

CONFERENCE BASE TEXT (HR 4173):

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Restoring American Financial Stability Act of 2010”.

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

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- Sec. 1473. Amendments relating to Appraisal Subcommittee of FFIEC, appraiser independence monitoring, approved appraiser education, appraisal management companies, appraiser complaint hotline, automated valuation models, and broker price opinions.
- Sec. 1474. Study required on improvements in appraisal process and compliance programs.
- Sec. 1475. Equal Credit Opportunity Act amendment.
- Sec. 1476. Real Estate Settlement Procedures Act of 1974 amendment relating to certain appraisal fees.

Subtitle G—Mortgage Resolution and Modification

- Sec. 1481. Multifamily mortgage resolution program.
- Sec. 1482. Home Affordable Modification Program guidelines.
- Sec. 1483. Public availability of information of Making Home Affordable Program.
- Sec. 1484. Protecting tenants at foreclosure extension.

Subtitle H—Miscellaneous Provisions

- Sec. 1491. Sense of Congress regarding the importance of Government-sponsored enterprises reform to enhance the protection, limitation, and regulation of the terms of residential mortgage credit.
- Sec. 1492. GAO study report on Government efforts to combat mortgage foreclosure rescue seams and loan modification fraud.
- Sec. 1493. Reporting of mortgage data by State.
- Sec. 1494. Study of effect of drywall presence on foreclosures.

TITLE XV—MISCELLANEOUS PROVISIONS

- Sec. 1501. Restrictions on use of Federal funds to finance bailouts of foreign governments.
- Sec. 1502. Congo conflict minerals.

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) **AFFILIATE.**—The term “affiliate” means
 6 any company that controls, is controlled by, or is
 7 under common control with another company.

1 (2) APPROPRIATE FEDERAL BANKING AGEN-
2 CY.—On and after the transfer date, the term “ap-
3 propriate Federal banking agency” has the same
4 meaning as in section 3(q) of the Federal Deposit
5 Insurance Act (12 U.S.C. 1813(q)), as amended by
6 title III.

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

10 (4) BUREAU.—The term “Bureau” means the
11 Bureau of Consumer Financial Protection estab-
12 lished under title X.

13 (5) COMMISSION.—The term “Commission”
14 means the Securities and Exchange Commission, ex-
15 cept in the context of the Commodity Futures Trad-
16 ing Commission.

17 (6) CORPORATION.—The term “Corporation”
18 means the Federal Deposit Insurance Corporation.

19 (7) COUNCIL.—The term “Council” means the
20 Financial Stability Oversight Council established
21 under title I.

22 (8) CREDIT UNION.—The term “credit union”
23 means a Federal credit union, State credit union, or
24 State-chartered credit union, as those terms are de-

1 fined in section 101 of the Federal Credit Union Act
2 (12 U.S.C. 1752).

3 (9) FEDERAL BANKING AGENCY.—The term—

4 (A) “Federal banking agency” means, indi-
5 vidually, the Board of Governors, the Office of
6 the Comptroller of the Currency, and the Cor-
7 poration; and

8 (B) “Federal banking agencies” means all
9 of the agencies referred to in subparagraph (A),
10 collectively.

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

16 (11) PRIMARY FINANCIAL REGULATORY AGEN-
17 CY.—The term “primary financial regulatory agen-
18 cy” means—

19 (A) the appropriate Federal banking agen-
20 cy, with respect to institutions described in sec-
21 tion 3(q) of the Federal Deposit Insurance Act,
22 except to the extent that an institution is or the
23 activities of an institution are otherwise de-
24 scribed in subparagraph (B), (C), (D), or (E);

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;

15 (iv) any clearing agency registered
16 with the Commission under the Securities
17 Exchange Act of 1934, with respect to the
18 activities of the clearing agency that re-
19 quire the agency to be registered under
20 such Act;

21 (v) any nationally recognized statis-
22 tical rating organization registered with
23 the Commission under the Securities Ex-
24 change Act of 1934;

