YEAR ADJUSTMENT.—For each fiscal
6 year, the Commission shall determine, by March 1 of
7 such fiscal year, whether, based on the actual aggregate
8 dollar volume of sales during the first 4 months
9 of such fiscal year, the baseline estimate of the aggregate
10 dollar volume of sales used under paragraph
11 (1) for such fiscal year is reasonably likely to be 10
12 percent (or more) greater or less than the actual aggregate
13 dollar volume of sales for such fiscal year.
14 If the Commission so determines, the Commission
15 shall by order, not later than March 1, adjust each
16 of the rates applicable under subsections (b) and (c)
17 for such fiscal year to a uniform adjusted rate that,
18 when applied to the revised estimate of the aggregate
19 dollar amount of sales for the remainder of
20 such fiscal year, is reasonably likely to produce aggregate
21 fee collections under this section (including
22 fees estimated to be collected under subsections (b)
23 and (c) during such fiscal year prior to the effective
24 date of the new uniform adjusted rate and assessments
25 collected under subsection (d)) that are equal

1 to the budget of the Commission for such fiscal year,
2 plus amounts necessary to maintain a reserve. In
3 making such revised estimate, the Commission shall,
4 after consultation with the Congressional Budget Of-
5 fice and the Office of Management and Budget, use
6 the same methodology required by paragraph (4).

7 “(3) REVIEW AND EFFECTIVE DATE.—In exer-
8 cising its authority under this subsection, the Com-
9 mission shall not be required to comply with the pro-
10 visions of section 553 of title 5 United States Code.
11 An adjusted rate prescribed under paragraph (1) or
12 (2) and published under subsection (g) shall not be
13 subject to judicial review. An adjusted rate pre-
14 scribed under paragraph (1) shall take effect on the
15 first day of the fiscal year to which such rate ap-
16 plies. An adjusted rate prescribed under paragraph
17 (2) shall take effect on April 1 of the fiscal year to
18 which such rate applies.

19 “(4) BASELINE ESTIMATE OF THE AGGREGATE
20 DOLLAR AMOUNT OF SALES.—For purposes of this
21 subsection, the baseline estimate of the aggregate
22 dollar amount of sales for any fiscal year is the
23 baseline estimate of the aggregate dollar amount of
24 sales of securities (other than bonds, debentures,
25 other evidences of indebtedness, security futures

1 products, and options on securities indexes excluding
2 a narrow-based security index)) to be transacted on
3 each national securities exchange and by or through
4 any member of each national securities association
5 (otherwise than on a national securities exchange)
6 during such fiscal year as determined by the Com-
7 mission, after consultation with the Congressional
8 Budget Office and the Office of Management and
9 Budget, using the methodology required for making
10 projections pursuant to section 907 of title 2.”; and

11 (6) by striking subsections (k) and (l).

12 (c) CONFORMING AMENDMENTS TO REGISTRATION
13 FEE PROVISIONS.—

14 (1) SECTION 6(B) OF THE SECURITIES ACT OF
15 1933.—Section 6(b) of the Securities Act of 1933
16 (15 U.S.C. 77f(b)) is amended—

17 (A) by striking “offsetting” each place that
18 term appears and inserting “fee”;

19 (B) in paragraph (3), in the paragraph
20 heading, by striking “OFFSETTING” and insert-
21 ing “FEE”;

22 (C) in paragraph (11)(A), in the subpara-
23 graph heading, by striking “OFFSETTING” and
24 inserting “FEE”;

1 (D) by striking paragraphs (1), (3), (4),
2 (6), (8), and (9);

3 (E) by redesignating paragraph (2) as
4 paragraph (1);

5 (F) in paragraph (1), as so redesignated,
6 by striking “(5) or (6)” and inserting “(3)”;

7 (G) by inserting after paragraph (1), as so
8 redesignated, the following:

9 “(2) FREE COLLECTIONS.—Fees collected pursu-
10 ant to this subsection shall be deposited and credited
11 in accordance with section 4(j) of the Securities Ex-
12 change Act of 1934.”;

13 (H) by redesignating paragraph (5) as
14 paragraph (3);

15 (I) in paragraph (3), as redesignated—

16 (i) by striking “of the fiscal years
17 2003 through 2011” and inserting “fiscal
18 year”; and

19 (ii) by striking “paragraph (2)” and
20 inserting “paragraph (1)”;

21 (J) by redesignating paragraph (7) as
22 paragraph (4);

23 (K) by inserting after paragraph (4), as so
24 redesignated, the following:

1 “(5) REVIEW AND EFFECTIVE DATE.—In exer-
 2 cising its authority under this subsection, the Com-
 3 mission shall not be required to comply with the pro-
 4 visions of section 553 of title 5, United States Code.
 5 An adjusted rate prescribed under paragraph (3)
 6 and published under paragraph (6) shall not be sub-
 7 ject to judicial review. An adjusted rate prescribed
 8 under paragraph (3) shall take effect on the first
 9 day of the fiscal year to which such rate applies.”;

10 (L) by redesignating paragraphs (10) and
 11 (11), as paragraphs (6) and (7);

12 (M) in paragraph (6), as redesignated, by
 13 striking “April 30” and inserting “August 31”;
 14 and

15 (N) in paragraph (7), as redesignated—

16 (i) by striking “of the fiscal years
 17 2002 through 2011” and inserting “fiscal
 18 year”; and

19 (ii) by inserting at the end of the
 20 table in subparagraph (A) the following:

2012 and each succeeding fiscal year	An amount that is equal to the target fee collection amount for the prior fiscal year adjusted by the rate of inflation.
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1 (2) SECTION 13(E) OF THE SECURITIES EX-
2 CHANGE ACT OF 1934.—Section 13(e) of the Securi-
3 ties Exchange Act of 1934 (15 U.S.C. 78m(e)) is
4 amended—

5 (A) by striking “offsetting” each place that
6 term appears and inserting “fee”;

7 (B) in paragraph (3) by striking “para-
8 graphs (5) and (6)” and inserting “paragraph
9 (5)”;

10 (C) by amending paragraph (4) to read as
11 follows:

12 “(4) FEE COLLECTIONS.—Fees collected pursu-
13 ant to this subsection shall be deposited and credited
14 in accordance with section 4(g) of this title.”;

15 (D) in paragraph (5), by striking “of the
16 fiscal years 2003 through 2011” and inserting
17 “fiscal year”;

18 (E) by striking paragraphs (6), (7), and
19 (8)

20 (F) by redesignating paragraph (7) as
21 paragraph (6);

22 (G) by inserting after paragraph (6), as so
23 redesignated, the following:

24 “(7) REVIEW AND EFFECTIVE DATE.—In exer-
25 cising its authority under this subsection, the Com-

1 mission shall not be required to comply with the pro-
2 visions of section 553 of title 5. An adjusted rate
3 prescribed under paragraph (5) and published under
4 paragraph (8) shall not be subject to judicial review.
5 An adjusted rate prescribed under paragraph (5)
6 shall take effect on the first day of the fiscal year
7 to which such rate applies.”;

8 (H) by striking paragraph (9);

9 (I) by redesignating paragraph (10) as
10 paragraph (8); and

11 (J) in paragraph (8), as so redesignated,
12 by striking “6(b)(10)” and inserting “6(b)(6)”.

13 (3) SECTION 14 OF THE SECURITIES EXCHANGE
14 ACT OF 1934.—Section 14(g) of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78n(g)) is amend-
16 ed—

17 (A) by striking the word “offsetting” each
18 time that it appears and inserting in its place
19 the word “fee”;

20 (B) in paragraph (1)(A), by striking
21 “paragraphs (5) and (6)” each time it appears
22 and inserting “paragraph (5)”;

23 (C) in paragraph (3), by striking “para-
24 graphs (5) and (6)” and inserting “paragraph
25 (5)”;

1 (D) by amending paragraph (4) to read as
2 follows:

3 “(4) FEE COLLECTIONS.—Fees collected pursu-
4 ant to this subsection shall be deposited and credited
5 in accordance with section 4(g) of this title.”;

6 (E) in paragraph (5), by striking “of the
7 fiscal years 2003 through 2011” and inserting
8 “fiscal year”;

9 (F) by striking paragraphs (6), (8), and
10 (9);

11 (G) by redesignating paragraph (7) as
12 paragraph (6);

13 (H) by inserting after paragraph (6), as so
14 redesignated, the following:

15 “(7) REVIEW AND EFFECTIVE DATE.—In exer-
16 cising its authority under this subsection, the Com-
17 mission shall not be required to comply with the pro-
18 visions of section 553 of title 5. An adjusted rate
19 prescribed under paragraph (5) and published under
20 paragraph (8) shall not be subject to judicial review.
21 An adjusted rate prescribed under paragraph (5)
22 shall take effect on the first day of the fiscal year
23 to which such rate applies.”;

1 (I) by redesignating paragraphs (10) and
2 (11) as paragraphs (8) and (9), respectively;
3 and

4 (J) in paragraph (9), as so redesignated,
5 by striking “6(b)(10)” and inserting “6(b)(7)”.

6 (d) REPEAL OF AUTHORIZATION OF APPROPRIA-
7 TIONS.—Section 35 of the Securities Exchange Act of
8 1934 (15 U.S.C. 78kk) is repealed.

9 (e) CONFORMING AMENDMENT TO TITLE 2.—Section
10 255(g)(1)(A) of the Balanced Budget and Emergency
11 Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is
12 amended by inserting after “Salaries of Article III
13 judges;” the following:

14 “Securities and Exchange Commission: Salaries and
15 Expenses (50-0100-0-1-376);”.

16 (f) EFFECTIVE DATE AND TRANSITION PROVI-
17 SIONS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graphs (2) and (3), the amendments made by this
20 section shall be effective on the first day of the fiscal
21 year following the fiscal year in which this Act is en-
22 acted.

23 (2) TRANSITION PERIOD.—For the fiscal year
24 following the fiscal year in which this Act is enacted,
25 the budget of the Commission shall be deemed to be

1 the budget submitted by the Chairman of the Com-
2 mission to the President for such fiscal year in ac-
3 cordance with the provisions of section 1108 of title
4 31, United States Code.

5 (3) OTHER PROVISIONS.—The amendments
6 made by this section to sections 31(g) and (j)(1) of
7 the Securities Exchange Act of 1934 (15 U.S.C.
8 78ee (g) and (j)(1)) shall be effective on the date of
9 enactment of this Act, and shall require the Com-
10 mission to make and publish an annual adjustment
11 to the fee rates applicable under sections 31(b) and
12 (c) of the Securities Exchange Act of 1934 (15
13 U.S.C. 78ee (b) and (c)) for the fiscal year following
14 the fiscal year in which this Act is enacted. The ad-
15 justed rate described in the preceding sentence shall
16 supersede any previously published adjusted rate ap-
17 plicable under sections 31 (b) and (c) of the Securi-
18 ties Exchange Act of 1934 for the fiscal year fol-
19 lowing the fiscal year in which this Act is enacted
20 and shall take effect on the first day of the fiscal
21 year following the fiscal year in which this Act is en-
22 acted, except that, if this Act is enacted on or after
23 August 31 and on or prior to September 30, the ad-
24 justed rate described in the first sentence shall be
25 published not later than 15 days after the date of

1 enactment of this Act and take effect 30 days there-
2 after, and the Commission shall continue to collect
3 fees under sections 31 (b) and (c) of the Securities
4 Exchange Act of 1934 at the rate in effect during
5 the preceding fiscal year until the adjusted rate is
6 effective.

7 **TITLE X—CONSUMER FINANCIAL**
8 **PROTECTION AGENCY ACT OF**
9 **2009**

10 **SEC. 1001. SHORT TITLE.**

11 This title may be cited as the “Consumer Financial
12 Protection Agency Act of 2009”.

13 **SEC. 1002. DEFINITIONS.**

14 Except as otherwise provided in this title, for pur-
15 poses of this title, the following definitions shall apply:

16 (1) **AFFILIATE.**—The term “affiliate” means
17 any person that controls, is controlled by, or is
18 under common control with another person.

19 (2) **APPOINTED BOARD MEMBER.**—The term
20 “appointed Board member” or “appointed Board
21 members” means a member or members of the
22 Board appointed by the President under section
23 1012(a)(1).

1 (3) BOARD.—The term “Board” means the
2 board of directors of the Consumer Financial Pro-
3 tection Agency.

4 (4) CONSUMER.—The term “consumer” means
5 an individual or an agent, trustee, or representative
6 acting on behalf of an individual.

7 (5) CONSUMER FINANCIAL PRODUCT OR SERV-
8 ICE.—The term “consumer financial product or
9 service” means any financial product or service to be
10 used by a consumer primarily for personal, family,
11 or household purposes.

12 (6) COVERED PERSON.—The term “covered
13 person” means any person who engages, directly or
14 indirectly in a financial activity, in connection with
15 the provision of a consumer financial product or
16 service.

17 (7) CREDIT.—The term “credit” means the
18 right granted by a person to a consumer to defer
19 payment of a debt, incur debt and defer its payment,
20 or purchase property or services and defer payment
21 for such purchase.

22 (8) CREDIT INSURANCE.—The term “credit in-
23 surance” means any insurance product or service re-
24 lated to, or provided in connection with, any exten-
25 sion of credit, and includes credit life insurance,

1 credit accident or health insurance, involuntary un-
2 employment insurance, and credit property insur-
3 ance.

4 (9) DEPOSIT-TAKING ACTIVITY.—

5 (A) IN GENERAL.—The term “deposit-tak-
6 ing activity” means—

7 (i) the acceptance of deposits, mainte-
8 nance of deposit accounts, or the provision
9 of services related to the acceptance of de-
10 posits or the maintenance of deposit ac-
11 counts;

12 (ii) the acceptance of money, the pro-
13 vision of other services related to the ac-
14 ceptance of money, or the maintenance of
15 member share accounts by a credit union;
16 and

17 (iii) the receipt of money or its equiv-
18 alent, as the CFPA may determine by rule
19 or order, received or held by a covered per-
20 son (or an agent for a covered person) for
21 the purpose of facilitating a payment or
22 transferring funds or value of funds by a
23 consumer to a third party.

24 (B) CFPA AUTHORITY.—For purposes of
25 this title, the CFPA may determine, by rule,

1 that the term “deposit-taking activity” includes
2 the receipt of money or its equivalent in connec-
3 tion with the sale or issuance of any payment
4 instrument or stored value product or service.

5 (10) DESIGNATED TRANSFER DATE.—The term
6 “designated transfer date” means the date estab-
7 lished under section 1062.

8 (11) DIRECTOR.—The term “Director” means
9 the Director of the CFPA.

10 (12) ENUMERATED CONSUMER LAWS.—The
11 term “enumerated consumer laws” means—

12 (A) the Alternative Mortgage Transaction
13 Parity Act of 1982 (12 U.S.C. 3801 et seq.);

14 (B) the Community Reinvestment Act of
15 1977 (12 U.S.C. 2901 et seq.);

16 (C) the Consumer Leasing Act of 1976 (15
17 U.S.C. 1667 et seq.);

18 (D) the Electronic Fund Transfer Act (15
19 U.S.C. 1693 et seq.);

20 (E) the Equal Credit Opportunity Act (15
21 U.S.C. 1691 et seq.);

22 (F) the Fair Credit Billing Act (15 U.S.C.
23 1666 et seq.);

24 (G) the Fair Credit Reporting Act (15
25 U.S.C. 1681 et seq.), except with respect to sec-

1 tions 615(e) and 628 of that Act (15 U.S.C.
2 1681m(e), 1681w);

3 (H) the Home Owners Protection Act of
4 1998 (12 U.S.C. 4901, et seq.);

5 (I) the Fair Debt Collection Practices Act
6 (15 U.S.C. 1692 et seq.);

7 (J) subsections (c) through (f) of section
8 43 of the Federal Deposit Insurance Act (12
9 U.S.C. 1831t(c)–(f));

10 (K) sections 502 through 509 of the
11 Gramm-Leach-Bliley Act (15 U.S.C. 6802–
12 6809);

13 (L) the Home Mortgage Disclosure Act of
14 1975 (12 U.S.C. 2801 et seq.);

15 (M) the Home Ownership and Equity Pro-
16 tection Act of 1994 (15 U.S.C. 1601 note);

17 (N) the Real Estate Settlement Procedures
18 Act of 1974 (12 U.S.C. 2601 et seq.);

19 (O) the S.A.F.E. Mortgage Licensing Act
20 of 2008 (12 U.S.C. 5101 et seq.);

21 (P) the Truth in Lending Act (15 U.S.C.
22 1601 et seq.); and

23 (Q) the Truth in Savings Act (12 U.S.C.
24 4301 et seq.).

1 (13) FINANCIAL ACTIVITY.—The term “finan-
2 cial activity” means—

3 (A) engaging in deposit-taking activities;

4 (B) extending credit and servicing loans,
5 including—

6 (i) acquiring, purchasing, selling,
7 brokering, or servicing loans or other ex-
8 tensions of credit; and

9 (ii) engaging in any other activity
10 usual in connection with extending credit
11 or servicing loans, including performing
12 appraisals of real estate and personal prop-
13 erty and selling or servicing credit insur-
14 ance or mortgage insurance;

15 (C) check cashing services or check-guar-
16 anty services, including—

17 (i) authorizing a subscribing merchant
18 to accept personal checks tendered by the
19 customers of the merchant in payment for
20 goods and services; and

21 (ii) purchasing from a subscribing
22 merchant validly authorized checks that
23 are subsequently dishonored;

24 (D) collecting, analyzing, maintaining, fur-
25 nishing, or providing consumer report informa-

1 tion or other account information, including in-
2 formation relating to the credit history of con-
3 sumers;

4 (E) collecting debt related to any consumer
5 financial product or service;

6 (F) providing real estate settlement serv-
7 ices, including providing title insurance;

8 (G) leasing personal or real property or
9 acting as agent, broker, or adviser in leasing
10 such property, if—

11 (i) the lease is on a non-operating
12 basis;

13 (ii) the initial term of the lease is at
14 least 90 days; and

15 (iii) in the case of a lease involving
16 real property, at the inception of the initial
17 lease, the transaction is intended to result
18 in ownership of the leased property to be
19 transferred to the lessee, subject to stand-
20 ards prescribed by the CFPA;

21 (H) acting as an investment adviser to any
22 person (other than a person regulated by the
23 Commodity Futures Trading Commission or the
24 Securities and Exchange Commission or a per-
25 son regulated as an investment adviser by any

1 securities commission, or any agency or office
2 performing like functions, of any State);

3 (I) acting as financial adviser to any per-
4 son, including—

5 (i) providing financial and other re-
6 lated advisory services;

7 (ii) providing educational courses and
8 instructional materials to consumers on in-
9 dividual financial management matters;

10 (iii) providing credit counseling, tax-
11 planning, or tax-preparation services to
12 any person (excluding the preparation of
13 returns, or claims for refund, of tax im-
14 posed by the Internal Revenue Code of
15 1986, or advice with respect to positions
16 taken therein, or services regulated by the
17 Secretary under section 330 of title 31,
18 United States Code); or

19 (iv) providing services to assist a con-
20 sumer with—

21 (I) debt management or debt set-
22 tlement;

23 (II) modifying the terms of any
24 extension of credit; or

25 (III) avoiding foreclosure;

1 (J) financial data processing by any tech-
2 nological means, including providing data proc-
3 essing, access to or use of databases or facili-
4 ties, or advice regarding processing or
5 archiving, if the data to be processed, fur-
6 nished, stored, or archived are financial, bank-
7 ing, or economic, except that a person shall not
8 be deemed to be a covered person with respect
9 to financial data processing if the person—

10 (i) unknowingly or incidentally trans-
11 mits, processes, or stores financial data in
12 a manner that such data is undifferen-
13 tiated from other types of data that the
14 person transmits, processes, or stores;

15 (ii) does not provide to any consumer
16 a consumer financial product or service in
17 connection with or relating to in any man-
18 ner financial data processing; and

19 (iii) does not provide a material serv-
20 ice to, or process a transaction on behalf
21 of, any covered person in connection with
22 the provision of a consumer financial prod-
23 uct or service;

24 (K) money transmitting;

25 (L) selling or issuing stored value;

1 (M) acting as a money services business;

2 (N) acting as a custodian of money or any
3 financial instrument; or

4 (O) engaging in any other activity that the
5 CFPA defines, by rule, as a financial activity
6 for purposes of this title, including an activity
7 that is entered into or conducted as a subter-
8 fuge or with a purpose to evade any require-
9 ment of this title, the enumerated consumer
10 laws, or the authorities transferred under sub-
11 titles F and H.

12 (14) FINANCIAL PRODUCT OR SERVICE.—The
13 term “financial product or service” means any prod-
14 uct or service that, directly or indirectly, results
15 from or is related to engaging in 1 or more financial
16 activities.

17 (15) FOREIGN EXCHANGE.—The term “foreign
18 exchange” means the exchange, for compensation, of
19 currency of the United States or of a foreign govern-
20 ment for currency of another government.

21 (16) MONEY SERVICES BUSINESS.—The term
22 “money services business” means a person that—

23 (A) receives currency, monetary value, or
24 payment instruments for the purpose of ex-
25 changing or transmitting the same by any

1 means, including transmission by wire, fac-
2 simile, electronic transfer, courier, the Internet,
3 or through bill payment services, or other busi-
4 nesses that facilitate third-party transfers with-
5 in the United States or to or from the United
6 States; or

7 (B) issues payment instruments or stored
8 value.

9 (17) MONEY TRANSMITTING.—The term
10 “money transmitting” means the receipt by a person
11 of currency, monetary value, or payment instru-
12 ments for the purpose of transmitting the same to
13 any third-party by any means, including trans-
14 mission by wire, facsimile, electronic transfer, cou-
15 rier, the Internet, or through bill payment services.

16 (18) MORTGAGE INSURANCE.—The term
17 “mortgage insurance” means insurance, including
18 any mortgage guaranty insurance, against the non-
19 payment of, or any default on, an individual mort-
20 gage or loan involved in a residential mortgage
21 transaction.

22 (19) PAYMENT INSTRUMENT.—The term “pay-
23 ment instrument” means a check, draft, warrant,
24 money order, traveler’s check, electronic instrument,

1 or other instrument, payment of money, or monetary
2 value (other than currency).

3 (20) PERSON.—The term “person” means an
4 individual, partnership, company, corporation, asso-
5 ciation (incorporated or unincorporated), trust, es-
6 tate, cooperative organization, or other entity, except
7 that “person” shall not include the United States
8 Government or any State or local government.

9 (21) PERSON REGULATED BY THE COMMODITY
10 FUTURES TRADING COMMISSION.—The term “person
11 regulated by the Commodity Futures Trading Com-
12 mission” means any futures commission merchant,
13 commodity trading adviser, commodity pool oper-
14 ator, or introducing broker that is subject to the ju-
15 risdiction of the Commodity Futures Trading Com-
16 mission under the Commodity Exchange Act, but
17 only to the extent that the person acts in such ca-
18 pacity.

19 (22) PERSON REGULATED BY THE COMMIS-
20 SION.—The term “person regulated by the Commis-
21 sion” means a person who is—

22 (A) a broker or dealer that is required to
23 be registered under the Securities Exchange Act
24 of 1934;

1 (B) an investment adviser that is required
2 to be registered under the Investment Advisers
3 Act of 1940;

4 (C) an investment company that is re-
5 quired to be registered under the Investment
6 Company Act of 1940;

7 (D) a national securities exchange that is
8 required to be registered under the Securities
9 Exchange Act of 1934;

10 (E) a transfer agent that is required to be
11 registered under the Securities Exchange Act of
12 1934;

13 (F) a clearing corporation that is required
14 to be registered under the Securities Exchange
15 Act of 1934; and

16 (G) any employee, agent, or contractor act-
17 ing on behalf of, registered with, or providing
18 services to, any person described in any of sub-
19 paragraphs (A) through (F), but only to the ex-
20 tent that any person described in any of sub-
21 paragraphs (A) through (F), or the employee,
22 agent, or contractor of such person, acts in a
23 regulated capacity.

24 (23) PERSON THAT PERFORMS INCOME TAX
25 PREPARATION ACTIVITIES FOR CONSUMERS.—The

1 term “person that performs income tax preparation
2 activities for consumers” means—

3 (A) any tax return preparer (as defined in
4 section 7701(a)(36) of the Internal Revenue
5 Code of 1986), regardless of whether com-
6 pensated, but only to the extent that the person
7 acts in such capacity;

8 (B) any person regulated by the Secretary
9 under section 330 of title 31, United States
10 Code, but only to the extent that the person
11 acts in such capacity; and

12 (C) any authorized IRS e-file Providers (as
13 defined for purposes of section 7216 of the In-
14 ternal Revenue Code of 1986), but only to the
15 extent that the person acts in such capacity.

16 (24) PROVISION OF A CONSUMER FINANCIAL
17 PRODUCT OR SERVICE.—The terms “provision of a
18 consumer financial product or service” and “pro-
19 viding a consumer financial product or service”
20 mean the advertisement, marketing, solicitation,
21 sale, disclosure, delivery, or account maintenance or
22 servicing of a consumer financial product or service.

23 (25) RELATED PERSON.—The term “related
24 person”—

1 (A) shall apply only with respect to a cov-
2 ered person that is not a bank holding company
3 (as that term is defined in section 2 of the
4 Bank Holding Company Act of 1956), credit
5 union, or depository institution;

6 (B) shall be deemed to mean a covered
7 person for all purposes of this title, any enu-
8 merated consumer law, and any law for which
9 authorities were transferred by subtitles F and
10 H; and

11 (C) means—

12 (i) any director, officer, or employee
13 charged with managerial responsibility, or
14 controlling stockholder of, or agent for,
15 such covered person;

16 (ii) any shareholder, consultant, joint
17 venture partner, or other person, as deter-
18 mined by the CFPB (by rule or on a case-
19 by-case basis) who materially participates
20 in the conduct of the affairs of such cov-
21 ered person; and

22 (iii) any independent contractor (in-
23 cluding any attorney, appraiser, or ac-
24 countant) who knowingly or recklessly par-
25 ticipates in any—

1 (I) violation of any provision of
2 law or regulation; or

3 (II) breach of a fiduciary duty.

4 (26) SERVICE PROVIDER.—

5 (A) IN GENERAL.—The term “service pro-
6 vider” means any person who provides a mate-
7 rial service to a covered person in connection
8 with the provision of a consumer financial prod-
9 uct or service by a covered person, including a
10 person who—

11 (i) facilitates the design of, or oper-
12 ations relating to the provision of, the con-
13 sumer financial product or service;

14 (ii) has direct interaction with a con-
15 sumer (whether in person or via a tele-
16 communication device or other similar
17 technology) regarding the consumer finan-
18 cial product or service; or

19 (iii) processes transactions relating to
20 the consumer financial product or service
21 (other than unknowingly or incidentally
22 transmitting or processing financial data in
23 a manner that such data is undifferen-
24 tiated from other types of data that the
25 person transmits or processes).

1 (B) EXCEPTIONS.—The term “service pro-
2 vider” does not include a person solely by virtue
3 of such person providing or selling to a covered
4 person—

5 (i) a support service of a type pro-
6 vided to businesses generally or a similar
7 ministerial service; or

8 (ii) time or space for an advertisement
9 for a consumer financial product or service
10 through print, newspaper, or electronic
11 media.

12 (27) STORED VALUE.—The term “stored value”
13 means funds or monetary value represented in any
14 electronic format, whether or not specially encrypted,
15 and stored or capable of storage on electronic media
16 in such a way as to be retrievable and transferred
17 electronically, and includes a prepaid debit card or
18 product, or any other similar product, regardless of
19 whether the amount of the funds or monetary value
20 may be increased or reloaded.

21 (28) TITLE INSURANCE.—The term “title in-
22 surance” means insurance issued by an insurance
23 company or title company (as those terms are de-
24 fined in section 2(4) of the Real Estate Settlements
25 Procedures Act of 1974 (12 U.S.C. 2602(4)) that

1 insures, guarantees, or indemnifies an owner of real
2 property or the holder of a lien or encumbrance on
3 the real property against loss or damage in connec-
4 tion with any defect in the title, lien, encumbrance,
5 unmarketability of the title, or other non-record de-
6 fect.

7 **Subtitle A—The Consumer** 8 **Financial Protection Agency**

9 **SEC. 1011. ESTABLISHMENT OF THE AGENCY.**

10 (a) CFPA ESTABLISHED.—There is established the
11 Consumer Financial Protection Agency, which shall be an
12 independent establishment, as defined under section 104
13 of title 5, United States Code, and shall regulate the provi-
14 sion of consumer financial products or services under this
15 title, the enumerated consumer laws, and the authorities
16 transferred under subtitles F and H.

17 (b) PRINCIPAL OFFICE.—The principal office of the
18 CFPA shall be located in the city of Washington, District
19 of Columbia, at 1 or more sites.

20 **SEC. 1012. BOARD OF DIRECTORS.**

21 (a) COMPOSITION OF THE BOARD.—The manage-
22 ment of the CFPA shall be vested in a board of directors
23 that is composed of 5 members—

1 (1) 4 of whom shall be appointed by the Presi-
2 dent, by and with the advice and consent of the Sen-
3 ate—

4 (A) from among individuals who are citi-
5 zens of the United States; and

6 (B) who have strong competencies and ex-
7 periences related to consumer financial products
8 or services, including a demonstrated under-
9 standing of consumer protection regarding fi-
10 nancial products and services; and

11 (2) the Director of FIRA.

12 (b) DIRECTOR OF THE CFPA.—From among the ap-
13 pointed Board members, the President shall designate 1
14 member of the Board to serve as the Director. The Direc-
15 tor shall be the chief executive of the CFPA.

16 (c) TERMS OF APPOINTED BOARD MEMBERS.—

17 (1) IN GENERAL.—An appointed Board mem-
18 ber, including the Director, shall serve for a term of
19 5 years.

20 (2) REMOVAL FOR CAUSE.—The President may
21 remove any appointed Board member for ineffi-
22 ciency, neglect of duty, or malfeasance in office.

23 (3) VACANCIES.—Any member of the Board ap-
24 pointed to fill a vacancy occurring before the expira-
25 tion of the term to which the predecessor of that

1 member was appointed (including the Director) shall
2 be appointed only for the remainder of the term.

3 (4) CONTINUATION OF SERVICE.—Each ap-
4 pointed Board member may continue to serve after
5 the expiration of the term of office to which that
6 member was appointed, until a successor has been
7 appointed by the President and confirmed by the
8 Senate.

9 (5) INITIAL APPOINTMENTS STAGGERED.—The
10 appointed Board members (including the Director)
11 shall serve staggered terms, which initially shall be
12 established by the President for terms of 2, 3, 4,
13 and 5 years, respectively.

14 (d) COMPENSATION.—

15 (1) DIRECTOR.—The Director shall be com-
16 pensated at the rate prescribed for level II of the
17 Executive Schedule under section 5313 of title 5,
18 United States Code.

19 (2) OTHER APPOINTED BOARD MEMBERS.—The
20 3 other appointed Board members shall each be
21 compensated at the rate prescribed for level III of
22 the Executive Schedule under section 5314 of title
23 5, United States Code.

1 **SEC. 1013. EXECUTIVE AND ADMINISTRATIVE POWERS.**

2 (a) POWERS OF THE BOARD.—The Board is author-
3 ized to establish the general policies of the CFPA with
4 respect to all executive and administrative functions, in-
5 cluding—

6 (1) the establishment of rules for conducting
7 the general business of the CFPA, in a manner not
8 inconsistent with this title;

9 (2) to bind the CFPA and enter into contracts;

10 (3) directing the establishment and mainte-
11 nance of divisions or other offices within the CFPA,
12 in order to carry out the responsibilities of this title,
13 the enumerated consumer laws, and the authorities
14 transferred under subtitles F and H, and to satisfy
15 the requirements of other applicable law;

16 (4) to coordinate and oversee the operation of
17 all administrative, enforcement, and research activi-
18 ties of the CFPA;

19 (5) to adopt and use a seal;

20 (6) to determine the character of and the neces-
21 sity for the obligations and expenditures of the
22 CFPA;

23 (7) delegating authority, at the lawful discretion
24 of the CFPA, to the Director or to a member of the
25 Board or to any officer or employee of the CFPA to

1 take action under any provision of this title or under
2 other applicable law;

3 (8) implementing this title and the authorities
4 of the CFPA under the enumerated consumer laws
5 and under subtitles F and H through rules, orders,
6 guidance, interpretations, statements of policy, ex-
7 aminations, and enforcement actions; and

8 (9) performing such other functions as may be
9 authorized or required by law.

10 (b) TRANACTING BUSINESS.—

11 (1) QUORUM.—Three members of the Board
12 shall constitute a quorum for the transaction of
13 business, except that if only 3 members of the Board
14 are serving because of vacancies, 2 members of the
15 Board shall constitute a quorum for the transaction
16 of business.

17 (2) VOTING.—Other than acts performed under
18 delegated authority, the Board shall act through a
19 majority vote of its members assembled.

20 (c) AUTHORITY OF THE DIRECTOR.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 the Director shall exercise all executive and adminis-
23 trative functions of the CFPA, including with re-
24 spect to—

1 (A) the appointment and supervision of
2 personnel employed by the CFPA;

3 (B) the distribution of business among per-
4 sonnel appointed and supervised by the Director
5 and among administrative units of the CFPA;
6 and

7 (C) the use and expenditure of funds.

8 (2) LIMITATION.—In carrying out the functions
9 under this subsection, the Director shall be governed
10 by general policies of the Board and by such rules,
11 orders, decisions, findings, and determinations as
12 the Board may by law be authorized to make.

13 **SEC. 1014. ADMINISTRATION.**

14 (a) OFFICERS.—The CFPA shall appoint—

15 (1) a secretary, who shall be charged with
16 maintaining the records of the CFPA and per-
17 forming such other activities as the Board directs;

18 (2) a general counsel, who shall be charged with
19 overseeing the legal affairs of the CFPA and per-
20 forming such other activities as the Board directs;
21 and

22 (3) an inspector general, who shall have the au-
23 thority and functions of an inspector general of a
24 designated Federal entity under the Inspector Gen-
25 eral Act of 1978 (5 U.S.C. App. 3).

1 (b) PERSONNEL.—

2 (1) APPOINTMENT.—

3 (A) IN GENERAL.—The CFPA may fix the
4 number of, and appoint and direct, all employ-
5 ees of the CFPA.

6 (B) EXPEDITED HIRING.—During the 2-
7 year period beginning on the date of enactment
8 of this Act, the CFPA may appoint, without re-
9 gard to the provisions of sections 3309 through
10 3318, of title 5, United States Code, candidates
11 directly to positions for which public notice has
12 been given.

13 (2) COMPENSATION.—

14 (A) PAY.—The CFPA shall fix, adjust,
15 and administer the pay for all employees of the
16 CFPA without regard to the provisions of chap-
17 ter 51 or subchapter III of chapter 53 of title
18 5, United States Code.

19 (B) BENEFITS.—The CFPA may provide
20 additional benefits to CFPA employees if the
21 same type of benefits are then being provided
22 by the Board of Governors or, if not then being
23 provided, could be provided by the Board of
24 Governors under applicable provisions of law.

1 (C) MINIMUM STANDARD.—The CFPA
2 shall at all times provide compensation and ben-
3 efits to each class of employees that, at a min-
4 imum, are equivalent to the compensation and
5 benefits provided by the Board of Governors for
6 the corresponding class of employees in any fis-
7 cal year.

8 (c) SPECIFIC FUNCTIONAL UNITS.—

9 (1) RESEARCH.—The CFPA shall establish a
10 unit whose functions shall include researching, ana-
11 lyzing, and reporting on—

12 (A) developments in markets for consumer
13 financial products or services, including market
14 areas of alternative consumer financial products
15 or services with high growth rates and areas of
16 risk to consumers;

17 (B) access to fair and affordable credit for
18 traditionally underserved communities;

19 (C) consumer awareness, understanding,
20 and use of disclosures and communications re-
21 garding consumer financial products or services;

22 (D) consumer awareness and under-
23 standing of costs, risks, and benefits of con-
24 sumer financial products or services; and

1 (E) consumer behavior with respect to con-
2 sumer financial products or services.

3 (2) COMMUNITY AFFAIRS.—The CFPA shall es-
4 tablish a unit whose functions shall include pro-
5 viding information, guidance, and technical assist-
6 ance regarding the provision of consumer financial
7 products or services to traditionally underserved con-
8 sumers and communities.

9 (3) CONSUMER COMPLAINTS.—

10 (A) IN GENERAL.—The CFPA shall estab-
11 lish a unit whose functions shall include estab-
12 lishing a central database for collecting and
13 tracking information on consumer complaints
14 about consumer financial products or services
15 and resolution of complaints.

16 (B) COORDINATION.—In performing the
17 functions described in subparagraph (A), the
18 CFPA shall coordinate with the Federal bank-
19 ing agencies, other Federal agencies, and other
20 regulatory agencies or enforcement authorities.

21 (4) DATA SHARING REQUIRED.—To the extent
22 permitted by law and the rules prescribed by the
23 CFPA regarding the confidential treatment of infor-
24 mation, the CFPA shall share data relating to con-
25 sumer complaints with Federal banking agencies,

1 other Federal agencies, and State regulators. To the
2 extent permitted by law and the regulations pre-
3 scribed by the Federal banking agencies and other
4 Federal agencies regarding the confidential treat-
5 ment of information, the Federal banking agencies
6 and other Federal agencies, respectively, shall share
7 data relating to consumer complaints with the
8 CFPA.

9 (d) OFFICE OF FAIR LENDING AND EQUAL OPPOR-
10 TUNITY.—

11 (1) ESTABLISHMENT.—Not later than 180 days
12 after the date of enactment of this Act, the Director
13 shall establish within the CFPA the Office of Fair
14 Lending and Equal Opportunity.

15 (2) FUNCTIONS.—The Office of Fair Lending
16 and Equal Opportunity shall have such powers and
17 duties as the Director may delegate to the Office, in-
18 cluding—

19 (A) providing oversight and enforcement of
20 Federal laws intended to ensure the fair, equi-
21 table, and nondiscriminatory access to credit for
22 both individuals and communities that are en-
23 forced by the CFPA, including the Equal Credit
24 Opportunity Act and the Home Mortgage Dis-
25 closure Act;

1 (B) coordinating fair lending enforcement
2 efforts of the CFPA with other Federal agen-
3 cies and State regulators, as appropriate, to
4 promote consistent, efficient and effective en-
5 forcement of Federal fair lending laws;

6 (C) working with private industry, fair
7 lending, civil rights, consumer and community
8 advocates on the promotion of fair lending com-
9 pliance and education; and

10 (D) providing annual reports to Congress
11 on the efforts of the CFPA to fulfill its fair
12 lending mandate.

13 (3) ADMINISTRATION OF OFFICE.—There is es-
14 tablished the position of Assistant Director of the
15 CFPA for Fair Lending and Equal Opportunity,
16 who—

17 (A) shall be appointed by the Director;

18 (B) shall carry out such duties as the Di-
19 rector may delegate to such Assistant Director;
20 and

21 (C) shall serve as the Director of the Of-
22 fice of Fair Lending and Equal Opportunity.

23 (e) OFFICE OF FINANCIAL LITERACY.—

24 (1) ESTABLISHMENT.—The CFPA shall estab-
25 lish an Office of Financial Literacy, which shall be

1 responsible for developing and implementing initia-
2 tives intended to educate and empower consumers to
3 make better informed financial decisions.

4 (2) OTHER DUTIES.—The Office of Financial
5 Literacy shall develop and implement a strategy to
6 improve the financial literacy of consumers that in-
7 cludes measurable goals and objectives, in consulta-
8 tion with the Financial Literacy and Education
9 Commission, consistent with the National Strategy
10 for Financial Education, through activities including
11 providing opportunities for consumers to access—

12 (A) financial counseling;

13 (B) information to assist with the evalua-
14 tion of credit products and the understanding
15 of credit histories and scores;

16 (C) savings, borrowing, and other services
17 found at mainstream financial institutions;

18 (D) activities intended to—

19 (i) prepare for educational expenses
20 and the submission of financial aid appli-
21 cations, and other major purchases;

22 (ii) reduce debt; and

23 (iii) improve the financial situation of
24 the consumer;

1 (E) assistance in developing long-term sav-
2 ings strategies; and

3 (F) wealth building and financial services
4 during the preparation process to claim earned
5 income tax credits and Federal benefits.