1 (vi) any transfer agent registered with
2 the Commission under the Securities Ex-
3 change Act of 1934;

4 (vii) any exchange registered as a na-
5 tional securities exchange with the Com-
6 mission under the Securities Exchange Act
7 of 1934;

8 (viii) any national securities associa-
9 tion registered with the Commission under
10 the Securities Exchange Act of 1934;

11 (ix) any securities information proc-
12 essor registered with the Commission
13 under the Securities Exchange Act of
14 1934;

15 (x) the Municipal Securities Rule-
16 making Board established under the Secu-
17 rities Exchange Act of 1934;

18 (xi) the Public Company Accounting
19 Oversight Board established under the
20 Sarbanes-Oxley Act of 2002 (15 U.S.C.
21 7211 et seq.);

22 (xii) the Securities Investor Protection
23 Corporation established under the Securi-
24 ties Investor Protection Act of 1970 (15
25 U.S.C. 78aaa et seq.); and

1 (xiii) any security-based swap execu-
2 tion facility, security-based swap data re-
3 pository, security-based swap dealer or
4 major security-based swap participant reg-
5 istered with the Commission under the Se-
6 curities Exchange Act of 1934, with re-
7 spect to the security-based swap activities
8 of the person that require such person to
9 be registered under such Act;

10 (C) the Commodity Futures Trading Com-
11 mission, with respect to any futures commission
12 merchant, any commodity trading adviser, and
13 any commodity pool operator registered with
14 the Commodity Futures Trading Commission
15 under the Commodity Exchange Act, with re-
16 spect to the commodities activities of such enti-
17 ty and activities that are incidental to such
18 commodities activities;

19 (D) the State insurance authority of the
20 State in which an insurance company is domi-
21 ciled, with respect to the insurance activities
22 and activities that are incidental to such insur-
23 ance activities of an insurance company that is
24 subject to supervision by the State insurance
25 authority under State insurance law; and

1 (E) the Federal Housing Finance Agency,
2 with respect to Federal Home Loan Banks or
3 the Federal Home Loan Bank System, and
4 with respect to the Federal National Mortgage
5 Association or the Federal Home Loan Mort-
6 gage Corporation.

7 (12) PRUDENTIAL STANDARDS.—The term
8 “prudential standards” means enhanced supervision
9 and regulatory standards developed by the Board of
10 Governors under section 115 or 165.

11 (13) SECRETARY.—The term “Secretary”
12 means the Secretary of the Treasury.

13 (14) SECURITIES TERMS.—The—

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

19 (B) term “investment adviser” has the
20 same meaning as in section 202 of the Invest-
21 ment Advisers Act of 1940 (15 U.S.C. 80b–2);
22 and

23 (C) term “investment company” has the
24 same meaning as in section 3 of the Investment
25 Company Act of 1940 (15 U.S.C. 80a–3).

1 (15) STATE.—The term “State” means any
2 State, commonwealth, territory, or possession of the
3 United States, the District of Columbia, the Com-
4 monwealth of Puerto Rico, the Commonwealth of the
5 Northern Mariana Islands, American Samoa, Guam,
6 or the United States Virgin Islands.

7 (16) TRANSFER DATE.—The term “transfer
8 date” means the date established under section 311.

9 (17) OTHER INCORPORATED DEFINITIONS.—

10 (A) FEDERAL DEPOSIT INSURANCE ACT.—

11 The terms “affiliate”, “bank”, “bank holding
12 company”, “control” (when used with respect to
13 a depository institution), “deposit”, “depository
14 institution”, “Federal depository institution”,
15 “Federal savings association”, “foreign bank”,
16 “including”, “insured branch”, “insured depository
17 institution”, “national member bank”,
18 “national nonmember bank”, “savings associa-
19 tion”, “State bank”, “State depository institu-
20 tion”, “State member bank”, “State non-
21 member bank”, “State savings association”,
22 and “subsidiary” have the same meanings as in
23 section 3 of the Federal Deposit Insurance Act
24 (12 U.S.C. 1813).

25 (B) HOLDING COMPANIES.—The term—

1 (i) “bank holding company” has the
2 same meaning as in section 2 of the Bank
3 Holding Company Act of 1956 (12 U.S.C.
4 1841);

5 (ii) “financial holding company” has
6 the same meaning as in section 2(p) of the
7 Bank Holding Company Act of 1956 (12
8 U.S.C. 1841(p)); and

9 (iii) “savings and loan holding com-
10 pany” has the same meaning as in section
11 10 of the Home Owners’ Loan Act (12
12 U.S.C. 1467a(a)).

13 **SEC. 3. SEVERABILITY.**

14 If any provision of this Act, an amendment made by
15 this Act, or the application of such provision or amend-
16 ment to any person or circumstance is held to be unconsti-
17 tutional, the remainder of this Act, the amendments made
18 by this Act, and the application of the provisions of such
19 to any person or circumstance shall not be affected there-
20 by.

21 **SEC. 4. EFFECTIVE DATE.**

22 Except as otherwise specifically provided in this Act
23 or the amendments made by this Act, this Act and such
24 amendments shall take effect 1 day after the date of en-
25 actment of this Act.

1 **SEC. 5. BUDGETARY EFFECTS.**

2 The budgetary effects of this Act, for the purpose of
3 complying with the Statutory Pay-As-You-Go-Act of 2010,
4 shall be determined by reference to the latest statement
5 titled “Budgetary Effects of PAYGO Legislation” for this
6 Act, submitted for printing in the Congressional Record
7 by the Chairman of the Senate Budget Committee, pro-
8 vided that such statement has been submitted prior to the
9 vote on passage.

10 **SEC. 6. ANTITRUST SAVINGS CLAUSE.**

11 Nothing in this Act, or any amendment made by this
12 Act, shall be construed to modify, impair, or supersede
13 the operation of any of the antitrust laws, unless otherwise
14 specified. For purposes of this section, the term “antitrust
15 laws” has the same meaning as in subsection (a) of the
16 first section of the Clayton Act, except that such term in-
17 cludes section 5 of the Federal Trade Commission Act,
18 to the extent that such section 5 applies to unfair methods
19 of competition.

20 **TITLE I—FINANCIAL STABILITY**

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

22 This title may be cited as the “Financial Stability Act
23 of 2010”.

1 **SEC. 102. DEFINITIONS.**

2 (a) IN GENERAL.—For purposes of this title, unless
3 the context otherwise requires, the following definitions
4 shall apply:

5 (1) BANK HOLDING COMPANY.—The term
6 “bank holding company” has the same meaning as
7 in section 2 of the Bank Holding Company Act of
8 1956 (12 U.S.C. 1841). A foreign bank or company
9 that is treated as a bank holding company for pur-
10 poses of the Bank Holding Company Act of 1956,
11 pursuant to section 8(a) of the International Bank-
12 ing Act of 1978 (12 U.S.C. 3106(a)), shall be treat-
13 ed as a bank holding company for purposes of this
14 title.

15 (2) CHAIRPERSON.—The term “Chairperson”
16 means the Chairperson of the Council.

17 (3) MEMBER AGENCY.—The term “member
18 agency” means an agency represented by a voting
19 member of the Council.

20 (4) NONBANK FINANCIAL COMPANY DEFINI-
21 TIONS.—

22 (A) FOREIGN NONBANK FINANCIAL COM-
23 PANY.—The term “foreign nonbank financial
24 company” means a company (other than a com-
25 pany that is, or is treated in the United States

1 as, a bank holding company or a subsidiary
2 thereof) that is—

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

5 (ii) predominantly engaged in, includ-
6 ing through a branch in the United States,
7 financial activities, as defined in paragraph
8 (6).

9 (B) U.S. NONBANK FINANCIAL COM-
10 PANY.—The term “U.S. nonbank financial com-
11 pany” means a company (other than a bank
12 holding company or a subsidiary thereof, or a
13 Farm Credit System institution chartered and
14 subject to the provisions of the Farm Credit
15 Act of 1971 (12 U.S.C. 2001 et seq.)) that is—

16 (i) incorporated or organized under
17 the laws of the United States or any State;
18 and

19 (ii) predominantly engaged in finan-
20 cial activities as defined in paragraph (6).