6 (3) COORDINATION.—The Office of Financial
7 Literacy shall coordinate with other units within the
8 CFPA in carrying out its functions, including—

9 (A) working with the Community Affairs
10 Office to implement the strategy to improve fi-
11 nancial literacy of consumers; and

12 (B) working with the research unit estab-
13 lished by the CFPA to conduct research related
14 to consumer financial education and counseling.

15 (4) REPORT.—Not later than 18 months after
16 the date of enactment of this Act, and annually
17 thereafter, the CFPA shall submit a report on its fi-
18 nancial literacy activities and strategy to improve fi-
19 nancial literacy of consumers to—

20 (A) the Committee on Banking, Housing,
21 and Urban Affairs of the Senate; and

22 (B) the Committee on Financial Services
23 of the House of Representatives.

24 (5) MEMBERSHIP IN FINANCIAL LITERACY AND
25 EDUCATION COMMISSION.—Section 513(c)(1) of the

1 Financial Literacy and Education Improvement Act
2 (20 U.S.C. 9702(c)(1)) is amended—

3 (A) in subparagraph (B), by striking
4 “‘and’” at the end;

5 (B) by redesignating subparagraph (C) as
6 subparagraph (D); and

7 (C) by inserting after subparagraph (B)
8 the following new subparagraph:

9 “(C) the Director of the Consumer Fi-
10 nancial Protection Agency; and”.

11 **SEC. 1015. CONSUMER ADVISORY BOARD.**

12 (a) ESTABLISHMENT REQUIRED.—The CFPA shall
13 establish a Consumer Advisory Board to advise and con-
14 sult with the board of directors of the CFPA in the exer-
15 cise of its functions under this title, the enumerated con-
16 sumer laws, and to provide information on emerging prac-
17 tices in the consumer financial products or services indus-
18 try.

19 (b) MEMBERSHIP.—In appointing the members of
20 the Consumer Advisory Board, the CFPA shall seek to
21 assemble experts in consumer protection, financial serv-
22 ices, community development, fair lending, and consumer
23 financial products or services and seek representation of
24 the interests of covered persons and consumers.

1 (c) MEETINGS.—The Consumer Advisory Board shall
2 meet from time to time at the call of the CFPA, but, at
3 a minimum, shall meet at least twice in each year.

4 (d) COMPENSATION AND TRAVEL EXPENSES.—Mem-
5 bers of the Consumer Advisory Board who are not full-
6 time employees of the United States shall—

7 (1) be entitled to receive compensation at a rate
8 fixed by the CFPA while attending meetings of the
9 Consumer Advisory Board, including travel time;
10 and

11 (2) be allowed travel expenses, including trans-
12 portation and subsistence, while away from their
13 homes or regular places of business.

14 **SEC. 1016. COORDINATION.**

15 (a) COORDINATION WITH OTHER FEDERAL AGEN-
16 CIES AND STATE REGULATORS.—The CFPA shall coordi-
17 nate with the Commission, the Commodity Futures Trad-
18 ing Commission, and other Federal agencies and State
19 regulators, as appropriate, to promote consistent regu-
20 latory treatment of consumer and investment products
21 and services.

22 (b) COORDINATION OF CONSUMER EDUCATION INI-
23 TIATIVES.—

24 (1) IN GENERAL.—The CFPA shall coordinate
25 with each agency that is a member of the Financial

1 Literacy and Education Commission established
2 under the Financial Literacy and Education Im-
3 provement Act (20 U.S.C. 9701 et seq.) to assist
4 each agency in enhancing its financial literacy and
5 education initiatives, to better achieve the goals enu-
6 merated under paragraph (2), and to ensure the
7 consistency of such initiatives across Federal agen-
8 cies.

9 (2) GOALS OF COORDINATION.—In coordinating
10 with the agencies described in paragraph (1), the
11 CFPA shall seek to improve efforts to educate con-
12 sumers about financial matters generally, the man-
13 agement of their own financial affairs, and their
14 judgments about the appropriateness of certain fi-
15 nancial products.

16 (c) COORDINATION ON FAIR HOUSING.—The CFPA
17 may coordinate investigations, compliance examinations,
18 information sharing, and related activities to support ac-
19 tivities undertaken pursuant to the Fair Housing Act by
20 other Federal agencies.

21 **SEC. 1017. REPORTS TO CONGRESS.**

22 (a) REPORTS REQUIRED.—The CFPA shall prepare
23 and submit to the President and to Congress a report at
24 the beginning of each regular session of Congress, begin-

1 ning with the session following the designated transfer
2 date.

3 (b) CONTENTS.—The reports required by subsection
4 (a) shall include—

5 (1) a list of the significant rules and orders
6 adopted by the CFPA, as well as other significant
7 initiatives conducted by the CFPA, during the pre-
8 ceding year and the plan of the CFPA for rules, or-
9 ders, or other initiatives to be undertaken during the
10 upcoming period;

11 (2) an analysis of complaints about consumer
12 financial products or services that the CFPA has re-
13 ceived and collected in its central database on com-
14 plaints during the preceding year;

15 (3) a list, with a brief statement of the issues,
16 of the public supervisory and enforcement actions to
17 which the CFPA is a party (including any adjudica-
18 tion proceedings conducted under subtitle E) during
19 the preceding year;

20 (4) the actions taken regarding rules, orders,
21 and supervisory actions with respect to covered per-
22 sons which are not credit unions or depository insti-
23 tutions, including descriptions of the types of such
24 covered persons, financial activities, and consumer

1 financial products or services affected by such rules,
2 orders, and supervisory actions;

3 (5) an appraisal of significant actions, including
4 actions under Federal or State law, by State attor-
5 neys general or State regulators relating to this title,
6 the authorities transferred to the CFPA under sub-
7 titles F and H, and the enumerated consumer laws;

8 (6) an analysis of the efforts of the CFPA to
9 fulfill the fair lending mission of the CFPA; and

10 (7) an appraisal of the regulatory and legal dif-
11 ficulties encountered by the Agency in carrying out
12 the mission and the duties of the Agency with re-
13 spect to consumer protection, including a description
14 of—

15 (A) the difficulties and hardships encoun-
16 tered with respect to coordinating with other
17 Federal and State government entities;

18 (B) the regulatory and enforcement limita-
19 tions placed on the Agency by this title;

20 (C) the practices of covered persons and
21 others under this title, that allow such persons
22 to harm consumers and escape regulation or en-
23 forcement, including any trends identified; and

1 (D) legislative and administrative rec-
2 ommendations with respect to solving or alle-
3 viating identified difficulties.

4 **SEC. 1018. FUNDING; FEES AND ASSESSMENTS; PENALTIES**
5 **AND FINES.**

6 (a) FEES AND ASSESSMENTS.—

7 (1) IN GENERAL.—The CFPA shall assess fees
8 on covered persons to recover the expenses of the
9 CFPA for carrying out its duties and responsibil-
10 ities, to the maximum extent possible. The CFPA
11 shall assess fees on covered persons, as described in
12 paragraph (3).

13 (2) RULEMAKING.—The CFPA shall prescribe
14 rules to govern the imposition and collection of fees
15 and assessments. Such rules shall specify and de-
16 fine—

17 (A) the basis of fees or assessments, such
18 as—

19 (i) the outstanding volume of con-
20 sumer credit accounts;

21 (ii) total assets under management;

22 (iii) volume of consumer financial
23 transactions;

24 (iv) use of service providers; or

1 (v) the complexity of and risk posed
2 by the covered person;

3 (B) the amount and frequency of fees or
4 assessments; and

5 (C) such other factors as the CFPA deter-
6 mines appropriate.

7 (3) ASSESSMENTS ON COVERED PERSONS.—

8 (A) NONDEPOSITORY COVERED PER-
9 SONS.—The CFPA shall impose fees for the
10 registration, examination, and supervision of
11 covered persons that are not credit unions or
12 depository institutions. To the maximum extent
13 possible, fees assessed by the CFPA under this
14 paragraph shall be established at levels nec-
15 essary to recover the expenses of the CFPA for
16 carrying out its duties and responsibilities, in-
17 cluding supervising such covered persons. Reg-
18 istration fees imposed on a covered person
19 under this paragraph shall, at a minimum, be
20 imposed at the time at which the covered per-
21 son registers (or periodically renews its reg-
22 istration) with the CFPA, in accordance with
23 rules prescribed by the CFPA.

24 (B) INSURED DEPOSITORY INSTITUTIONS
25 AND CREDIT UNIONS WITH ASSETS OF

1 \$10,000,000,000 OR GREATER.—The CFPA shall
2 assess such fees as are appropriate on each
3 credit union and insured depository institution
4 which has total consolidated assets of
5 \$10,000,000,000 or more, taking into account
6 their size and complexity and risk that they
7 pose. Fees assessed by the CFPA under this
8 paragraph may be established at levels nec-
9 essary to recover the expenses of the CFPA for
10 carrying out its duties and responsibilities, in-
11 cluding supervising such credit unions and in-
12 sured depository institutions, taking into ac-
13 count such other sums as are available to the
14 CFPA.

15 (C) FEDERALLY CHARTERED INSURED DE-
16 POSITORY INSTITUTIONS AND FEDERAL CREDIT
17 UNIONS WITH ASSETS OF LESS THAN
18 \$10,000,000,000.—

19 (i) IN GENERAL.—The CFPA may as-
20 sess fees for carrying out its duties and re-
21 sponsibilities on each Federal credit union
22 and federally chartered insured depository
23 institution which has total consolidated as-
24 sets of less than \$10,000,000,000 as are
25 appropriate, taking into account the size

1 and complexity of and risk posed by the
2 Federal credit union and insured deposi-
3 tory institution. The CFPA and the agency
4 responsible for chartering and supervising
5 national banks, in consultation with State
6 banking supervisors, shall coordinate on
7 the levels of fees assessed on Federal credit
8 unions and federally chartered insured de-
9 pository institutions under this paragraph.

10 (ii) PARITY WITH FEES ASSESSED ON
11 STATE-CHARTERED INSTITUTIONS.—The
12 CFPA may not assess fees under clause (i)
13 that, when combined with the fees assessed
14 on such insured depository institutions by
15 the agency responsible for chartering and
16 supervising national banks, exceed the av-
17 erage level of fees charged to State-char-
18 tered banks and State-chartered credit
19 unions having total consolidated assets of
20 less than \$10,000,000,000. In establishing
21 the fees assessed on federally chartered in-
22 sured depository institutions under clause
23 (i), the agencies may take into account
24 variances in the levels of fees assessed on
25 State-chartered banks and State-chartered

1 credit unions, including variances among
2 States.

3 (D) STATE-CHARTERED CREDIT UNIONS
4 AND INSURED DEPOSITORY INSTITUTIONS WITH
5 ASSETS OF LESS THAN \$10,000,000,000.—The
6 CFPA may not assess fees on a State-chartered
7 credit union or State-chartered insured deposi-
8 tory institution which has total consolidated as-
9 sets of less than \$10,000,000,000.

10 (E) TRANSFER OF FUNDS FROM BOARD OF
11 GOVERNORS.—

12 (i) IN GENERAL.—Each year (or quar-
13 ter of such year), beginning on the des-
14 ignated transfer date, and each quarter
15 thereafter, the Board of Governors shall
16 transfer to the CFPA from the combined
17 earnings of the Federal Reserve System
18 the amount estimated by the CFPA needed
19 to carry out the authorities granted in this
20 title, under the enumerated consumer laws,
21 and transferred under subtitles F and H,
22 taking into account such other sums avail-
23 able to the CFPA for the following year
24 (or quarter of such year), as requested by
25 the CFPA.

1 (ii) TRANSITION PERIOD.—Beginning
2 on the date of enactment of this Act and
3 until the designated transfer date, the
4 Board of Governors shall transfer to the
5 CFPA the amount estimated by the Sec-
6 retary to needed to carry out the authori-
7 ties granted to the Secretary under this
8 title, under the enumerated consumer laws,
9 and transferred under subtitles F and H,
10 from the date of enactment of this Act
11 until the designated transfer date.

12 (b) CONSUMER FINANCIAL PROTECTION AGENCY
13 FUND.—

14 (1) SEPARATE FUND IN TREASURY ESTAB-
15 LISHED.—There is established in the Treasury of
16 the United States a separate fund, to be known as
17 the “Consumer Financial Protection Agency Fund”
18 (referred to in this section as the “CFPA Fund”).

19 (2) FUND RECEIPTS.—All amounts transferred
20 to the CFPA under subsection (a), and all super-
21 visory fees and assessments that the CFPA receives
22 under subsection (b) shall be deposited into the
23 CFPA Fund.

24 (3) INVESTMENT AUTHORITY.—

1 (A) AMOUNTS IN CFPA FUND MAY BE IN-
2 VESTED.—The CFPA may request the Sec-
3 retary to invest the portion of the CFPA Fund
4 that is not, in the judgment of the CFPA, re-
5 quired to meet the current needs of the CFPA.

6 (B) ELIGIBLE INVESTMENTS.—Invest-
7 ments authorized by this paragraph shall be
8 made by the Secretary in obligations of the
9 United States or obligations that are guaran-
10 teed as to principal and interest by the United
11 States, with maturities suitable to the needs of
12 the CFPA Fund, as determined by the CFPA.

13 (C) INTEREST AND PROCEEDS CRED-
14 ITED.—The interest on, and the proceeds from
15 the sale or redemption of, any obligations held
16 in the Fund shall be credited to the Fund.

17 (c) USE OF FUNDS.—

18 (1) IN GENERAL.—Funds obtained by, trans-
19 ferred to, or credited to the CFPA Fund shall be im-
20 mediately available to the CFPA, and shall remain
21 available until expended, to pay the expenses of the
22 CFPA in carrying out its duties and responsibilities.
23 The compensation of the members of the Board and
24 other employees of the CFPA and all other expenses

1 thereof may be paid from assessments levied under
2 this section.

3 (2) FEES, ASSESSMENTS, AND OTHER FUNDS
4 NOT GOVERNMENT FUNDS.—Funds obtained by or
5 transferred to the CFPA Fund shall not be con-
6 strued to be Government funds or appropriated
7 monies.

8 (3) AMOUNTS NOT SUBJECT TO APPORTION-
9 MENT.—Notwithstanding any other provision of law,
10 amounts in the CFPA Fund and in the Civil Penalty
11 Fund established under subsection (d) shall not be
12 subject to apportionment for purposes of chapter 15
13 of title 31, United States Code, or under any other
14 authority.

15 (d) PENALTIES AND FINES.—

16 (1) ESTABLISHMENT OF VICTIMS RELIEF
17 FUND.—There is established in the Treasury of the
18 United States a fund to be known as the “Consumer
19 Financial Protection Agency Civil Penalty Fund”
20 (referred to in this subsection as the “Civil Penalty
21 Fund”). If the CFPA obtains a civil penalty against
22 any person in any judicial or administrative action
23 under this title, the authorities transferred under
24 subtitles F and H, or any enumerated consumer law,

1 the CFPA shall deposit into the Civil Penalty Fund,
2 the amount of the penalty collected.

3 (2) PAYMENT TO VICTIMS.—Amounts in the
4 Civil Penalty Fund shall be available to the CFPA,
5 without fiscal year limitation, for payments to the
6 victims of activities for which civil penalties have
7 been imposed under this title, the authorities trans-
8 ferred under subtitles F and H, or any enumerated
9 consumer law. To the extent such victims cannot be
10 located or such payments are otherwise not prac-
11 ticable, the CFPA may use such funds for the pur-
12 pose of consumer education and financial literacy
13 programs.

14 **SEC. 1019. EFFECTIVE DATE.**

15 This subtitle shall become effective on the date of en-
16 actment of this Act.

17 **Subtitle B—General Powers of the**
18 **CFPA**

19 **SEC. 1021. MANDATE AND OBJECTIVES.**

20 (a) MANDATE.—The CFPA shall seek to promote
21 transparency, simplicity, fairness, accountability, and ac-
22 cess in the market for consumer financial products or serv-
23 ices.

24 (b) OBJECTIVES.—The CFPA is authorized to exer-
25 cise its authorities under this title, in the enumerated con-

1 consumer laws, and transferred under subtitles F and H for
2 the purposes of ensuring that—

3 (1) consumers have, understand, and can use
4 the information they need to make responsible deci-
5 sions about consumer financial products or services;

6 (2) consumers are protected from abuse, unfair-
7 ness, deception, and discrimination;

8 (3) markets for consumer financial products or
9 services operate fairly and efficiently, with ample
10 room for sustainable growth and innovation; and

11 (4) consumers, including traditionally under-
12 served consumers and communities, have access to
13 financial services.

14 **SEC. 1022. AUTHORITIES.**

15 (a) **IN GENERAL.**—The CFPA is authorized to exer-
16 cise its authorities under this title, in the enumerated con-
17 sumer laws, and transferred under subtitles F and H, to
18 administer, enforce, and otherwise implement the provi-
19 sions of this title, the enumerated consumer laws, and the
20 authorities transferred under subtitles F and H.

21 (b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

22 (1) **IN GENERAL.**—The CFPA may prescribe
23 rules and issue orders and guidance, as may be nec-
24 essary or appropriate to enable the CFPA to admin-
25 ister and carry out the purposes and objectives of

1 this title, the authorities transferred under subtitles
2 F and H, and the enumerated consumer laws, and
3 to prevent evasions thereof.

4 (2) STANDARDS FOR RULEMAKING.—In pre-
5 scribing a rule under this title or pursuant to the
6 authorities transferred under subtitles F and H or
7 the enumerated consumer laws, the CFPA shall—

8 (A) consider the potential benefits and
9 costs to consumers and covered persons, includ-
10 ing the potential reduction of access by con-
11 sumers to consumer financial products or serv-
12 ices resulting from such rule; and

13 (B) consult with the Federal banking agen-
14 cies, or other Federal agencies, as appropriate,
15 regarding the consistency of a proposed rule
16 with prudential, market, or systemic objectives
17 administered by such agencies.

18 (3) EXEMPTIONS.—

19 (A) IN GENERAL.—The CFPA, by rule (or,
20 with respect to a covered person for the purpose
21 of carrying out section 1034, including with re-
22 spect to an enumerated consumer law, by
23 order), may conditionally or unconditionally ex-
24 empt any covered person, service provider, or
25 any consumer financial product or service or

1 any class of covered persons, class of service
2 providers, or consumer financial products or
3 services, from any provision of this title, or
4 from any rule issued under this title, as the
5 CFPA determines necessary or appropriate to
6 carry out the purposes and objectives of this
7 title, taking into consideration the factors in
8 subparagraph (B).

9 (B) FACTORS.—In issuing an exemption
10 by rule or order, as permitted under subpara-
11 graph (A), the CFPA shall, as appropriate, take
12 into consideration—

13 (i) the total assets of the covered per-
14 son;

15 (ii) the volume of transactions involv-
16 ing consumer financial products or services
17 in which the covered person engages;

18 (iii) the extent to which the covered
19 person engages in one or more financial
20 activities; and

21 (iv) existing provisions of law which
22 are applicable to the consumer financial
23 product or service and the extent to which
24 such provisions provide consumers with
25 adequate protections.

1 (c) EXAMINATIONS AND REPORTS.—

2 (1) IN GENERAL.—The CFPA may, on a peri-
3 odic basis, examine, or require reports from, a cov-
4 ered person or service provider in connection with
5 the provision of any consumer financial product or
6 service by a covered person, for purposes of ensuring
7 compliance with the requirements of this title, the
8 enumerated consumer laws, and any rules prescribed
9 by the CFPA thereunder or under the authorities
10 transferred under subtitles F and H, and enforcing
11 compliance with such requirements.

12 (2) RISK-BASED EXAMINATION PROGRAM.—The
13 CFPA shall exercise its authority under paragraph
14 (1) in a manner designed to ensure that such exer-
15 cise, with respect to covered persons, is made with-
16 out regard to charter or corporate form, based on
17 the assessment by the CFPA of the risks posed to
18 consumers in the relevant product markets and geo-
19 graphic markets, and taking into consideration, as
20 applicable—

21 (A) the asset size of the covered person;

22 (B) the volume of transactions involving
23 consumer financial products or services in
24 which the covered person engages;

1 (C) the risks to consumers created by the
2 provision of such consumer financial products
3 or services;

4 (D) in the case of State-chartered or li-
5 censed institutions, the extent to which such in-
6 stitutions are subject to oversight by State au-
7 thorities for consumer protection; and

8 (E) any other factors that the CFPA de-
9 termines to be relevant to a class of covered
10 persons.

11 (3) COORDINATION.—To minimize regulatory
12 burden, the CFPA shall coordinate its supervisory
13 activities with the supervisory activities conducted by
14 the Federal banking agencies, the National Credit
15 Union Administration, and the State bank regu-
16 latory authorities, including establishing their re-
17 spective schedules for examining covered persons
18 and requirements regarding reports to be submitted
19 by covered persons.

20 (4) CONTENT OF REPORTS.—The CFPA may
21 require any reports collected under paragraph (1) to
22 include such information as necessary to keep the
23 CFPA informed as to—

24 (A) the compliance systems or procedures
25 of the covered person or any affiliate thereof,

1 with applicable provisions of this title or any
2 other provision of law that the CFPA has juris-
3 diction to enforce; and

4 (B) matters related to the provision of con-
5 sumer financial products or services, including
6 the servicing or maintenance of accounts or ex-
7 tensions of credit.

8 (5) USE OF EXISTING REPORTS.—The CFPA
9 shall, to the fullest extent possible, use—

10 (A) reports pertaining to a covered person,
11 or any service provider to such covered person
12 that have been provided or required to have
13 been provided to a Federal or State agency; and

14 (B) information that has been reported
15 publicly.

16 (6) ACCESS BY THE CFPA TO REPORTS OF
17 OTHER REGULATORS.—

18 (A) EXAMINATION AND FINANCIAL CONDI-
19 TION REPORTS.—Upon providing reasonable as-
20 surances of confidentiality, the CFPA shall
21 have access to any report of examination or fi-
22 nancial condition made by a Federal banking
23 agency or other Federal agency having super-
24 visory authority over a covered person, and to
25 all revisions made to any such report.

1 (B) PROVISION OF OTHER REPORTS TO
2 CFPA.—In addition to the reports described in
3 subparagraph (A), a Federal banking agency
4 may, in its discretion, furnish to the CFPA any
5 other report or other confidential supervisory
6 information concerning any insured depository
7 institution, credit union, or other entity exam-
8 ined by such agency under authority of any
9 Federal law.

10 (7) ACCESS BY OTHER REGULATORS TO RE-
11 PORTS OF THE CFPA.—

12 (A) EXAMINATION REPORTS.—Upon pro-
13 viding reasonable assurances of confidentiality,
14 a Federal banking agency, a State regulator, or
15 any other Federal agency having supervision of
16 a covered person shall have access to any report
17 of examination made by the CFPA with respect
18 to the covered person or service provider, and to
19 all revisions made to any such report.

20 (B) PROVISION OF OTHER REPORTS TO
21 OTHER REGULATORS.—In addition to the re-
22 ports described in subparagraph (A), the CFPA
23 may, in its discretion, furnish to a Federal
24 banking agency any other report or other con-
25 fidential supervisory information concerning

1 any insured depository institution, any credit
2 union, or other entity examined by the CFPA
3 under the authority of any other provision of
4 Federal law.

5 (8) PRESERVATION OF AUTHORITY.—Nothing
6 in—

7 (A) paragraph (3) may be construed to
8 prevent the CFPA from conducting an exam-
9 ination authorized by this title or under the au-
10 thorities transferred under subtitles F and H or
11 pursuant to any enumerated consumer law; and

12 (B) this title may be construed as limiting
13 the authority of the Director to require reports
14 from a covered person, as permitted under
15 paragraph (1), regarding information owned or
16 under the control of the covered person, regard-
17 less of whether such information is maintained,
18 stored, or processed by another person.

19 (9) REPORTS OF TAX LAW NONCOMPLIANCE.—
20 The CFPA shall provide the Commissioner of Inter-
21 nal Revenue with any report of examination or re-
22 lated information identifying possible tax law non-
23 compliance.

24 (d) EXCLUSIVE RULEMAKING AND EXAMINATION
25 AUTHORITY.—Subject to subsection (f), but notwith-

1 standing any other provision of Federal law, to the extent
2 that a provision of Federal law authorizes the CFPA and
3 another Federal agency to issue regulations or guidance,
4 conduct examinations, or require reports under that provi-
5 sion of law for purposes of assuring compliance with this
6 title, any enumerated consumer law, the laws for which
7 authorities were transferred under subtitles F and H, and
8 any regulations thereunder, the CFPA shall have the ex-
9 clusive authority to prescribe rules, issue guidance, con-
10 duct examinations, require reports, or issue exemptions
11 with regard to any person subject to those provisions of
12 law.

13 (e) PRIMARY ENFORCEMENT AUTHORITY.—

14 (1) THE CFPA TO HAVE PRIMARY ENFORCE-
15 MENT AUTHORITY.—To the extent that a provision
16 of Federal law authorizes the CFPA and another
17 Federal agency to enforce that provision of law, the
18 CFPA shall have primary authority to enforce that
19 provision of Federal law with respect to any person,
20 in accordance with this subsection.

21 (2) REFERRAL.—Any Federal agency author-
22 ized to enforce a provision of Federal law described
23 in paragraph (1) may recommend in writing to the
24 CFPA that the CFPA initiate an enforcement pro-
25 ceeding, as the CFPA is authorized by that provision

1 of Federal law or by this title. The recommendation
2 shall be accompanied by a written explanation of the
3 concerns giving rise to the recommendation.

4 (3) BACKSTOP ENFORCEMENT AUTHORITY OF
5 OTHER FEDERAL AGENCY.—If the CFPA does not,
6 before the end of the 120-day period beginning on
7 the date on which the CFPA receives a recommenda-
8 tion under paragraph (2), initiate an enforcement
9 proceeding, the other agency may initiate an en-
10 forcement proceeding, as permitted by the subject
11 provision of Federal law.

12 (f) SIMULTANEOUS AND COORDINATED SUPER-
13 VISORY ACTION.—

14 (1) EXAMINATIONS.—A Federal banking agen-
15 cy and the CFPA shall, with respect to each insured
16 depository institution, credit union, or other covered
17 person supervised by the Federal banking agency
18 and the CFPA, respectively—

19 (A) coordinate the scheduling of examina-
20 tions of the insured depository institution, cred-
21 it union, or other covered person;

22 (B) conduct simultaneous examinations of
23 each insured depository institution, credit
24 union, or other covered person, unless such in-

1 stitution requests examinations to be conducted
2 separately;

3 (C) share each draft report of examination
4 with the other agency and permit the receiving
5 agency a reasonable opportunity (which shall
6 not be less than a period of 30 days after the
7 date of receipt) to comment on the draft report
8 before such report is made final; and

9 (D) prior to issuing a final report of exam-
10 ination or taking supervisory action, take into
11 consideration concerns, if any, raised in the
12 comments made by the other agency.

13 (2) COORDINATION WITH STATE BANK SUPER-
14 VISORS.—The CFPA shall pursue arrangements and
15 agreements with State bank supervisors to coordi-
16 nate examinations, consistent with paragraph (1).

17 (3) AVOIDANCE OF CONFLICT IN SUPER-
18 VISION.—

19 (A) BANK REQUEST.—If the proposed su-
20 pervisory determinations of the CFPA and a
21 Federal banking agency (in this section referred
22 to collectively as the “agencies”) are conflicting,
23 an insured depository institution, credit union,
24 or other covered person may request the agen-

1 cies to coordinate and present a joint statement
2 of coordinated supervisory action.

3 (B) JOINT STATEMENT.—The agencies
4 shall provide a joint statement under subpara-
5 graph (A), not later than 30 days after the date
6 of receipt of the request of the insured deposi-
7 tory institution, credit union, or covered person.

8 (4) APPEALS TO GOVERNING PANEL.—

9 (A) IN GENERAL.—If the agencies do not
10 issue a joint statement required by subpara-
11 graph (B), or if either of the agencies takes or
12 attempts to take any supervisory action relating
13 to the request for the joint statement without
14 the consent of the other agency, an insured de-
15 pository institution, credit union, or other cov-
16 ered person may institute an appeal to a gov-
17 erning panel, as provided in this subsection, not
18 later than 30 days after the expiration of the
19 period during which a joint statement is re-
20 quired to be filed under paragraph (3)(B).

21 (B) COMPOSITION OF GOVERNING
22 PANEL.—The governing panel for an appeal
23 under this paragraph shall be composed of—

1 (i) a representative from the CFPA
2 and a representative of the Federal bank-
3 ing agency, both of whom—

4 (I) have not participated in the
5 material supervisory determinations
6 under appeal; and

7 (II) do not directly or indirectly
8 report to the person who made the su-
9 pervisory determinations under ap-
10 peal; and

11 (ii) a representative from the Federal
12 banking agency that heads the Federal Fi-
13 nancial Institution Examination Council,
14 except as provided in subparagraph (C).

15 (C) SUBSTITUTE MEMBER.—If the Federal
16 Financial Institutions Examination Council is
17 headed by the Federal banking agency that has
18 issued a conflicting material supervisory deter-
19 mination that is the subject of appeal under
20 this paragraph, the Federal banking agency
21 that is next scheduled to head the Federal Fi-
22 nancial Institutions Examination Council shall
23 appoint one of its employees as a member of
24 the governing panel for that appeal.

1 (D) CONDUCT OF APPEAL.—In an appeal
2 under this paragraph—

3 (i) the insured depository institution,
4 credit union, or other covered person—

5 (I) shall include in its appeal all
6 the facts and legal arguments per-
7 taining to the matter; and

8 (II) may, through counsel, em-
9 ployees, or representatives, appear be-
10 fore the governing panel in person or
11 by telephone; and

12 (ii) the governing panel—

13 (I) may request the insured de-
14 pository institution, credit union, or
15 other covered person, the CFPB, or
16 the Federal banking agency to
17 produce additional information rel-
18 evant to the appeal; and

19 (II) by a majority vote of its
20 members, shall provide a final deter-
21 mination, in writing, not later than 30
22 days after the date of filing of an
23 informationally complete appeal, or
24 such longer period as the panel and
25 the insured depository institution,

1 credit union, or other covered person
2 may jointly agree.

3 (E) PUBLIC AVAILABILITY OF DETERMINA-
4 TIONS.—A redacted copy of each determination
5 of the governing panel under this paragraph
6 shall be made public upon its issuance.

7 (F) PROHIBITION AGAINST RETALIA-
8 TION.—The CFPA and the Federal banking
9 agencies shall prescribe rules to provide safe-
10 guards from retaliation against the insured de-
11 pository institution, credit union, or other cov-
12 ered person instituting an appeal under this
13 paragraph, as well as their officers and employ-
14 ees.

15 (G) DEFINITIONS.—For purposes of this
16 paragraph, the following definitions shall apply:

17 (i) MATERIAL SUPERVISORY DETER-
18 MINATIONS.—The term “material super-
19 visory determinations”—

20 (I) includes those actions relating
21 to supervision and examinations for
22 which the FIRA, the CFPA, insured
23 depository institution, credit union, or
24 other covered person determines that

1 conflict resolution would be appro-
2 priate; and

3 (II) does not include a deter-
4 mination by a Federal banking agency
5 to appoint a conservator or receiver
6 for an insured depository institution
7 or a liquidating agent for an insured
8 credit union, as the case may be, or a
9 decision to take action pursuant to
10 section 38 of the Federal Deposit In-
11 surance Act (12 U.S.C. 1831o) or sec-
12 tion 212 of the Federal Credit Union
13 Act (112 U.S.C. 1790a), as appro-
14 priate.

15 (ii) INDEPENDENT APPELLATE PROC-
16 ESS.—The term “independent appellate
17 process” means a review by an agency offi-
18 cial who does not directly or indirectly re-
19 port to the agency official who made the
20 material supervisory determination under
21 review.

22 (H) EFFECT ON OTHER AUTHORITY.—
23 Nothing in this section shall modify or limit the
24 authority of an appropriate Federal banking
25 agency or the CFPA to interpret, or take en-

1 enforcement action under, any law or rule the in-
2 terpretation or enforcement of which is com-
3 mitted to the agency or CFPA, which shall in-
4 clude, in the case of the CFPA, this title, the
5 enumerated consumer laws, and the rules pre-
6 scribed thereunder.

7 **SEC. 1023. COLLECTION OF INFORMATION; CONFIDEN-**
8 **TIALITY RULES.**

9 (a) COLLECTION OF INFORMATION.—In conducting
10 research on the provision of consumer financial products
11 or services, the CFPA shall have the power to gather in-
12 formation from time to time regarding the organization,
13 business conduct, and practices of covered persons or serv-
14 ice providers. In order to gather such information, the
15 CFPA shall have the power—

16 (1) to gather and compile information;

17 (2) to require persons to file with the CFPA, in
18 such form and within such reasonable period of time
19 as the CFPA may prescribe, by rule or order, annual
20 or special reports, or answers in writing to specific
21 questions, furnishing information that the CFPA
22 may require; and

23 (3) to make public such information obtained
24 by the CFPA under this section as is in the public

1 interest in reports or otherwise in the manner best
2 suited for public information and use.

3 (b) CONFIDENTIALITY RULES.—The CFPA shall
4 prescribe rules regarding the confidential treatment of in-
5 formation obtained from persons in connection with the
6 exercise of its authorities under this title and the enumer-
7 ated consumer laws and the authorities transferred under
8 subtitles F and H.

9 (c) PRIVACY CONSIDERATIONS.—In collecting infor-
10 mation from any person, publicly releasing information
11 held by the CFPA, or requiring covered persons to publicly
12 report information, the CFPA shall take steps to ensure
13 that proprietary, personal, or confidential consumer infor-
14 mation that is protected from public disclosure under sec-
15 tion 552(b) or 552a of title 5, United States Code, or any
16 other provision of law, is not made public under this title.

17 **SEC. 1024. LIMITATIONS ON AUTHORITIES OF THE CFPA;**
18 **PRESERVATION OF AUTHORITIES.**

19 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
20 OTHER SELLERS OF NONFINANCIAL SERVICES.—

21 (1) IN GENERAL.—Except as permitted in para-
22 graph (3), the CFPA may not exercise any rule-
23 making, supervisory, enforcement or other authority,
24 including authority to order assessments, under this
25 title with respect to a person who is a merchant, re-

1 tailer, or seller of any nonfinancial good or service,
2 but only to the extent that such person is engaged
3 in the sale or brokerage of such nonfinancial good
4 or service.

5 (2) REAL ESTATE BROKERAGE ACTIVITIES EX-
6 CLUDED.—Without limiting paragraph (1) and ex-
7 cept as permitted in paragraph (3), the CFPA may
8 not exercise any rulemaking, supervisory, enforce-
9 ment or other authority, including authority to order
10 assessments, under this title with respect to a person
11 that is licensed or registered as a real estate broker,
12 real estate agent, in accordance with State law, but
13 only to the extent that such person—

14 (A) acts as a real estate agent or broker
15 for a buyer, seller, lessor, or lessee of real prop-
16 erty;

17 (B) brings together parties interested in
18 the sale, purchase, lease, rental, or exchange of
19 real property;

20 (C) negotiates, on behalf of any party, any
21 portion of a contract relating to the sale, pur-
22 chase, lease, rental, or exchange of real prop-
23 erty (other than in connection with the provi-
24 sion of financing with respect to any such
25 transaction); or

1 (D) offers to engage in any activity, or act
2 in any capacity, described in subparagraph (A),
3 (B), or (C).

4 (3) DESCRIPTION OF ACTIVITIES.—Paragraphs
5 (1) and (2) shall not apply to any person to the ex-
6 tent such person is engaged in any financial activity
7 described in any subparagraph of section 1002(13)
8 or is otherwise subject to any enumerated consumer
9 law or any law or authority transferred under sub-
10 title F or H.

11 (b) EXCLUSION FOR MERCHANTS, RETAILERS, AND
12 OTHER SELLERS OF NONFINANCIAL SERVICES FOR CER-
13 TAIN CREDIT TRANSACTIONS.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (3), the CFPA may not exercise any super-
16 visory or enforcement authority, including authority
17 to order assessments, under this title with respect
18 to—

19 (A) credit extended directly by a merchant,
20 retailer, or seller of nonfinancial goods or serv-
21 ices to a consumer, in a case in which the good
22 or service being provided is not itself a con-
23 sumer financial product or service, exclusively
24 for the purpose of enabling that consumer to

1 purchase such nonfinancial good or service di-
2 rectly from the merchant, retailer, or seller; or

3 (B) a merchant, retailer, or seller of a non-
4 financial good or service who directly collects
5 debt arising from such credit extended.

6 (2) RULE OF CONSTRUCTION.—No provision of
7 this title shall be construed as modifying, limiting,
8 or superseding the supervisory or enforcement au-
9 thority of the Federal Trade Commission or any
10 other agency with respect to credit extended, or the
11 collection of debt arising from such extension, di-
12 rectly by a merchant or retailer to a consumer exclu-
13 sively for the purpose of enabling that consumer to
14 purchase nonfinancial goods or services directly from
15 the merchant or retailer.

16 (3) EXCLUSIONS NOT APPLICABLE TO CERTAIN
17 CREDIT TRANSACTIONS OR ACTIVITIES.—Paragraph
18 (1) shall not apply to any credit transaction—

19 (A) including the collection of debt arising
20 from such extension, in which the merchant, re-
21 tailer, or seller of nonfinancial goods or services
22 assigns, sells or otherwise conveys such debt
23 owed by the consumer to another person;

1 (B) in which the credit provided exceeds
2 the market value of the nonfinancial good or
3 service provided;

4 (C) with respect to which the CFPA finds
5 that the sale of the nonfinancial good or service
6 is done as a subterfuge so as to evade or cir-
7 cumvent the provisions of this title; or

8 (D) in which the merchant, retailer, or
9 seller of nonfinancial goods or services regularly
10 extends credit and the credit is—

11 (i) subject to a finance charge; or

12 (ii) payable by written agreement in
13 more than 4 installments.

14 (c) EXCLUSION FOR ACCOUNTANTS AND TAX PRE-
15 PARERS.—

16 (1) IN GENERAL.—Except as permitted in para-
17 graph (2), the CFPA may not exercise any rule-
18 making, supervisory, enforcement or other authority,
19 including authority to order assessments, over—

20 (A) any person that is a certified public ac-
21 countant, permitted to practice as a certified
22 public accounting firm, or certified or licensed
23 for such purpose by a State, or any individual
24 who is employed by or holds an ownership inter-
25 est with respect to a person described in this

1 subparagraph, when such person is performing
2 or offering to perform—

3 (i) customary and usual accounting
4 activities, including the provision of ac-
5 counting, tax, advisory, other services that
6 are subject to the regulatory authority of a
7 State board of accountancy or a Federal
8 authority; or

9 (ii) other services that are incidental
10 to such customary and usual accounting
11 activities, to the extent that such incidental
12 services are not offered or provided—

13 (I) by the person separate and
14 apart from such customary and usual
15 accounting activities; or

16 (II) to consumers who are not re-
17 ceiving such customary and usual ac-
18 counting activities; or

19 (B) any person, other than a person de-
20 scribed in subparagraph (A) that performs in-
21 come tax preparation activities for consumers.

22 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
23 (1) shall not apply to—

24 (A) any person described in paragraph
25 (1)(A) to the extent such person is engaged in

1 any activity which is not a customary and usual
2 accounting activity described in paragraph
3 (1)(A) or incidental thereto but which is a fi-
4 nancial activity described in any subparagraph
5 of section 1002(13);

6 (B) any person described in paragraph
7 (1)(B) to the extent such person is engaged in
8 any activity which is a financial activity de-
9 scribed in any subparagraph of section
10 1002(13); or

11 (C) any person described in paragraph
12 (1)(A) or (1)(B) that is otherwise subject to
13 any of the enumerated consumer laws or any
14 law or authority transferred under subtitle F or
15 H.