21 (C) NONBANK FINANCIAL COMPANY.—The
22 term “nonbank financial company” means a
23 U.S. nonbank financial company and a foreign
24 nonbank financial company.

1 (D) NONBANK FINANCIAL COMPANY SU-
2 PERVISED BY THE BOARD OF GOVERNORS.—

3 The term “nonbank financial company super-
4 vised by the Board of Governors” means a
5 nonbank financial company that the Council
6 has determined under section 113 shall be su-
7 pervised by the Board of Governors.

8 (5) OFFICE OF FINANCIAL RESEARCH.—The
9 term “Office of Financial Research” means the of-
10 fice established under section 152.

11 (6) PREDOMINANTLY ENGAGED.—A company is
12 “predominantly engaged in financial activities” if—

13 (A) the annual gross revenues derived by
14 the company and all of its subsidiaries from ac-
15 tivities that are financial in nature (as defined
16 in section 4(k) of the Bank Holding Company
17 Act of 1956) and, if applicable, from the owner-
18 ship or control of one or more insured deposi-
19 tory institutions, represents 85 percent or more
20 of the consolidated annual gross revenues of the
21 company; or

22 (B) the consolidated assets of the company
23 and all of its subsidiaries related to activities
24 that are financial in nature (as defined in sec-
25 tion 4(k) of the Bank Holding Company Act of

1 1956) and, if applicable, related to the owner-
2 ship or control of one or more insured deposi-
3 tory institutions, represents 85 percent or more
4 of the consolidated assets of the company.

5 (7) SIGNIFICANT INSTITUTIONS.—The terms
6 “significant nonbank financial company” and “sig-
7 nificant bank holding company” have the meanings
8 given those terms by rule of the Board of Governors.

9 (b) DEFINITIONAL CRITERIA.—The Board of Gov-
10 ernors shall establish, by regulation, the requirements for
11 determining if a company is predominantly engaged in fi-
12 nancial activities, as defined in subsection (a)(6).

13 (c) FOREIGN NONBANK FINANCIAL COMPANIES.—
14 For purposes of the authority of the Board of Governors
15 under this title with respect to foreign nonbank financial
16 companies, references in this title to “company” or “sub-
17 sidiary” include only the United States activities and sub-
18 sidiaries of such foreign company.

19 **Subtitle A—Financial Stability** 20 **Oversight Council**

21 **SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ES-** 22 **TABLISHED.**

23 (a) ESTABLISHMENT.—Effective on the date of en-
24 actment of this Act, there is established the Financial Sta-
25 bility Oversight Council.

1 (b) MEMBERSHIP.—The Council shall consist of the
2 following members:

3 (1) VOTING MEMBERS.—The voting members,
4 who shall each have 1 vote on the Council shall be—

5 (A) the Secretary of the Treasury, who
6 shall serve as Chairperson of the Council;

7 (B) the Chairman of the Board of Gov-
8 ernors;

9 (C) the Comptroller of the Currency;

10 (D) the Director of the Bureau;

11 (E) the Chairman of the Commission;

12 (F) the Chairperson of the Corporation;

13 (G) the Chairperson of the Commodity Fu-
14 tures Trading Commission;

15 (H) the Director of the Federal Housing
16 Finance Agency; and

17 (I) an independent member appointed by
18 the President, by and with the advice and con-
19 sent of the Senate, having insurance expertise.

20 (2) NONVOTING MEMBERS.—The Director of
21 the Office of Financial Research—

22 (A) shall serve in an advisory capacity as
23 a nonvoting member of the Council; and

1 (B) may not be excluded from any of the
2 proceedings, meetings, discussions, or delibera-
3 tions of the Council.

4 (c) TERMS; VACANCY.—

5 (1) TERMS.—The independent member of the
6 Council shall serve for a term of 6 years.

7 (2) VACANCY.—Any vacancy on the Council
8 shall be filled in the manner in which the original
9 appointment was made.

10 (3) ACTING OFFICIALS MAY SERVE.—In the
11 event of a vacancy in the office of the head of a
12 member agency or department, and pending the ap-
13 pointment of a successor, or during the absence or
14 disability of the head of a member agency or depart-
15 ment, the acting head of the member agency or de-
16 partment shall serve as a member of the Council in
17 the place of that agency or department head.

18 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-
19 MITTEES.—The Council may appoint such special advi-
20 sory, technical, or professional committees as may be use-
21 ful in carrying out the functions of the Council, including
22 an advisory committee consisting of State regulators, and
23 the members of such committees may be members of the
24 Council, or other persons, or both.

25 (e) MEETINGS.—

1 (1) TIMING.—The Council shall meet at the call
2 of the Chairperson or a majority of the members
3 then serving, but not less frequently than quarterly.

4 (2) RULES FOR CONDUCTING BUSINESS.—The
5 Council shall adopt such rules as may be necessary
6 for the conduct of the business of the Council. Such
7 rules shall be rules of agency organization, proce-
8 dure, or practice for purposes of section 553 of title
9 5, United States Code.

10 (f) VOTING.—Unless otherwise specified, the Council
11 shall make all decisions that it is authorized or required
12 to make by a majority vote of the members then serving.

13 (g) NONAPPLICABILITY OF FACCA.—The Federal Ad-
14 visory Committee Act (5 U.S.C. App.) shall not apply to
15 the Council, or to any special advisory, technical, or pro-
16 fessional committee appointed by the Council, except that,
17 if an advisory, technical, or professional committee has
18 one or more members who are not employees of or affili-
19 ated with the United States Government, the Council shall
20 publish a list of the names of the members of such com-
21 mittee.

22 (h) ASSISTANCE FROM FEDERAL AGENCIES.—Any
23 department or agency of the United States may provide
24 to the Council and any special advisory, technical, or pro-
25 fessional committee appointed by the Council, such serv-

1 ices, funds, facilities, staff, and other support services as
2 the Council may determine advisable.

3 (i) COMPENSATION OF MEMBERS.—

4 (1) FEDERAL EMPLOYEE MEMBERS.—All mem-
5 bers of the Council who are officers or employees of
6 the United States shall serve without compensation
7 in addition to that received for their services as offi-
8 cers or employees of the United States.

9 (2) COMPENSATION FOR NON-FEDERAL MEM-
10 BER.—Section 5314 of title 5, United States Code,
11 is amended by adding at the end the following:

12 “Independent Member of the Financial Stability
13 Oversight Council (1).”.

14 (j) DETAIL OF GOVERNMENT EMPLOYEES.—Any em-
15 ployee of the Federal Government may be detailed to the
16 Council without reimbursement, and such detail shall be
17 without interruption or loss of civil service status or privi-
18 lege. An employee of the Federal Government detailed to
19 the Council shall report to and be subject to oversight by
20 the Council during the assignment to the Council, and
21 shall be compensated by the department or agency from
22 which the employee was detailed.

23 **SEC. 112. COUNCIL AUTHORITY.**

24 (a) PURPOSES AND DUTIES OF THE COUNCIL.—

1 (1) IN GENERAL.—The purposes of the Council
2 are—

3 (A) to identify risks to the financial sta-
4 bility of the United States that could arise from
5 the material financial distress or failure of
6 large, interconnected bank holding companies or
7 nonbank financial companies;

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

13 (C) to respond to emerging threats to the
14 stability of the United States financial markets.