16 (d) EXCLUSION FOR QUALIFIED RETIREMENT OR
17 ELIGIBLE DEFERRED COMPENSATION PLANS AND AR-
18 RANGEMENTS.—

19 (1) IN GENERAL.—No provision of this title
20 shall be construed as altering, amending, or affect-
21 ing the authority of the Secretary of the Treasury,
22 the Secretary of Labor, or the Commissioner of In-
23 ternal Revenue to adopt regulations, initiate enforce-
24 ment proceedings, or take any actions with respect
25 to—

1 (A) any retirement or eligible deferred
2 compensation plan or arrangement qualified
3 under or meeting the requirements of section
4 401(a), 403(a), 403(b), 457(b), 408 or 408A of
5 the Internal Revenue Code of 1986; or

6 (B) any educational savings arrangement
7 under section 529 of such Code.

8 (2) LIMITATION ON CFPA AUTHORITY.—

9 (A) IN GENERAL.—Except as permitted in
10 subsection (f), the CFPA may not exercise any
11 power to enforce this title with respect to serv-
12 ices provided directly (or indirectly if the serv-
13 ices relate to the operation of such plan or ar-
14 rangement) to any retirement or eligible de-
15 ferred compensation plan or arrangement quali-
16 fied under or meeting the requirements of sec-
17 tion 401(a), 403(a), 403(b), or 457(b) of the
18 Internal Revenue Code of 1986.

19 (B) SERVICES DEFINED.—For purposes
20 subparagraph (A), the term “services” means
21 activities relating to the establishment or ad-
22 ministration of a plan or arrangement, includ-
23 ing the custody and investment of assets.

24 (e) PERSONS REGULATED BY A STATE SECURITIES
25 COMMISSION.—

1 (1) IN GENERAL.—No provision of this title
2 shall be construed as altering, amending, or affect-
3 ing the authority of any securities commission (or
4 any agency or office performing like functions) of
5 any State to adopt rules, initiate enforcement pro-
6 ceedings, or take any other action with respect to a
7 person regulated by any securities commission (or
8 any agency or office performing like functions) of
9 any State. Except as permitted in paragraph (2) and
10 subsection (f), the CFPA shall have no authority to
11 exercise any power to enforce this title with respect
12 to a person regulated by any securities commission
13 (or any agency or office performing like functions)
14 of any State, but only to the extent that the person
15 acts in such regulated capacity.

16 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
17 (1) shall not apply to any person to the extent such
18 person is engaged in any financial activity described
19 in any subparagraph of section 1002(13) or is other-
20 wise subject to any enumerated consumer law or any
21 law or authority transferred under subtitle F or H.

22 (f) LIMITED AUTHORITY OF THE CFPA TO OBTAIN
23 INFORMATION.—Notwithstanding subsections (a), (b), (c),
24 (d), and (e), the CFPA may request or require information
25 from any person subject to or described in such sub-

1 sections in order to carry out the responsibilities and func-
2 tions of the CFPA and in accordance with section 1023,
3 1051, or 1052.

4 (g) EXCLUSION FOR PERSONS REGULATED BY THE
5 COMMISSION.—

6 (1) IN GENERAL.—No provision of this title
7 shall be construed as altering, amending, or affect-
8 ing the authority of the Commission or any securi-
9 ties commission (or any agency or office performing
10 like functions) of any State to adopt rules, initiate
11 enforcement proceedings, or take any other action
12 with respect to a person regulated by the Commis-
13 sion or any securities commission (or any agency or
14 office performing like functions) of any State. The
15 CFPA shall have no authority to exercise any power
16 to enforce this title with respect to a person regu-
17 lated by the Commission or any securities commis-
18 sion (or any agency or office performing like func-
19 tions) of any State.

20 (2) CONSULTATION AND COORDINATION.—Not-
21 withstanding paragraph (1), the Commission shall
22 consult and coordinate with the CFPA with respect
23 to any rule (including any advance notice of pro-
24 posed rulemaking) regarding an investment product
25 or service that is the same type of product as, or

1 that competes directly with, a consumer financial
2 product or service that is subject to the jurisdiction
3 of the CFPA under this title or under any other law.

4 (h) EXCLUSION FOR PERSONS REGULATED BY THE
5 COMMODITY FUTURES TRADING COMMISSION.—

6 (1) IN GENERAL.—No provision of this title
7 shall be construed as altering, amending, or affect-
8 ing the authority of the Commodity Futures Trading
9 Commission to adopt rules, initiate enforcement pro-
10 ceedings, or take any other action with respect to a
11 person regulated by the Commodity Futures Trading
12 Commission. The CFPA shall have no authority to
13 exercise any power to enforce this title with respect
14 to a person regulated by the Commodity Futures
15 Trading Commission.

16 (2) CONSULTATION AND COORDINATION.—Not-
17 withstanding paragraph (1), the Commodity Futures
18 Trading Commission shall consult and coordinate
19 with the CFPA with respect to any rule (including
20 any advance notice of proposed rulemaking) regard-
21 ing a product or service that is the same type of
22 product as, or that competes directly with, a con-
23 sumer financial product or service that is subject to
24 the jurisdiction of the CFPA under this title or
25 under any other law.

1 (i) INSURANCE.—

2 (1) IN GENERAL.—Except with respect to in-
3 surance activities described in section 1002, the
4 CFPA may not define as a financial activity, by reg-
5 ulation or otherwise, engaging in the business of in-
6 surance.

7 (2) NO AUTHORITY TO ESTABLISH RATES OR
8 PREMIUMS FOR COVERED INSURANCE ACTIVITIES.—
9 Nothing in this title may be construed as conferring
10 authority on the CFPA to approve or establish rates
11 or premiums with respect to an insurance product or
12 service described in section 1002.

13 (j) NO AUTHORITY TO IMPOSE USURY LIMIT.—No
14 provision of this title shall be construed as conferring au-
15 thority on the CFPA to establish a usury limit applicable
16 to an extension of credit offered or made by a covered per-
17 son to a consumer, unless explicitly authorized by law.

18 (k) ATTORNEY GENERAL.—No provision of this title
19 shall affect the authorities of the Attorney General under
20 otherwise applicable provisions of law.

21 (l) SECRETARY OF THE TREASURY.—No provision of
22 this title shall affect the authorities of the Secretary, in-
23 cluding with respect to prescribing rules, initiating en-
24 forcement proceedings, or taking other actions with re-

1 spect to a person that performs income tax preparation
2 activities for consumers.

3 **SEC. 1025. MONITORING; ASSESSMENTS OF SIGNIFICANT**
4 **RULES; REPORTS.**

5 (a) MONITORING.—

6 (1) IN GENERAL.—The CFPA shall monitor for
7 risks to consumers in the provision of consumer fi-
8 nancial products or services, including developments
9 in markets for such products or services.

10 (2) MEANS OF MONITORING.—Such monitoring
11 may be conducted by examinations of covered per-
12 sons or service providers, analysis of reports ob-
13 tained from covered persons or service providers, as-
14 sessment of consumer complaints, surveys and inter-
15 views of covered persons and consumers, and review
16 of available databases.

17 (3) CONSIDERATIONS.—In allocating its re-
18 sources to perform the monitoring required by this
19 section, the CFPA may consider, among other fac-
20 tors—

21 (A) likely risks and costs to consumers as-
22 sociated with buying or using a type of con-
23 sumer financial product or service;

1 (B) understanding by consumers of the
2 risks of a type of consumer financial product or
3 service;

4 (C) the state of the law that applies to the
5 provision of a consumer financial product or
6 service, including the extent to which the law is
7 likely to adequately protect consumers;

8 (D) rates of growth in the provision of a
9 consumer financial product or service;

10 (E) the extent, if any, to which the risks
11 of a consumer financial product or service may
12 disproportionately affect traditionally under-
13 served consumers, if any; or

14 (F) the types, number, and other pertinent
15 characteristics of covered persons that provide
16 the product or service.

17 (4) REPORTS.—The CFPA shall publish not
18 fewer than 1 report of significant findings of its
19 monitoring required by this subsection in each cal-
20 endar year, beginning with the first calendar year
21 that begins at least 1 year after the designated
22 transfer date.

23 (b) ASSESSMENT OF SIGNIFICANT RULES.—

24 (1) IN GENERAL.—The CFPA shall conduct an
25 assessment of each significant rule or order adopted

1 by the CFPA under this title, the authorities trans-
2 ferred under subtitles F and H, or any enumerated
3 consumer law that addresses, among other relevant
4 factors, the effectiveness of the rule in meeting the
5 purposes and objectives of this Act and the specific
6 goals stated by the CFPA. The assessment shall re-
7 flect available evidence and any data that the CFPA
8 reasonably may collect.

9 (2) REPORTS.—The CFPA shall publish a re-
10 port of its assessment under this subsection not
11 later than 3 years after the effective date of the rule
12 or order, unless the CFPA determines that 3 years
13 is not sufficient time to study or review the impact
14 of the rule, but in no event shall the CFPA publish
15 such report more than 5 years after the effective
16 date of the rule or order.

17 (3) PUBLIC COMMENT REQUIRED.—Before pub-
18 lishing a report of its assessment, the CFPA shall
19 invite public comment on recommendations for modi-
20 fying, expanding, or eliminating the newly adopted
21 significant rule or order.

22 (c) INFORMATION GATHERING.—In conducting any
23 monitoring or assessment required by this section, the
24 CFPA may gather information through a variety of meth-

1 ods, including by conducting surveys or interviews of con-
2 sumers.

3 **SEC. 1026. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
4 **PUTE ARBITRATION.**

5 (a) IN GENERAL.—The CFPA, by regulation, may
6 prohibit or impose conditions or limitations on the use of
7 an agreement between a covered person and a consumer
8 for a consumer financial product or service providing for
9 arbitration of any future dispute between the parties, if
10 the CFPA finds that such a prohibition or imposition of
11 conditions or limitations are in the public interest and for
12 the protection of consumers.

13 (b) EFFECTIVE DATE.—Notwithstanding any other
14 provision of law, any regulation prescribed by the CFPA
15 under subsection (a) shall apply, consistent with the terms
16 of the regulation, to any agreement between a consumer
17 and a covered person entered into after the end of the
18 180-day period beginning on the effective date of the regu-
19 lation, as established by the CFPA.

20 **SEC. 1027. SUPERVISION OF NONDEPOSITORY COVERED**
21 **PERSONS.**

22 (a) IN GENERAL.—The CFPA shall develop risk-
23 based programs to supervise covered persons that are not
24 credit unions or depository institutions by prescribing reg-
25 istration requirements, reporting requirements, and exam-

1 ination standards and procedures. The risk-based super-
2 visory programs, shall be based on—

3 (1) relevant registration and reporting informa-
4 tion about such covered persons, as determined by
5 the CFPA; and

6 (2) the assessment by the CFPA of risks posed
7 to consumers in the relevant geographic markets and
8 markets for consumer financial products and serv-
9 ices.

10 (b) REGISTRATION.—

11 (1) IN GENERAL.—The CFPA shall prescribe
12 rules regarding registration requirements for covered
13 persons that are not credit unions or depository in-
14 stitutions.

15 (2) CONSULTATION WITH STATE AGENCIES.—
16 In developing and implementing registration require-
17 ments under this subsection, the CFPA shall consult
18 with State agencies regarding requirements or sys-
19 tems for registration (including coordinated or com-
20 bined systems), where appropriate.

21 (3) EXCEPTION FOR RELATED PERSONS.—The
22 CFPA may not impose requirements under this sec-
23 tion regarding the registration of a related person.

24 (4) REGISTRATION INFORMATION.—Subject to
25 rules prescribed by the CFPA, the CFPA shall pub-

1 licly disclose the registration information about a
2 covered person which is not a bank holding com-
3 pany, credit union, or depository institution for the
4 purpose of facilitating the ability of consumers to
5 identify the covered person as registered with the
6 CFPA.

7 (c) REPORTING REQUIREMENTS.—

8 (1) IN GENERAL.—The CFPA may require re-
9 ports from covered persons that are not credit
10 unions or depository institutions, or service providers
11 thereto, for the purposes of facilitating supervision
12 of such covered persons or service providers. The
13 CFPA shall impose reporting requirements under
14 this paragraph that are consistent with the risk-
15 based standards developed and implemented under
16 this section and the registration information per-
17 taining to the relevant types or classes of covered
18 persons.

19 (2) CONTENTS OF REPORTS.—Reporting re-
20 quirements imposed under this subsection may in-
21 clude information regarding—

22 (A) the nature of the business of the cov-
23 ered person;

1 (B) the name, legal form, ownership and
2 management structure, and related persons of
3 the covered person;

4 (C) the locations of operation of the cov-
5 ered person;

6 (D) the types and number of consumer fi-
7 nancial products and services provided by the
8 covered person;

9 (E) compliance with any requirement im-
10 posed or enforced by the CFPA, including any
11 requirement relating to registration, licensing,
12 fees, or assessments; and

13 (F) the financial condition of such covered
14 person, including a related person, for the pur-
15 pose of assessing the ability of such person to
16 perform its obligation to consumers.

17 (3) EXCEPTION FOR RELATED PERSONS.—

18 Other than reports permitted under paragraph
19 (2)(F), or in connection with a supervisory action or
20 examination, or pursuant to the powers granted
21 under subtitle E, the CFPA may not impose require-
22 ments regarding reports of related persons.

23 (d) EXAMINATIONS.—The CFPA shall conduct ex-
24 aminations of covered persons that are not credit unions
25 or depository institutions as part of the programs imple-

1 mented under paragraphs (2) and (3) of section 1022(c).
2 The CFPA shall establish risk-based standards and proce-
3 dures for conducting examinations of such covered per-
4 sons, including the frequency and scope of such examina-
5 tions, except that the CFPA shall conduct examinations
6 of such covered persons that are determined to pose the
7 highest risk to consumers based on factors determined by
8 the CFPA, such as the operations, sales practices, or con-
9 sumer financial products or services provided by such cov-
10 ered persons.

11 (e) **AUTHORITY TO COLLECT INFORMATION REGARD-**
12 **ING FEES OR ASSESSMENTS.**—To the extent permitted by
13 Federal law, the CFPA may obtain from the Department
14 of the Treasury information relating to a covered person
15 which is not a bank holding company, credit union, or de-
16 pository institution, including information regarding com-
17 pliance with a reporting or registration requirement under
18 the Bank Secrecy Act, for the purpose of, and only to the
19 extent necessary in, investigating, determining, or enforce-
20 ing compliance with a requirement relating to any fee or
21 assessment imposed by the CFPA under this title.

22 **SEC. 1028. EFFECTIVE DATE.**

23 This subtitle shall become effective on the designated
24 transfer date.

1 **Subtitle C—Specific CFPA**
2 **Authorities**

3 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
4 **ACTS OR PRACTICES.**

5 (a) IN GENERAL.—The CFPA may take any action
6 authorized under subtitle E to prevent a person from com-
7 mitting or engaging in an unfair, deceptive, or abusive act
8 or practice under Federal law in connection with any
9 transaction with a consumer for a consumer financial
10 product or service, or the offering of a consumer financial
11 product or service.

12 (b) RULEMAKING.—The CFPA may prescribe rules
13 identifying as unlawful unfair, deceptive, or abusive acts
14 or practices in connection with any transaction with a con-
15 sumer for a consumer financial product or service, or the
16 offering of a consumer financial product or service. Rules
17 under this section may include requirements for the pur-
18 pose of preventing such acts or practices.

19 (c) UNFAIRNESS.—

20 (1) IN GENERAL.—The CFPA shall have no au-
21 thority under this section to declare an act or prac-
22 tice in connection with a transaction with a con-
23 sumer for a consumer financial product or service,
24 or the offering of a consumer financial product or
25 service, to be unlawful on the grounds that such act

1 or practice is unfair, unless the CFPA has a reason-
2 able basis to conclude that—

3 (A) the act or practice causes or is likely
4 to cause substantial injury to consumers which
5 is not reasonably avoidable by consumers; and

6 (B) such substantial injury is not out-
7 weighed by countervailing benefits to consumers
8 or to competition.

9 (2) CONSIDERATION OF PUBLIC POLICIES.—In
10 determining whether an act or practice is unfair, the
11 CFPA may consider established public policies as
12 evidence to be considered with all other evidence.

13 (d) CONSULTATION.—In prescribing rules under this
14 section, the CFPA shall consult with the Federal banking
15 agencies, or other Federal agencies, as appropriate, con-
16 cerning the consistency of the proposed rule with pruden-
17 tial, market, or systemic objectives administered by such
18 agencies.

19 **SEC. 1032. DISCLOSURES.**

20 (a) IN GENERAL.—The CFPA may prescribe rules
21 to ensure the appropriate and effective disclosure to con-
22 sumers of the costs, benefits, and risks associated with
23 any consumer financial product or service.

24 (b) REASONABLE DISCLOSURES.—Subject to rules
25 prescribed by the CFPA, a covered person shall, with re-

1 spect to disclosures regarding any consumer financial
2 product or service, make or provide to a consumer disclo-
3 sures that reasonably communicate to consumers the
4 terms, costs, benefits, and risks of the product or service,
5 in light of all of the facts and circumstances.

6 (c) BASIS FOR RULEMAKING.—In prescribing rules
7 under this section, the CFPA shall consider available evi-
8 dence about consumer awareness, understanding of, and
9 responses to disclosures or communications about the
10 risks, costs, and benefits of consumer financial products
11 or services.

12 (d) COMBINED MORTGAGE LOAN DISCLOSURE.—Not
13 later than 1 year after the designated transfer date, the
14 CFPA shall propose for public comment rules and model
15 disclosures that combine the disclosures required under
16 the Truth in Lending Act and the Real Estate Settlement
17 Procedures Act of 1974 into a single, integrated disclosure
18 for mortgage loan transactions covered by those laws, un-
19 less the CFPA determines that any proposal issued by the
20 Board of Governors and the Secretary of Housing and
21 Urban Development carries out the same purpose.

22 **SEC. 1033. SALES PRACTICES.**

23 The CFPA may prescribe rules and issue orders and
24 guidance regarding the manner, settings, and cir-
25 cumstances for the provision of any consumer financial

1 product or service to ensure that the risks, costs, and ben-
2 efits of the products or services, both initially and over
3 the term of the products or services, are fully and accu-
4 rately represented to consumers.

5 **SEC. 1034. CONSUMER TESTING AND PILOT DISCLOSURES.**

6 (a) **PILOT DISCLOSURES.**—The CFPB shall establish
7 standards and procedures for approval of pilot disclosures
8 to be provided or made available by a covered person to
9 consumers in connection with the provision of a consumer
10 financial product or service for the purpose of improving
11 disclosures.

12 (b) **REQUIREMENTS.**—The standards and procedures
13 required by this section shall provide—

14 (1) that a pilot disclosure must be limited in
15 time and scope and reasonably designed to con-
16 tribute materially to the understanding of consumer
17 awareness and understanding of, and responses to,
18 disclosures or communications about the risks, costs,
19 and benefits of consumer financial products or serv-
20 ices;

21 (2) that the pilot disclosure be reasonably likely
22 to satisfy several or all of the criteria described in
23 paragraph (1), based on testing with consumer focus
24 groups or other appropriate testing methods; and

1 (3) for public disclosure of pilots, but the
2 CFPA may limit disclosure to the extent necessary
3 to encourage covered persons to conduct effective pi-
4 lots.

5 **SEC. 1035. ADOPTING OPERATIONAL STANDARDS TO**
6 **DETER UNFAIR, DECEPTIVE, OR ABUSIVE**
7 **PRACTICES.**

8 (a) STATE AUTHORITY TO PRESCRIBE STAND-
9 ARDS.—The States are encouraged to prescribe standards
10 applicable to covered persons who are not insured deposi-
11 tory institutions, credit unions, or service providers, to
12 deter and detect unfair, deceptive, abusive, fraudulent, or
13 illegal transactions in the provision of consumer financial
14 products or services, including standards for—

15 (1) background checks for principals, officers,
16 directors, or key personnel;

17 (2) registration, licensing, or certification;

18 (3) bond or other appropriate financial require-
19 ments to provide reasonable assurance of the ability
20 to perform its obligations to consumers;

21 (4) creating and maintaining records of trans-
22 actions or accounts; and

23 (5) procedures and operations relating to the
24 provision of, or maintenance of accounts for, con-
25 sumer financial products or services.

1 (b) CFPA AUTHORITY TO PRESCRIBE STAND-
2 ARDS.—

3 (1) IN GENERAL.—The CFPA may prescribe
4 rules establishing minimum standards described in
5 subsection (a) for any class of covered persons, other
6 than covered persons that are subject to the jurisdic-
7 tion of a Federal banking agency or a State banking
8 agency, or for any service provider.

9 (2) REGISTRATION AND LICENSING STAND-
10 ARDS.—In addition to prescribing minimum stand-
11 ards for the purposes described in subsection (a),
12 the CFPA may prescribe registration or licensing
13 standards applicable to covered persons for the pur-
14 poses of imposing fees or assessments in accordance
15 with this title.

16 (3) ENFORCEMENT OF STANDARDS.—The
17 CFPA may enforce under subtitle E compliance with
18 standards adopted by the CFPA or a State pursuant
19 to this section for covered persons or service pro-
20 viders operating in that State.

21 (c) CONSULTATION.—In prescribing minimum stand-
22 ards under this section, the CFPA shall consult with the
23 State authorities, the Federal banking agencies, or other
24 Federal agencies, as appropriate, concerning the consist-
25 ency of the proposed rule with prudential, market, or sys-

1 temic objectives administered by such State authorities or
2 such agencies.

3 **SEC. 1036. DUTIES OF COVERED PERSONS.**

4 (a) RULEMAKING REQUIRED.—The CFPA shall pre-
5 scribe rules imposing duties on a covered person, or an
6 employee of a covered person, or an agent or independent
7 contractor for a covered person, who deals or commu-
8 nicates directly with consumers in the provision of a con-
9 sumer financial product or service, as the CFPA deter-
10 mines appropriate or necessary to ensure fair dealing with
11 consumers.

12 (b) CONSIDERATIONS FOR DUTIES.—In prescribing
13 rules under this section, the CFPA shall consider wheth-
14 er—

15 (1) the covered person, employee, agent, or
16 independent contractor represents implicitly or ex-
17 plicitly that it is acting in the interest of the con-
18 sumer with respect to any aspect of the transaction;

19 (2) the covered person, employee, agent, or
20 independent contractor provides the consumer with
21 advice with respect to any aspect of the transaction;

22 (3) use by the consumer of any advice from the
23 covered person, employee, agent, or independent con-
24 tractor would be reasonable and justifiable under the
25 circumstances;

1 (4) the benefits to consumers of imposing a
2 particular duty would outweigh the costs; and

3 (5) any other factors, as the CFPA considers
4 appropriate.

5 (c) DUTIES RELATING TO COMPENSATION PRAC-
6 TICES.—The CFPA may prescribe rules establishing du-
7 ties regarding compensation practices applicable to a cov-
8 ered person, employee, agent, or independent contractor
9 who deals or communicates directly with a consumer in
10 the provision of a consumer financial product or service
11 for the purpose of promoting fair dealing with consumers.
12 The CFPA may not prescribe a limit on the total dollar
13 amount of compensation paid to any covered person or af-
14 filiate thereof.

15 (d) ADMINISTRATIVE PROCEEDINGS.—Any rule pre-
16 scribed by the CFPA under this section shall be enforce-
17 able only by the CFPA through an adjudication pro-
18 ceeding under subtitle E or by a State regulator through
19 an appropriate administrative proceeding, as permitted
20 under State law. No action may be commenced in any
21 court to enforce any requirement of a rule prescribed
22 under this section (other than by the CFPA, or by a State
23 regulator, as may be necessary to enforce an administra-
24 tive order under this section), and no court may exercise
25 supplemental jurisdiction over a claim asserted under a

1 rule prescribed under this section based on allegations or
2 evidence of conduct that otherwise may be subject to such
3 rule. The CFPA, the Attorney General of the United
4 States, or any State attorney general or State regulator
5 shall not be precluded from enforcing any other provision
6 of Federal or State law against a person with respect to
7 conduct that may be subject to a rule prescribed by the
8 CFPA under this section.

9 (e) EXCLUSIONS.—This section does not authorize
10 the CFPA to prescribe rules applicable to—

11 (1) an attorney licensed to practice law and in
12 compliance with the applicable rules and standards
13 of professional conduct, but only to the extent that
14 the consumer financial product or service provided is
15 within the attorney-client relationship with the con-
16 sumer; or

17 (2) any trustee, custodian, or other person that
18 holds a fiduciary duty in connection with a trust, in-
19 cluding a fiduciary duty to a grantor or beneficiary
20 of a trust, that is subject to and in compliance with
21 the applicable law relating to such trust.

22 **SEC. 1037. CONSUMER RIGHTS TO ACCESS INFORMATION.**

23 (a) IN GENERAL.—Subject to rules prescribed by the
24 CFPA, a covered person shall make available to a con-
25 sumer, upon request, information in the control or posses-

1 sion of the covered person concerning the consumer finan-
2 cial product or service that the consumer obtained from
3 such covered person, including information relating to any
4 transaction, series of transactions, or to the account in-
5 cluding costs, charges and usage data. The information
6 shall be made available in an electronic form usable by
7 consumers.

8 (b) EXCEPTIONS.—A covered person may not be re-
9 quired by this section to make available to the consumer—

10 (1) any confidential commercial information, in-
11 cluding an algorithm used to derive credit scores or
12 other risk scores or predictors;

13 (2) any information collected by the covered
14 person for the purpose of preventing fraud or money
15 laundering, or detecting, or making any report re-
16 garding other unlawful or potentially unlawful con-
17 duct;

18 (3) any information required to be kept con-
19 fidential by any other provision of law; or

20 (4) any information that the covered person
21 cannot retrieve in the ordinary course of its business
22 with respect to that information.

23 (c) NO DUTY TO MAINTAIN RECORDS.—Nothing in
24 this section shall be construed to impose any duty on a

1 covered person to maintain or keep any information about
2 a consumer.

3 (d) STANDARDIZED FORMATS FOR DATA.—The
4 CFPA, by rule, shall prescribe standards applicable to cov-
5 ered persons to promote the development and use of stand-
6 ardized formats for information, including through the use
7 of machine readable files, to be made available to con-
8 sumers under this section.

9 (e) CONSULTATION.—The CFPA shall, when pre-
10 scribing any rule under this section, consult with the Fed-
11 eral banking agencies and the Federal Trade Commission
12 to ensure that the rules—

13 (1) impose substantively similar requirements
14 on covered persons;

15 (2) take into account conditions under which
16 covered persons do business both in the United
17 States and in other countries; and

18 (3) do not require or promote the use of any
19 particular technology in order to develop systems for
20 compliance.

21 **SEC. 1038. PROHIBITED ACTS.**

22 It shall be unlawful for any person—

23 (1) to advertise, market, offer, sell, enforce, or
24 attempt to enforce, any term, agreement, change in
25 terms, fee or charge in connection with a consumer

1 financial product or service that is not in conformity
2 with this title or applicable rules or orders issued by
3 the CFPA or to engage in any unfair, deceptive, or
4 abusive act or practice;

5 (2) to fail or refuse, as required by this title,
6 an enumerated consumer law, or pursuant to the au-
7 thorities transferred by subtitles F and H, or any
8 rule or order issued by the CFPA thereunder—

9 (A) to pay any fee or assessment imposed
10 by the CFPA under this title;

11 (B) to permit access to or copying of
12 records;

13 (C) to establish or maintain records; or

14 (D) to make reports or provide information
15 to the CFPA; or

16 (3) knowingly or recklessly to provide substan-
17 tial assistance to another person in violation of the
18 provisions of section 1031, or any rule or order
19 issued under thereunder, and notwithstanding any
20 provision of this title, the provider of such substan-
21 tial assistance shall be deemed to be in violation of
22 that section to the same extent as the person to
23 whom such assistance is provided.

1 **SEC. 1039. EFFECTIVE DATE.**

2 This subtitle shall become effective on the designated
3 transfer date.

4 **Subtitle D—Preservation of State**
5 **Law**

6 **SEC. 1041. RELATION TO STATE LAW.**

7 (a) IN GENERAL.—

8 (1) RULE OF CONSTRUCTION.—This title does
9 not annul, alter, or affect, or exempt any person
10 subject to the provisions of this title from complying
11 with the statutes, regulations, orders, or interpreta-
12 tions in effect in any State, except to the extent that
13 such statute, regulation, order, or interpretation is
14 inconsistent with the provisions of this title, and
15 then only to the extent of the inconsistency.

16 (2) GREATER PROTECTION UNDER STATE
17 LAW.—For the purposes of this subsection, a stat-
18 ute, regulation, order, or interpretation in effect in
19 any State is not inconsistent with the provisions of
20 this title, if the protection that such statute, regula-
21 tion, order, or interpretation affords to consumers is
22 greater than the protection provided under this title.
23 A determination regarding whether a statute, regu-
24 lation, order, or interpretation in effect in any State
25 is inconsistent with the provisions of this title may
26 be made by the CFPA on its own motion or in re-

1 sponse to a non-frivolous petition initiated by any in-
2 terested person.

3 (b) **RELATION TO OTHER PROVISIONS OF ENUMER-**
4 **ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—**
5 Nothing in this title may be construed to modify, limit,
6 or supersede the operation of any provision of an enumer-
7 ated consumer law that relates to the application of State
8 law with respect to such Federal law (except as provided
9 in the amendments to the Alternative Mortgage Parity Act
10 of 1982 made by subtitle H of this title).

11 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF**
12 **STATES.**

13 (a) **IN GENERAL.—**Notwithstanding any other provi-
14 sion of this title—

15 (1) any State attorney general (or equivalent
16 State regulator) may bring a civil action in the name
17 of such State, as *parens patriae* on behalf of natural
18 persons residing in such State, in any district court
19 of the United States or State court having jurisdic-
20 tion over the defendant, to secure legal or equitable
21 relief for violation of any provisions of this title or
22 regulations issued thereunder; and

23 (2) nothing in this title may be construed to
24 modify, limit, or supersede the operation of any pro-
25 vision of an enumerated consumer law that relates

1 to the authority of a State attorney general or State
2 regulator to enforce such Federal law.

3 (b) CONSULTATION REQUIRED.—

4 (1) PRIOR NOTICE.—Before initiating any ac-
5 tion in a court or other administrative or regulatory
6 proceeding against any covered person to enforce
7 any provision of this title, including any rule pre-
8 scribed by the CFPA thereunder, a State attorney
9 general or State regulator shall timely provide a
10 copy of the complete complaint to be filed and writ-
11 ten notice describing such action or proceeding to
12 the CFPA, or the designee of the CFPA. If prior no-
13 tice is not practicable, the State attorney general or
14 State regulator shall provide a copy of the complete
15 complaint and the notice to the CFPA immediately
16 upon instituting the action or proceeding.

17 (2) CONTENT OF NOTIFICATION.—The notifica-
18 tion required under this section shall, at a minimum,
19 describe—

20 (A) the identity of the parties;

21 (B) the alleged facts underlying the pro-
22 ceeding; and

23 (C) whether there may be a need to coordi-
24 nate the prosecution of the proceeding so as not
25 to interfere with any action, including any rule-

1 making, undertaken by the CFPA or another
2 Federal agency.

3 (3) CFPA AUTHORITY.—In any action de-
4 scribed in paragraph (1), the CFPA may—

5 (A) intervene in the action as a party;

6 (B) upon intervening—

7 (i) remove the action to the appro-
8 priate United States district court, if the
9 action was not originally brought there;
10 and

11 (ii) be heard on all matters arising in
12 the action; and

13 (C) appeal any order or judgment to the
14 same extent as any other party in the pro-
15 ceeding may.

16 (c) RULEMAKING REQUIRED.—The CFPA shall
17 adopt rules to implement the requirements of this section
18 and, from time to time, provide guidance in order to fur-
19 ther coordinate actions with the State attorneys general
20 and other State regulators.

21 (d) PRESERVATION OF STATE CLAIMS.—

22 (1) IN GENERAL.—Nothing in this title may be
23 construed as altering, limiting, or affecting the au-
24 thority of a State attorney general or State regulator

1 to bring an action or other regulatory proceeding
2 arising solely under the law of that State.

3 (2) STATE SECURITIES REGULATORS.—No pro-
4 vision of this title may be construed as altering, lim-
5 iting, or affecting the authority of a State securities
6 commission (or any agency or office performing like
7 functions) under State law to adopt rules, initiate
8 enforcement proceedings, or take any other action
9 with respect to a person regulated by such commis-
10 sion (or agency).

11 (3) STATE INSURANCE REGULATORS.—No pro-
12 vision of this title may be construed as altering, lim-
13 iting, or affecting the authority of a State insurance
14 commission or State insurance regulator under State
15 law to adopt rules, initiate enforcement proceedings,
16 or take any other action with respect to a person
17 regulated by such commission or regulator.

18 **SEC. 1043. STATE LAW PREEMPTION STANDARDS FOR NA-**
19 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
20 **FIED.**

21 (a) IN GENERAL.—Chapter One of title LXII of the
22 Revised Statutes of the United States (12 U.S.C. 21 et
23 seq.) is amended by inserting after section 5136B the fol-
24 lowing new section:

1 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
2 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
3 **FIED.**

4 “(a) DEFINITIONS.—For purposes of this section, the
5 term—

6 “(1) ‘national bank’ includes—

7 “(A) any bank organized under the laws of
8 the United States;

9 “(B) any affiliate of a national bank;

10 “(C) any subsidiary of a national bank;

11 and

12 “(D) any Federal branch established in ac-
13 cordance with the International Banking Act of
14 1978;

15 “(2) ‘depository institution’, ‘affiliate’, ‘sub-
16 sidiary’, ‘includes’, and ‘including’ have the same
17 meanings as in section 3 of the Federal Deposit In-
18 surance Act;

19 “(3) ‘nondepository institution’ means any enti-
20 ty that is not a depository institution;

21 “(4) ‘FIRA’ means the Financial Institutions
22 Regulatory Administration; and

23 “(5) ‘State consumer law’ means any law of a
24 State that—

25 “(A) accords rights to or protects the
26 rights of its citizens or other persons in finan-

1 cial transactions concerning negotiation, sales,
2 solicitation, disclosure, terms and conditions,
3 advice, and remedies; or

4 “(B) prevents counterparties, successors,
5 and assigns of financial contracts from engag-
6 ing in unfair or deceptive acts or practices with
7 respect to such financial transactions.

8 “(b) STATE CONSUMER LAWS OF GENERAL APPLI-
9 CATION.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), and notwithstanding any other provision
12 of Federal law, any consumer protection provision in
13 a State consumer law of general application, includ-
14 ing any law relating to unfair or deceptive acts or
15 practices, any consumer fraud law, and repossession,
16 foreclosure, and collection law, shall apply to any na-
17 tional bank.

18 “(2) EXCEPTIONS.—

19 “(A) IN GENERAL.—Paragraph (1) does
20 not apply with respect to any State consumer
21 law, if—

22 “(i) the State consumer law discrimi-
23 nates against national banks; or

24 “(ii) the State consumer law is incon-
25 sistent with provisions of Federal law other

1 than this title, but only to the extent of the
2 inconsistency (as determined in accordance
3 with the provision of the other Federal
4 law).

5 “(B) DETERMINATION OF INCONSIST-
6 ENCY.—For purposes of this paragraph, a State
7 consumer law is not inconsistent with Federal
8 law if the protection that the State consumer
9 law affords consumers is greater than the pro-
10 tection provided under Federal law, as deter-
11 mined by the CFPA.

12 “(c) STATE BANKING LAWS ENACTED PURSUANT TO
13 FEDERAL LAW.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), and notwithstanding any other provision
16 of Federal law, each national bank shall be subject
17 to any State consumer law that—

18 “(A) is applicable to State banks; and

19 “(B) was enacted pursuant to or in accord-
20 ance with, and is not inconsistent with, an Act
21 of Congress, including the Gramm-Leach-Bliley
22 Act, the Consumer Credit Protection Act, and
23 the Real Estate Settlement Procedures Act of
24 1974, that explicitly or by implication, permits
25 States to exceed or supplement the require-

1 ments of any comparable provision of Federal
2 law.

3 “(2) EXCEPTIONS.—

4 “(A) IN GENERAL.—Paragraph (1) does
5 not apply with respect to any provision of State
6 law, if—

7 “(i) the State consumer law discrimi-
8 nates against national banks; or

9 “(ii) the State consumer law is incon-
10 sistent with provisions of Federal law,
11 other than this title, but only to the extent
12 of the inconsistency (as determined in ac-
13 cordance with the other Federal law).

14 “(B) DETERMINATION OF INCONSIST-
15 ENCY.—For purposes of this paragraph, a State
16 consumer law is not inconsistent with Federal
17 law if the protection that the State consumer
18 law affords consumers is greater than the pro-
19 tection provided under Federal law, as deter-
20 mined by the CFPB.

21 “(3) PRESERVATION OF POWERS RELATING TO
22 CHARGING INTEREST.—No provision of this section
23 shall be construed as altering, limiting, or affecting
24 the powers or authority of a national bank conferred
25 under any provision of this title for the charging of

1 interest at the rate allowed by the laws of the State,
2 territory, or district in which the bank is located, in-
3 cluding with respect to the meaning of ‘interest’
4 under such provision.

5 “(d) NO NEGATIVE IMPLICATIONS FOR APPLICA-
6 BILITY OF OTHER STATE LAWS.—No provision of this
7 section may be construed as altering or affecting the appli-
8 cability to national banks of any provision of State law
9 that is not described in this section.

10 “(e) EFFECT OF TRANSFER OF TRANSACTION.—A
11 provision of State consumer law applicable to a trans-
12 action at the inception of the transaction may not be pre-
13 empted under Federal law solely because a national bank
14 subsequently acquires the asset or instrument that is the
15 subject of the transaction.

16 “(f) DENIAL OF PREEMPTION NOT A DEPRIVATION
17 OF A CIVIL RIGHT.—The preemption of any provision of
18 the law of any State with respect to any national bank
19 shall not be treated as a right, privilege, or immunity for
20 purposes of section 1979 of the Revised Statutes of the
21 United States (42 U.S.C. 1983).”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for chapter One of title LXII of the Revised Statutes of
24 the United States is amended by inserting after the item
25 relating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries clarified.”.

1 **SEC. 1044. CLARIFICATION OF LAW APPLICABLE TO NON-**
2 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

3 Section 5136C of the Revised Statutes of the United
4 States (as added by section 1043 of this Act) is amended
5 by inserting after subsection (i) (as added by section
6 1044) the following new subsection:

7 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
8 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
9 ATES OF NATIONAL BANKS.—No provision of this title
10 shall be construed as annulling, altering, or affecting the
11 applicability of State law to any nondepository institution
12 or a subsidiary, other affiliate, or agent of a national
13 bank.”.

14 **SEC. 1045. STATE LAW PREEMPTION STANDARDS FOR FED-**
15 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
16 **ARIES CLARIFIED.**

17 (a) IN GENERAL.—The Home Owners’ Loan Act (12
18 U.S.C. 1461 et seq.) is amended by inserting after section
19 5 the following new section:

20 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
21 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

22 “(a) DEFINITIONS.—For purposes of this section—
23 “(1) ‘depository institution’, ‘affiliate’, ‘sub-
24 sidiary’, ‘includes’, and ‘including’ have the same

1 meanings as in section 3 of the Federal Deposit In-
2 surance Act;

3 “(2) ‘nondepository institution’ means any enti-
4 ty that is not a depository institution;

5 “(3) ‘CFPA’ means the Consumer Financial
6 Protection Agency;

7 “(4) ‘FIRA’ means the Financial Institutions
8 Regulatory Administration; and

9 “(5) ‘State consumer law’ means any law of a
10 State that—

11 “(A) accords rights to or protects the
12 rights of its citizens in financial transactions
13 concerning negotiation, sales, solicitation, dis-
14 closure, terms and conditions, advice, and rem-
15 edies; or

16 “(B) prevents counterparties, successors,
17 and assigns of financial contracts from engag-
18 ing in unfair or deceptive acts and practices.

19 “(b) STATE CONSUMER LAWS OF GENERAL APPLI-
20 CATION.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), and notwithstanding any other provision
23 of Federal law, any consumer protection provision in
24 a State consumer law of general application, includ-
25 ing any law relating to unfair or deceptive acts or

1 practices, any consumer fraud law and repossession,
2 foreclosure, and collection law, shall apply to any
3 Federal savings association.

4 “(2) EXCEPTIONS.—

5 “(A) IN GENERAL.—Paragraph (1) does
6 not apply with respect to any State consumer
7 law, if—

8 “(i) the State consumer law discrimi-
9 nates against Federal savings associations;
10 or

11 “(ii) the State consumer law is incon-
12 sistent with provisions of Federal law other
13 than this title, but only to the extent of the
14 inconsistency (as determined in accordance
15 with the provision of the other Federal
16 law).

17 “(B) DETERMINATION OF INCONSIST-
18 ENCY.—For purposes of this paragraph, a State
19 consumer law is not inconsistent with Federal
20 law if the protection that the State consumer
21 law affords consumers is greater than the pro-
22 tection provided under Federal law, as deter-
23 mined by the CFPA.

24 “(c) STATE BANKING OR THRIFT LAWS ENACTED
25 PURSUANT TO FEDERAL LAW.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), and notwithstanding any other provision
3 of Federal law, each Federal savings association
4 shall be subject to any State consumer law that—

5 “(A) is applicable to State savings associa-
6 tions (as that term is defined in section 3 of the
7 Federal Deposit Insurance Act); and

8 “(B) was enacted pursuant to or in accord-
9 ance with, and is not inconsistent with, an Act
10 of Congress, including the Gramm-Leach-Bliley
11 Act, the Consumer Credit Protection Act, and
12 the Real Estate Settlement Procedures Act of
13 1974, that explicitly or by implication, permits
14 States to exceed or supplement the require-
15 ments of any comparable Federal law.

16 “(2) EXCEPTIONS.—

17 “(A) IN GENERAL.—Paragraph (1) does
18 not apply with respect to any provision of State
19 law, if—

20 “(i) the State consumer law discrimi-
21 nates against Federal savings associations;
22 or

23 “(ii) the State consumer law is incon-
24 sistent with provisions of Federal law other
25 than this title, but only to the extent of the

1 inconsistency (as determined in accordance
2 with the provision of the other Federal
3 law).

4 “(B) DETERMINATION OF INCONSIST-
5 ENCY.—For this purposes of this paragraph, a
6 State consumer law is not inconsistent with
7 Federal law if the protection that the State con-
8 sumer law affords consumers is greater than
9 the protection provided under Federal law, as
10 determined by the CFPA.

11 “(d) NO NEGATIVE IMPLICATIONS FOR APPLICA-
12 BILITY OF OTHER STATE LAWS.—No provision of this
13 section may be construed as altering or affecting the appli-
14 cability to Federal savings associations, of any State law
15 which is not described in this section.

16 “(e) EFFECT OF TRANSFER OF TRANSACTION.—
17 State consumer law applicable to a transaction at the in-
18 ception of the transaction may not be preempted under
19 Federal law solely because a Federal savings association
20 subsequently acquires the asset or instrument that is the
21 subject of the transaction.

22 “(f) DENIAL OF PREEMPTION NOT A DEPRIVATION
23 OF A CIVIL RIGHT.—The preemption of any provision of
24 the law of any State with respect to any Federal savings
25 association shall not be treated as a right, privilege, or

1 immunity for purposes of section 1979 of the Revised
2 Statutes of the United States (42 U.S.C. 1983).”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)
5 is amended by striking the item relating to section 6 and
6 inserting the following new item:

“6. State law preemption standards for Federal savings associations and subsidi-
aries clarified.”.

7 **SEC. 1046. VISITORIAL STANDARDS FOR NATIONAL BANKS**
8 **AND SAVINGS ASSOCIATIONS.**

9 (a) NATIONAL BANKS.—Section 5136C of the Re-
10 vised Statutes of the United States (as added by this sub-
11 title) is amended by adding at the end the following new
12 subsections:

13 “(g) VISITORIAL POWERS.—

14 “(1) IN GENERAL.—No provision of this title
15 which relates to visitorial powers or otherwise limits
16 or restricts the supervisory, examination, or regu-
17 latory authority to which any national bank is sub-
18 ject shall be construed as limiting or restricting the
19 authority of any attorney general (or other chief law
20 enforcement officer) of any State to bring any action
21 in any court of appropriate jurisdiction—

22 “(A) to require a national bank to produce
23 records relative to the investigation of violations

1 of State consumer law, or Federal consumer
2 laws;

3 “(B) to enforce any applicable provision of
4 Federal or State law, as authorized by such
5 law; or

6 “(C) on behalf of residents of such State,
7 to enforce any applicable provision of any Fed-
8 eral or State law against a national bank, as
9 authorized by such law, or to seek relief and re-
10 cover damages for such residents from any vio-
11 lation of any such law by any national bank.

12 “(2) PRIOR CONSULTATION WITH FIRA RE-
13 QUIRED.—The attorney general (or other chief law
14 enforcement officer) of any State shall consult with
15 FIRA before acting under paragraph (1).

16 “(h) ENFORCEMENT ACTIONS.—The ability of FIRA
17 to bring an enforcement action under this title or section
18 5 of the Federal Trade Commission Act does not preclude
19 any private party from enforcing rights granted under
20 Federal or State law in the courts.”.

21 (b) SAVINGS ASSOCIATIONS.—Section 6 of the Home
22 Owners’ Loan Act (as added by this title) is amended by
23 adding at the end the following new subsections:

24 “(g) VISITORIAL POWERS.—

1 “(1) IN GENERAL.—No provision of this Act
2 shall be construed as limiting or restricting the au-
3 thority of any attorney general (or other chief law
4 enforcement officer) of any State to bring any action
5 in any court of appropriate jurisdiction—

6 “(A) to require a Federal savings associa-
7 tion to produce records relative to the investiga-
8 tion of violations of State consumer law, or
9 Federal consumer laws;

10 “(B) to enforce any applicable provision of
11 Federal or State law, as authorized by such
12 law; or

13 “(C) on behalf of residents of such State,
14 to enforce any applicable provision of any Fed-
15 eral or State law against a Federal savings as-
16 sociation, as authorized by such law, or to seek
17 relief and recover damages for such residents
18 from any violation of any such law by any Fed-
19 eral savings association.

20 “(2) PRIOR CONSULTATION WITH FIRA RE-
21 QUIRED.—The attorney general (or other chief law
22 enforcement officer) of any State shall consult with
23 FIRA before acting under paragraph (1).

24 “(h) ENFORCEMENT ACTIONS.—The ability of FIRA
25 to bring an enforcement action under this Act or section

1 5 of the Federal Trade Commission Act does not preclude
2 any private party from enforcing rights granted under
3 Federal or State law in the courts.”.

4 **SEC. 1047. CLARIFICATION OF LAW APPLICABLE TO NON-**
5 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

6 Section 6 of the Home Owners’ Loan Act (as added
7 by section 1046 of this title) is amended by adding after
8 subsection (i) (as added by section 1047) the following
9 new subsection:

10 “(j) CLARIFICATION OF LAW APPLICABLE TO NON-
11 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
12 ATES OF FEDERAL SAVINGS ASSOCIATIONS.—No provi-
13 sion of this title may be construed as preempting the ap-
14 plicability of State law to any nondepository institution or
15 any subsidiary, other affiliate, or agent of a Federal sav-
16 ings association.”.

17 **SEC. 1048. EFFECTIVE DATE.**

18 This subtitle shall become effective on the designated
19 transfer date.

20 **Subtitle E—Enforcement Powers**

21 **SEC. 1051. DEFINITIONS.**

22 For purposes of this subtitle, the following definitions
23 shall apply:

1 (1) CIVIL INVESTIGATIVE DEMAND AND DE-
2 MAND.—The terms “civil investigative demand” and
3 “demand” mean any demand issued by the CFPA.

4 (2) CFPA INVESTIGATION.—The term “CFPA
5 investigation” means any inquiry conducted by a
6 CFPA investigator for the purpose of ascertaining
7 whether any person is or has been engaged in any
8 conduct that is a violation, as defined in this section.

9 (3) CFPA INVESTIGATOR.—The term “CFPA
10 investigator” means any attorney or investigator em-
11 ployed by the CFPA who is charged with the duty
12 of enforcing or carrying into effect any provisions of
13 this title, any enumerated consumer law, the au-
14 thorities transferred under subtitles F and H, or any
15 rule or order promulgated thereunder by the CFPA.

16 (4) CUSTODIAN.—The term “custodian” means
17 the custodian or any deputy custodian designated by
18 the CFPA.

19 (5) DOCUMENTARY MATERIAL.—The term
20 “documentary material” includes the original or any
21 copy of any book, document, record, report, memo-
22 randum, paper, communication, tabulation, chart,
23 logs, electronic files, or other data or data compila-
24 tions stored in any medium.

1 (6) VIOLATION.—The term “violation” means
2 any act or omission that, if proved, would constitute
3 a violation of any provision of this title, any enumer-
4 ated consumer law, any law for which authorities
5 were transferred under subtitles F and H, or of any
6 rule or order prescribed by the CFPA thereunder.

7 **SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DIS-**
8 **COVERY.**

9 (a) JOINT INVESTIGATIONS.—

10 (1) IN GENERAL.—The CFPA or, where appro-
11 priate, a CFPA investigator, may engage in joint in-
12 vestigations and requests for information.

13 (2) FAIR LENDING.—The authority under para-
14 graph (1) includes matters relating to fair lending,
15 and where appropriate, joint investigations and re-
16 quests for information with the Secretary of Hous-
17 ing and Urban Development, the Attorney General
18 of the United States, or both.

19 (b) SUBPOENAS.—

20 (1) IN GENERAL.—The CFPA or a CFPA in-
21 vestigator may issue subpoenas for the attendance
22 and testimony of witnesses and the production of
23 relevant papers, books, documents, or other material
24 in connection with hearings under this title.

1 (2) FAILURE TO OBEY.—In case of contumacy
2 or refusal to obey a subpoena issued pursuant to
3 this paragraph and served upon any person, the dis-
4 trict court of the United States for any district in
5 which such person is found, resides, or transacts
6 business, upon application by the CFPA or a CFPA
7 investigator and after notice to such person, may
8 issue an order requiring such person to appear and
9 give testimony or to appear and produce documents
10 or other material.

11 (3) CONTEMPT.—Any failure to obey an order
12 of the court under this subsection may be punished
13 by the court as a contempt thereof.

14 (c) DEMANDS.—

15 (1) IN GENERAL.—Whenever the CFPA has
16 reason to believe that any person may be in posses-
17 sion, custody, or control of any documentary mate-
18 rial or tangible things, or may have any information,
19 relevant to a violation, the CFPA may, before the in-
20 stitution of any proceedings under this title or under
21 any enumerated consumer law or pursuant to the
22 authorities transferred under subtitles F and H,
23 issue in writing, and cause to be served upon such
24 person, a civil investigative demand requiring such
25 person to—

1 (A) produce such documentary material for
2 inspection and copying or reproduction in the
3 form or medium requested by the CFPA;

4 (B) submit such tangible things;

5 (C) file written reports or answers to ques-
6 tions;

7 (D) give oral testimony concerning docu-
8 mentary material, tangible things, or other in-
9 formation; or

10 (E) furnish any combination of such mate-
11 rial, answers, or testimony.

12 (2) REQUIREMENTS.—Each civil investigative
13 demand shall state the nature of the conduct consti-
14 tuting the alleged violation which is under investiga-
15 tion and the provision of law applicable to such vio-
16 lation.

17 (3) PRODUCTION OF DOCUMENTS.—Each civil
18 investigative demand for the production of documen-
19 tary material shall—

20 (A) describe each class of documentary
21 material to be produced under the demand with
22 such definiteness and certainty as to permit
23 such material to be fairly identified;

24 (B) prescribe a return date or dates which
25 will provide a reasonable period of time within

1 which the material so demanded may be assem-
2 bled and made available for inspection and
3 copying or reproduction; and

4 (C) identify the custodian to whom such
5 material shall be made available.

6 (4) PRODUCTION OF THINGS.—Each civil inves-
7 tigative demand for the submission of tangible
8 things shall—

9 (A) describe each class of tangible things
10 to be submitted under the demand with such
11 definiteness and certainty as to permit such
12 things to be fairly identified;

13 (B) prescribe a return date or dates which
14 will provide a reasonable period of time within
15 which the things so demanded may be assem-
16 bled and submitted; and

17 (C) identify the custodian to whom such
18 things shall be submitted.

19 (5) DEMAND FOR WRITTEN REPORTS OR AN-
20 SWERS.—Each civil investigative demand for written
21 reports or answers to questions shall—

22 (A) propound with definiteness and cer-
23 tainty the reports to be produced or the ques-
24 tions to be answered;

1 (B) prescribe a date or dates at which time
2 written reports or answers to questions shall be
3 submitted; and

4 (C) identify the custodian to whom such
5 reports or answers shall be submitted.

6 (6) ORAL TESTIMONY.—Each civil investigative
7 demand for the giving of oral testimony shall—

8 (A) prescribe a date, time, and place at
9 which oral testimony shall be commenced; and

10 (B) identify a CFPA investigator who shall
11 conduct the investigation and the custodian to
12 whom the transcript of such investigation shall
13 be submitted.

14 (7) SERVICE.—Any civil investigative demand
15 and any enforcement petition filed under this section
16 may be served—

17 (A) by any CFPA investigator at any place
18 within the territorial jurisdiction of any court of
19 the United States; and

20 (B) upon any person who is not found
21 within the territorial jurisdiction of any court of
22 the United States—

23 (i) in such manner as the Federal
24 Rules of Civil Procedure prescribe for serv-
25 ice in a foreign nation; and

1 (ii) to the extent that the courts of
2 the United States have authority to assert
3 jurisdiction over such person, consistent
4 with due process, the United States Dis-
5 trict Court for the District of Columbia
6 shall have the same jurisdiction to take
7 any action respecting compliance with this
8 section by such person that such district
9 court would have if such person were per-
10 sonally within the jurisdiction of such dis-
11 trict court.

12 (8) METHOD OF SERVICE.—Service of any civil
13 investigative demand or any enforcement petition
14 filed under this section may be made upon a person,
15 including any legal entity, by—

16 (A) delivering a duly executed copy of such
17 demand or petition to the individual or to any
18 partner, executive officer, managing agent, or
19 general agent of such person, or to any agent
20 of such person authorized by appointment or by
21 law to receive service of process on behalf of
22 such person;

23 (B) delivering a duly executed copy of such
24 demand or petition to the principal office or
25 place of business of the person to be served; or

1 (C) depositing a duly executed copy in the
2 United States mails, by registered or certified
3 mail, return receipt requested, duly addressed
4 to such person at the principal office or place
5 of business of such person.

6 (9) PROOF OF SERVICE.—

7 (A) IN GENERAL.—A verified return by the
8 individual serving any civil investigative demand
9 or any enforcement petition filed under this sec-
10 tion setting forth the manner of such service
11 shall be proof of such service.

12 (B) RETURN RECEIPTS.—In the case of
13 service by registered or certified mail, such re-
14 turn shall be accompanied by the return post
15 office receipt of delivery of such demand or en-
16 forcement petition.

17 (10) PRODUCTION OF DOCUMENTARY MATE-
18 RIAL.—The production of documentary material in
19 response to a civil investigative demand shall be
20 made under a sworn certificate, in such form as the
21 demand designates, by the person, if a natural per-
22 son, to whom the demand is directed or, if not a
23 natural person, by any person having knowledge of
24 the facts and circumstances relating to such produc-
25 tion, to the effect that all of the documentary mate-

1 rial required by the demand and in the possession,
2 custody, or control of the person to whom the de-
3 mand is directed has been produced and made avail-
4 able to the custodian.

5 (11) SUBMISSION OF TANGIBLE THINGS.—The
6 submission of tangible things in response to a civil
7 investigative demand shall be made under a sworn
8 certificate, in such form as the demand designates,
9 by the person to whom the demand is directed or,
10 if not a natural person, by any person having knowl-
11 edge of the facts and circumstances relating to such
12 production, to the effect that all of the tangible
13 things required by the demand and in the posses-
14 sion, custody, or control of the person to whom the
15 demand is directed have been submitted to the cus-
16 todian.

17 (12) SEPARATE ANSWERS.—Each reporting re-
18 quirement or question in a civil investigative demand
19 shall be answered separately and fully in writing
20 under oath, unless it is objected to, in which event
21 the reasons for the objection shall be stated in lieu
22 of an answer, and it shall be submitted under a
23 sworn certificate, in such form as the demand des-
24 ignates, by the person, if a natural person, to whom
25 the demand is directed or, if not a natural person,

1 by any person responsible for answering each report-
2 ing requirement or question, to the effect that all in-
3 formation required by the demand and in the posses-
4 sion, custody, control, or knowledge of the person to
5 whom the demand is directed has been submitted.

6 (13) TESTIMONY.—

7 (A) IN GENERAL.—

8 (i) OATH OR AFFIRMATION.—Any
9 CFPA investigator before whom oral testi-
10 mony is to be taken shall put the witness
11 under oath or affirmation, and shall per-
12 sonally, or by any individual acting under
13 the direction of and in the presence of the
14 CFPA investigator, record the testimony of
15 the witness.

16 (ii) TRANSCRIPTION.—The testimony
17 shall be taken stenographically and tran-
18 scribed.

19 (iii) TRANSMISSION TO CUSTODIAN.—
20 After the testimony is fully transcribed,
21 the CFPA investigator before whom the
22 testimony is taken shall promptly transmit
23 a copy of the transcript of the testimony to
24 the custodian.

1 (B) PARTIES PRESENT.—Any CFPA inves-
2 tigator before whom oral testimony is to be
3 taken shall exclude from the place where the
4 testimony is to be taken all other persons, ex-
5 cept the person giving the testimony, the attor-
6 ney of that person, the officer before whom the
7 testimony is to be taken, and any stenographer
8 taking such testimony.

9 (C) LOCATION.—The oral testimony of any
10 person taken pursuant to a civil investigative
11 demand shall be taken in the judicial district of
12 the United States in which such person resides,
13 is found, or transacts business, or in such other
14 place as may be agreed upon by the CFPA in-
15 vestigator before whom the oral testimony of
16 such person is to be taken and such person.

17 (D) ATTORNEY REPRESENTATION.—

18 (i) IN GENERAL.—Any person com-
19 pelled to appear under a civil investigative
20 demand for oral testimony pursuant to this
21 section may be accompanied, represented,
22 and advised by an attorney.

23 (ii) AUTHORITY.—The attorney may
24 advise a person described in clause (i), in
25 confidence, either upon the request of such

1 person or upon the initiative of the attor-
2 ney, with respect to any question asked of
3 such person.

4 (iii) OBJECTIONS.—A person de-
5 scribed in clause (i), or the attorney for
6 that person, may object on the record to
7 any question, in whole or in part, and such
8 person shall briefly state for the record the
9 reason for the objection. An objection may
10 properly be made, received, and entered
11 upon the record when it is claimed that
12 such person is entitled to refuse to answer
13 the question on grounds of any constitu-
14 tional or other legal right or privilege, in-
15 cluding the privilege against self-incrimina-
16 tion, but such person shall not otherwise
17 object to or refuse to answer any question,
18 and such person or attorney shall not oth-
19 erwise interrupt the oral examination.

20 (iv) REFUSAL TO ANSWER.—If a per-
21 son described in clause (i) refuses to an-
22 swer any question—

23 (I) the CFPA may petition the
24 district court of the United States
25 pursuant to this section for an order

1 compelling such person to answer
2 such question; and

3 (II) on grounds of the privilege
4 against self-incrimination, the testi-
5 mony of such person may be com-
6 pelled in accordance with the provi-
7 sions of section 6004 of title 18,
8 United States Code.

9 (E) TRANSCRIPTS.—For purposes of this
10 subsection—

11 (i) after the testimony of any witness
12 is fully transcribed, the CFPA investigator
13 shall afford the witness (who may be ac-
14 companied by an attorney) a reasonable
15 opportunity to examine the transcript;

16 (ii) the transcript shall be read to or
17 by the witness, unless such examination
18 and reading are waived by the witness;

19 (iii) any changes in form or substance
20 which the witness desires to make shall be
21 entered and identified upon the transcript
22 by the CFPA investigator, with a state-
23 ment of the reasons given by the witness
24 for making such changes;

1 (iv) the transcript shall be signed by
2 the witness, unless the witness in writing
3 waives the signing, is ill, cannot be found,
4 or refuses to sign; and

5 (v) if the transcript is not signed by
6 the witness during the 30-day period fol-
7 lowing the date on which the witness is
8 first afforded a reasonable opportunity to
9 examine the transcript, the CFPA investi-
10 gator shall sign the transcript and state on
11 the record the fact of the waiver, illness,
12 absence of the witness, or the refusal to
13 sign, together with any reasons given for
14 the failure to sign.

15 (F) CERTIFICATION BY INVESTIGATOR.—

16 The CFPA investigator shall certify on the
17 transcript that the witness was duly sworn by
18 him or her and that the transcript is a true
19 record of the testimony given by the witness,
20 and the CFPA investigator shall promptly de-
21 liver the transcript or send it by registered or
22 certified mail to the custodian.

23 (G) COPY OF TRANSCRIPT.—The CFPA
24 investigator shall furnish a copy of the tran-
25 script (upon payment of reasonable charges for

1 the transcript) to the witness only, except that
2 the CFPA may for good cause limit such wit-
3 ness to inspection of the official transcript of
4 his testimony.

5 (H) WITNESS FEES.—Any witness appear-
6 ing for the taking of oral testimony pursuant to
7 a civil investigative demand shall be entitled to
8 the same fees and mileage which are paid to
9 witnesses in the district courts of the United
10 States.

11 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-
12 RIAL.—

13 (1) IN GENERAL.—Documentary materials and
14 tangible things received as a result of a civil inves-
15 tigative demand shall be subject to requirements and
16 procedures regarding confidentiality, in accordance
17 with rules established by the CFPA.

18 (2) DISCLOSURE TO CONGRESS.—No rule es-
19 tablished by the CFPA regarding the confidentiality
20 of materials submitted to, or otherwise obtained by,
21 the CFPA shall be intended to prevent disclosure to
22 either House of Congress or to an appropriate com-
23 mittee of the Congress, except that the CFPA is per-
24 mitted to adopt rules allowing prior notice to any
25 party that owns or otherwise provided the material

1 to the CFPA and had designated such material as
2 confidential.

3 (e) PETITION FOR ENFORCEMENT.—

4 (1) IN GENERAL.—Whenever any person fails
5 to comply with any civil investigative demand duly
6 served upon him under this section, or whenever sat-
7 isfactory copying or reproduction of material re-
8 quested pursuant to the demand cannot be accom-
9 plished and such person refuses to surrender such
10 material, the CFPA, through such officers or attor-
11 neys as it may designate, may file, in the district
12 court of the United States for any judicial district
13 in which such person resides, is found, or transacts
14 business, and serve upon such person, a petition for
15 an order of such court for the enforcement of this
16 section.

17 (2) SERVICE OF PROCESS.—All process of any
18 court to which application may be made as provided
19 in this subsection may be served in any judicial dis-
20 trict.

21 (f) PETITION FOR ORDER MODIFYING OR SETTING
22 ASIDE DEMAND.—

23 (1) IN GENERAL.—Not later than 20 days after
24 the service of any civil investigative demand upon
25 any person under subsection (b), or at any time be-

1 fore the return date specified in the demand, which-
2 ever period is shorter, or within such period exceed-
3 ing 20 days after service or in excess of such return
4 date as may be prescribed in writing, subsequent to
5 service, by any CFPA investigator named in the de-
6 mand, such person may file with the CFPA a peti-
7 tion for an order by the CFPA modifying or setting
8 aside the demand.

9 (2) COMPLIANCE DURING PENDENCY.—The
10 time permitted for compliance with the demand in
11 whole or in part, as determined proper and ordered
12 by the CFPA, shall not run during the pendency of
13 a petition under paragraph (1) at the CFPA, except
14 that such person shall comply with any portions of
15 the demand not sought to be modified or set aside.

16 (3) SPECIFIC GROUNDS.—A petition under
17 paragraph (1) shall specify each ground upon which
18 the petitioner relies in seeking relief, and may be
19 based upon any failure of the demand to comply
20 with the provisions of this section, or upon any con-
21 stitutional or other legal right or privilege of such
22 person.

23 (g) CUSTODIAL CONTROL.—At any time during
24 which any custodian is in custody or control of any docu-
25 mentary material, tangible things, reports, answers to

1 questions, or transcripts of oral testimony given by any
2 person in compliance with any civil investigative demand,
3 such person may file, in the district court of the United
4 States for the judicial district within which the office of
5 such custodian is situated, and serve upon such custodian,
6 a petition for an order of such court requiring the per-
7 formance by such custodian of any duty imposed upon him
8 by this section or rule promulgated by the CFPA.

9 (h) JURISDICTION OF COURT.—

10 (1) IN GENERAL.—Whenever any petition is
11 filed in any district court of the United States under
12 this section, such court shall have jurisdiction to
13 hear and determine the matter so presented, and to
14 enter such order or orders as may be required to
15 carry out the provisions of this section.

16 (2) APPEAL.—Any final order entered as de-
17 scribed in paragraph (1) shall be subject to appeal
18 pursuant to section 1291 of title 28, United States
19 Code.

20 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

21 (a) IN GENERAL.—The CFPA is authorized to con-
22 duct hearings and adjudication proceedings with respect
23 to any person in the manner prescribed by chapter 5 of
24 title 5, United States Code in order to ensure or enforce
25 compliance with—

1 (1) the provisions of this title, including any
2 rules prescribed by the CFPA under this title; and

3 (2) any other Federal law that the CFPA is au-
4 thorized to enforce, including an enumerated con-
5 sumer law, and any regulations or order prescribed
6 thereunder, unless such Federal law specifically lim-
7 its the CFPA from conducting a hearing or adju-
8 dication proceeding and only to the extent of such
9 limitation.

10 (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-
11 CEEDINGS.—

12 (1) ORDERS AUTHORIZED.—

13 (A) IN GENERAL.—If, in the opinion of the
14 CFPA, any covered person or service provider is
15 engaging or has engaged in an activity that vio-
16 lates a law, rule, or any condition imposed in
17 writing on the person by the CFPA, the CFPA
18 may issue and serve upon the covered person or
19 service provider a notice of charges in respect
20 thereof.

21 (B) CONTENT OF NOTICE.—The notice
22 under subparagraph (A) shall contain a state-
23 ment of the facts constituting the alleged viola-
24 tion or violations, and shall fix a time and place
25 at which a hearing will be held to determine

1 whether an order to cease and desist should
2 issue against the covered person or service pro-
3 vider, such hearing to be held not earlier than
4 30 days nor later than 60 days after the date
5 of service of such notice, unless an earlier or a
6 later date is set by the CFPA, at the request
7 of any party so served.

8 (C) CONSENT.—Unless the party or par-
9 ties served under subparagraph (B) appear at
10 the hearing personally or by a duly authorized
11 representative, such person shall be deemed to
12 have consented to the issuance of the cease-and-
13 desist order.

14 (D) PROCEDURE.—In the event of consent
15 under subparagraph (C), or if, upon the record,
16 made at any such hearing, the CFPA finds that
17 any violation specified in the notice of charges
18 has been established, the CFPA may issue and
19 serve upon the covered person or service pro-
20 vider an order to cease and desist from the vio-
21 lation or practice. Such order may, by provi-
22 sions which may be mandatory or otherwise, re-
23 quire the covered person or service provider to
24 cease and desist from the subject activity, and

1 to take affirmative action to correct the condi-
2 tions resulting from any such violation.

3 (2) EFFECTIVENESS OF ORDER.—A cease-and-
4 desist order shall become effective at the expiration
5 of 30 days after the date of service of an order
6 under paragraph (1) upon the covered person or
7 service provider concerned (except in the case of a
8 cease-and-desist order issued upon consent, which
9 shall become effective at the time specified therein),
10 and shall remain effective and enforceable as pro-
11 vided therein, except to such extent as the order is
12 stayed, modified, terminated, or set aside by action
13 of the CFPA or a reviewing court.

14 (3) DECISION AND APPEAL.—Any hearing pro-
15 vided for in this subsection shall be held in the Fed-
16 eral judicial district or in the territory in which the
17 residence or principal office or place of business of
18 the person is located unless the person consents to
19 another place, and shall be conducted in accordance
20 with the provisions of chapter 5 of title 5 of the
21 United States Code. After such hearing, and within
22 90 days after the CFPA has notified the parties that
23 the case has been submitted to the CFPA for final
24 decision, the CFPA shall render its decision (which
25 shall include findings of fact upon which its decision

1 is predicated) and shall issue and serve upon each
2 party to the proceeding an order or orders consistent
3 with the provisions of this section. Judicial review of
4 any such order shall be exclusively as provided in
5 this subsection. Unless a petition for review is timely
6 filed in a court of appeals of the United States, as
7 provided in paragraph (4), and thereafter until the
8 record in the proceeding has been filed as provided
9 in paragraph (4), the CFPA may at any time, upon
10 such notice and in such manner as the CFPA shall
11 determine proper, modify, terminate, or set aside
12 any such order. Upon filing of the record as pro-
13 vided, the CFPA may modify, terminate, or set aside
14 any such order with permission of the court.

15 (4) APPEAL TO COURT OF APPEALS.—Any
16 party to any proceeding under this subsection may
17 obtain a review of any order served pursuant to this
18 subsection (other than an order issued with the con-
19 sent of the person concerned) by the filing in the
20 court of appeals of the United States for the circuit
21 in which the principal office of the covered person is
22 located, or in the United States Court of Appeals for
23 the District of Columbia Circuit, within 30 days
24 after the date of service of such order, a written pe-
25 tition praying that the order of the CFPA be modi-

1 fied, terminated, or set aside. A copy of such peti-
2 tion shall be forthwith transmitted by the clerk of
3 the court to the CFPA, and thereupon the CFPA
4 shall file in the court the record in the proceeding,
5 as provided in section 2112 of title 28 of the United
6 States Code. Upon the filing of such petition, such
7 court shall have jurisdiction, which upon the filing of
8 the record shall except as provided in the last sen-
9 tence of paragraph (3) be exclusive, to affirm, mod-
10 ify, terminate, or set aside, in whole or in part, the
11 order of the CFPA. Review of such proceedings shall
12 be had as provided in chapter 7 of title 5 of the
13 United States Code. The judgment and decree of the
14 court shall be final, except that the same shall be
15 subject to review by the Supreme Court upon certio-
16 rari, as provided in section 1254 of title 28 of the
17 United States Code.

18 (5) NO STAY.—The commencement of pro-
19 ceedings for judicial review under paragraph (4)
20 shall not, unless specifically ordered by the court,
21 operate as a stay of any order issued by the CFPA.

22 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-
23 DESIST PROCEEDINGS.—

24 (1) IN GENERAL.—Whenever the CFPA deter-
25 mines that the violation specified in the notice of

1 charges served upon a person, including a service
2 provider, pursuant to subsection (b), or the continu-
3 ation thereof, is likely to cause the person to be in-
4 solvent or otherwise prejudice the interests of con-
5 sumers before the completion of the proceedings con-
6 ducted pursuant to subsection (b), the CFPA may
7 issue a temporary order requiring the person to
8 cease and desist from any such violation or practice
9 and to take affirmative action to prevent or remedy
10 such insolvency or other condition pending comple-
11 tion of such proceedings. Such order may include
12 any requirement authorized under this subtitle. Such
13 order shall become effective upon service upon the
14 person and, unless set aside, limited, or suspended
15 by a court in proceedings authorized by paragraph
16 (2), shall remain effective and enforceable pending
17 the completion of the administrative proceedings
18 pursuant to such notice and until such time as the
19 CFPA shall dismiss the charges specified in such no-
20 tice, or if a cease-and-desist order is issued against
21 the person, until the effective date of such order.

22 (2) APPEAL.—Not later than 10 days after the
23 covered person or service provider concerned has
24 been served with a temporary cease-and-desist order,
25 the person may apply to the United States district

1 court for the judicial district in which the residence
2 or principal office or place of business of the person
3 is located, or the United States District Court for
4 the District of Columbia, for an injunction setting
5 aside, limiting, or suspending the enforcement, oper-
6 ation, or effectiveness of such order pending the
7 completion of the administrative proceedings pursu-
8 ant to the notice of charges served upon the person
9 under subsection (b), and such court shall have ju-
10 risdiction to issue such injunction.

11 (3) INCOMPLETE OR INACCURATE RECORDS.—

12 (A) TEMPORARY ORDER.—If a notice of
13 charges served under subsection (b) specifies,
14 on the basis of particular facts and cir-
15 cumstances, that the books and records of a
16 covered person or service provider are so incom-
17 plete or inaccurate that the CFPA is unable to
18 determine the financial condition of that person
19 or the details or purpose of any transaction or
20 transactions that may have a material effect on
21 the financial condition of that person, the
22 CFPA may issue a temporary order requiring—

23 (i) the cessation of any activity or
24 practice which gave rise, whether in whole

1 or in part, to the incomplete or inaccurate
2 state of the books or records; or

3 (ii) affirmative action to restore such
4 books or records to a complete and accu-
5 rate state, until the completion of the pro-
6 ceedings under subsection (b)(1).

7 (B) EFFECTIVE PERIOD.—Any temporary
8 order issued under subparagraph (A)—

9 (i) shall become effective upon service;
10 and

11 (ii) unless set aside, limited, or sus-
12 pended by a court in proceedings under
13 paragraph (2), shall remain in effect and
14 enforceable until the earlier of—

15 (I) the completion of the pro-
16 ceeding initiated under subsection (b)
17 in connection with the notice of
18 charges; or

19 (II) the date the CFPA deter-
20 mines, by examination or otherwise,
21 that the books and records of the cov-
22 ered person or service provider are ac-
23 curate and reflect the financial condi-
24 tion thereof.

1 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-
2 DERS.—

3 (1) IN GENERAL.—The CFPA may in its dis-
4 cretion apply to the United States district court
5 within the jurisdiction of which the principal office
6 or place of business of the person is located, for the
7 enforcement of any effective and outstanding notice
8 or order issued under this section, and such court
9 shall have jurisdiction and power to order and re-
10 quire compliance herewith.

11 (2) EXCEPTION.—Except as otherwise provided
12 in this subsection, no court shall have jurisdiction to
13 affect by injunction or otherwise the issuance or en-
14 forcement of any notice or order or to review, mod-
15 ify, suspend, terminate, or set aside any such notice
16 or order.

17 (e) RULES.—The CFPA shall prescribe rules estab-
18 lishing such procedures as may be necessary to carry out
19 this section.

20 **SEC. 1054. LITIGATION AUTHORITY.**

21 (a) IN GENERAL.—If any person violates a provision
22 of this title, any enumerated consumer law, any law for
23 which authorities were transferred under subtitles F and
24 H, or any rule or order prescribed by the CFPA there-
25 under, then the CFPA may commence a civil action

1 against such person to impose a civil penalty or to seek
2 all appropriate legal and equitable relief including a per-
3 manent or temporary injunction as permitted by law.

4 (b) REPRESENTATION.—The CFPA may act in its
5 own name and through its own attorneys in enforcing any
6 provision of this title, rules thereunder, or any other law
7 or regulation, or in any action, suit, or proceeding to which
8 the CFPA is a party.

9 (c) COMPROMISE OF ACTIONS.—The CFPA may
10 compromise or settle any action if such compromise is ap-
11 proved by the court.

12 (d) NOTICE TO THE ATTORNEY GENERAL.—When
13 commencing a civil action under this title, any enumerated
14 consumer law, any law for which authorities were trans-
15 ferred under subtitles F and H, or any rule thereunder,
16 the CFPA shall notify the Attorney General.

17 (e) APPEARANCE BEFORE THE SUPREME COURT.—
18 The CFPA may represent itself in its own name before
19 the Supreme Court of the United States, provided that
20 the CFPA makes a written request to the Attorney Gen-
21 eral within the 10-day period which begins on the date
22 of entry of the judgment which would permit any party
23 to file a petition for writ of certiorari, and the Attorney
24 General concurs with such request or fails to take action
25 within 60 days of the request of the CFPA.

1 (f) FORUM.—Any civil action brought under this title
2 may be brought in a United States district court or in
3 any court of competent jurisdiction of a state in a district
4 in which the defendant is located or resides or is doing
5 business, and such court shall have jurisdiction to enjoin
6 such person and to require compliance with this title, any
7 enumerated consumer law, any law for which authorities
8 were transferred under subtitles F and H, or rule or order
9 of the CFPA thereunder.

10 (g) TIME FOR BRINGING ACTION.—

11 (1) IN GENERAL.—Except as otherwise per-
12 mitted by law or equity, no action may be brought
13 under this title more than 3 years after the date of
14 discovery of the violation to which an action relates.

15 (2) LIMITATIONS UNDER OTHER FEDERAL
16 LAWS.—

17 (A) IN GENERAL.—For purposes of this
18 section, an action arising under this title does
19 not include claims arising solely under enumer-
20 ated consumer laws.

21 (B) CFPA AUTHORITY.—In any action
22 arising solely under an enumerated consumer
23 law, the CFPA may commence, defend, or in-
24 tervene in the action in accordance with the re-

1 requirements of that provision of law, as applica-
2 ble.

3 (C) TRANSFERRED AUTHORITY.—In any
4 action arising solely under the laws for which
5 authorities were transferred by subtitles F and
6 H, the CFPA may commence, defend, or inter-
7 vene in the action in accordance with the re-
8 quirements of that provision of law, as applica-
9 ble.

10 **SEC. 1055. RELIEF AVAILABLE.**

11 (a) ADMINISTRATIVE PROCEEDINGS OR COURT AC-
12 TIONS.—

13 (1) JURISDICTION.—The court (or the CFPA,
14 as the case may be) in an action or adjudication pro-
15 ceeding brought under this title, any enumerated
16 consumer law, or any law for which authorities were
17 transferred by subtitles F and H, shall have jurisdic-
18 tion to grant any appropriate legal or equitable relief
19 with respect to a violation of this title, any enumer-
20 ated consumer law, and any law for which authori-
21 ties were transferred by subtitles F and H, including
22 a violation of a rule or order prescribed under this
23 title, any enumerated consumer law and any law for
24 which authorities were transferred by subtitles F
25 and H.

1 (2) RELIEF.—Relief under this section may in-
2 clude, without limitation—

3 (A) rescission or reformation of contracts;

4 (B) refund of moneys or return of real
5 property;

6 (C) restitution;

7 (D) disgorgement or compensation for un-
8 just enrichment;

9 (E) payment of damages or other mone-
10 tary relief;

11 (F) public notification regarding the viola-
12 tion, including the costs of notification;

13 (G) limits on the activities or functions of
14 the person; and

15 (H) civil money penalties, as set forth
16 more fully in subsection (c).

17 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—

18 Nothing in this subsection shall be construed as au-
19 thorizing the imposition of exemplary or punitive
20 damages.

21 (b) RECOVERY OF COSTS.—In any action brought by
22 the CFPA, a State attorney general, or any State regu-
23 lator to enforce any provision of this title, any enumerated
24 consumer law, any law for which authorities were trans-
25 ferred by subtitles F and H, or any rule or order pre-

1 scribed by the CFPA thereunder, the CFPA, the State at-
2 torney general, or the State regulator may recover its costs
3 in connection with prosecuting such action if the CFPA,
4 the State attorney general, or the State regulator is the
5 prevailing party in the action.

6 (c) CIVIL MONEY PENALTY IN COURT AND ADMINIS-
7 TRATIVE ACTIONS.—

8 (1) IN GENERAL.—Any person that violates,
9 through any act or omission, any provision of this
10 title, any enumerated consumer law, or any rule or
11 order prescribed under this title shall forfeit and pay
12 a civil penalty pursuant to this subsection.