15 (2) DUTIES.—The Council shall, in accordance
16 with this title—

17 (A) collect information from member agen-
18 cies and other Federal and State financial regu-
19 latory agencies and, if necessary to assess risks
20 to the United States financial system, direct the
21 Office of Financial Research to collect informa-
22 tion from bank holding companies and nonbank
23 financial companies;

1 (B) provide direction to, and request data
2 and analyses from, the Office of Financial Re-
3 search to support the work of the Council;

4 (C) monitor the financial services market-
5 place in order to identify potential threats to
6 the financial stability of the United States;

7 (D) facilitate information sharing and co-
8 ordination among the member agencies and
9 other Federal and State agencies regarding do-
10 mestic financial services policy development,
11 rulemaking, examinations, reporting require-
12 ments, and enforcement actions;

13 (E) recommend to the member agencies
14 general supervisory priorities and principles re-
15 flecting the outcome of discussions among the
16 member agencies;

17 (F) identify gaps in regulation that could
18 pose risks to the financial stability of the
19 United States;

20 (G) require supervision by the Board of
21 Governors for nonbank financial companies that
22 may pose risks to the financial stability of the
23 United States in the event of their material fi-
24 nancial distress or failure, pursuant to section
25 113;

1 (H) make recommendations to the Board
2 of Governors concerning the establishment of
3 heightened prudential standards for risk-based
4 capital, leverage, liquidity, contingent capital,
5 resolution plans and credit exposure reports,
6 concentration limits, enhanced public disclo-
7 sures, and overall risk management for
8 nonbank financial companies and large, inter-
9 connected bank holding companies supervised
10 by the Board of Governors;

11 (I) identify systemically important finan-
12 cial market utilities and payment, clearing, and
13 settlement activities (as that term is defined in
14 title VIII), and require such utilities and activi-
15 ties to be subject to standards established by
16 the Board of Governors;

17 (J) make recommendations to primary fi-
18 nancial regulatory agencies to apply new or
19 heightened standards and safeguards for finan-
20 cial activities or practices that could create or
21 increase risks of significant liquidity, credit, or
22 other problems spreading among bank holding
23 companies, nonbank financial companies, and
24 United States financial markets;

1 (K) make determinations regarding exemp-
2 tions in title VII, where necessary;

3 (L) provide a forum for—

4 (i) discussion and analysis of emerg-
5 ing market developments and financial reg-
6 ulatory issues; and

7 (ii) resolution of jurisdictional dis-
8 putes among the members of the Council;
9 and

10 (M) annually report to and testify before
11 Congress on—

12 (i) the activities of the Council;

13 (ii) significant financial market devel-
14 opments and potential emerging threats to
15 the financial stability of the United States;

16 (iii) all determinations made under
17 section 113 or title VIII, and the basis for
18 such determinations; and

19 (iv) recommendations—

20 (I) to enhance the integrity, effi-
21 ciency, competitiveness, and stability
22 of United States financial markets;

23 (II) to promote market discipline;
24 and

1 (III) to maintain investor con-
2 fidence.

3 (b) AUTHORITY TO OBTAIN INFORMATION.—

4 (1) IN GENERAL.—The Council may receive,
5 and may request the submission of, any data or in-
6 formation from the Office of Financial Research and
7 member agencies, as necessary—

8 (A) to monitor the financial services mar-
9 ketplace to identify potential risks to the finan-
10 cial stability of the United States; or

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

13 (2) SUBMISSIONS BY THE OFFICE AND MEMBER
14 AGENCIES.—Notwithstanding any other provision of
15 law, the Office of Financial Research and any mem-
16 ber agency are authorized to submit information to
17 the Council.

18 (3) FINANCIAL DATA COLLECTION.—

19 (A) IN GENERAL.—The Council, acting
20 through the Office of Financial Research, may
21 require the submission of periodic and other re-
22 ports from any nonbank financial company or
23 bank holding company for the purpose of as-
24 sessing the extent to which a financial activity
25 or financial market in which the nonbank finan-

1 cial company or bank holding company partici-
2 pates, or the nonbank financial company or
3 bank holding company itself, poses a threat to
4 the financial stability of the United States.