13 (2) PENALTY AMOUNTS.—

14 (A) FIRST TIER.—For any violation of a
15 law, rule, or final order or condition imposed in
16 writing by the CFPA, or for any failure to pay
17 any fee or assessment imposed by the CFPA
18 (including any fee or assessment for which a re-
19 lated person may be liable), a civil penalty may
20 not exceed \$5,000 for each day during which
21 such violation or failure to pay continues.

22 (B) SECOND TIER.—Notwithstanding
23 paragraph (A), for any person that recklessly
24 engages in a violation of this title, any enumer-
25 ated consumer law, or any rule or order pre-

1 scribed under this title, a civil penalty may not
2 exceed \$25,000 for each day during which such
3 violation continues.

4 (C) THIRD TIER.—Notwithstanding sub-
5 paragraphs (A) and (B), for any person that
6 knowingly violates this title, any enumerated
7 consumer law, or a rule or order prescribed
8 under this title, a civil penalty may not exceed
9 \$1,000,000 for each day during which such vio-
10 lation continues.

11 (3) MITIGATING FACTORS.—In determining the
12 amount of any penalty assessed under paragraph
13 (2), the CFPA or the court shall take into account
14 the appropriateness of the penalty with respect to—

15 (A) the size of financial resources and good
16 faith of the person charged;

17 (B) the gravity of the violation or failure
18 to pay;

19 (C) the severity of the risks to or losses of
20 the consumer, which may take into account the
21 number of products or services sold or provided;

22 (D) the history of previous violations; and

23 (E) such other matters as justice may re-
24 quire.

1 (4) AUTHORITY TO MODIFY OR REMIT PEN-
2 ALTY.—The CFPA may compromise, modify, or
3 remit any penalty which may be assessed or had al-
4 ready been assessed under paragraph (2). The
5 amount of such penalty, when finally determined,
6 shall be exclusive of any sums owed by the person
7 to the United States in connection with the costs of
8 the proceeding, and may be deducted from any sums
9 owing by the United States to the person charged.

10 (5) NOTICE AND HEARING.—No civil penalty
11 may be assessed under this subsection with respect
12 to a violation of this title, any enumerated consumer
13 law, or any rule or order prescribed by the CFPA,
14 unless—

15 (A) the CFPA gives notice and an oppor-
16 tunity for a hearing to the person accused of
17 the violation; or

18 (B) the appropriate court has ordered such
19 assessment and entered judgment in favor of
20 the CFPA.

21 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

22 If the CFPA obtains evidence that any person, do-
23 mestic or foreign, has engaged in conduct that may con-
24 stitute a violation of Federal criminal law, the CFPA shall
25 have the power to transmit such evidence to the Attorney

1 General of the United States, who may institute criminal
2 proceedings under appropriate law. Nothing in this section
3 affects any other authority of the CFPA to disclose infor-
4 mation.

5 **SEC. 1057. EMPLOYEE PROTECTION.**

6 (a) IN GENERAL.—No covered person or service pro-
7 vider shall terminate or in any other way discriminate
8 against, or cause to be terminated or discriminated
9 against, any covered employee or any authorized rep-
10 resentative of covered employees by reason of the fact that
11 such employee or representative, whether at the initiative
12 of the employee or in the ordinary course of the duties
13 of the employee (or any person acting pursuant to a re-
14 quest of the employee), has—

15 (1) provided, caused to be provided, or is about
16 to provide or cause to be provided, information to
17 the employer, the CFPA, or any other State, local,
18 or Federal, government authority or law enforce-
19 ment agency relating to any violation of, or any act
20 or omission that the employee reasonably believes to
21 be a violation of, any provision of this title or any
22 other provision of law that is subject to the jurisdic-
23 tion of the CFPA, or any rule, order, standard, or
24 prohibition prescribed by the CFPA;

1 (2) testified or will testify in any proceeding re-
2 sulting from the administration or enforcement of
3 any provision of this title or any other provision of
4 law that is subject to the jurisdiction of the CFPA,
5 or any rule, order, standard, or prohibition pre-
6 scribed by the CFPA;

7 (3) filed, instituted or caused to be filed or in-
8 stituted any proceeding under any enumerated con-
9 sumer law or any provision of law for which authori-
10 ties were transferred by subtitles F and H; or

11 (4) objected to, or refused to participate in, any
12 activity, policy, practice, or assigned task that the
13 employee (or other such person) reasonably believed
14 to be in violation of any law, rule, order, standard,
15 or prohibition, subject to the jurisdiction of, or en-
16 forceable by, the CFPA.

17 (b) DEFINITION OF COVERED EMPLOYEE.—For the
18 purposes of this section, the term “covered employee”
19 means any individual performing tasks related to the pro-
20 vision of a financial product or service to a consumer.

21 (c) PROCEDURES AND TIMETABLES.—

22 (1) COMPLAINT.—

23 (A) IN GENERAL.—A person who believes
24 that he or she has been discharged or otherwise
25 discriminated against by any person in violation

1 of subsection (a) may, not later than 180 days
2 after the date on which such alleged violation
3 occurs, file (or have any person file on his or
4 her behalf) a complaint with the Secretary of
5 Labor alleging such discharge or discrimination
6 and identifying the person responsible for such
7 act.

8 (B) ACTIONS OF SECRETARY OF LABOR.—
9 Upon receipt of such a complaint, the Secretary
10 of Labor shall notify, in writing, the person
11 named in the complaint who is alleged to have
12 committed the violation, of —

- 13 (i) the filing of the complaint;
14 (ii) the allegations contained in the
15 complaint;
16 (iii) the substance of evidence sup-
17 porting the complaint; and
18 (iv) opportunities that will be afforded
19 to such person under paragraph (2).

20 (2) INVESTIGATION BY SECRETARY OF
21 LABOR.—

22 (A) IN GENERAL.—Not later than 60 days
23 after the date of receipt of a complaint filed
24 under paragraph (1), and after affording the
25 complainant and the person named in the com-

1 plaintiff who is alleged to have committed the vio-
2 lation that is the basis for the complaint an op-
3 portunity to submit to the Secretary of Labor
4 a written response to the complaint and an op-
5 portunity to meet with a representative of the
6 Secretary of Labor to present statements from
7 witnesses, the Secretary of Labor shall—

8 (i) initiate an investigation and deter-
9 mine whether there is reasonable cause to
10 believe that the complaint has merit; and

11 (ii) notify the complainant and the
12 person alleged to have committed the viola-
13 tion of subsection (a), in writing, of such
14 determination.

15 (B) NOTICE OF RELIEF AVAILABLE.—If
16 the Secretary of Labor concludes that there is
17 reasonable cause to believe that a violation of
18 subsection (a) has occurred, the Secretary of
19 Labor shall, together with the notice under sub-
20 paragraph (A)(ii), issue a preliminary order
21 providing the relief prescribed by paragraph
22 (4)(B).

23 (C) REQUEST FOR HEARING.—Not later
24 than 30 days after the date of receipt of notifi-
25 cation of a determination of the Secretary of

1 Labor under this paragraph, either the person
2 alleged to have committed the violation or the
3 complainant may file objections to the findings
4 or preliminary order, or both, and request a
5 hearing on the record. The filing of such objec-
6 tions shall not operate to stay any reinstatement
7 remedy contained in the preliminary
8 order. Any such hearing shall be conducted ex-
9 peditiously, and if a hearing is not requested in
10 such 30-day period, the preliminary order shall
11 be deemed a final order that is not subject to
12 judicial review.

13 (3) GROUNDS FOR DETERMINATION OF COM-
14 PLAINTS.—

15 (A) IN GENERAL.—The Secretary of Labor
16 shall dismiss a complaint filed under this sub-
17 section, and shall not conduct an investigation
18 otherwise required under paragraph (2), unless
19 the complainant makes a prima facie showing
20 that any behavior described in paragraphs (1)
21 through (4) of subsection (a) was a contrib-
22 uting factor in the unfavorable personnel action
23 alleged in the complaint.

24 (B) REBUTTAL EVIDENCE.—Notwith-
25 standing a finding by the Secretary of Labor

1 that the complainant has made the showing re-
2 quired under subparagraph (A), no investiga-
3 tion otherwise required under paragraph (2)
4 shall be conducted, if the employer dem-
5 onstrates, by clear and convincing evidence,
6 that the employer would have taken the same
7 unfavorable personnel action in the absence of
8 that behavior.

9 (C) EVIDENTIARY STANDARDS.—The Sec-
10 retary of Labor may determine that a violation
11 of subsection (a) has occurred only if the com-
12 plainant demonstrates that any behavior de-
13 scribed in paragraphs (1) through (4) of sub-
14 section (a) was a contributing factor in the un-
15 favorable personnel action alleged in the com-
16 plaint. Relief may not be ordered under sub-
17 paragraph (A) if the employer demonstrates by
18 clear and convincing evidence that the employer
19 would have taken the same unfavorable per-
20 sonnel action in the absence of that behavior.

21 (4) ISSUANCE OF FINAL ORDERS; REVIEW PRO-
22 CEDURES.—

23 (A) TIMING.—Not later than 120 days
24 after the date of conclusion of any hearing
25 under paragraph (2), the Secretary of Labor

1 shall issue a final order providing the relief pre-
2 scribed by this paragraph or denying the com-
3 plaint. At any time before issuance of a final
4 order, a proceeding under this subsection may
5 be terminated on the basis of a settlement
6 agreement entered into by the Secretary of
7 Labor, the complainant, and the person alleged
8 to have committed the violation.

9 (B) PENALTIES.—If, in response to a com-
10 plaint filed under paragraph (1), the Secretary
11 of Labor determines that a violation of sub-
12 section (a) has occurred, the Secretary of Labor
13 shall order the person who committed such vio-
14 lation—

15 (i) to take affirmative action to abate
16 the violation;

17 (ii) to reinstate the complainant to his
18 or her former position, together with com-
19 pensation (including back pay) and restore
20 the terms, conditions, and privileges associ-
21 ated with his or her employment; and

22 (iii) to provide compensatory damages
23 to the complainant. If such an order is
24 issued under this paragraph, the Secretary
25 of Labor, at the request of the complain-

1 ant, shall assess against the person against
2 whom the order is issued a sum equal to
3 the aggregate amount of all costs and ex-
4 penses (including attorneys' and expert
5 witness fees) reasonably incurred, as deter-
6 mined by the Secretary of Labor, by the
7 complainant for, or in connection with, the
8 bringing of the complaint upon which the
9 order was issued.

10 (C) PENALTY FOR FRIVOLOUS CLAIMS.—If
11 the Secretary of Labor finds that a complaint
12 under paragraph (1) is frivolous or has been
13 brought in bad faith, the Secretary of Labor
14 may award to the prevailing employer a reason-
15 able attorney fee, not exceeding \$1,000, to be
16 paid by the complainant.

17 (D) DE NOVO REVIEW.—

18 (i) FAILURE OF THE SECRETARY TO
19 ACT.—If the Secretary of Labor has not
20 issued a final order within 210 days after
21 the date of filing of a complaint under this
22 subsection, or within 90 days after the
23 date of receipt of a written determination,
24 the complainant may bring an action at
25 law or equity for de novo review in the ap-

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1 appropriate district court of the United
2 States having jurisdiction, which shall have
3 jurisdiction over such an action without re-
4 gard to the amount in controversy, and
5 which action shall, at the request of either
6 party to such action, be tried by the court
7 with a jury.

8 (ii) PROCEDURES.—A proceedings
9 under clause (i) shall be governed by the
10 same legal burdens of proof specified in
11 paragraph (3). The court shall have juris-
12 diction to grant all relief necessary to
13 make the employee whole, including injunc-
14 tive relief and compensatory damages, in-
15 cluding—

16 (I) reinstatement with the same
17 seniority status that the employee
18 would have had, but for the discharge
19 or discrimination;

20 (II) the amount of back pay, with
21 interest; and

22 (III) compensation for any spe-
23 cial damages sustained as a result of
24 the discharge or discrimination, in-

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1 including litigation costs, expert witness
2 fees, and reasonable attorney fees.

3 (E) OTHER APPEALS.—Unless the com-
4 plainant brings an action under subparagraph
5 (D), any person adversely affected or aggrieved
6 by a final order issued under subparagraph (A)
7 may file a petition for review of the order in the
8 United States Court of Appeals for the circuit
9 in which the violation with respect to which the
10 order was issued, allegedly occurred or the cir-
11 cuit in which the complainant resided on the
12 date of such violation, not later than 60 days
13 after the date of the issuance of the final order
14 of the Secretary of Labor under subparagraph
15 (A). Review shall conform to chapter 7 of title
16 5, United States Code. The commencement of
17 proceedings under this subparagraph shall not,
18 unless ordered by the court, operate as a stay
19 of the order. An order of the Secretary of
20 Labor with respect to which review could have
21 been obtained under this subparagraph shall
22 not be subject to judicial review in any criminal
23 or other civil proceeding.

24 (5) FAILURE TO COMPLY WITH ORDER.—

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1 (A) ACTIONS BY THE SECRETARY.—If any
2 person has failed to comply with a final order
3 issued under paragraph (4), the Secretary of
4 Labor may file a civil action in the United
5 States district court for the district in which
6 the violation was found to have occurred, or in
7 the United States district court for the District
8 of Columbia, to enforce such order. In actions
9 brought under this paragraph, the district
10 courts shall have jurisdiction to grant all appro-
11 priate relief including injunctive relief and com-
12 pensatory damages.

13 (B) CIVIL ACTIONS TO COMPEL COMPLI-
14 ANCE.—A person on whose behalf an order was
15 issued under paragraph (4) may commence a
16 civil action against the person to whom such
17 order was issued to require compliance with
18 such order. The appropriate United States dis-
19 trict court shall have jurisdiction, without re-
20 gard to the amount in controversy or the citi-
21 zenship of the parties, to enforce such order.

22 (C) AWARD OF COSTS AUTHORIZED.—The
23 court, in issuing any final order under this
24 paragraph, may award costs of litigation (in-
25 cluding reasonable attorney and expert witness

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1 fees) to any party, whenever the court deter-
2 mines such award is appropriate.

3 (D) MANDAMUS PROCEEDINGS.—Any non-
4 discretionary duty imposed by this section shall
5 be enforceable in a mandamus proceeding
6 brought under section 1361 of title 28, United
7 States Code.

8 (d) UNENFORCEABILITY OF CERTAIN AGREE-
9 MENTS.—

10 (1) NO WAIVER OF RIGHTS AND REMEDIES.—
11 Except as provided under paragraph (3), and not-
12 withstanding any other provision of law, the rights
13 and remedies provided for in this section may not be
14 waived by any agreement, policy, form, or condition
15 of employment, including by any predispute arbitra-
16 tion agreement.

17 (2) NO PREDISPUTE ARBITRATION AGREE-
18 MENTS.—Except as provided under paragraph (3),
19 and notwithstanding any other provision of law, no
20 predispute arbitration agreement shall be valid or
21 enforceable if it requires arbitration of a dispute
22 arising under this section.

23 (3) EXCEPTION.—Notwithstanding paragraphs
24 (1) and (2), an arbitration provision in a collective
25 bargaining agreement shall be enforceable as to dis-

1 putes arising under subsection (a) (4), unless the
2 CFPB determines, by rule, that such provision is in-
3 consistent with the purposes of this Act.

4 **SEC. 1058. EFFECTIVE DATE.**

5 This subtitle shall become effective on the designated
6 transfer date.

7 **Subtitle F—Transfer of Functions**
8 **and Personnel; Transitional**
9 **Provisions**

10 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
11 **TION FUNCTIONS.**

12 (a) **DEFINED TERMS.**—For purposes of this sub-
13 title—

14 (1) the term “consumer financial protection
15 functions” means research, rulemaking, issuance of
16 orders or guidance, supervision, examination, and
17 enforcement activities, powers, and duties relating to
18 the provision of consumer financial products or serv-
19 ices, including the authority to assess and collect
20 fees for those purposes; and

21 (2) the terms “transferor agency” and “trans-
22 feror agencies” mean, respectively—

23 (A) the Board of Governors (and any Fed-
24 eral reserve bank, as the context requires), the
25 Federal Deposit Insurance Corporation, the

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1 Federal Trade Commission, the National Credit
2 Union Administration, the Office of the Comp-
3 troller of the Currency, the Office of Thrift Su-
4 pervision, and the Department of Housing and
5 Urban Development, and the heads of those
6 agencies; and

7 (B) the agencies listed in subparagraph
8 (A), collectively.

9 (b) IN GENERAL.—Except as provided in subsection
10 (c), consumer financial protection functions are trans-
11 ferred as follows:

12 (1) BOARD OF GOVERNORS.—

13 (A) TRANSFER OF FUNCTIONS.—All con-
14 sumer financial protection functions of the
15 Board of Governors are transferred to the
16 CFPA.

17 (B) BOARD OF GOVERNORS AUTHORITY.—
18 The CFPA shall have all powers and duties
19 that were vested in the Board of Governors, re-
20 lating to consumer financial protection func-
21 tions, on the day before the designated transfer
22 date.

23 (2) COMPTROLLER OF THE CURRENCY.—

24 (A) TRANSFER OF FUNCTIONS.—All con-
25 sumer financial protection functions of the

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1 Comptroller of the Currency are transferred to
2 the CFPA.

3 (B) COMPTROLLER AUTHORITY.—The
4 CFPA shall have all powers and duties that
5 were vested in the Comptroller of the Currency,
6 relating to consumer financial protection func-
7 tions, on the day before the designated transfer
8 date.

9 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-
10 PERVISION.—

11 (A) TRANSFER OF FUNCTIONS.—All con-
12 sumer financial protection functions of the Di-
13 rector of the Office of Thrift Supervision are
14 transferred to the CFPA.

15 (B) DIRECTOR AUTHORITY.—The CFPA
16 shall have all powers and duties that were vest-
17 ed in the Director of the Office of Thrift Super-
18 vision, relating to consumer financial protection
19 functions, on the day before the designated
20 transfer date.

21 (4) FEDERAL DEPOSIT INSURANCE CORPORA-
22 TION.—

23 (A) TRANSFER OF FUNCTIONS.—All con-
24 sumer financial protection functions of the Fed-

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1 eral Deposit Insurance Corporation are trans-
2 ferred to the CFPA.

3 (B) CORPORATION AUTHORITY.—The
4 CFPA shall have all powers and duties that
5 were vested in the Federal Deposit Insurance
6 Corporation, relating to consumer financial pro-
7 tection functions, on the day before the des-
8 ignated transfer date.

9 (5) FEDERAL TRADE COMMISSION.—

10 (A) TRANSFER OF FUNCTIONS.—Except as
11 provided in subparagraph (C), all consumer fi-
12 nancial protection functions of the Federal
13 Trade Commission are transferred to the
14 CFPA.

15 (B) COMMISSION AUTHORITY.—Except as
16 provided in subparagraph (C), the CFPA shall
17 have all powers and duties that were vested in
18 the Federal Trade Commission relating to con-
19 sumer financial protection functions on the day
20 before the designated transfer date.

21 (C) CONTINUATION OF CERTAIN COMMIS-
22 SION AUTHORITIES.—Notwithstanding subpara-
23 graphs (A) and (B), the Federal Trade Com-
24 mission shall continue to have authority to en-
25 force, and issue rules with respect to—

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1 (i) the Credit Repair Organizations
2 Act (15 U.S.C. 1679 et seq.);

3 (ii) section 5 of the Federal Trade
4 Commission Act (15 U.S.C. 45); and

5 (iii) the Telemarketing and Consumer
6 Fraud and Abuse Prevention Act (15
7 U.S.C. 6101 et seq.).

8 (6) NATIONAL CREDIT UNION ADMINISTRA-
9 TION.—

10 (A) TRANSFER OF FUNCTIONS.—All con-
11 sumer financial protection functions of the Na-
12 tional Credit Union Administration are trans-
13 ferred to the CFPA.

14 (B) NATIONAL CREDIT UNION ADMINIS-
15 TRATION AUTHORITY.—The CFPA shall have
16 all powers and duties that were vested in the
17 National Credit Union Administration, relating
18 to consumer financial protection functions, on
19 the day before the designated transfer date.

20 (7) DEPARTMENT OF HOUSING AND URBAN DE-
21 VELOPMENT.—

22 (A) TRANSFER OF FUNCTIONS.—All con-
23 sumer protection functions of the Secretary of
24 the Department of Housing and Urban Devel-
25 opment relating to the Real Estate Settlement

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1 Procedures Act of 1974 (12 U.S.C. 2601 et
2 seq.) and the Secure and Fair Enforcement for
3 Mortgage Licensing Act of 2008 (12 U.S.C.
4 5102 et seq.) are transferred to the CFPA.

5 (B) DEPARTMENT OF HOUSING AND
6 URBAN DEVELOPMENT'S AUTHORITY.—The
7 CFPA shall have all powers and duties that
8 were vested in the Secretary of the Department
9 of Housing and Urban Development relating to
10 the Real Estate Settlement Procedures Act of
11 1974, and the Secure and Fair Enforcement for
12 Mortgage Licensing Act of 2008, on the day be-
13 fore the designated transfer date.

14 (c) TRANSFERS OF FUNCTIONS SUBJECT TO BACK-
15 STOP ENFORCEMENT AUTHORITY REMAINING WITH
16 TRANSFEROR AGENCIES.—The transfers of functions in
17 subsection (b) do not affect the authority of the agencies
18 identified in subsection (b) from initiating enforcement
19 proceedings under the circumstances described in section
20 1022(e)(3).

21 (d) TERMINATION OF AUTHORITY OF TRANSFEROR
22 AGENCIES TO COLLECT FEES FOR CONSUMER FINAN-
23 CIAL PROTECTION PURPOSES.—Authorities of the agen-
24 cies identified in subsection (b) to assess and collect fees
25 to cover the cost of conducting consumer financial protec-

1 tion functions shall terminate on the day before the des-
2 ignated transfer date.

3 (e) **EFFECTIVE DATE.**—Subsections (b) and (c) shall
4 become effective on the designated transfer date.

5 **SEC. 1062. DESIGNATED TRANSFER DATE.**

6 (a) **IN GENERAL.**—Not later than 60 days after the
7 date of enactment of this Act, the Secretary shall—

8 (1) in consultation with the Chairman of the
9 Board of Governors, the Chairperson of the Cor-
10 poration, the Chairman of the Federal Trade Com-
11 mission, the Chairman of the National Credit Union
12 Administration Board, the Comptroller of the Cur-
13 rency, the Director of the Office of Thrift Super-
14 vision, the Secretary of the Department of Housing
15 and Urban Development, and the Director of the Of-
16 fice of Management and Budget, designate a single
17 calendar date for the transfer of functions to the
18 CFPA under section 1061; and

19 (2) publish notice of that designated date in the
20 Federal Register.

21 (b) **CHANGING DESIGNATION.**—The Secretary—

22 (1) may, in consultation with the Chairman of
23 the Board of Governors, the Chairperson of the Fed-
24 eral Deposit Insurance Corporation, the Chairman
25 of the Federal Trade Commission, the Chairman of

1 the National Credit Union Administration Board,
2 the Comptroller of the Currency, the Director of the
3 Office of Thrift Supervision, the Secretary of the
4 Department of Housing and Urban Development,
5 and the Director of the Office of Management and
6 Budget, change the date designated under sub-
7 section (a); and

8 (2) shall publish notice of any changed des-
9 ignated date in the Federal Register.

10 (c) PERMISSIBLE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), any date designated under this section
13 shall be not earlier than 180 days, nor later than 18
14 months, after the date of enactment of this Act.

15 (2) EXTENSION OF TIME.—The Secretary may
16 designate a date that is later than 18 months after
17 the date of enactment of this Act if the Secretary
18 transmits to appropriate committees of Congress—

19 (A) a written determination that orderly
20 implementation of this title is not feasible be-
21 fore the date that is 18 months after the date
22 of enactment of this Act;

23 (B) an explanation of why an extension is
24 necessary for the orderly implementation of this
25 title; and

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1 (C) a description of the steps that will be
2 taken to effect an orderly and timely implemen-
3 tation of this title within the extended time pe-
4 riod.

5 (3) EXTENSION LIMITED.—In no case may any
6 date designated under this section be later than 24
7 months after the date of enactment of this Act.

8 **SEC. 1063. SAVINGS PROVISIONS.**

9 (a) BOARD OF GOVERNORS.—

10 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
11 TIONS NOT AFFECTED.—Section 1061(b)(1) does
12 not affect the validity of any right, duty, or obliga-
13 tion of the United States, the Board of Governors
14 (or any Federal reserve bank), or any other person
15 that—

16 (A) arises under any provision of law relat-
17 ing to any consumer financial protection func-
18 tion of the Board of Governors transferred to
19 the CFPB by this title; and

20 (B) existed on the day before the des-
21 ignated transfer date.

22 (2) CONTINUATION OF SUITS.—No provision of
23 this Act shall abate any proceeding commenced by
24 or against the Board of Governors (or any Federal
25 reserve bank) before the designated transfer date

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1 with respect to any consumer financial protection
2 function of the Board of Governors (or any Federal
3 reserve bank) transferred to the CFPA by this title,
4 except that the CFPA shall be substituted for the
5 Board of Governors (or Federal reserve bank) as a
6 party to any such proceeding as of the designated
7 transfer date.

8 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

9 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
10 TIONS NOT AFFECTED.—Section 1061(b)(4) does
11 not affect the validity of any right, duty, or obliga-
12 tion of the United States, the Federal Deposit In-
13 surance Corporation, the Board of Directors of that
14 Corporation, or any other person, that—

15 (A) arises under any provision of law relat-
16 ing to any consumer financial protection func-
17 tion of the Federal Deposit Insurance Corpora-
18 tion transferred to the CFPA by this title; and

19 (B) existed on the day before the des-
20 ignated transfer date.

21 (2) CONTINUATION OF SUITS.—No provision of
22 this Act shall abate any proceeding commenced by
23 or against the Federal Deposit Insurance Corpora-
24 tion (or the Board of Directors of that Corporation)
25 before the designated transfer date with respect to

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1 any consumer financial protection function of the
2 Federal Deposit Insurance Corporation transferred
3 to the CFPA by this title, except that the CFPA
4 shall be substituted for the Federal Deposit Insur-
5 ance Corporation (or Board of Directors) as a party
6 to any such proceeding as of the designated transfer
7 date.

8 (c) FEDERAL TRADE COMMISSION.—

9 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
10 TIONS NOT AFFECTED.—Section 1061(b)(5) does
11 not affect the validity of any right, duty, or obliga-
12 tion of the United States, the Federal Trade Com-
13 mission, or any other person, that—

14 (A) arises under any provision of law relat-
15 ing to any consumer financial protection func-
16 tion of the Federal Trade Commission trans-
17 ferred to the CFPA by this title; and

18 (B) existed on the day before the des-
19 ignated transfer date.

20 (2) CONTINUATION OF SUITS.—No provision of
21 this Act shall abate any proceeding commenced by
22 or against the Federal Trade Commission before the
23 designated transfer date with respect to any con-
24 sumer financial protection function of the Federal
25 Trade Commission transferred to the CFPA by this

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1 title, except that the CFPA shall be substituted for
2 the Federal Trade Commission as a party to any
3 such proceeding as of the designated transfer date.

4 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
6 TIONS NOT AFFECTED.—Section 1061(b)(6) does
7 not affect the validity of any right, duty, or obliga-
8 tion of the United States, the National Credit Union
9 Administration, the National Credit Union Adminis-
10 tration Board, or any other person, that—

11 (A) arises under any provision of law relat-
12 ing to any consumer financial protection func-
13 tion of the National Credit Union Administra-
14 tion transferred to the CFPA by this title; and

15 (B) existed on the day before the des-
16 ignated transfer date.

17 (2) CONTINUATION OF SUITS.—No provision of
18 this Act shall abate any proceeding commenced by
19 or against the National Credit Union Administration
20 (or the National Credit Union Administration
21 Board) before the designated transfer date with re-
22 spect to any consumer financial protection function
23 of the National Credit Union Administration trans-
24 ferred to the CFPA by this title, except that the
25 CFPA shall be substituted for the National Credit

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1 Union Administration (or National Credit Union Ad-
2 ministration Board) as a party to any such pro-
3 ceeding as of the designated transfer date.

4 (e) OFFICE OF THE COMPTROLLER OF THE CUR-
5 RENCY.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 1061(b)(2) does
8 not affect the validity of any right, duty, or obliga-
9 tion of the United States, the Comptroller of the
10 Currency, the Office of the Comptroller of the Cur-
11 rency, or any other person, that—

12 (A) arises under any provision of law relat-
13 ing to any consumer financial protection func-
14 tion of the Comptroller of the Currency trans-
15 ferred to the CFPA by this title; and

16 (B) existed on the day before the des-
17 igned transfer date.

18 (2) CONTINUATION OF SUITS.—No provision of
19 this Act shall abate any proceeding commenced by
20 or against the Comptroller of the Currency (or the
21 Office of the Comptroller of the Currency) with re-
22 spect to any consumer financial protection function
23 of the Comptroller of the Currency transferred to
24 the CFPA by this title before the designated trans-
25 fer date, except that the CFPA shall be substituted

1 for the Comptroller of the Currency (or the Office
2 of the Comptroller of the Currency) as a party to
3 any such proceeding as of the designated transfer
4 date.

5 (f) OFFICE OF THRIFT SUPERVISION.—

6 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
7 TIONS NOT AFFECTED.—Section 1061(b)(3) does
8 not affect the validity of any right, duty, or obliga-
9 tion of the United States, the Director of the Office
10 of Thrift Supervision, the Office of Thrift Super-
11 vision, or any other person, that—

12 (A) arises under any provision of law relat-
13 ing to any consumer financial protection func-
14 tion of the Director of the Office of Thrift Su-
15 pervision transferred to the CFPA by this title;
16 and

17 (B) that existed on the day before the des-
18 ignated transfer date.

19 (2) CONTINUATION OF SUITS.—No provision of
20 this Act shall abate any proceeding commenced by
21 or against the Director of the Office of Thrift Su-
22 pervision (or the Office of Thrift Supervision) with
23 respect to any consumer financial protection func-
24 tion of the Director of the Office of Thrift Super-
25 vision transferred to the CFPA by this title before

1 the designated transfer date, except that the CFPA
2 shall be substituted for the Director (or the Office
3 of Thrift Supervision) as a party to any such pro-
4 ceeding as of the designated transfer date.

5 (g) DEPARTMENT OF HOUSING AND URBAN DEVEL-
6 OPMENT.—

7 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
8 TIONS NOT AFFECTED.—Section 1061(b)(7) shall
9 not affect the validity of any right, duty, or obliga-
10 tion of the United States, the Secretary of the De-
11 partment of Housing and Urban Development (or
12 the Department of Housing and Urban Develop-
13 ment), or any other person, that—

14 (A) arises under any provision of law relat-
15 ing to any function of the Secretary of the De-
16 partment of Housing and Urban Development
17 with respect to the Real Estate Settlement Pro-
18 cedures Act of 1974 (12 U.S.C. 2601 et seq.)
19 or the Secure and Fair Enforcement for Mort-
20 gage Licensing Act of 2008 (12 U.S.C. 5102 et
21 seq.) transferred to the CFPA by this title; and

22 (B) existed on the day before the des-
23 igned transfer date.

24 (2) CONTINUATION OF SUITS.—This title shall
25 not abate any proceeding commenced by or against

1 the Secretary of the Department of Housing and
2 Urban Development (or the Department of Housing
3 and Urban Development) with respect to any con-
4 sumer financial protection function of the Secretary
5 of the Department of Housing and Urban Develop-
6 ment transferred to the CFPA by this title before
7 the designated transfer date, except that the CFPA
8 shall be substituted for the Secretary of the Depart-
9 ment of Housing and Urban Development (or the
10 Department of Housing and Urban Development) as
11 a party to any such proceeding as of the designated
12 transfer date.

13 (h) CONTINUATION OF EXISTING ORDERS, RULES,
14 DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—
15 All orders, resolutions, determinations, agreements, and
16 rules that have been issued, made, prescribed, or allowed
17 to become effective by any transferor agency or by a court
18 of competent jurisdiction, in the performance of consumer
19 financial protection functions that are transferred by this
20 title and that are in effect on the day before the designated
21 transfer date, shall continue in effect according to the
22 terms of those orders, resolutions, determinations, agree-
23 ments, and rules, and shall not be enforceable by or
24 against the CFPA.

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1 (i) IDENTIFICATION OF RULES CONTINUED.—Not
2 later than the designated transfer date, the CFPA—

3 (1) shall, after consultation with the head of
4 each transferor agency, identify the rules continued
5 under subsection (g) that will be enforced by the
6 CFPA; and

7 (2) shall publish a list of such rules in the Fed-
8 eral Register.

9 (j) STATUS OF RULES PROPOSED OR NOT YET EF-
10 FECTIVE.—

11 (1) PROPOSED RULES.—Any proposed rule of a
12 transferor agency which that agency, in performing
13 consumer financial protection functions transferred
14 by this title, has proposed before the designated
15 transfer date, but has not published as a final rule
16 before that date, shall be deemed to be a proposed
17 rule of the CFPA.

18 (2) RULES NOT YET EFFECTIVE.—Any interim
19 or final rule of a transferor agency which that agen-
20 cy, in performing consumer financial protection
21 functions transferred by this title, has published be-
22 fore the designated transfer date, but which has not
23 become effective before that date, shall become effec-
24 tive as a rule of the CFPA according to its terms.

1 **SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**

2 (a) IN GENERAL.—

3 (1) CERTAIN FEDERAL RESERVE SYSTEM EM-
4 PLOYEES TRANSFERRED.—

5 (A) IDENTIFYING EMPLOYEES FOR TRANS-
6 FER.—The CFPA and the Board of Governors
7 shall—

8 (i) jointly determine the number of
9 employees of the Board necessary to per-
10 form or support the consumer financial
11 protection functions of the Board of Gov-
12 ernors that are transferred to the CFPA
13 by this title; and

14 (ii) consistent with the number deter-
15 mined under clause (i), jointly identify em-
16 ployees of the Board of Governors for
17 transfer to the CFPA, in a manner that
18 the CFPA and the Board of Governors, in
19 their sole discretion, determine equitable.

20 (B) IDENTIFIED EMPLOYEES TRANS-
21 FERRED.—All employees of the Board of Gov-
22 ernors identified under subparagraph (A)(ii)
23 shall be transferred to the CFPA for employ-
24 ment.

25 (C) FEDERAL RESERVE BANK EMPLOY-
26 EES.—Employees of any Federal reserve bank

1 who, on the day before the designated transfer
2 date, are performing consumer financial protec-
3 tion functions on behalf of the Board of Gov-
4 ernors shall be treated as employees of the
5 Board of Governors for purposes of subpara-
6 graphs (A) and (B).

7 (2) CERTAIN FDIC EMPLOYEES TRANS-
8 FERRED.—

9 (A) IDENTIFYING EMPLOYEES FOR TRANS-
10 FER.—The CFPA and the Board of Directors
11 of the Federal Deposit Insurance Corporation
12 shall—

13 (i) jointly determine the number of
14 employees of that Corporation necessary to
15 perform or support the consumer financial
16 protection functions of the Corporation
17 that are transferred to the CFPA by this
18 title; and

19 (ii) consistent with the number deter-
20 mined under clause (i), jointly identify em-
21 ployees of the Corporation for transfer to
22 the CFPA, in a manner that the CFPA
23 and the Board of Directors of the Corpora-
24 tion, in their sole discretion, determine eq-
25 uitable.

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1 (B) IDENTIFIED EMPLOYEES TRANS-
2 FERRED.—All employees of the Corporation
3 identified under subparagraph (A)(ii) shall be
4 transferred to the CFPA for employment.

5 (3) CERTAIN NCUA EMPLOYEES TRANS-
6 FERRED.—

7 (A) IDENTIFYING EMPLOYEES FOR TRANS-
8 FER.—The CFPA and the National Credit
9 Union Administration Board shall—

10 (i) jointly determine the number of
11 employees of the National Credit Union
12 Administration necessary to perform or
13 support the consumer financial protection
14 functions of the National Credit Union Ad-
15 ministration that are transferred to the
16 CFPA by this title; and

17 (ii) consistent with the number deter-
18 mined under clause (i), jointly identify em-
19 ployees of the National Credit Union Ad-
20 ministration for transfer to the CFPA, in
21 a manner that the CFPA and the National
22 Credit Union Administration Board, in
23 their sole discretion, determine equitable.

24 (B) IDENTIFIED EMPLOYEES TRANS-
25 FERRED.—All employees of the National Credit

1 Union Administration identified under subpara-
2 graph (A)(ii) shall be transferred to the CFPA
3 for employment.

4 (4) CERTAIN EMPLOYEES OF DEPARTMENT OF
5 HOUSING AND URBAN DEVELOPMENT TRANS-
6 FERRED.—

7 (A) IDENTIFYING EMPLOYEES FOR TRANS-
8 FER.—The CFPA and the Secretary of the De-
9 partment of Housing and Urban Development
10 shall—

11 (i) jointly determine the number of
12 employees of the Department of Housing
13 and Urban Development necessary to per-
14 form or support the consumer protection
15 functions of the Department that are
16 transferred to the CFPA by this title; and

17 (ii) consistent with the number deter-
18 mined under clause (i), jointly identify em-
19 ployees of the Department of Housing and
20 Urban Development for transfer to the
21 CFPA in a manner that the CFPA and the
22 Secretary of the Department of Housing
23 and Urban Development, in their sole dis-
24 cretion, deem equitable.

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1 (B) IDENTIFIED EMPLOYEES TRANS-
2 FERRED.—All employees of the Department of
3 Housing and Urban Development identified
4 under subparagraph (A)(ii) shall be transferred
5 to the CFPA for employment.

6 (5) APPOINTMENT AUTHORITY FOR EXCEPTED
7 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-
8 FERRED.—

9 (A) IN GENERAL.—In the case of employee
10 occupying a position in the excepted service or
11 the Senior Executive Service, any appointment
12 authority established pursuant to law or regula-
13 tions of the Office of Personnel Management
14 for filling such positions shall be transferred,
15 subject to subparagraph (B).

16 (B) DECLINING TRANSFERS ALLOWED.—
17 An agency or entity may decline to make a
18 transfer of authority under subparagraph (A)
19 (and the employees appointed pursuant thereto)
20 to the extent that such authority relates to posi-
21 tions excepted from the competitive service be-
22 cause of their confidential, policy-making, pol-
23 icy-determining, or policy-advocating character,
24 and non-career positions in the Senior Execu-

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1 tive Service (within the meaning of section
2 3132(a)(7) of title 5, United States Code).

3 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
4 MENTS.—Each employee to be transferred under this sec-
5 tion shall—

6 (1) be transferred not later than 90 days after
7 the designated transfer date; and

8 (2) receive notice of a position assignment not
9 later than 120 days after the effective date of his or
10 her transfer.

11 (c) TRANSFER OF FUNCTION.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of law, the transfer of employees shall be
14 deemed a transfer of functions for the purpose of
15 section 3503 of title 5, United States Code.

16 (2) PRIORITY OF THIS TITLE.—If any provi-
17 sions of this title conflict with any protection pro-
18 vided to transferred employees under section 3503 of
19 title 5, United States Code, the provisions of this
20 title shall control.

21 (d) EQUAL STATUS AND TENURE POSITIONS.—

22 (1) EMPLOYEES TRANSFERRED FROM FDIC,
23 FTC, HUD, NCUA, OCC, AND OTS.—Each employee
24 transferred from the Federal Deposit Insurance Cor-
25 poration, the Federal Trade Commission, the Na-

1 tional Credit Union Administration, the Office of the
2 Comptroller of the Currency, the Office of Thrift
3 Supervision, or the Department of Housing and
4 Urban Development shall be placed in a position at
5 the CFPA with the same status and tenure as that
6 employee held on the day before the designated
7 transfer date.

8 (2) EMPLOYEES TRANSFERRED FROM THE
9 FEDERAL RESERVE SYSTEM.—

10 (A) COMPARABILITY.—Each employee
11 transferred from the Board of Governors or
12 from a Federal reserve bank shall be placed in
13 a position with the same status and tenure as
14 that of an employee transferring to the CFPA
15 from the Office of the Comptroller of the Cur-
16 rency who perform similar functions and have
17 similar periods of service.

18 (B) SERVICE PERIODS CREDITED.—For
19 purposes of this paragraph, periods of service
20 with the Board of Governors or a Federal re-
21 serve bank shall be credited as periods of serv-
22 ice with a Federal agency.

23 (e) ADDITIONAL CERTIFICATION REQUIREMENTS
24 LIMITED.—Examiners transferred to the CFPA are not
25 subject to any additional certification requirements before

1 being placed in a comparable examiner position at the
2 CFPA examining the same types of institutions as they
3 examined before they were transferred.

4 (f) PERSONNEL ACTIONS LIMITED.—

5 (1) 2-YEAR PROTECTION.—Except as provided
6 in paragraph (2), each transferred employee holding
7 a permanent position on the day before the des-
8 ignated transfer date may not, during the 2-year pe-
9 riod beginning on the designated transfer date, be
10 involuntarily separated, or involuntarily reassigned
11 outside his or her local locality pay area, as defined
12 by the Office of Personnel Management.

13 (2) EXCEPTIONS.—Paragraph (1) does not
14 limit the right of the CFPA—

15 (A) to separate an employee for cause or
16 for unacceptable performance;

17 (B) to terminate an appointment to a posi-
18 tion excepted from the competitive service be-
19 cause of its confidential policy-making, policy-
20 determining, or policy-advocating character; or

21 (C) to reassign a supervisory employee out-
22 side his or her locality pay area, as defined by
23 the Office of Personnel Management, when the
24 CFPA determines that the reassignment is nec-
25 essary for the efficient operation of the CFPA.

1 (g) PAY.—

2 (1) 2-YEAR PROTECTION.—Except as provided
3 in paragraph (2), each transferred employee shall,
4 during the 2-year period beginning on the des-
5 ignated transfer date, receive pay at a rate equal to
6 not less than the basic rate of pay (including any ge-
7 ographic differential) that the employee received
8 during the 2-year period immediately before the
9 transfer.

10 (2) EXCEPTIONS.—Paragraph (1) does not
11 limit the right of the CFPA to reduce the rate of
12 basic pay of a transferred employee—

13 (A) for cause;

14 (B) for unacceptable performance; or

15 (C) with the consent of the employee.

16 (3) PROTECTION ONLY WHILE EMPLOYED.—

17 Paragraph (1) applies to a transferred employee
18 only while that employee remains employed by the
19 CFPA.

20 (4) PAY INCREASES PERMITTED.—Paragraph

21 (1) does not limit the authority of the CFPA to in-
22 crease the pay of a transferred employee.

23 (h) REORGANIZATION.—

24 (1) BETWEEN 1ST AND 3RD YEAR.—

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1 (A) IN GENERAL.—If the CFPA deter-
2 mines, during the 2-year period beginning 1
3 year after the designated transfer date, that a
4 reorganization of the staff of the CFPA is re-
5 quired—

6 (i) that reorganization shall be
7 deemed a “major reorganization” for pur-
8 poses of affording affected employees re-
9 tirement under section 8336(d)(2) or
10 8414(b)(1)(B) of title 5, United States
11 Code;

12 (ii) before the reorganization occurs,
13 all employees in the same locality pay area
14 as defined by the Office of Personnel Man-
15 agement shall be placed in a uniform posi-
16 tion classification system; and

17 (iii) any resulting reduction in force
18 shall be governed by the provisions of
19 chapter 35 of title 5, United States Code,
20 except that the CFPA shall—

21 (I) establish competitive areas
22 (as that term is defined in regulations
23 issued by the Office of Personnel
24 Management) to include at a min-
25 imum all employees in the same local-

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1 ity pay area as defined by the Office
2 of Personnel Management;

3 (II) establish competitive levels
4 (as that term is defined in regulations
5 issued by the Office of Personnel
6 Management) without regard to
7 whether the particular employees have
8 been appointed to positions in the
9 competitive service or the excepted
10 service; and

11 (III) afford employees appointed
12 to positions in the excepted service
13 (other than to a position excepted
14 from the competitive service because
15 of its confidential policy-making, pol-
16 icy-determining, or policy-advocating
17 character) the same assignment rights
18 to positions within the CFPA as em-
19 ployees appointed to positions in the
20 competitive service.

21 (B) SERVICE CREDIT FOR REDUCTIONS IN
22 FORCE.—For purposes of this paragraph, peri-
23 ods of service with a Federal home loan bank,
24 a joint office of the Federal home loan banks,
25 the Board of Governors, a Federal reserve

1 bank, the Federal Deposit Insurance Corpora-
2 tion, or the National Credit Union Administra-
3 tion shall be credited as periods of service with
4 a Federal agency.

5 (2) AFTER 3RD YEAR.—

6 (A) IN GENERAL.—If the CFPA deter-
7 mines, at any time after the 3-year period be-
8 ginning on the designated transfer date, that a
9 reorganization of the staff of the CFPA is re-
10 quired, any resulting reduction in force shall be
11 governed by the provisions of chapter 35 of title
12 5, United States Code, except that the CFPA
13 shall establish competitive levels (as that term
14 is defined in regulations issued by the Office of
15 Personnel Management) without regard to
16 types of appointment held by particular employ-
17 ees transferred under this section.

18 (B) SERVICE CREDIT FOR REDUCTIONS IN
19 FORCE.—For purposes of this paragraph, peri-
20 ods of service with a Federal home loan bank,
21 a joint office of the Federal home loan banks,
22 the Board of Governors, a Federal reserve
23 bank, the Federal Deposit Insurance Corpora-
24 tion, or the National Credit Union Administra-

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1 tion shall be credited as periods of service with
2 a Federal agency.

3 (i) BENEFITS.—

4 (1) RETIREMENT BENEFITS FOR TRANSFERRED
5 EMPLOYEES.—

6 (A) IN GENERAL.—

7 (i) CONTINUATION OF EXISTING RE-
8 TIREMENT PLAN.—Except as provided in
9 subparagraph (B), each transferred em-
10 ployee shall remain enrolled in his or her
11 existing retirement plan, through any pe-
12 riod of continuous employment with the
13 CFPA.

14 (ii) EMPLOYER CONTRIBUTION.—The
15 CFPA shall pay any employer contribu-
16 tions to the existing retirement plan of
17 each transferred employee, as required
18 under that plan.

19 (B) OPTION FOR EMPLOYEES TRANS-
20 FERRED FROM FEDERAL RESERVE SYSTEM TO
21 BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
22 MENT PROGRAM.—

23 (i) ELECTION.—Any transferred em-
24 ployee who was enrolled in a Federal Re-
25 serve System retirement plan on the day

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1 before his or her transfer to the CFPA
2 may, during the 1-year period beginning 6
3 months after the designated transfer date,
4 elect to be subject to the Federal employee
5 retirement program.

6 (ii) EFFECTIVE DATE OF COV-
7 ERAGE.—For any employee making an
8 election under clause (i), coverage by the
9 Federal employee retirement program shall
10 begin 1 year after the designated transfer
11 date.

12 (C) CFPA PARTICIPATION IN FEDERAL
13 RESERVE SYSTEM RETIREMENT PLAN.—

14 (i) SEPARATE ACCOUNT IN FEDERAL
15 RESERVE SYSTEM RETIREMENT PLAN ES-
16 TABLISHED.—A separate account in the
17 Federal Reserve System retirement plan
18 shall be established for CFPA employees
19 who do not make the election under sub-
20 paragraph (B).

21 (ii) FUNDS ATTRIBUTABLE TO TRANS-
22 FERRED EMPLOYEES REMAINING IN FED-
23 ERAL RESERVE SYSTEM RETIREMENT
24 PLAN TRANSFERRED.—The proportionate
25 share of funds in the Federal Reserve Sys-

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1 tem retirement plan, including the propor-
2 tionate share of any funding surplus in
3 that plan, attributable to a transferred em-
4 ployee who does not make the election
5 under subparagraph (B), shall be trans-
6 ferred to the account established under
7 clause (i).

8 (iii) EMPLOYER CONTRIBUTIONS DE-
9 POSITED.—The CFPA shall deposit into
10 the account established under clause (i)
11 the employer contributions that the CFPA
12 makes on behalf of employees who do not
13 make the election under subparagraph (B).

14 (iv) ACCOUNT ADMINISTRATION.—The
15 CFPA shall administer the account estab-
16 lished under clause (i) as a participating
17 employer in the Federal Reserve System
18 retirement plan.

19 (D) DEFINITIONS.—For purposes of this
20 paragraph—

21 (i) the term “existing retirement
22 plan” means, with respect to any employee
23 transferred under this section, the par-
24 ticular retirement plan (including the Fi-
25 nancial Institutions Retirement Fund) and

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1 any associated thrift savings plan of the
2 agency or Federal reserve bank from which
3 the employee was transferred, which the
4 employee was enrolled in on the day before
5 the designated transfer date; and

6 (ii) the term “Federal employee re-
7 tirement program” means the retirement
8 program for Federal employees established
9 by chapter 84 of title 5, United States
10 Code.

11 (2) BENEFITS OTHER THAN RETIREMENT BEN-
12 EFITS FOR TRANSFERRED EMPLOYEES.—

13 (A) DURING 1ST YEAR.—

14 (i) EXISTING PLANS CONTINUE.—
15 Each transferred employee may, for 1 year
16 after the designated transfer date, retain
17 membership in any other employee benefit
18 program of the agency or bank from which
19 the employee transferred, including a den-
20 tal, vision, long term care, or life insurance
21 program, to which the employee belonged
22 on the day before the designated transfer
23 date.

24 (ii) EMPLOYER CONTRIBUTION.—The
25 CFPA shall reimburse the agency or bank

1 from which an employee was transferred
2 for any cost incurred by that agency or
3 bank in continuing to extend coverage in
4 the benefit program to the employee, as re-
5 quired under that program or negotiated
6 agreements.

7 (B) DENTAL, VISION, OR LIFE INSURANCE
8 AFTER 1ST YEAR.—If, after the 1-year period
9 beginning on the designated transfer date, the
10 CFPA decides not to continue participation in
11 any dental, vision, or life insurance program of
12 an agency or bank from which an employee
13 transferred, a transferred employee who is a
14 member of such a program may, before the de-
15 cision of the CFPA takes effect, elect to enroll,
16 without regard to any regularly scheduled open
17 season, in—

18 (i) the enhanced dental benefits estab-
19 lished by chapter 89A of title 5, United
20 States Code;

21 (ii) the enhanced vision benefits estab-
22 lished by chapter 89B of title 5, United
23 States Code; or

24 (iii) the Federal Employees Group
25 Life Insurance Program established by

1 chapter 87 of title 5, United States Code,
2 without regard to any requirement of in-
3 surability.

4 (C) LONG TERM CARE INSURANCE AFTER
5 1ST YEAR.—If, after the 1-year period begin-
6 ning on the designated transfer date, the CFPA
7 decides not to continue participation in any
8 long term care insurance program of an agency
9 or bank from which an employee transferred, a
10 transferred employee who is a member of such
11 a program may, before the decision of the
12 CFPA takes effect, elect to apply for coverage
13 under the Federal Long Term Care Insurance
14 Program established by chapter 90 of title 5,
15 United States Code, under the underwriting re-
16 quirements applicable to a new active workforce
17 member (as defined in part 875, title 5, Code
18 of Federal Regulations).

19 (D) EMPLOYEE CONTRIBUTION.—An indi-
20 vidual enrolled in the Federal Employees
21 Health Benefits program shall pay any em-
22 ployee contribution required by the plan.

23 (E) ADDITIONAL FUNDING.—The CFPA
24 shall transfer to the Federal Employees Health
25 Benefits Fund established under section 8909

1 of title 5, United States Code, an amount deter-
2 mined by the Director of the Office of Per-
3 sonnel Management, after consultation with the
4 CFPA and the Office of Management and
5 Budget, to be necessary to reimburse the Fund
6 for the cost to the Fund of providing benefits
7 under this paragraph.

8 (F) CREDIT FOR TIME ENROLLED IN
9 OTHER PLANS.—For employees transferred
10 under this title, enrollment in a health benefits
11 plan administered by a transferor agency imme-
12 diately before enrollment in a health benefits
13 plan under chapter 89 of title 5, United States
14 Code, shall be considered as enrollment in a
15 health benefits plan under that chapter for pur-
16 poses of section 8905(b)(1)(A) of title 5, United
17 States Code.

18 (G) SPECIAL PROVISIONS TO ENSURE CON-
19 TINUATION OF LIFE INSURANCE BENEFITS.—

20 (i) IN GENERAL.—An annuitant (as
21 defined in section 8901(3) of title 5,
22 United States Code) who is enrolled in a
23 life insurance plan administered by a
24 transferor agency on the day before the
25 designated transfer date shall be eligible

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1 for coverage by a life insurance plan under
2 sections 8706(b), 8714a, 8714b, and
3 8714c of title 5, United States Code, or in
4 a life insurance plan established by the
5 CFPA, without regard to any regularly
6 scheduled open season and requirement of
7 insurability.

8 (ii) EMPLOYEE CONTRIBUTION.—An
9 individual enrolled in a life insurance plan
10 under this subparagraph shall pay any em-
11 ployee contribution required by the plan.

12 (iii) ADDITIONAL FUNDING.—The
13 CFPA shall transfer to the Employees'
14 Life Insurance Fund established under sec-
15 tion 8714 of title 5, United States Code,
16 an amount determined by the Director of
17 the Office of Personnel Management, after
18 consultation with the CFPA and the Office
19 of Management and Budget, to be nec-
20 essary to reimburse the Fund for the cost
21 to the Fund of providing benefits under
22 this subparagraph not otherwise paid for
23 by the employee under clause (ii).

24 (iv) CREDIT FOR TIME ENROLLED IN
25 OTHER PLANS.—For employees transferred

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1 under this title, enrollment in a life insur-
2 ance plan administered by a transferor
3 agency immediately before enrollment in a
4 life insurance plan under chapter 87 of
5 title 5, United States Code, shall be con-
6 sidered as enrollment in a life insurance
7 plan under that chapter for purposes of
8 section 8706(b)(1)(A) of title 5, United
9 States Code.

10 (3) OPM RULES.—The Office of Personnel
11 Management shall issue such rules as are necessary
12 to carry out this subsection.

13 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
14 FICATION SYSTEM.—Not later than 2 years after the des-
15 ignated transfer date, the CFPA shall implement a uni-
16 form pay and classification system for all employees trans-
17 ferred under this title.

18 (k) EQUITABLE TREATMENT.—In administering the
19 provisions of this section, the CFPA—

20 (1) shall take no action that would unfairly dis-
21 advantage transferred employees relative to each
22 other based on their prior employment by the Board
23 of Governors, the Federal Deposit Insurance Cor-
24 poration, the Federal Trade Commission, the Na-
25 tional Credit Union Administration, the Office of the

1 Comptroller of the Currency, the Office of Thrift
2 Supervision, a Federal reserve bank, a Federal home
3 loan bank, or a joint office of the Federal home loan
4 banks; and

5 (2) may take such action as is appropriate in
6 individual cases so that employees transferred under
7 this section receive equitable treatment, with respect
8 to the status, tenure, pay, benefits (other than bene-
9 fits under programs administered by the Office of
10 Personnel Management), and accrued leave or vaca-
11 tion time of those employees, for prior periods of
12 service with any Federal agency, including the
13 Board of Governors of the Federal Reserve System,
14 the Federal Deposit Insurance Corporation, the Fed-
15 eral Trade Commission, the National Credit Union
16 Administration, the Office of the Comptroller of the
17 Currency, the Office of Thrift Supervision, a Federal
18 reserve bank, a Federal home loan bank, or a joint
19 office of the Federal home loan banks.

20 (l) IMPLEMENTATION.—In implementing the provi-
21 sions of this section, the CFPB shall coordinate with the
22 Office of Personnel Management and other entities having
23 expertise in matters related to employment to ensure a
24 fair and orderly transition for affected employees.

1 **SEC. 1065. INCIDENTAL TRANSFERS.**

2 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-
3 rector of the Office of Management and Budget, in con-
4 sultation with the Secretary, shall make such additional
5 incidental transfers and dispositions of assets and liabil-
6 ities held, used, arising from, available, or to be made
7 available, in connection with the functions transferred by
8 this title, as the Director may determine necessary to ac-
9 complish the purposes of this title.

10 (b) SUNSET.—The authority provided in this section
11 shall terminate 5 years after the date of enactment of this
12 Act.

13 **SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

14 (a) IN GENERAL.—The Secretary is authorized to
15 perform the functions of the CFPA under this subtitle
16 until 3 of the appointed Board members are confirmed
17 by the Senate in accordance with section 1012.

18 (b) INTERIM ADMINISTRATIVE SERVICES BY THE
19 DEPARTMENT OF THE TREASURY.—The Department of
20 the Treasury may provide administrative services nec-
21 essary to support the CFPA before the designated transfer
22 date.

23 (c) INTERIM FUNDING FOR THE DEPARTMENT OF
24 THE TREASURY.—

1 (1) IN GENERAL.—There are authorized to be
2 appropriated to the Department of the Treasury
3 such sums as are necessary to carry out this section.

4 (2) APPORTIONMENT AND RESTRICTIONS.—
5 Notwithstanding any other provision of law,
6 amounts appropriated under paragraph (1) shall be
7 subject to apportionment under section 1517 of title
8 31, United States Code, and restrictions that gen-
9 erally apply to the use of appropriated funds in title
10 31, United States Code, and other laws.

11 **Subtitle G—Regulatory**
12 **Improvements**

13 **SEC. 1071. COLLECTION OF DEPOSIT ACCOUNT DATA.**

14 (a) PURPOSE.—The purpose of this section is to pro-
15 mote awareness and understanding of the access of indi-
16 viduals and communities to financial services, and to iden-
17 tify business and community development needs and op-
18 portunities.

19 (b) IN GENERAL.—

20 (1) RECORDS REQUIRED.—For each branch,
21 automated teller machine at which deposits are ac-
22 cepted, and other deposit taking service facility with
23 respect to any financial institution, the financial in-
24 stitution shall maintain a record of the number and
25 dollar amounts of deposit accounts of customers.

1 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—

2 Customer addresses shall be geo-coded for the collec-
3 tion of data regarding the census tracts of the resi-
4 dences or business locations of customers.

5 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In
6 maintaining records on any deposit account under
7 this section, the financial institution shall record
8 whether the deposit account is for a residential or
9 commercial customer.

10 (4) PUBLIC AVAILABILITY.—

11 (A) IN GENERAL.—Each financial institu-
12 tion shall make publicly available on an annual
13 basis, from information collected under this sec-
14 tion—

15 (i) the address and census tract of
16 each branch, automated teller machine at
17 which deposits are accepted, and other de-
18 posit taking service facility with respect to
19 the financial institution;

20 (ii) the type of deposit account, in-
21 cluding whether the account was a check-
22 ing or savings account; and

23 (iii) data on the number and dollar
24 amount of the accounts, presented by cen-

1 sus tract location of the residential and
2 commercial customer.

3 (B) PROTECTION OF IDENTITY.—In mak-
4 ing data publicly available, any personally iden-
5 tifiable data element shall be removed so as to
6 protect the identities of the commercial and res-
7 idential customers.

8 (c) AVAILABILITY OF INFORMATION.—

9 (1) SUBMISSION TO AGENCIES.—The data re-
10 quired to be compiled and maintained under this
11 section by any financial institution shall be sub-
12 mitted annually to the CFPA, or to a Federal bank-
13 ing agency, in accordance with rules prescribed by
14 the CFPA.

15 (2) AVAILABILITY OF INFORMATION.—Informa-
16 tion compiled and maintained under this section
17 shall be retained for not less than 3 years after the
18 date of preparation and shall be made available to
19 the public, upon request, in the form required under
20 rules prescribed by the CFPA.

21 (d) CFPA USE.—The CFPA—

22 (1) shall use the data on branches and deposit
23 accounts acquired under this section as part of the
24 examination of a financial institution under the
25 Community Reinvestment Act of 1977;

1 (2) shall assess the distribution of residential
2 and commercial accounts at such financial institu-
3 tion across income and minority level of census
4 tracts; and

5 (3) may use the data for any other purpose as
6 permitted by law.

7 (e) RULES AND GUIDANCE.—The CFPA shall pre-
8 scribe such rules and issue guidance as may be necessary
9 to carry out, enforce, and compile data pursuant to this
10 section. The CFPA shall prescribe rules regarding the pro-
11 vision of data compiled under this section to the Federal
12 banking agencies to carry out the purposes of this section,
13 and shall issue guidance to financial institutions regarding
14 measures to facilitate compliance with the this section and
15 the requirements of rules prescribed thereunder.

16 (f) DEFINITIONS.—For purposes of this section, the
17 following definitions shall apply:

18 (1) DEPOSIT ACCOUNT.—The term “deposit ac-
19 count” includes any checking account, savings ac-
20 count, credit union share account, and other type of
21 account as defined by the CFPA.

22 (2) FINANCIAL INSTITUTION.—The term “fi-
23 nancial institution”—

1 (A) has the meaning given to the term “in-
2 sured depository institution” in section 3(e)(2)
3 of the Federal Deposit Insurance Act; and

4 (B) includes any credit union.

5 (g) EFFECTIVE DATE.—This section shall become ef-
6 fective on the designated transfer date.

7 **SEC. 1072. SMALL BUSINESS DATA COLLECTION.**

8 (a) IN GENERAL.—The Equal Credit Opportunity
9 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
10 section 704A the following new section:

11 **“SEC. 740B. SMALL BUSINESS LOAN DATA COLLECTION.**

12 “(a) PURPOSE.—The purpose of this section is to fa-
13 cilitate enforcement of fair lending laws and enable com-
14 munities, governmental entities, and creditors to identify
15 business and community development needs and opportu-
16 nities of women-owned and minority-owned small busi-
17 nesses.

18 “(b) IN GENERAL.—Subject to the requirements of
19 this section, in the case of any application to a financial
20 institution for credit for a small business, the financial in-
21 stitution shall—

22 “(1) inquire whether the small business is a
23 women- or minority-owned small business, without
24 regard to whether such application is received in
25 person, by mail, by telephone, by electronic mail or

1 other form of electronic transmission, or by any
2 other means, and whether or not such application is
3 in response to a solicitation by the financial institu-
4 tion; and

5 “(2) maintain a record of the responses to such
6 inquiry, separate from the application and accom-
7 panying information.

8 “(c) RIGHT TO REFUSE.—Any applicant for credit
9 may refuse to provide any information requested pursuant
10 to subsection (b) in connection with any application for
11 credit.

12 “(d) NO ACCESS BY UNDERWRITERS.—

13 “(1) LIMITATION.—Where feasible, no loan un-
14 derwriter or other officer or employee of a financial
15 institution, or any affiliate of a financial institution,
16 involved in making any determination concerning an
17 application for credit shall have access to any infor-
18 mation provided by the applicant pursuant to a re-
19 quest under subsection (b) in connection with such
20 application.

21 “(2) LIMITED ACCESS.—If a financial institu-
22 tion determines that loan underwriter or other offi-
23 cer or employee of a financial institution, or any af-
24 filiate of a financial institution, involved in making
25 any determination concerning an application for

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1 credit should have access to any information pro-
2 vided by the applicant pursuant to a request under
3 subsection (b), the financial institution shall provide
4 notice to the applicant of the access of the under-
5 writer to such information, along with notice that
6 the financial institution may not discriminate on this
7 basis of such information.

8 “(e) FORM AND MANNER OF INFORMATION.—

9 “(1) IN GENERAL.—Each financial institution
10 shall compile and maintain, in accordance with regu-
11 lations of the CFPA, a record of the information
12 provided by any loan applicant pursuant to a request
13 under subsection (b).

14 “(2) ITEMIZATION.—Information compiled and
15 maintained under paragraph (1) shall be itemized in
16 order to clearly and conspicuously disclose—

17 “(A) the number of the application and the
18 date on which the application was received;

19 “(B) the type and purpose of the loan or
20 other credit being applied for;

21 “(C) the amount of the credit or credit
22 limit applied for, and the amount of the credit
23 transaction or the credit limit approved for such
24 applicant;

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1 “(D) the type of action taken with respect
2 to such application, and the date of such action;

3 “(E) the census tract in which is located
4 the principal place of business of the small busi-
5 ness loan applicant;

6 “(F) the gross annual revenue of the busi-
7 ness in the last fiscal year of the small business
8 loan applicant preceding the date of the appli-
9 cation;

10 “(G) the race and ethnicity of the principal
11 owners of the business; and

12 “(H) any additional data that the CFPA
13 determines would aid in fulfilling the purposes
14 of this section.

15 “(3) NO PERSONALLY IDENTIFIABLE INFORMA-
16 TION.—In compiling and maintaining any record of
17 information under this section, a financial institution
18 may not include in such record the name, specific
19 address (other than the census tract required under
20 paragraph (1)(E)), telephone number, electronic
21 mail address, or any other personally identifiable in-
22 formation concerning any individual who is, or is
23 connected with, the small business loan applicant.

24 “(4) DISCRETION TO DELETE OR MODIFY PUB-
25 LICLY-AVAILABLE DATA.—The CFPA may, at its

1 discretion, delete or modify data collected under this
2 section which is or will be available to the public, if
3 the CFPA determines that the deletion or modifica-
4 tion of the data would advance a compelling privacy
5 interest.

6 “(f) AVAILABILITY OF INFORMATION.—

7 “(1) SUBMISSION TO CFPA.—The data required
8 to be compiled and maintained under this section by
9 any financial institution shall be submitted annually
10 to the CFPA.

11 “(2) AVAILABILITY OF INFORMATION.—Infor-
12 mation compiled and maintained under this section
13 shall be—

14 “(A) retained for not less than 3 years
15 after the date of preparation;

16 “(B) made available to the any member of
17 the public, upon request, in the form required
18 under regulations prescribed by the CFPA;

19 “(C) annually made available to the public
20 generally by the CFPA, in such form and in
21 such manner as is determined appropriate by
22 the CFPA.

23 “(3) COMPILATION OF AGGREGATE DATA.—The
24 CFPA may, at its discretion—

1 “(A) compile and aggregate data collected
2 under this section for its own use; and

3 “(B) make public such compilations of ag-
4 gregate data.

5 “(g) DEFINITIONS.—For purposes of this section, the
6 following definitions shall apply:

7 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
8 nancial institution’ means any partnership, com-
9 pany, corporation, association (incorporated or unin-
10 corporated), trust, estate, cooperative organization,
11 or other entity that engages in any financial activity.

12 “(2) MINORITY-OWNED SMALL BUSINESS.—The
13 term ‘minority-owned small business’ means a small
14 business—

15 “(A) more than 50 percent of the owner-
16 ship or control of which is held by 1 or more
17 minority individuals; and

18 “(B) more than 50 percent of the net prof-
19 it or loss of which accrues to 1 or more minor-
20 ity individuals.

21 “(3) WOMEN-OWNED SMALL BUSINESS.—The
22 term ‘women-owned small business’ means a busi-
23 ness—

1 “(A) more than 50 percent of the owner-
2 ship or control of which is held by 1 or more
3 women; and

4 “(B) more than 50 percent of the net prof-
5 it or loss of which accrues to 1 or more women.

6 “(4) MINORITY.—The term ‘minority’ has the
7 same meaning as in section 1204(c)(3) of the Finan-
8 cial Institutions Reform, Recovery and Enforcement
9 Act of 1989.

10 “(5) SMALL BUSINESS LOAN.—The term ‘small
11 business loan’ shall be defined by the CFPA, which
12 may take into account—

13 “(A) the gross revenues of the borrower;

14 “(B) the total number of employees of the
15 borrower;

16 “(C) the industry in which the borrower
17 has its primary operations; and

18 “(D) the size of the loan.

19 “(h) CFPA ACTION.—

20 “(1) IN GENERAL.—The CFPA shall prescribe
21 such rules and issue such guidance as may be nec-
22 essary to carry out, enforce, and compile data pursu-
23 ant to this section.

24 “(2) EXCEPTIONS.—The CFPA, by rule or
25 order, may adopt exceptions to any requirement of

1 this section and may, conditionally or uncondition-
2 ally, exempt any financial institution or class of fi-
3 nancial institutions from the requirements of this
4 section, as the CFPA deems necessary or appro-
5 priate to carry out the purposes of this section.

6 “(3) GUIDANCE.—The CFPA shall issue guid-
7 ance designed to facilitate compliance with the re-
8 quirements of this section, including assisting finan-
9 cial institutions in working with applicants to deter-
10 mine whether the applicants are women- or minor-
11 ity-owned for purposes of this section.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
13 Section 701(b) of the Equal Credit Opportunity Act (15
14 U.S.C. 1691(b)) is amended—

15 (1) in paragraph (3), by striking “or” at the
16 end;

17 (2) in paragraph (4), by striking the period at
18 the end and inserting “; or”; and

19 (3) by inserting after paragraph (4), the fol-
20 lowing:

21 “(5) to make an inquiry under section 704B, in
22 accordance with the requirements of that section.”.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 for title VII of the Consumer Credit Protection Act is

1 amended by inserting after the item relating to section
2 704A the following new item:

“704B. Small business loan data collection.”.

3 (d) EFFECTIVE DATE.—This section shall become ef-
4 fective on the designated transfer date.

5 **Subtitle H—Conforming** 6 **Amendments**

7 **SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL** 8 **ACT.**

9 Effective on the date of enactment of this Act, section
10 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C.
11 App. 3) is amended by inserting “the Consumer Financial
12 Protection Agency,” before “the Consumer Product Safety
13 Commission,”.

14 **SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

15 Effective on the date of enactment of this Act, section
16 552a of title 5, United States Code, is amended by adding
17 at the end the following:

18 “(w) APPLICABILITY TO CONSUMER FINANCIAL PRO-
19 TECTION AGENCY.—Except as provided in the Consumer
20 Financial Protection Agency Act of 2009, this section
21 shall apply with respect to the Consumer Financial Protec-
22 tion Agency.”.

1 **SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORT-**
2 **GAGE TRANSACTION PARITY ACT OF 1982.**

3 (a) IN GENERAL.—The Alternative Mortgage Trans-
4 action Parity Act of 1982 (12 U.S.C. 3801 et seq.) is
5 amended—

6 (1) in section 803 (12 U.S.C. 3802(1)), by
7 striking “1974” and all that follows through “de-
8 scribed and defined” and inserting the following:
9 “1974), in which the interest rate or finance charge
10 may be adjusted or renegotiated, described and de-
11 fined”; and

12 (2) in section 804 (12 U.S.C. 3803)—

13 (A) in subsection (a)—

14 (i) in each of paragraphs (1), (2), and
15 (3), by inserting after “transactions made”
16 each place that term appears “on or before
17 the designated transfer date, as deter-
18 mined under section 1062 of the Consumer
19 Financial Protection Agency Act of
20 2009,”;

21 (ii) in paragraph (2), by striking
22 “and” at the end;

23 (iii) in paragraph (3), by striking the
24 period at the end and inserting “; and”;
25 and

1 (iv) by adding at the end the following
2 new paragraph:

3 “(4) with respect to transactions made after the
4 designated transfer date, only in accordance with
5 regulations governing alternative mortgage trans-
6 actions, as issued by the Consumer Financial Pro-
7 tection Agency for federally chartered housing credi-
8 tors, in accordance with the rulemaking authority
9 granted to the Consumer Financial Protection Agen-
10 cy with regard to federally chartered housing credi-
11 tors under provisions of law other than this sec-
12 tion.”;

13 (B) by striking subsection (c) and insert-
14 ing the following:

15 “(c) PREEMPTION OF STATE LAW.—An alternative
16 mortgage transaction may be made by a housing creditor
17 in accordance with this section, notwithstanding any State
18 constitution, law, or regulation that prohibits an alter-
19 native mortgage transaction. For purposes of this sub-
20 section, a State constitution, law, or regulation that pro-
21 hibits an alternative mortgage transaction does not in-
22 clude any State constitution, law, or regulation that regu-
23 lates mortgage transactions generally, including any re-
24 striction on prepayment penalties or late charges.”; and

25 (C) by adding at the end the following:

1 “(d) CFPA ACTIONS.—The Consumer Financial
2 Protection Agency shall—

3 “(1) review the regulations identified by the
4 Comptroller of the Currency, the National Credit
5 Union Administration, and the Director of the Office
6 of Thrift Supervision (as those rules exist on the
7 designated transfer date), as applicable under para-
8 graphs (1) through (3) of subsection (a);

9 “(2) determine whether such regulations are
10 fair and not deceptive and otherwise meet the objec-
11 tives of section 1021 of the Consumer Financial
12 Protection Agency Act of 2009; and

13 “(3) promulgate regulations under subsection
14 (a)(4) after the designated transfer date.

15 “(e) DESIGNATED TRANSFER DATE.—As used in
16 this section, the term ‘designated transfer date’ means the
17 date determined under section 1062 of the Consumer Fi-
18 nancial Protection Agency Act of 2009.”.

19 (b) EFFECTIVE DATE.—This section and the amend-
20 ments made by this section shall become effective on the
21 designated transfer date.

22 (c) RULE OF CONSTRUCTION.—The amendments
23 made by subsection (a) shall not affect any transaction
24 covered by the Alternative Mortgage Transaction Parity

1 Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on
2 or before the designated transfer date.

3 **SEC. 1084. AMENDMENTS TO THE COMMUNITY REINVEST-**
4 **MENT ACT OF 1977.**

5 (a) IN GENERAL.—The Community Reinvestment
6 Act of 1977 (12 U.S.C. 2901 et seq.) is amended—

7 (1) by striking “each appropriate Federal finan-
8 cial supervisory agency” and inserting “the Con-
9 sumer Financial Protection Agency”;

10 (2) by striking “appropriate Federal financial
11 supervisory agency” each place that term appears
12 and inserting “CFPA”;

13 (3) in section 803 (12 U.S.C. 2902)—

14 (A) in paragraph (2), by striking “and” at
15 the end;

16 (B) in paragraph (3), by striking the pe-
17 riod at the end and inserting a semicolon;

18 (C) in paragraph (4)—

19 (i) by striking “A” and inserting “a”;

20 and

21 (ii) by striking the period at the end
22 and inserting “; and”; and

23 (D) by adding at the end the following:

24 “(5) the term ‘CFPA’ means the Consumer Fi-
25 nancial Protection Agency.”;

1 (4) in section 804 (12 U.S.C. 2903)—

2 (A) by striking subsection (a) and insert-
3 ing the following:

4 “(a) IN GENERAL.—In connection with its examina-
5 tion of a financial institution—

6 “(1) the CFPA shall assess the record of the
7 institution of meeting the credit needs of its entire
8 community, including low- and moderate-income
9 neighborhoods, consistent with the safe and sound
10 operation of such institution; and

11 “(2) the FIRA shall take such assessment into
12 account in its evaluation of an application for a de-
13 posit facility by such institution.”; and

14 (B) in subsection (c)(2)(B), by striking
15 “such agency” and inserting “the CFPA”;

16 (5) in section 805 (12 U.S.C. 2904), by striking
17 “Each” and inserting “The”;

18 (6) in section 806 (12 U.S.C. 2905), by striking
19 “Regulations” and all that follows through the end
20 and inserting the following: “The CFPA shall pre-
21 scribe rules to carry out this title.”; and

22 (7) in section 807 (12 U.S.C. 2906)—

23 (A) in subsection (b)—

24 (i) by striking “appropriate Federal
25 financial supervisory agency’s conclusions”

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1 and inserting “conclusions of the CFPA”;
2 and
3 (ii) by striking “Federal financial su-
4 pervisory agencies” and inserting “CFPA”;
5 (B) in subsection (c)(1), by inserting be-
6 fore the period “or to the CFPA”; and
7 (C) in subsection (d), by striking “Federal
8 financial supervisory agency” and inserting
9 “CFPA”.

10 **SEC. 1085. AMENDMENTS TO THE ELECTRONIC FUND**
11 **TRANSFER ACT.**

12 The Electronic Fund Transfer Act (15 U.S.C. 1693
13 et seq.) is amended—

14 (1) by striking “Board” each place that term
15 appears and inserting “CFPA”;

16 (2) in section 903 (15 U.S.C. 1693a), by strik-
17 ing paragraph (3) and inserting the following:

18 “(3) the term ‘CFPA’ means the Consumer Fi-
19 nancial Protection Agency;”;

20 (3) in section 916(d) (as so designated by sec-
21 tion 401 of the Credit CARD Act of 2009) (15
22 U.S.C. 1693m)—

23 (A) by striking “FEDERAL RESERVE SYS-
24 TEM” and inserting “CONSUMER FINANCIAL
25 PROTECTION AGENCY”; and

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1 (B) by striking “Federal Reserve System”
2 and inserting “Consumer Financial Protection
3 Agency”; and

4 (4) in section 918 (as so designated by the
5 Credit Card Act of 2009) (15 U.S.C. 1693o)—

6 (A) in subsection (a)—

7 (i) by striking “Compliance” and in-
8 serting “Subject to section 1022 of the
9 Consumer Financial Protection Agency Act
10 of 2009, compliance”;

11 (ii) in paragraph (1)(A), by striking
12 “Office of the Comptroller of the Cur-
13 rency” and inserting “Financial Institu-
14 tions Regulatory Administration”; and

15 (iii) by striking paragraph (2) and in-
16 serting the following:

17 “(2) subtitle E of the Consumer Financial Pro-
18 tection Agency Act of 2009, by the CFPA;”;

19 (B) by striking subsection (c) and insert-
20 ing the following:

21 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
22 FEDERAL TRADE COMMISSION.—Except to the extent
23 that enforcement of the requirements imposed under this
24 title is specifically committed to some other Government
25 agency under subsection (a), and subject to section 1022

1 of the Consumer Financial Protection Agency Act of 2009,
2 the Federal Trade Commission shall enforce such require-
3 ments. For the purpose of the exercise by the Federal
4 Trade Commission of its functions and powers under the
5 Federal Trade Commission Act, a violation of any require-
6 ment imposed under this title shall be deemed a violation
7 of a requirement imposed under that Act. All of the func-
8 tions and powers of the Federal Trade Commission under
9 the Federal Trade Commission Act are available to the
10 Federal Trade Commission to enforce compliance by any
11 person subject to the jurisdiction of the Federal Trade
12 Commission with the requirements imposed under this
13 title, irrespective of whether that person is engaged in
14 commerce or meets any other jurisdictional tests under the
15 Federal Trade Commission Act.”.

16 **SEC. 1086. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
17 **TUNITY ACT.**

18 The Equal Credit Opportunity Act (15 U.S.C. 1691
19 et seq.) is amended—

20 (1) by striking “Board” each place that term
21 appears and inserting “CFPA”;

22 (2) in section 702 (15 U.S.C. 1691a), by strik-
23 ing subsection (c) and inserting the following:

24 “(c) The term ‘CFPA’ means the Consumer Finan-
25 cial Protection Agency.”;

1 (3) in section 703 (15 U.S.C. 1691b)—

2 (A) by striking the section heading and in-
3 serting the following:

4 **“SEC. 703. PROMULGATION OF REGULATIONS BY THE**
5 **CFPA.”;**

6 (B) by striking “(a) REGULATIONS.—”;

7 (C) by striking subsection (b);

8 (D) by redesignating paragraphs (1)
9 through (5) as subsections (a) through (e), re-
10 spectively; and

11 (E) in subsection (e), as so redesignated,
12 by striking “paragraph (2)” and inserting “sub-
13 section (b)”;

14 (4) in section 704 (15 U.S.C. 1691e)—

15 (A) in subsection (a)—

16 (i) by striking “Compliance” and in-
17 serting “Subject to section 1022 of the
18 Consumer Financial Protection Agency Act
19 of 2009, compliance”;

20 (ii) in paragraph (1)(A), by striking
21 “Office of the Comptroller of the Cur-
22 rency” and inserting “Financial Institu-
23 tions Regulatory Administration”;

24 (iii) by striking paragraph (2) and in-
25 serting the following:

1 “(2) Subtitle E of the Consumer Financial Pro-
2 tection Agency Act of 2009, by the CFPA.”; and

3 (B) by striking subsection (c) and insert-
4 ing the following:

5 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
6 ERAL TRADE COMMISSION.—Except to the extent that en-
7 forcement of the requirements imposed under this title is
8 specifically committed to some other Government agency
9 under subsection (a), and subject to section 1022 of the
10 Consumer Financial Protection Agency Act of 2009, the
11 Federal Trade Commission shall enforce such require-
12 ments. For the purpose of the exercise by the Federal
13 Trade Commission of its functions and powers under the
14 Federal Trade Commission Act, a violation of any require-
15 ment imposed under this title shall be deemed a violation
16 of a requirement imposed under that Act. All of the func-
17 tions and powers of the Federal Trade Commission under
18 the Federal Trade Commission Act are available to the
19 Federal Trade Commission to enforce compliance by any
20 person with the requirements imposed under this title, ir-
21 respective of whether that person is engaged in commerce
22 or meets any other jurisdictional tests under the Federal
23 Trade Commission Act, including the power to enforce any
24 rule prescribed by the CFPA under this title in the same

1 manner as if the violation had been a violation of a Fed-
2 eral Trade Commission trade regulation rule.”; and

3 (5) in section 706(e) (15 U.S.C. 1691e(e))—

4 (A) in the subsection heading—

5 (i) by striking “BOARD” each place
6 that term appears and inserting “CFPA”;

7 and

8 (ii) by striking “FEDERAL RESERVE
9 SYSTEM” and inserting “CONSUMER FI-
10 NANCIAL PROTECTION AGENCY”; and

11 (B) by striking “Federal Reserve System”
12 and inserting “Consumer Financial Protection
13 Agency”.

14 **SEC. 1087. AMENDMENTS TO THE EXPEDITED FUNDS**
15 **AVAILABILITY ACT.**

16 (a) AMENDMENT TO SECTION 603.—Section
17 603(d)(1) of the Expedited Funds Availability Act (12
18 U.S.C. 4002) is amended by inserting after “Board” the
19 following “, jointly with the Director of the Consumer Fi-
20 nancial Protection Agency,”.

21 (b) AMENDMENTS TO SECTION 604.—Section 604 of
22 the Expedited Funds Availability Act (12 U.S.C. 4003)
23 is amended—

24 (1) by inserting after “Board” each place that
25 term appears, other than in subsection (f), the fol-

1 lowing: “, jointly with the Director of the Consumer
2 Financial Protection Agency,”; and

3 (2) in subsection (f), by striking “Board.” each
4 place that term appears and inserting the following:
5 “Board, jointly with the Director of the Consumer
6 Financial Protection Agency.”.

7 (c) AMENDMENTS TO SECTION 605.—Section 605 of
8 the Expedited Funds Availability Act (12 U.S.C. 4004)
9 is amended—

10 (1) by inserting after “Board” each place that
11 term appears the following: “, jointly with the Direc-
12 tor of the Consumer Financial Protection Agency,”;
13 and

14 (2) in subsection (f), in the subsection heading,
15 by inserting “AND CFPA” after “BOARD”.

16 (d) AMENDMENTS TO SECTION 609.—Section 609 of
17 the Expedited Funds Availability Act (12 U.S.C. 4008)
18 is amended:

19 (1) in subsection (a), by inserting after
20 “Board” the following “, jointly with the Director of
21 the Consumer Financial Protection Agency,”; and

22 (2) by striking subsection (e) and inserting the
23 following:

24 “(e) CONSULTATIONS.—In prescribing regulations
25 under subsection (a) and (b) of this section, the Board

1 and the Director of the Consumer Financial Protection
2 Agency, in the case of subsection (a), and the Board, in
3 the case of subsection (b), shall consult with the Chair-
4 person of FIRA, the Board of Directors of the Federal
5 Deposit Insurance Corporation, and the National Credit
6 Union Administration Board.”.

7 **SEC. 1088. AMENDMENTS TO THE FAIR CREDIT BILLING**
8 **ACT.**

9 The Fair Credit Billing Act (15 U.S.C. 1666–1666j)
10 is amended by striking “Board” each place that term ap-
11 pears and inserting “CFPA”.

12 **SEC. 1089. AMENDMENTS TO THE FAIR CREDIT REPORTING**
13 **ACT AND THE FAIR AND ACCURATE CREDIT**
14 **TRANSACTIONS ACT.**

15 (a) FAIR CREDIT REPORTING ACT.—The Fair Credit
16 Reporting Act (15 U.S.C. 1681 et seq.) is amended—

17 (1) in section 603 (15 U.S.C. 1681a)—

18 (A) by redesignating subsections (w) and
19 (x) as subsections (x) and (y), respectively; and

20 (B) by inserting after subsection (v) the
21 following:

22 “(w) The term ‘CFPA’ means the Consumer Finan-
23 cial Protection Agency.”; and

24 (2) except as otherwise specifically provided in
25 this subsection—

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1 (A) by striking “Federal Trade Commis-
2 sion” each place that term appears and insert-
3 ing “CFPA”;

4 (B) by striking “FTC” each place that
5 term appears and inserting “CFPA”;

6 (C) by striking “the Commission” each
7 place that term appears and inserting “the
8 CFPA”; and

9 (D) by striking “The Federal banking
10 agencies, the National Credit Union Adminis-
11 tration, and the Commission shall jointly” each
12 place that term appears and inserting “The
13 CFPA shall”;

14 (3) in section 603(k)(2) (15 U.S.C.
15 1681a(k)(2)), by striking “Board of Governors of
16 the Federal Reserve System” and inserting
17 “CFPA”;

18 (4) in section 604(g) (15 U.S.C.1681b(g))—

19 (A) in paragraph (3), by striking subpara-
20 graph (C) and inserting the following:

21 “(C) as otherwise determined to be nec-
22 essary and appropriate, by regulation or order,
23 by the CFPA (consistent with the enforcement
24 authorities prescribed under section 621(b)), or
25 the applicable State insurance authority (with

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1 respect to any person engaged in providing in-
2 surance or annuities).”;

3 (B) by striking paragraph (5) and insert-
4 ing the following:

5 “(5) REGULATIONS AND EFFECTIVE DATE FOR
6 PARAGRAPH (2).—

7 “(A) REGULATIONS REQUIRED.—The
8 CFPA may, after notice and opportunity for
9 comment, prescribe regulations that permit
10 transactions under paragraph (2) that are de-
11 termined to be necessary and appropriate to
12 protect legitimate operational, transactional,
13 risk, consumer, and other needs (and which
14 shall include permitting actions necessary for
15 administrative verification purposes), consistent
16 with the intent of paragraph (2) to restrict the
17 use of medical information for inappropriate
18 purposes.”; and

19 (C) by striking paragraph (6);

20 (5) in section 611(e)(2) (15 U.S.C.1681i(e)), by
21 striking paragraph (2) and inserting the following:

22 “(2) EXCLUSION.—Complaints received or ob-
23 tained by the CFPA pursuant to its investigative au-
24 thority under the Consumer Financial Protection

1 Agency Act of 2009 shall not be subject to para-
2 graph (1).”;

3 (6) in section 615(h)(6) (15 U.S.C.
4 1681m(h)(6)), by striking subparagraph (A) and in-
5 serting the following:

6 “(A) RULES REQUIRED.—The CFPA shall
7 prescribe rules to carry out this subsection.”;

8 (7) in section 621 (15 U.S.C.1681s)—

9 (A) by striking subsection (a) and insert-
10 ing the following:

11 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
12 SION.—

13 “(1) IN GENERAL.—Subject to section 1022 of
14 the Consumer Financial Protection Agency Act of
15 2009, compliance with the requirements imposed
16 under this title shall be enforced under the Federal
17 Trade Commission Act (15 U.S.C. 41 et seq.) by the
18 Federal Trade Commission, with respect to con-
19 sumer reporting agencies and all other persons sub-
20 ject thereto, except to the extent that enforcement of
21 the requirements imposed under this title is specifi-
22 cally committed to some other Government agency
23 under subsection (b). For the purpose of the exercise
24 by the Federal Trade Commission of its functions
25 and powers under the Federal Trade Commission

1 Act, a violation of any requirement or prohibition
2 imposed under this title shall constitute an unfair or
3 deceptive act or practice in commerce, in violation of
4 section 5(a) of the Federal Trade Commission Act
5 (15 U.S.C. 45(a)), and shall be subject to enforce-
6 ment by the Federal Trade Commission under sec-
7 tion 5(b) of that Act with respect to any consumer
8 reporting agency or person that is subject to en-
9 forcement by the Federal Trade Commission pursu-
10 ant to this subsection, irrespective of whether that
11 person is engaged in commerce or meets any other
12 jurisdictional tests under the Federal Trade Com-
13 mission Act. The Federal Trade Commission shall
14 have such procedural, investigative, and enforcement
15 powers (subject to section 1022 of the Consumer Fi-
16 nancial Protection Agency Act of 2009), including
17 the power to issue procedural rules in enforcing com-
18 pliance with the requirements imposed under this
19 title and to require the filing of reports, the produc-
20 tion of documents, and the appearance of witnesses,
21 as though the applicable terms and conditions of the
22 Federal Trade Commission Act were part of this
23 title.

24 “(2) PENALTIES.—

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1 “(A) KNOWING VIOLATIONS.—Subject to
2 section 1022 of the Consumer Financial Protec-
3 tion Agency Act of 2009, in the event of a
4 knowing violation, which constitutes a pattern
5 or practice of violations of this title, the Federal
6 Trade Commission may commence a civil action
7 to recover a civil penalty in a district court of
8 the United States against any person that vio-
9 lates this title. In such action, such person shall
10 be liable for a civil penalty of not more than
11 \$2,500 per violation.

12 “(B) DETERMINING PENALTY AMOUNT.—
13 In determining the amount of a civil penalty
14 under subparagraph (A), the court shall take
15 into account the degree of culpability, any his-
16 tory of prior such conduct, ability to pay, effect
17 on ability to continue to do business, and such
18 other matters as justice may require.

19 “(C) LIMITATION.—Notwithstanding para-
20 graph (2), a court may not impose any civil
21 penalty on a person for a violation of section
22 623(a)(1), unless the person has been enjoined
23 from committing the violation, or ordered not to
24 commit the violation, in an action or proceeding
25 brought by or on behalf of the Federal Trade

1 Commission, and has violated the injunction or
2 order, and the court may not impose any civil
3 penalty for any violation occurring before the
4 date of the violation of the injunction or
5 order.”;

6 (8) by striking subsection (b) and inserting the
7 following:

8 “(b) ENFORCEMENT BY OTHER AGENCIES.—

9 “(1) IN GENERAL.—Subject to section 1022 of
10 the Consumer Financial Protection Agency Act of
11 2009, compliance with the requirements imposed
12 under this title with respect to consumer reporting
13 agencies, persons who use consumer reports from
14 such agencies, persons who furnish information to
15 such agencies, and users of information that are
16 subject to section 615(d) shall be enforced under—

17 “(A) section 8 of the Federal Deposit In-
18 surance Act (12 U.S.C. 1818), in the case of—

19 “(i) any national bank, and any Fed-
20 eral branch or Federal agency of a foreign
21 bank, by the Financial Institutions Regu-
22 latory Administration (hereafter in this
23 title referred to as ‘FIRA’);

24 “(ii) any member bank of the Federal
25 Reserve System (other than a national

1 bank), a branch or agency of a foreign
2 bank (other than a Federal branch, Fed-
3 eral agency, or insured State branch of a
4 foreign bank), a commercial lending com-
5 pany owned or controlled by a foreign
6 bank, and any organization operating
7 under section 25 or 25A of the Federal
8 Reserve Act, by the Board of Governors of
9 the Federal Reserve System; and

10 “(iii) any bank insured by the Federal
11 Deposit Insurance Corporation (other than
12 a member of the Federal Reserve System)
13 and any insured State branch of a foreign
14 bank, by the Board of Directors of the
15 Federal Deposit Insurance Corporation;

16 “(B) subtitle E of the Consumer Financial
17 Protection Agency Act of 2009, by the CFPA;

18 “(C) the Federal Credit Union Act (12
19 U.S.C. 1751 et seq.), by the Administrator of
20 the National Credit Union Administration with
21 respect to any Federal credit union;

22 “(D) subtitle IV of title 49, United States
23 Code, by the Secretary of Transportation, with
24 respect to all carriers subject to the jurisdiction
25 of the Surface Transportation Board;

1 “(E) the Federal Aviation Act of 1958 (49
2 U.S.C. App. 1301 et seq.), by the Secretary of
3 Transportation, with respect to any air carrier
4 or foreign air carrier subject to that Act;

5 “(F) the Packers and Stockyards Act,
6 1921 (7 U.S.C. 181 et seq.) (except as provided
7 in section 406 of that Act, by the Secretary of
8 Agriculture, with respect to any activities sub-
9 ject to that Act;

10 “(G) the Commodity Exchange Act, with
11 respect to a person subject to the jurisdiction of
12 the Commodity Futures Trading Commission;
13 and

14 “(H) the Federal securities laws, and any
15 other laws that are subject to the jurisdiction of
16 the Securities and Exchange Commission, with
17 respect to a person that subject to the jurisdic-
18 tion of the Securities and Exchange Commis-
19 sion.

20 “(2) INCORPORATED DEFINITIONS.—The terms
21 used in paragraph (1) that are not defined in this
22 title or otherwise defined in section 3(s) of the Fed-
23 eral Deposit Insurance Act (12 U.S.C. 1813(s)) have
24 the same meanings as in section 1(b) of the Inter-
25 national Banking Act of 1978 (12 U.S.C. 3101).”;

1 (9) by striking subsection (e) and inserting the
2 following:

3 “(e) REGULATORY AUTHORITY.—The CFPA shall
4 prescribe such regulations as are necessary to carry out
5 the purposes of this Act. The regulations prescribed by
6 the CFPA under this subsection shall apply to any person
7 that is subject to this Act, notwithstanding the enforce-
8 ment authorities granted to other agencies under this sec-
9 tion.”; and

10 (10) in section 623 (15 U.S.C.1681s-2)—

11 (A) in subsection (a)(7), by striking sub-
12 paragraph (D) and inserting the following:

13 “(D) MODEL DISCLOSURE.—

14 “(i) DUTY OF CFPA.—The CFPA
15 shall prescribe a brief model disclosure
16 that a financial institution may use to
17 comply with subparagraph (A), which shall
18 not exceed 30 words.

19 “(ii) USE OF MODEL NOT RE-
20 QUIRED.—No provision of this paragraph
21 may be construed to require a financial in-
22 stitution to use any such model form pre-
23 scribed by the CFPA.

24 “(iii) COMPLIANCE USING MODEL.—A
25 financial institution shall be deemed to be

1 in compliance with subparagraph (A) if the
2 financial institution uses any model form
3 prescribed by the CFPA under this sub-
4 paragraph, or the financial institution uses
5 any such model form and rearranges its
6 format.”; and

7 (B) by striking subsection (e) and insert-
8 ing the following:

9 “(e) ACCURACY GUIDELINES AND REGULATIONS RE-
10 QUIRED.—

11 “(1) GUIDELINES.—The CFPA shall, with re-
12 spect to persons or entities that are subject to the
13 enforcement authority of the CFPA under section
14 621—

15 “(A) establish and maintain guidelines for
16 use by each person that furnishes information
17 to a consumer reporting agency regarding the
18 accuracy and integrity of the information relat-
19 ing to consumers that such entities furnish to
20 consumer reporting agencies, and update such
21 guidelines as often as necessary; and

22 “(B) prescribe regulations requiring each
23 person that furnishes information to a con-
24 sumer reporting agency to establish reasonable
25 policies and procedures for implementing the

1 guidelines established pursuant to subpara-
2 graph (A).

3 “(2) CRITERIA.—In developing the guidelines
4 required by paragraph (1)(A), the CFPA shall—

5 “(A) identify patterns, practices, and spe-
6 cific forms of activity that can compromise the
7 accuracy and integrity of information furnished
8 to consumer reporting agencies;

9 “(B) review the methods (including techno-
10 logical means) used to furnish information re-
11 lating to consumers to consumer reporting
12 agencies;

13 “(C) determine whether persons that fur-
14 nish information to consumer reporting agen-
15 cies maintain and enforce policies to ensure the
16 accuracy and integrity of information furnished
17 to consumer reporting agencies; and

18 “(D) examine the policies and processes
19 that persons that furnish information to con-
20 sumer reporting agencies employ to conduct re-
21 investigations and correct inaccurate informa-
22 tion relating to consumers that has been fur-
23 nished to consumer reporting agencies.”.

24 (b) FAIR AND ACCURATE CREDIT TRANSACTIONS
25 ACT OF 2003.—Section 214(b)(1) of the Fair and Accu-

1 rate Credit Transactions Act of 2003 (15 U.S.C. 1681s–
2 3 note) is amended by striking “The Federal banking
3 agencies, the National Credit Union Administration, and
4 the Commission, with respect to the entities that are sub-
5 ject to their respective enforcement authority under sec-
6 tion 621 of the Fair Credit Reporting Act and” and insert-
7 ing “The Consumer Financial Protection Agency, with re-
8 spect to a person that is subject to its enforcement author-
9 ity, the Commodity Futures Trading Commission, and”.

10 **SEC. 1090. AMENDMENTS TO THE FAIR DEBT COLLECTION**

11 **PRACTICES ACT.**

12 The Fair Debt Collection Practices Act (15 U.S.C.
13 1692 et seq.) is amended—

14 (1) by striking “Commission” each place that
15 term appears and inserting “CFPA”;

16 (2) in section 803 (15 U.S.C. 1692a)—

17 (A) by striking paragraph (1) and insert-
18 ing the following:

19 “(1) The term ‘CFPA’ means the Consumer Fi-
20 nancial Protection Agency.”;

21 (3) in section 814 (15 U.S.C. 1692l)—

22 (A) by striking subsection (a) and insert-
23 ing the following:

24 “(a) FEDERAL TRADE COMMISSION.—Subject to sec-
25 tion 1022 of the Consumer Financial Protection Agency

1 Act of 2009, compliance with this title shall be enforced
2 by the Federal Trade Commission, except to the extent
3 that enforcement of the requirements imposed under this
4 title is specifically committed to another Government
5 agency under subsection (b). For purpose of the exercise
6 by the Federal Trade Commission of its functions and
7 powers under the Federal Trade Commission Act, a viola-
8 tion of this title shall be deemed an unfair or deceptive
9 act or practice in violation of that Act. All of the functions
10 and powers of the Federal Trade Commission under the
11 Federal Trade Commission Act are available to the Fed-
12 eral Trade Commission to enforce compliance by any per-
13 son with this title, irrespective of whether that person is
14 engaged in commerce or meets any other jurisdictional
15 tests under the Federal Trade Commission Act, including
16 the power to enforce the provisions of this title, in the
17 same manner as if the violation had been a violation of
18 a Federal Trade Commission trade regulation rule.”; and

19 (B) in subsection (b)—

20 (i) by striking “Compliance” and in-
21 sserting “Subject to section 1022 of the
22 Consumer Financial Protection Agency Act
23 of 2009, compliance”;

24 (ii) in paragraph (1)(A), by striking
25 “Office of the Comptroller of the Cur-

1 rency;” and inserting “Financial Institu-
2 tions Regulatory Administration”; and

3 (iii) by striking paragraph (2) and in-
4 serting the following:

5 “(2) subtitle E of the Consumer Financial Pro-
6 tection Agency Act of 2009, by the CFPA;”; and

7 (4) in subsection (d), by striking “Neither the
8 Commission” and all that follows through the end of
9 the subsection and inserting the following: “The
10 CFPA may prescribe rules with respect to the collec-
11 tion of debts by debt collectors, as defined in this
12 Act.”.

13 **SEC. 1091. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
14 **SURANCE ACT.**

15 The Federal Deposit Insurance Act (12 U.S.C. 1811
16 et seq.) is amended—

17 (1) in section 8(t) (12 U.S.C. 1818(t)), by add-
18 ing at the end the following:

19 “(6) REFERRAL TO CONSUMER FINANCIAL PRO-
20 TECTION AGENCY.—Each appropriate Federal bank-
21 ing agency shall make a referral to the Consumer
22 Financial Protection Agency when the Federal bank-
23 ing agency has a reasonable belief that a violation of
24 an enumerated consumer law, as defined in the Con-
25 sumer Financial Protection Agency Act of 2009, has

1 been committed by any insured depository institu-
2 tion or institution-affiliated party within the jurisdic-
3 tion of that appropriate Federal banking agency.”;
4 and

5 (2) in section 43 (2 U.S.C. 1831t)—

6 (A) in subsection (c), by striking “Federal
7 Trade Commission” and inserting “CFPA”;

8 (B) in subsection (d), by striking “Federal
9 Trade Commission” and inserting “CFPA”;

10 (C) in subsection (e)—

11 (i) in paragraph (2), by striking
12 “Federal Trade Commission” and insert-
13 ing “CFPA”; and

14 (ii) by adding at the end the following
15 new paragraph:

16 “(5) CFPA.—The term ‘CFPA’ means the
17 Consumer Financial Protection Agency.”; and

18 (D) in subsection (f)—

19 (i) by striking paragraph (1) and in-
20 serting the following:

21 “(1) LIMITED ENFORCEMENT AUTHORITY.—

22 Compliance with the requirements of subsections (b),
23 (c) and (e), and any regulation prescribed or order
24 issued under such subsection, shall be enforced
25 under the Consumer Financial Protection Agency

1 Act of 2009, by the CFPA, with respect to any per-
2 son (and without regard to the provision of a con-
3 sumer financial product or service).”; and

4 (ii) in paragraph (2), by striking sub-
5 paragraph (C) and inserting the following:

6 “(C) LIMITATION ON STATE ACTION
7 WHILE FEDERAL ACTION PENDING.—If the
8 CFPA has instituted an enforcement action for
9 a violation of this section, no appropriate State
10 supervisory agency may, during the pendency of
11 such action, bring an action under this section
12 against any defendant named in the complaint
13 of the CFPA for any violation of this section
14 that is alleged in that complaint.”.

15 **SEC. 1092. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
16 **ACT.**

17 Title V of the Gramm-Leach-Bliley Act (15 U.S.C.
18 6801 et seq.) is amended—

19 (1) in section 504(a)(1) (15 U.S.C.
20 6804(a)(1))—

21 (A) by striking “The Federal banking
22 agencies, the National Credit Union Adminis-
23 tration, the Secretary of the Treasury,” and in-
24 serting “The Consumer Financial Protection
25 Agency and”; and

1 (B) by striking “, and the Federal Trade
2 Commission”;

3 (2) in section 505(a) (15 U.S.C. 6805(a))—

4 (A) by striking “This subtitle and the reg-
5 ulations prescribed thereunder shall be enforced
6 by” and inserting “Subject to section 1022 of
7 the Consumer Financial Protection Agency Act
8 of 2009, this subtitle and the regulations pre-
9 scribed thereunder shall be enforced by the
10 Consumer Financial Protection Agency,”;

11 (B) in paragraph (1)—

12 (i) in subparagraph (B), by inserting
13 “and” after the semicolon;

14 (ii) in subparagraph (C), by striking
15 “; and” and inserting a period; and

16 (iii) by striking subparagraph (D);

17 and

18 (C) by adding at the end the following:

19 “(8) Under the Consumer Financial Protection
20 Agency Act of 2009, by the Consumer Financial
21 Protection Agency, in the case of any financial insti-
22 tution and other covered person or service provider
23 that is subject to the jurisdiction of the CFPA under
24 that Act, but not with respect to the standards
25 under section 501.”; and

1 (3) in section 505(b)(1) (15 U.S.C.
2 6805(b)(1)), by inserting “, other than the Con-
3 sumer Financial Protection Agency,” after “sub-
4 section (a)”.

5 **SEC. 1093. AMENDMENTS TO THE HOME MORTGAGE DIS-**
6 **CLOSURE ACT.**

7 The Home Mortgage Disclosure Act of 1975 (12
8 U.S.C. 2801 et seq.) is amended—

9 (1) except as otherwise specifically provided in
10 this section, by striking “Board” each place that
11 term appears and inserting “CFPA”;

12 (2) in section 303 (12 U.S.C. 2802)—

13 (A) by redesignating paragraphs (1)
14 through (6) as paragraphs (2) through (7), re-
15 spectively; and

16 (B) by inserting before paragraph (2) the
17 following:

18 “(1) the term ‘CFPA’ means the Consumer Fi-
19 nancial Protection Agency;”;

20 (3) in section 304 (12 U.S.C. 2803)—

21 (A) in subsection (b)—

22 (i) in paragraph (4), by inserting
23 “age,” before “and gender”;

24 (ii) in paragraph (3), by striking
25 “and” at the end; and

1 (iii) in paragraph (4), by striking the
2 period at the end and inserting the fol-
3 lowing: “; and

4 “(5) the number and dollar amount of mort-
5 gage loans grouped according to measurements of—

6 “(A) the total points and fees payable at
7 origination in connection with the mortgage as
8 determined by the CFPA, taking into account
9 15 U.S.C. 1602(aa)(4);

10 “(B) the difference between the annual
11 percentage rate associated with the loan and a
12 benchmark rate or rates for all loans;

13 “(C) the term in months of any prepay-
14 ment penalty or other fee or charge payable on
15 repayment of some portion of principal or the
16 entire principal in advance of scheduled pay-
17 ments; and

18 “(D) such other information as the CFPA
19 may require; and

20 “(6) the number and dollar amount of mort-
21 gage loans and completed applications grouped ac-
22 cording to measurements of—

23 “(A) the value of the real property pledged
24 or proposed to be pledged as collateral;

1 “(B) the actual or proposed term in
2 months of any introductory period after which
3 the rate of interest may change;

4 “(C) the presence of contractual terms or
5 proposed contractual terms that would allow the
6 mortgagor or applicant to make payments other
7 than fully amortizing payments during any por-
8 tion of the loan term;

9 “(D) the actual or proposed term in
10 months of the mortgage loan;

11 “(E) the channel through which applica-
12 tion was made, including retail, broker, and
13 other relevant categories;

14 “(F) as the CFPA may determine to be
15 appropriate, a unique identifier that identifies
16 the loan originator as set forth in Section 1503
17 of the S.A.F.E. Mortgage Licensing Act of
18 2008;

19 “(G) as the CFPA may determine to be
20 appropriate, a universal loan identifier;

21 “(H) as the CFPA may determine to be
22 appropriate, the parcel number that cor-
23 responds to the real property pledged or pro-
24 posed to be pledged as collateral;

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1 “(I) the credit score of mortgage appli-
2 cants and mortgagors, in such form as the
3 CFPA may prescribe, except that the CFPA
4 shall modify or require modification of credit
5 score data that is or will be available to the
6 public to protect the compelling privacy interest
7 of the mortgage applicant or mortgagors; and

8 “(J) such other information as the CFPA
9 may require.”;

10 (B) in subsection (i), by striking “sub-
11 section (b)(4)” and inserting “subsections
12 (b)(4), (b)(5), and (b)(6)”;

13 (C) in subsection (j)—

14 (i) in paragraph (1), by striking “(as”
15 and inserting “(containing loan-level and
16 application-level information relating to
17 disclosures required under subsections (a)
18 and (b) and as otherwise”;

19 (ii) by striking paragraph (3) and in-
20 serting the following:

21 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
22 pository institution meets the disclosure requirement
23 of paragraph (1) if the institution provides the infor-
24 mation required under such paragraph in such for-
25 mats as the CFPA may require”; and

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1 (iii) in paragraph (2)(A), by striking
2 “in the format in which such information
3 is maintained by the institution” and in-
4 serting “in such formats as the CFPA may
5 require”;

6 (D) in subsection (m), by striking para-
7 graph (2) and inserting the following:

8 “(2) FORM OF INFORMATION.—In complying
9 with paragraph (1), a depository institution shall
10 provide the person requesting the information with
11 a copy of the information requested in such formats
12 as the CFPA may require”;

13 (E) by striking subsection (h) and insert-
14 ing the following:

15 “(h) SUBMISSION TO AGENCIES.—

16 “(1) IN GENERAL.—The data required to be
17 disclosed under subsection (b) shall be submitted to
18 the CFPA or to the appropriate agency for the insti-
19 tution reporting under this title, in accordance with
20 rules prescribed by the CFPA. Notwithstanding the
21 requirement of subsection (a)(2)(A) for disclosure by
22 census tract, the CFPA, in cooperation with other
23 appropriate regulators described in paragraph (2),
24 shall develop regulations that—

1 “(A) prescribe the format for such disclo-
2 sures, the method for submission of the data to
3 the appropriate regulatory agency, and the pro-
4 cedures for disclosing the information to the
5 public;

6 “(B) require the collection of data required
7 to be disclosed under subsection (b) with re-
8 spect to loans sold by each institution reporting
9 under this title;

10 “(C) require disclosure of the class of the
11 purchaser of such loans; and

12 “(D) permit any reporting institution to
13 submit in writing to the CFPB or to the appro-
14 priate agency such additional data or expla-
15 nations as it deems relevant to the decision to
16 originate or purchase mortgage loans.

17 “(2) OTHER APPROPRIATE AGENCIES.—The ap-
18 propriate regulators described in this paragraph
19 are—

20 “(A) the Financial Institutions Regulatory
21 Administration (hereafter in this Act referred
22 to as ‘FIRA’) for national banks and Federal
23 branches, Federal agencies of foreign banks,
24 and savings associations;

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1 “(B) the Federal Deposit Insurance Cor-
2 poration for banks insured by the Federal De-
3 posit Insurance Corporation (other than mem-
4 bers of the Federal Reserve System), mutual
5 savings banks, insured State branches of for-
6 eign banks, and any other depository institution
7 described in section 303(2)(A) which is not oth-
8 erwise referred to in this paragraph;

9 “(C) the National Credit Union Adminis-
10 tration Board for credit unions; and

11 “(D) the Secretary of Housing and Urban
12 Development for other lending institutions not
13 regulated by the agencies referred to in sub-
14 paragraphs (A) through (C).”; and

15 (F) by adding at the end the following:

16 “(n) TIMING OF CERTAIN DISCLOSURES.—The data
17 required to be disclosed under subsection (b) shall be sub-
18 mitted to the CFPA or to the appropriate agency for any
19 institution reporting under this title, in accordance with
20 regulations prescribed by the CFPA. Institutions shall not
21 be required to report new data under paragraphs (5) or
22 (6) of subsection (b) before the first January 1 that occurs
23 after the end of the 9-month period beginning on the date
24 on which regulations are issued by the CFPA in final form
25 with respect to such disclosures.”;

1 (4) in section 305 (12 U.S.C. 2804)—

2 (A) by striking subsection (b) and insert-
3 ing the following:

4 “(b) POWERS OF CERTAIN OTHER AGENCIES.—

5 “(1) IN GENERAL.—Compliance with the re-
6 quirements of this title shall be enforced under—

7 “(A) section 8 of the Federal Deposit In-
8 surance Act, in the case of—

9 “(i) any national bank, and any Fed-
10 eral branch or Federal agency of a foreign
11 bank, by FIRA;

12 “(ii) any member bank of the Federal
13 Reserve System (other than a national
14 bank), branch or agency of a foreign bank
15 (other than a Federal branch, Federal
16 agency, and insured State branch of a for-
17 eign bank), commercial lending company
18 owned or controlled by a foreign bank, and
19 any organization operating under section
20 25 or 25(a) of the Federal Reserve Act, by
21 the Board; and

22 “(iii) any bank insured by the Federal
23 Deposit Insurance Corporation (other than
24 a member of the Federal Reserve System),
25 any mutual savings bank as, defined in

1 section 3(f) of the Federal Deposit Insur-
2 ance Act (12 U.S.C. 1813(f)), any insured
3 State branch of a foreign bank, and any
4 other depository institution not referred to
5 in this paragraph or subparagraph (B) or
6 (C), by the Federal Deposit Insurance Cor-
7 poration;

8 “(B) subtitle E of the Consumer Financial
9 Protection Agency Act of 2009, by the CFPA;

10 “(C) the Federal Credit Union Act, by the
11 Administrator of the National Credit Union Ad-
12 ministration with respect to any insured credit
13 union; and

14 “(D) other lending institutions, by the Sec-
15 retary of Housing and Urban Development.

16 “(2) INCORPORATED DEFINITIONS.—The terms
17 used in paragraph (1) that are not defined in this
18 title or otherwise defined in section 3(s) of the Fed-
19 eral Deposit Insurance Act (12 U.S.C. 1813(s))
20 shall have the same meanings as in section 1(b) of
21 the International Banking Act of 1978 (12 U.S.C.
22 3101).”; and

23 (B) by adding at the end the following:

24 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE
25 CONSUMER FINANCIAL PROTECTION AGENCY.—Subject

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1 to section 1022 of the Consumer Financial Protection
2 Agency Act of 2009, enforcement of the requirements im-
3 posed under this title is committed to each of the agencies
4 under subsection (b). The CFPA may exercise its authori-
5 ties under the Consumer Financial Protection Agency Act
6 of 2009 to exercise principal authority to examine and en-
7 force compliance by any person with the requirements of
8 this title.”;

9 (5) in section 306 (12 U.S.C. 2805(b)), by
10 striking subsection (b) and inserting the following:

11 “(b) EXEMPTION AUTHORITY.—The CFPA may, by
12 regulation, exempt from the requirements of this title any
13 State chartered depository institution within any State or
14 subdivision thereof, if the agency determines that, under
15 the law of such State or subdivision, that institution is
16 subject to requirements that are substantially similar to
17 those imposed under this title, and that such law contains
18 adequate provisions for enforcement. Notwithstanding any
19 other provision of this subsection, compliance with the re-
20 quirements imposed under this subsection shall be en-
21 forced by FIRA under section 8 of the Federal Deposit
22 Insurance Act, in the case of national banks and savings
23 association the deposits of which are insured by the Fed-
24 eral Deposit Insurance Corporation.”; and

1 (6) by striking section 307 (12 U.S.C. 2806)
2 and inserting the following:

3 **“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.**

4 “(a) IN GENERAL.—

5 “(1) CONSULTATION REQUIRED.—The Director
6 of the Consumer Financial Protection Agency, with
7 the assistance of the Secretary, the Director of the
8 Bureau of the Census, the Board of Governors of
9 the Federal Reserve System, the Federal Deposit In-
10 surance Corporation, and such other persons, as the
11 CFPA deems appropriate, shall develop or assist in
12 the improvement of, methods of matching addresses
13 and census tracts to facilitate compliance by deposi-
14 tory institutions in as economical a manner as pos-
15 sible with the requirements of this title.

16 “(2) AUTHORIZATION OF APPROPRIATIONS.—
17 There are authorized to be appropriated, such sums
18 as may be necessary to carry out this subsection.

19 “(3) CONTRACTING AUTHORITY.—The Director
20 of the Consumer Financial Protection Agency is au-
21 thorized to utilize, contract with, act through, or
22 compensate any person or agency in order to carry
23 out this subsection.

24 “(b) RECOMMENDATIONS TO CONGRESS.—The Di-
25 rector of the Consumer Financial Protection Agency shall

1 recommend to the Committee on Banking, Housing, and
2 Urban Affairs of the Senate and the Committee on Finan-
3 cial Services of the House of Representatives, such addi-
4 tional legislation as the Director of the Consumer Finan-
5 cial Protection Agency deems appropriate to carry out the
6 purpose of this title.”.

7 **SEC. 1094. AMENDMENTS TO THE HOME OWNERS PROTEC-**
8 **TION ACT OF 1998.**

9 Section 10 of the Homeowners Protection Act of
10 1998 (12 U.S.C. 4909) is amended—

11 (1) in subsection (a)—

12 (A) by striking “Compliance” and insert-
13 ing “Subject to section 1022 of the Consumer
14 Financial Protection Agency Act of 2009, com-
15 pliance”;

16 (B) in paragraph (2), by striking “and” at
17 the end;

18 (C) in paragraph (3), by striking the pe-
19 riod at the end and inserting “; and”; and

20 (D) by adding at the end the following:

21 “(4) subtitle E of title X of the Consumer Fi-
22 nancial Protection Agency Act of 2009, by the Con-
23 sumer Financial Protection Agency.”; and

24 (2) in subsection (b)(2), by inserting before the
25 period at the end the following: “, subject to section

1 1022 of the Consumer Financial Protection Agency
2 Act of 2009”.

3 **SEC. 1095. AMENDMENTS TO THE HOME OWNERSHIP AND**
4 **EQUITY PROTECTION ACT OF 1994.**

5 The Home Ownership and Equity Protection Act of
6 1994 (15 U.S.C. 1601 note) is amended—

7 (1) in section 158(a), by striking “Consumer
8 Advisory Council of the Board” and inserting “Advi-
9 sory Board to the CFPA”; and

10 (2) by striking “Board” each place that term
11 appears and inserting “CFPA”.

12 **SEC. 1096. AMENDMENTS TO THE OMNIBUS APPROPRIA-**
13 **TIONS ACT, 2009.**

14 Section 626 of the Omnibus Appropriations Act,
15 2009 (Public Law 111–8) is amended—

16 (1) in subsection (a), by striking paragraph (1)
17 and inserting the following:

18 “(1) The Consumer Financial Protection Agen-
19 cy shall have authority to prescribe rules with re-
20 spect to mortgage loans in accordance with section
21 553 of title 5, United States Code. Such rulemaking
22 shall relate to unfair or deceptive acts or practices
23 regarding mortgage loans, which may include unfair
24 or deceptive acts or practices involving loan modi-
25 fication and foreclosure rescue services. Any viola-

1 tion of a rule prescribed under this paragraph shall
2 be treated as a violation of a rule prohibiting unfair,
3 deceptive, or abusive acts or practices under the
4 Consumer Financial Protection Agency Act of
5 2009.”;

6 (2) by striking paragraphs (2) through (4) and
7 inserting the following:

8 “(2) The Consumer Financial Protection Agen-
9 cy shall enforce the rules issued under paragraph (1)
10 in the same manner, by the same means, and with
11 the same jurisdiction, powers, and duties, as though
12 all applicable terms and provisions of the Consumer
13 Financial Protection Agency Act of 2009 were incor-
14 porated into and made part of this subsection.”; and

15 (3) in subsection (b)—

16 (A) by striking “Federal Trade Commis-
17 sion” and inserting “Consumer Financial Pro-
18 tection Agency”;

19 (B) by striking “the Commission” and in-
20 serting “the Consumer Financial Protection
21 Agency”; and

22 (C) by striking “primary Federal regu-
23 lator” and inserting “Consumer Financial Pro-
24 tection Agency”.

1 **SEC. 1097. AMENDMENTS TO THE REAL ESTATE SETTLE-**
2 **MENT PROCEDURES ACT.**

3 The Real Estate Settlement Procedures Act of 1974
4 (12 U.S.C. 2601 et seq.) is amended—

5 (1) in section 3 (12 U.S.C. 2602)—

6 (A) in paragraph (7), by striking “and” at
7 the end;

8 (B) in paragraph (8), by striking the pe-
9 riod at the end and inserting “; and”; and

10 (C) by adding at the end the following:

11 “(9) the term ‘CFPA’ means the Consumer Fi-
12 nancial Protection Agency.”;

13 (2) in section 4 (12 U.S.C. 2603)—

14 (A) in subsection (a), by striking the first
15 sentence and inserting the following: “The
16 CFPA shall publish a single, integrated disclo-
17 sure for mortgage loan transactions (including
18 real estate settlement cost statements) which
19 includes the disclosure requirements of this
20 title, in conjunction with the disclosure require-
21 ments of the Truth in Lending Act that, taken
22 together, may apply to a transaction that is
23 subject to both or either provisions of law. The
24 purpose of such model disclosure shall be to fa-
25 cilitate compliance with the disclosure require-
26 ments of this title and the Truth in Lending

1 Act, and to aid the borrower or lessee in under-
2 standing the transaction by utilizing readily un-
3 derstandable language to simplify the technical
4 nature of the disclosures.”;

5 (B) by striking “Secretary” each place
6 that term appears and inserting “CFPA”; and

7 (C) by striking “form” each place that
8 term appears and inserting “forms”;

9 (3) in section 5 (12 U.S.C. 2604)—

10 (A) by striking “Secretary” each place that
11 term appears, and inserting “CFPA”; and

12 (B) in subsection (a), by striking the first
13 sentence and inserting the following: “The
14 CFPA shall prepare and distribute booklets
15 jointly addressing compliance with the require-
16 ments of the Truth in Lending Act and the pro-
17 visions of this title, in order to help persons
18 borrowing money to finance the purchase of
19 residential real estate better to understand the
20 nature and costs of real estate settlement serv-
21 ices.”;

22 (4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

23 (A) by striking “Secretary” and inserting
24 “CFPA”; and

1 (B) by striking “, by regulations that shall
2 take effect not later than April 20, 1991,”;

3 (5) in section 7(b) (12 U.S.C. 2606(b)) by
4 striking “Secretary” and inserting “CFPA”;

5 (6) in section 8(d) (12 U.S.C. 2607(d))—

6 (A) in the subsection heading, by inserting
7 “CFPA AND” before “SECRETARY”; and

8 (B) in paragraph (4)—

9 (i) by striking “The Secretary,” and
10 inserting “The CFPA, the Secretary,”; and

11 (ii) by inserting before the period the
12 following: “, except that, to the extent that
13 a Federal law authorizes the CFPA and
14 other Federal and State agencies to en-
15 force or administer the law, the CFPA
16 shall have primary authority to enforce or
17 administer this section in accordance with
18 section 1022 of the Consumer Financial
19 Protection Agency Act of 2009.”;

20 (7) in section 10(c) (12 U.S.C. 2609(c) and
21 (d)), by striking “Secretary” and inserting “CFPA”;

22 (8) in section 16 (12 U.S.C. 2614), by inserting
23 “the CFPA,” before “the Secretary”;

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1 (9) in section 18 (12 U.S.C. 2616), by striking
2 “Secretary” each place that term appears and in-
3 serting “CFPA”; and

4 (10) in section 19 (12 U.S.C. 2617)—

5 (A) in the section heading by striking
6 “**SECRETARY**” and inserting “**CFPA**”; and

7 (B) by striking “Secretary” each place
8 that term appears and inserting “CFPA”.

9 **SEC. 1098. AMENDMENTS TO THE RIGHT TO FINANCIAL**
10 **PRIVACY ACT OF 1978.**

11 The Right to Financial Privacy Act of 1978 (12
12 U.S.C. 3401 et seq.) is amended—

13 (1) in section 1101—

14 (A) in paragraph (6)—

15 (i) in subparagraph (A), by inserting
16 “and” after the semicolon;

17 (ii) in subparagraph (B), by striking
18 “and” at the end; and

19 (iii) by striking subparagraph (C);
20 and

21 (B) in paragraph (7)—

22 (i) by striking subparagraph (B) and
23 inserting the following:

1 “(B) the Financial Institutions Regulatory
2 Administration (hereafter in this title referred
3 to as ‘FIRA’);”; and

4 (ii) by striking subparagraph (E) and
5 inserting the following:

6 “(E) the Consumer Financial Protection
7 Agency;”;

8 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
9 striking “and the Commodity Futures Trading Com-
10 mission is permitted” and inserting “the Commodity
11 Futures Trading Commission, and the Consumer Fi-
12 nancial Protection Agency is permitted”; and

13 (3) in section 1113 (12 U.S.C. 3413), by add-
14 ing at the end the following new subsection:

15 “(r) DISCLOSURE TO THE CONSUMER FINANCIAL
16 PROTECTION AGENCY.—Nothing in this title shall apply
17 to the examination by or disclosure to the Consumer Fi-
18 nancial Protection Agency of financial records or informa-
19 tion in the exercise of its authority with respect to a finan-
20 cial institution.”.

21 **SEC. 1099. AMENDMENTS TO THE SECURE AND FAIR EN-**
22 **FORCEMENT FOR MORTGAGE LICENSING ACT**
23 **OF 2008.**

24 The S.A.F.E. Mortgage Licensing Act of 2008 (12
25 U.S.C. 5101 et seq.) is amended—

1 (1) by striking “a Federal banking agency”
2 each place that term appears, other than in para-
3 graphs (7) and (11) of section 1503 and section
4 1507(a)(1), and inserting “the CFPA”;

5 (2) by striking “Federal banking agencies”
6 each place that term appears and inserting
7 “CFPA”; and

8 (3) by striking “Secretary” each place that
9 term appears and inserting “Director”;

10 (4) in section 1503 (12 U.S.C. 5102)—

11 (A) by redesignating paragraphs (2)
12 through (12) as (3) through (13), respectively;

13 (B) by striking paragraph (1) and insert-
14 ing the following:

15 “(1) CFPA.—The term ‘CFPA’ means the
16 Consumer Financial Protection Agency.

17 “(2) FEDERAL BANKING AGENCY.—The term
18 ‘Federal banking agency’ means the Board of Gov-
19 ernors of the Federal Reserve System, the Financial
20 Institutions Regulatory Administration, the National
21 Credit Union Administration, and the Federal De-
22 posit Insurance Corporation.”; and

23 (C) by striking paragraph (10), as so re-
24 designated by this section, and inserting the fol-
25 lowing:

1 “(10) DIRECTOR.—The term ‘Director’ means
2 the Director of the Consumer Financial Protection
3 Agency.”; and

4 (5) in section 1507 (12 U.S.C. 5106)—

5 (A) in subsection (a)—

6 (i) by striking paragraph (1) and in-
7 serting the following:

8 “(1) IN GENERAL.—The CFPA shall develop
9 and maintain a system for registering employees of
10 a depository institution, employees of a subsidiary
11 that is owned and controlled by a depository institu-
12 tion and regulated by a Federal banking agency, or
13 employees of an institution regulated by the Farm
14 Credit Administration, as registered loan originators
15 with the Nationwide Mortgage Licensing System and
16 Registry. The system shall be implemented before
17 the end of the 1-year period beginning on the date
18 of enactment of the Consumer Financial Protection
19 Agency Act of 2009.”; and

20 (ii) in paragraph (2)—

21 (I) by striking “appropriate Fed-
22 eral banking agency and the Farm
23 Credit Administration” and inserting
24 “CFPA”; and

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1 (II) by striking “employees’s
2 identity” and inserting “identity of
3 the employee”; and

4 (B) in subsection (b), by striking “through
5 the Financial Institutions Examination Council,
6 and the Farm Credit Administration”, and in-
7 serting “and the Consumer Financial Protec-
8 tion Agency”;

9 (6) in section 1508 (12 U.S.C. 5107)—

10 (A) by striking the section heading and in-
11 serting the following:

12 **“SEC. 1508. CONSUMER FINANCIAL PROTECTION AGENCY**
13 **BACKUP AUTHORITY TO ESTABLISH LOAN**
14 **ORIGINATOR LICENSING SYSTEM.”; and**

15 (B) by adding at the end the following:

16 “(f) REGULATION AUTHORITY.—

17 “(1) IN GENERAL.—The CFPA is authorized to
18 promulgate regulations setting minimum net worth
19 or surety bond requirements for residential mortgage
20 loan originators and minimum requirements for re-
21 covery funds paid into by loan originators.

22 “(2) CONSIDERATIONS.—In issuing regulations
23 under paragraph (1), the CFPA shall take into ac-
24 count the need to provide originators adequate in-
25 centives to originate affordable and sustainable

1 mortgage loans, as well as the need to ensure a com-
2 petitive origination market that maximizes consumer
3 access to affordable and sustainable mortgage
4 loans.”;

5 (7) by striking section 1510 (12 U.S.C. 5109)
6 and inserting the following:

7 **“SEC. 1510. FEES.**

8 “The CFPA, the Farm Credit Administration, and
9 the Nationwide Mortgage Licensing System and Registry
10 may charge reasonable fees to cover the costs of maintain-
11 ing and providing access to information from the Nation-
12 wide Mortgage Licensing System and Registry, to the ex-
13 tent that such fees are not charged to consumers for ac-
14 cess to such system and registry.”;

15 (8) by striking section 1513 (12 U.S.C. 5112)
16 and inserting the following:

17 **“SEC. 1513. LIABILITY PROVISIONS.**

18 “The CFPA, any State official or agency, or any or-
19 ganization serving as the administrator of the Nationwide
20 Mortgage Licensing System and Registry or a system es-
21 tablished by the Director under section 1509, or any offi-
22 cer or employee of any such entity, shall not be subject
23 to any civil action or proceeding for monetary damages
24 by reason of the good faith action or omission of any offi-
25 cer or employee of any such entity, while acting within

1 the scope of office or employment, relating to the collec-
2 tion, furnishing, or dissemination of information con-
3 cerning persons who are loan originators or are applying
4 for licensing or registration as loan originators.”; and

5 (9) in section 1514 (12 U.S.C. 5113) in the
6 section heading, by striking “**UNDER HUD BACKUP**
7 **LICENSING SYSTEM**” and inserting “**BY THE**
8 **CFPA**”.

9 **SEC. 1100. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

10 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
11 is amended—

12 (1) in section 103 (5 U.S.C. 1602)—

13 (A) by redesignating subsections (b)
14 through (bb) as subsections (c) through (cc),
15 respectively; and

16 (B) by inserting after subsection (a) the
17 following:

18 “(b) CFPA.—The term ‘CFPA’ means the Consumer
19 Financial Protection Agency.”;

20 (2) by striking “Board” each place that term
21 appears, other than in section 140(d) and section
22 108(a), as amended by this section, and inserting
23 “CFPA”;

24 (3) by striking “Federal Trade Commission”
25 each place that term appears, other than in section

1 108(c) and section 129(m), as amended by this Act,
2 and other than in the context of a reference to the
3 Federal Trade Commission Act, and inserting
4 “CFPA”;

5 (4) in section 105(a) (15 U.S.C. 1604(a)), in
6 the second sentence—

7 (A) by striking “Except in the case of a
8 mortgage referred to in section 103(aa), these
9 regulations may contain such” and inserting
10 “Except with respect to the provisions of sec-
11 tion 129 that apply to a mortgage referred to
12 in section 103(aa), such regulations may con-
13 tain such additional requirements,”; and

14 (B) by inserting “all or” after “exceptions
15 for”;

16 (5) in section 105(b) (15 U.S.C. 1604(b)), by
17 striking the first sentence and inserting the fol-
18 lowing: “The CFPA shall publish a single, inte-
19 grated disclosure for mortgage loan transactions (in-
20 cluding real estate settlement cost statements) which
21 includes the disclosure requirements of this title in
22 conjunction with the disclosure requirements of the
23 Real Estate Settlement Procedures Act of 1974
24 that, taken together, may apply to a transaction that
25 is subject to both or either provisions of law. The

1 purpose of such model disclosure shall be to facili-
2 tate compliance with the disclosure requirements of
3 this title and the Real Estate Settlement Procedures
4 Act of 1974, and to aid the borrower or lessee in un-
5 derstanding the transaction by utilizing readily un-
6 derstandable language to simplify the technical na-
7 ture of the disclosures.”;

8 (6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)),
9 by inserting “all or” after “from all or part of this
10 title”;

11 (7) in section 108 (15 U.S.C. 1607)—

12 (A) by striking subsection (a) and insert-
13 ing the following:

14 “(a) ENFORCING AGENCIES.—Subject to section
15 1022 of the Consumer Financial Protection Agency Act
16 of 2009, compliance with the requirements imposed under
17 this title shall be enforced under—

18 “(1) section 8 of the Federal Deposit Insurance
19 Act, in the case of—

20 “(A) any national bank, and Federal
21 branch or Federal agency of a foreign bank, by
22 the Financial Institutions Regulatory Adminis-
23 tration (hereafter in this title referred to as
24 ‘FIRA’);

1 “(B) any member bank of the Federal Re-
2 serve System (other than a national bank), any
3 branch or agency of a foreign bank (other than
4 a Federal branch, Federal agency, or insured
5 State branch of a foreign bank), any commer-
6 cial lending company owned or controlled by a
7 foreign bank, and organizations operating
8 under section 25 or 25(a) of the Federal Re-
9 serve Act, by the Board; and

10 “(C) any bank insured by the Federal De-
11 posit Insurance Corporation (other than a
12 member of the Federal Reserve System) and an
13 insured State branch of a foreign bank, by the
14 Board of Directors of the Federal Deposit In-
15 surance Corporation;

16 “(2) subtitle E of the Consumer Financial Pro-
17 tection Agency Act of 2009, by the CFPA;

18 “(3) the Federal Credit Union Act, by the Di-
19 rector of the National Credit Union Administration,
20 with respect to any Federal credit union;

21 “(4) the Federal Aviation Act of 1958, by the
22 Secretary of Transportation, with respect to any air
23 carrier or foreign air carrier subject to that Act;

24 “(5) the Packers and Stockyards Act, 1921 (ex-
25 cept as provided in section 406 of that Act), by the

1 Secretary of Agriculture, with respect to any activi-
2 ties subject to that Act; and

3 “(6) the Farm Credit Act of 1971, by the Farm
4 Credit Administration with respect to any Federal
5 land bank, Federal land bank association, Federal
6 intermediate credit bank, or production credit asso-
7 ciation.”; and

8 (B) by striking subsection (c) and insert-
9 ing the following:

10 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
11 FEDERAL TRADE COMMISSION.—Except to the extent
12 that enforcement of the requirements imposed under this
13 title is specifically committed to some other Government
14 agency under subsection (a), and subject to section 1022
15 of the Consumer Financial Protection Agency Act of 2009,
16 the Federal Trade Commission shall enforce such require-
17 ments. For the purpose of the exercise by the Federal
18 Trade Commission of its functions and powers under the
19 Federal Trade Commission Act, a violation of any require-
20 ment imposed under this title shall be deemed a violation
21 of a requirement imposed under that Act. All of the func-
22 tions and powers of the Federal Trade Commission under
23 the Federal Trade Commission Act are available to the
24 Commission to enforce compliance by any person with the
25 requirements under this title, irrespective of whether that

1 person is engaged in commerce or meets any other juris-
2 dictional tests under the Federal Trade Commission Act.”;

3 (8) in section 129 (15 U.S.C. 1639), by striking
4 subsection (m) and inserting the following:

5 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-
6 MISSION ENFORCEMENT ACTIONS.—For purposes of en-
7 forcement by the Federal Trade Commission, any violation
8 of a regulation issued by the CFPA pursuant to subsection
9 (l)(2) shall be treated as a violation of a rule promulgated
10 under section 18 of the Federal Trade Commission Act
11 (15 U.S.C. 57a) regarding unfair or deceptive acts or
12 practices.”; and

13 (9) in chapter 5 (15 U.S.C. 1667 et seq.)—

14 (A) by striking “the Board” each place
15 that term appears and inserting “the CFPA”;
16 and

17 (B) by striking “The Board” each place
18 that term appears and inserting “The CFPA”.

19 **SEC. 1101. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

20 The Truth in Savings Act (12 U.S.C. 4301 et seq.)
21 is amended—

22 (1) by striking “Board” each place that term
23 appears and inserting “CFPA”;

24 (2) in section 270(a) (12 U.S.C. 4309)—

1 (A) by striking “Compliance” and insert-
2 ing “Subject to section 1022 of the Consumer
3 Financial Protection Agency Act of 2009, com-
4 pliance”;

5 (B) in paragraph (1)—

6 (i) by striking subparagraph (A) and
7 inserting the following:

8 “(A) by the Chairperson of the Financial
9 Institutions Regulatory Administration (here-
10 after in this title referred to as ‘FIRA’) for na-
11 tional banks, and Federal branches and Federal
12 agencies of foreign banks; and”;

13 (ii) in subparagraph (B), by striking
14 “and” at the end; and

15 (iii) by striking subparagraph (C);

16 (C) in paragraph (2), by striking the pe-
17 riod at the end and inserting “; and”; and

18 (D) by adding at the end, the following:

19 “(3) subtitle E of the Consumer Financial Pro-
20 tection Agency Act of 2009, by the CFPA.”;

21 (3) in section 272(b) (12 U.S.C. 4311(b)), by
22 striking “regulation prescribed by the Board” each
23 place that term appears and inserting “regulation
24 prescribed by the CFPA”; and

1 (4) in section 274 (12 U.S.C. 4313), by striking
2 paragraph (4) and inserting the following:

3 “(4) CFPA.—The term ‘CFPA’ means the
4 Consumer Financial Protection Agency.”.

5 **SEC. 1102. AMENDMENTS TO THE TELEMARKETING AND**
6 **CONSUMER FRAUD AND ABUSE PREVENTION**
7 **ACT.**

8 (a) AMENDMENTS TO SECTION 3.—Section 3 of the
9 Telemarketing and Consumer Fraud and Abuse Preven-
10 tion Act (15 U.S.C. 6102) is amended by striking sub-
11 sections (b) and (c) and inserting the following:

12 “(b) RULEMAKING AUTHORITY.—The Commission
13 shall have authority to prescribe rules under subsection
14 (a), in accordance with section 553 of title 5, United
15 States Code. In prescribing a rule under this section that
16 relates to the provision of a consumer financial product
17 or service that is subject to the Consumer Financial Pro-
18 tection Agency Act of 2009, including any enumerated
19 consumer law thereunder, the Commission shall consult
20 with the Consumer Financial Protection Agency regarding
21 the consistency of a proposed rule with standards, pur-
22 poses, or objectives administered by the Consumer Finan-
23 cial Protection Agency.

24 “(c) VIOLATIONS.—Any violation of any rule pre-
25 scribed under subsection (a)—

1 “(1) shall be treated as a violation of a rule
2 under section 18 of the Federal Trade Commission
3 Act regarding unfair or deceptive acts or practices;
4 and

5 “(2) that is committed by a person subject to
6 the Consumer Financial Protection Agency Act of
7 2009 shall be treated as a violation of a rule under
8 section 1031 of that Act regarding unfair, deceptive,
9 or abusive acts or practices.”.

10 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of
11 the Telemarketing and Consumer Fraud and Abuse Pre-
12 vention Act (15 U.S.C. 6103(d)) is amended by inserting
13 after “Commission” each place that term appears the fol-
14 lowing: “or the Consumer Financial Protection Agency”.

15 (c) AMENDMENTS TO SECTION 5.—Section 5(c) of
16 the Telemarketing and Consumer Fraud and Abuse Pre-
17 vention Act (15 U.S.C. 6104(c)) is by inserting after
18 “Commission” each place that term appears the following:
19 “or the Consumer Financial Protection Agency”.

20 (d) AMENDMENT TO SECTION 6.—Section 6 of the
21 Telemarketing and Consumer Fraud and Abuse Preven-
22 tion Act (15 U.S.C. 6105) is amended by adding at the
23 end the following:

24 “(d) ENFORCEMENT BY CFPA.—Except as otherwise
25 provided in sections 3(d), 3(e), 4, and 5, this Act shall

1 be enforced by the Consumer Financial Protection Agency
2 under subtitle E of title X of the Consumer Financial Pro-
3 tection Agency Act of 2009.”.

4 **SEC. 1103. AMENDMENTS TO THE PAPERWORK REDUCTION**
5 **ACT.**

6 (a) NO PRIOR REVIEW OF RULES, ORDERS, LEGIS-
7 LATIVE RECOMMENDATIONS, TESTIMONY, OR COM-
8 MENTS.—No officer or agency of the United States shall
9 have any authority to require the CFPA to submit pro-
10 posed or final rules, proposed or final orders, legislative
11 recommendations, testimony, or comments on legislation
12 to any officer or agency of the United States for approval,
13 comments, or review prior to the publication or submission
14 of such proposed or final rules, proposed or final orders,
15 legislative recommendations, testimony, or comments on
16 legislation, except that any such recommendations, testi-
17 mony, or comments to the Congress shall include a state-
18 ment that the views expressed therein are those of the
19 CFPA and do not necessarily represent the views of the
20 President.

21 (b) DESIGNATION AS AN INDEPENDENT AGENCY.—
22 Section 2(5) of the Paperwork Reduction Act (44 U.S.C.
23 3502(5)) is amended by inserting “the Consumer Finan-
24 cial Protection Agency,” after “the Securities and Ex-
25 change Commission,”.

1 **SEC. 1104. EFFECTIVE DATE.**

2 The amendments made by sections 1083 through
3 1103 shall become effective on the designated transfer
4 date.

5 **TITLE XI—FINANCIAL REGU-**
6 **LATORY AGENCIES TRANSI-**
7 **TION OVERSIGHT COMMIS-**
8 **SION**

9 **SEC. 1151. FINANCIAL REGULATORY AGENCIES TRANSI-**
10 **TION OVERSIGHT COMMISSION.**

11 (a) **DEFINITIONS.**—In this section—

12 (1) the term “new agencies” means the Agency,
13 FIRA, and the CFPA, as established by titles I, III,
14 and X, respectively; and

15 (2) the term “Oversight Commission” means
16 the Financial Regulatory Agencies Transition Over-
17 sight Commission.

18 (b) **IN GENERAL.**—There is established the Financial
19 Regulatory Agencies Transition Oversight Commission,
20 the purpose of which is to ensure that the new agencies—

21 (1) have an orderly and organized start up;

22 (2) attract and retain qualified workforces; and

23 (3) establish comprehensive employee training
24 and benefits programs.

25 (c) **MEMBERSHIP.**—

26 (1) **COMPOSITION.**—

1 (A) IN GENERAL.—The Oversight Commis-
2 sion shall be composed of 5 members appointed
3 by the President, by and with the advice and
4 consent of the Senate.

5 (B) CHAIRPERSON.—The Oversight Com-
6 mission shall select a Chairperson from among
7 its members.

8 (2) QUALIFICATIONS.—Members of the Over-
9 sight Commission shall be appointed on the basis of
10 their professional experience in—

11 (A) public sector workforce management,
12 including labor relations;

13 (B) financial institution supervision or reg-
14 ulations;

15 (C) consumer protection in connection with
16 financial products or services;

17 (D) information technology;

18 (E) training and workforce development;

19 or

20 (F) the compensation, benefits, and work-
21 ing conditions for Federal employees.

22 (3) PERIOD OF APPOINTMENT.—Members shall
23 be appointed for the life of the Oversight Commis-
24 sion.

1 (4) VACANCY.—Any vacancy on the Oversight
2 Commission shall not affect its powers, but shall be
3 filled in the same manner as the original appoint-
4 ment.

5 (d) RESPONSIBILITIES OF THE OVERSIGHT COMMIS-
6 SION.—

7 (1) GENERAL RESPONSIBILITIES.—

8 (A) OVERSIGHT.—The Oversight Commis-
9 sion shall oversee—

10 (i) the transition of responsibilities
11 and employees to the new agencies in ac-
12 cordance with this Act; and

13 (ii) subsequent administration, man-
14 agement, conduct, direction, and imple-
15 mentation of the organizational missions of
16 the new agencies.

17 (B) COOPERATION.—The Oversight Com-
18 mission shall work with the new agencies to de-
19 velop a strategic plan to comply with the re-
20 quirements of this section.

21 (2) SPECIFIC RESPONSIBILITIES.—

22 (A) TRAINING AND WORKFORCE DEVELOP-
23 MENT.—The Oversight Commission shall review
24 and approve training and workforce develop-

1 ment plans of the new agencies that include, to
2 the extent practicable—

3 (i) identification of skill and technical
4 expertise needs and action taken to meet
5 those requirements;

6 (ii) steps taken to foster innovation
7 and creativity;

8 (iii) leadership development and suc-
9 cession planning; and

10 (iv) effective use of technology by
11 agency employees.

12 (B) WORKPLACE FLEXIBILITIES RE-
13 VIEW.—The Oversight Commission shall review
14 and approve workforce flexibility plans of the
15 new agencies that include, to the extent prac-
16 ticable—

17 (i) telework;

18 (ii) flexible work schedules;

19 (iii) phased retirement;

20 (iv) reemployed annuitants;

21 (v) part-time work;

22 (vi) job sharing;

23 (vii) parental leave benefits and
24 childcare assistance;

25 (viii) domestic partner benefits;

1 (ix) other workplace flexibilities as de-
2 termined appropriate by the Oversight
3 Commission; or

4 (x) any combination of the items de-
5 scribed in clauses (i) through (ix).

6 (C) RECRUITMENT AND RETENTION.—

7 (i) REVIEW REQUIRED.—The Over-
8 sight Commission shall review and approve
9 the recruitment and retention plans of the
10 new agencies, including the process and
11 criteria used to identify which employees of
12 existing Federal agencies will be trans-
13 ferred to the new agency.

14 (ii) PLAN CONTENT.—Each recruit-
15 ment and retention plan of a new agency
16 shall include, to the extent practicable, pro-
17 visions relating to—

18 (I) the steps necessary to target
19 highly qualified applicant pools with
20 diverse backgrounds;

21 (II) streamlined employment ap-
22 plication processes;

23 (III) the provision of timely noti-
24 fication of the status of employment
25 applications to applicants; and

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1 (IV) the collection of information
2 to measure indicators of hiring effec-
3 tiveness.

4 (e) OVERSIGHT COMMISSION PERSONNEL MAT-
5 TERS.—

6 (1) TRAVEL EXPENSES.—Each member of the
7 Oversight Commission shall receive travel expenses,
8 including per diem in lieu of subsistence, at rates
9 authorized for employees of agencies under sub-
10 chapter I of chapter 57 of title 5, United States
11 Code, while away from their homes or regular places
12 of business in the performance of services for the
13 Oversight Commission.

14 (2) STAFF.—

15 (A) IN GENERAL.—The Chairperson of the
16 Oversight Commission may appoint and termi-
17 nate an executive director and such other per-
18 sonnel as may be necessary to enable the Over-
19 sight Commission to perform the duties of the
20 Oversight Commission.

21 (B) DETAIL OF GOVERNMENT EMPLOY-
22 EES.—Upon request of the Oversight Commis-
23 sion, the head of any Federal agency or depart-
24 ment may detail, on a reimbursable basis, any
25 of the personnel of that agency or department

1 to assist the Oversight Commission in carrying
2 out the duties of the Oversight Commission.

3 (C) PROCUREMENT OF TEMPORARY AND
4 INTERMITTENT SERVICES.—The Chairperson of
5 the Oversight Commission may procure tem-
6 porary and intermittent services under section
7 3109(b) of title 5, United States Code, at rates
8 for individuals which do not exceed the daily
9 equivalent of the annual rate of basic pay pre-
10 scribed for level V of the Executive Schedule
11 under section 5136 of such title.

12 (f) ADMINISTRATIVE MATTERS.—

13 (1) CHAIRPERSON.—

14 (A) POWERS.—Except as otherwise pro-
15 vided by a majority vote of the Oversight Com-
16 mission, the powers of the Chairperson shall in-
17 clude—

18 (i) establishing Committees, as nec-
19 essary;

20 (ii) setting meeting places and times;

21 (iii) establishing meeting agendas; and

22 (iv) developing procedures for the con-
23 duct of business.

24 (B) MEETINGS.—The Oversight Commis-
25 sion shall meet not less frequently than quar-

1 terly, and otherwise at the call of the Chair-
2 person.

3 (2) REPORT.—The Oversight Commission shall
4 submit an annual report to the Committee on Bank-
5 ing, Housing, and Urban Affairs of the Senate, and
6 the Committee on Financial Services of the House of
7 Representatives that includes an analysis of the ac-
8 tivities required of the new agencies under this title.

9 (g) TERMINATION OF THE OVERSIGHT COMMIS-
10 SION.—The Oversight Commission shall terminate 3 years
11 after the date of enactment of this Act.

12 **TITLE XII—FEDERAL RESERVE** 13 **SYSTEM PROVISIONS**

14 **SEC. 1201. FEDERAL RESERVE ACT AMENDMENTS ON** 15 **EMERGENCY LENDING AUTHORITY.**

16 The third undesignated paragraph of section 13 of
17 the Federal Reserve Act (12 U.S.C. 343) (relating to
18 emergency lending authority) is amended—

19 (1) by inserting “(3)(A)” before “In unusual”;

20 (2) by striking “individual, partnership, or cor-
21 poration” each place that term appears and insert-
22 ing the following: “financial utilities or payment,
23 clearing, or settlement activities that the Agency for
24 Financial Stability determines are, or are likely to

1 become, systemically important, or any program or
2 facility with broad-based participation”;

3 (3) by striking “exchange for an individual or
4 a partnership or corporation” and inserting “ex-
5 change,”; and

6 (4) by striking “may prescribe.” and inserting
7 the following: “may prescribe.

8 “(B) The Board shall provide to the Committee
9 on Banking, Housing, and Urban Affairs of the Sen-
10 ate and the Committee on Financial Services of the
11 House of Representatives—

12 “(i) not later than 7 days after providing
13 any loan or other financial assistance under this
14 paragraph, a report that includes—

15 “(I) the justification for the exercise
16 of authority to provide such assistance;

17 “(II) the identity of the recipients of
18 such assistance, subject to subparagraph
19 (C);

20 “(III) the date and amount of the as-
21 sistance, and form in which the assistance
22 was provided; and

23 “(IV) the terms of the assistance, in-
24 cluding—

25 “(aa) duration;

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1 “(bb) collateral pledged and the
2 value thereof;

3 “(cc) all interest, fees, and other
4 revenue or items of value to be re-
5 ceived in exchange for the assistance;

6 “(dd) any requirements imposed
7 on the recipient with respect to em-
8 ployee compensation, distribution of
9 dividends, or any other corporate deci-
10 sion in exchange for the assistance;
11 and

12 “(ee) the expected costs to the
13 taxpayers of such assistance; and

14 “(ii) once every 30 days, with respect to
15 any outstanding loan or other financial assist-
16 ance under this paragraph, written updates
17 on—

18 “(I) the value of collateral;

19 “(II) the amount of interest, fees, and
20 other revenue or items of value received in
21 exchange for the assistance; and

22 “(III) the expected or final cost to the
23 taxpayers of such assistance.

24 “(C) The Board may postpone releasing the
25 identity of a recipient, and may withhold any detail

1 about pledged collateral that would identify the re-
2 cipient, for a period of not longer than 1 year, be-
3 ginning on the date on which such assistance is first
4 received.”.

5 **SEC. 1202. SELECTION OF BOARDS OF DIRECTORS OF FED-**
6 **ERAL RESERVE BANKS.**

7 Section 4 of the Federal Reserve Act (12 U.S.C. 301
8 et seq.) is amended—

9 (1) in the 9th undesignated paragraph (12
10 U.S.C. 302) (relating to Class A directors), by strik-
11 ing “chosen by” and inserting “appointed by the
12 Board of Governors of the Federal Reserve System”;

13 (2) in the 10th undesignated paragraph (12
14 U.S.C. 302) (relating to Class B directors), by strik-
15 ing “elected” and inserting “appointed by the Board
16 of Governors of the Federal Reserve System”;

17 (3) by striking the 11th undesignated para-
18 graph (relating to Class C directors) and inserting
19 the following:

20 “Class C shall consist of 3 members. One mem-
21 ber shall be the chairman of the board, who shall be
22 appointed by the President, by and with the advice
23 and consent of the Senate. Upon the expiration of
24 the term of office of the chairman, the chairman
25 shall continue to serve until the successor of the

1 chairman is appointed and qualified. The 2 Class C
2 members who are not the chairman shall be des-
3 ignated by the Board of Governors of the Federal
4 Reserve System. Each class C member shall be cho-
5 sen to represent the public, without discrimination
6 on the basis of race, creed, color, sex, or national or-
7 igin, and with due (but not exclusive) consideration
8 to the interests of agriculture, commerce, industry,
9 services, labor, and consumers. When the necessary
10 subscriptions to the capital stock have been obtained
11 for the organization of any Federal reserve bank, the
12 President shall appoint the class C member who
13 shall serve as chairman, and the Board of Governors
14 of the Federal Reserve System shall appoint the 2
15 class C members who are not the chairman. Pending
16 the appointment and qualification of the chairman,
17 the organization committee shall exercise the powers
18 and duties appertaining to the office of chairman in
19 the organization of the Federal reserve bank.”;

20 (4) by striking the 16th undesignated para-
21 graph (12 U.S.C. 304) (relating to the nomination
22 and election of directors of Class A and Class B);

23 (5) by striking the 17th undesignated para-
24 graph (12 U.S.C. 304) (relating to the requirement
25 for a preferential ballot);

1 (6) by striking the 18th undesignated para-
2 graph (12 U.S.C. 304) (relating to eligibility of can-
3 didates serving more than 1 member bank);

4 (7) by striking the 19th undesignated para-
5 graph (12 U.S.C. 304) (relating to counting the bal-
6 lots) and inserting the following:

7 “The Board of Governors of the Federal Re-
8 serve System shall establish a public process for so-
9 liciting comments relating to the selection of Class
10 B and Class C directors of the Federal reserve
11 banks, to ensure that the interests of agriculture,
12 commerce, industry, services, labor, and consumers
13 are adequately represented.”; and

14 (8) by striking the 22nd undesignated para-
15 graph (12 U.S.C. 305) (relating to Class C direc-
16 tors, selection, and Federal reserve agent) and in-
17 serting the following:

18 “The Class C directors shall have been, for not
19 less than 2 years, residents of the district for which
20 they are appointed. The chairman of the board of di-
21 rectors shall be designated as ‘Federal reserve
22 agent’. The individual appointed as chairman shall
23 be a person with relevant expertise in economic pol-
24 icy, business, banking, or financial markets, and in
25 addition to the duties of the individual as chairman

1 of the board of directors of the Federal reserve
2 bank, such individual shall be required to maintain,
3 under regulations established by the Board of Gov-
4 ernors of the Federal Reserve System, a local office
5 of said board on the premises of the Federal reserve
6 bank. The chairman shall make regular reports to
7 the Board of Governors of the Federal Reserve Sys-
8 tem, and shall act as its official representative for
9 the performance of the functions conferred upon the
10 Board of Governors of the Federal Reserve System
11 by this Act. The chairman shall receive an annual
12 compensation to be fixed by the Board of Governors
13 of the Federal Reserve System and paid monthly by
14 the Federal reserve bank to which the chairman is
15 appointed. One of the class C directors shall be ap-
16 pointed by the Board of Governors of the Federal
17 Reserve System as deputy chairman, to exercise the
18 powers of the chairman of the board in the case of
19 the absence or unavailability of the chairman. In
20 case of the absence or unavailability of the chairman
21 and deputy chairman, the class C director who is not
22 the chairman or the deputy chairman shall preside
23 at meetings of the board of directors.”.

1 **SEC. 1203. REVIEWS OF SPECIAL FEDERAL RESERVE CRED-**
2 **IT FACILITIES.**

3 (a) REVIEWS.—Section 714 of title 31, United States
4 Code, is amended by adding at the end the following:

5 “(f) REVIEWS OF CREDIT FACILITIES OF THE FED-
6 ERAL RESERVE SYSTEM.—

7 “(1) DEFINITION.—In this subsection, the term
8 ‘credit facility’ means an entity established by or on
9 behalf of the Board or a Federal reserve bank, in-
10 cluding—

11 “(A) the Money Market Investor Funding
12 Facility;

13 “(B) the Asset-Backed Commercial Paper
14 Money Market Mutual Fund Liquidity Facility;

15 “(C) the Term Asset-Backed Securities
16 Loan Facility;

17 “(D) the Primary Dealer Credit Facility;

18 “(E) the Commercial Paper Funding Fa-
19 cility; and

20 “(F) any other utility, activity, program,
21 facility, or special purpose vehicle that is ap-
22 proved by or receives assistance from the Board
23 under the 3rd undesignated paragraph of sec-
24 tion 13 of the Federal Reserve Act (12 U.S.C.
25 343), other than a credit facility that is subject
26 to the requirements of subsection (e).

1 “(2) IN GENERAL.—Subject to paragraph (3),
2 and notwithstanding any limitation in subsection (b)
3 on the auditing and oversight of certain functions of
4 the Board or any Federal reserve bank, the Comp-
5 troller General may conduct reviews, including onsite
6 examinations, if the Comptroller General determines
7 that such examinations are appropriate, of the ac-
8 counting, financial reporting, and internal controls
9 of any credit facility, including when such facilities
10 are established or operated by or on behalf of the
11 Board or any official of a Federal reserve bank.

12 “(3) REPORTS AND DELAYED DISCLOSURE.—

13 “(A) REPORTS REQUIRED.—A report on
14 each review conducted under paragraph (2)
15 shall be submitted by the Comptroller General
16 to the Congress before the end of the 90-day
17 period beginning on the date on which such re-
18 view is completed.

19 “(B) CONTENTS.—The report under sub-
20 paragraph (A) shall include a detailed descrip-
21 tion of the findings and conclusions of the
22 Comptroller General with respect to the review
23 that is the subject of the report, together with
24 such recommendations for legislative or admin-

1 istrative action as the Comptroller General may
2 determine to be appropriate.

3 “(C) DELAYED RELEASE OF CERTAIN IN-
4 FORMATION.—

5 “(i) IN GENERAL.—The Comptroller
6 General shall not disclose to any person or
7 entity, including to the Congress, the
8 names or identifying details of specific par-
9 ticipants in any of the audited facilities or
10 identifying details regarding assets or col-
11 lateral held by, under, or in connection
12 with any of the audited facilities, and any
13 report provided under subparagraph (A)
14 shall be redacted to ensure that such de-
15 tails are not disclosed.

16 “(ii) DELAYED RELEASE.—The non-
17 disclosure obligation under clause (i) shall
18 expire with respect to any participant after
19 a period of not longer than 1 year, begin-
20 ning on the earlier of the date on which—

21 “(I) assistance is first received;

22 or

23 “(II) the Board discloses the
24 identity of the subject participant.

1 “(iii) GENERAL RELEASE.—The
2 Comptroller General shall release a non-
3 redacted version of any reports on specific
4 credit facilities, 1 year after the termi-
5 nation of the relevant credit facility.”.

6 (b) ACCESS TO RECORDS.—Section 714(d) of title
7 31, United States Code, is amended—

8 (1) in paragraph (2), by inserting “or any sin-
9 gle and specific partnership or corporation (as speci-
10 fied in subsection (e)) or any facility established by
11 an agency (as specified in subsection (f))” after
12 “used by an agency”;

13 (2) in paragraph (3), by inserting “or (f)” after
14 “subsection (e)” each place that term appears; and

15 (3) in paragraph (3)(B), by adding at the end
16 the following: “The Comptroller General may make
17 and retain copies of books, accounts, and other
18 records provided under subparagraph (A) as the
19 Comptroller General deems appropriate. The Comp-
20 troller General shall have access to the officers, em-
21 ployees, contractors, and other agents and represent-
22 atives of any single and specific partnership or cor-
23 poration (as specified in subsection (e)) or any credit
24 facility established by an agency (as specified in sub-
25 section (f)) at any reasonable time, as the Comp-

1 troller General may request. The Comptroller Gen-
2 eral shall provide to any such partnership, corpora-
3 tion, or credit facility a current list of officers and
4 employees to whom, with proper identification,
5 records and property may be made available, and
6 who may make notes or copies necessary to carry
7 out a review or examination under this subsection.”.

8 **SEC. 1204. PUBLIC ACCESS TO INFORMATION.**

9 Section 2B of the Federal Reserve Act (12 U.S.C.
10 225b) is amended by adding at the end the following:

11 “(c) PUBLIC ACCESS TO INFORMATION.—The Board
12 shall place on its home Internet website, a link entitled
13 ‘Audit’, which shall link to a webpage that shall serve as
14 a repository of information made available to the public
15 for a reasonable period of time, not less than 6 months
16 following the date of release of the relevant information,
17 including—

18 “(1) the reports prepared by the Comptroller
19 General under section 714 of title 31, United States
20 Code;

21 “(2) the annual financial statements prepared
22 by an independent auditor for the Board in accord-
23 ance with section 11B;

24 “(3) the reports to the Committee on Banking,
25 Housing, and Urban Affairs of the Senate required

1 under the third undesignated paragraph of section
2 13 (relating to emergency lending authority); and
3 “(4) such other information as the Board rea-
4 sonably believes is necessary or helpful to the public
5 in understanding the accounting, financial reporting,
6 and internal controls of the Board and the Federal
7 reserve banks.”.