5 (B) MITIGATION OF REPORT BURDEN.—
6 Before requiring the submission of reports from
7 any nonbank financial company or bank holding
8 company that is regulated by a member agency
9 or any primary financial regulatory agency, the
10 Council, acting through the Office of Financial
11 Research, shall coordinate with such agencies
12 and shall, whenever possible, rely on informa-
13 tion available from the Office of Financial Re-
14 search or such agencies.

15 (C) MITIGATION IN CASE OF FOREIGN FI-
16 NANCIAL COMPANIES.—Before requiring the
17 submission of reports from a company that is
18 a foreign nonbank financial company or foreign-
19 based bank holding company, the Council shall,
20 acting through the Office of Financial Re-
21 search, to the extent appropriate, consult with
22 the appropriate foreign regulator of such com-
23 pany and, whenever possible, rely on informa-
24 tion already being collected by such foreign reg-
25 ulator, with English translation.

1 (4) BACK-UP EXAMINATION BY THE BOARD OF
2 GOVERNORS.—If the Council is unable to determine
3 whether the financial activities of a nonbank finan-
4 cial company pose a threat to the financial stability
5 of the United States, based on information or re-
6 ports obtained under paragraph (3), discussions with
7 management, and publicly available information, the
8 Council may request the Board of Governors, and
9 the Board of Governors is authorized, to conduct an
10 examination of the nonbank financial company for
11 the sole purpose of determining whether the
12 nonbank financial company should be supervised by
13 the Board of Governors for purposes of this title.

14 (5) CONFIDENTIALITY.—

15 (A) IN GENERAL.—The Council, the Office
16 of Financial Research, and the other member
17 agencies shall maintain the confidentiality of
18 any data, information, and reports submitted
19 under this subsection and subtitle B.

20 (B) RETENTION OF PRIVILEGE.—The sub-
21 mission of any nonpublicly available data or in-
22 formation under this subsection and subtitle B
23 shall not constitute a waiver of, or otherwise af-
24 fect, any privilege arising under Federal or
25 State law (including the rules of any Federal or

1 State court) to which the data or information is
2 otherwise subject.

3 (C) FREEDOM OF INFORMATION ACT.—
4 Section 552 of title 5, United States Code, in-
5 cluding the exceptions thereunder, shall apply
6 to any data or information submitted under this
7 subsection and subtitle B.

8 **SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REG-**
9 **ULATION OF CERTAIN NONBANK FINANCIAL**
10 **COMPANIES.**

11 (a) U.S. NONBANK FINANCIAL COMPANIES SUPER-
12 VISED BY THE BOARD OF GOVERNORS.—

13 (1) DETERMINATION.—The Council, on a non-
14 delegable basis and by a vote of not fewer than $\frac{2}{3}$
15 of the members then serving, including an affirma-
16 tive vote by the Chairperson, may determine that a
17 U.S. nonbank financial company shall be supervised
18 by the Board of Governors and shall be subject to
19 prudential standards, in accordance with this title, if
20 the Council determines that material financial dis-
21 tress at the U.S. nonbank financial company would
22 pose a threat to the financial stability of the United
23 States.

1 (2) CONSIDERATIONS.—Each determination
2 under paragraph (1) shall be based on a consider-
3 ation by the Council of—

4 (A) the degree of leverage of the company;

5 (B) the amount and nature of the financial
6 assets of the company;

7 (C) the amount and types of the liabilities
8 of the company, including the degree of reliance
9 on short-term funding;

10 (D) the extent and types of the off-bal-
11 ance-sheet exposures of the company;

12 (E) the extent and types of the trans-
13 actions and relationships of the company with
14 other significant nonbank financial companies
15 and significant bank holding companies;

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

20 (G) the importance of the company as a
21 source of credit for low income, minority, or un-
22 derserved communities, and the impact that the
23 failure of such company would have on the
24 availability of credit in such communities;

1 (H) the recommendation, if any, of a mem-
2 ber of the Council;

3 (I) the operation of, or ownership interest
4 in, any clearing, settlement, or payment busi-
5 ness of the company;

6 (J) the extent to which—

7 (i) assets are managed rather than
8 owned by the company; and

9 (ii) ownership of assets under man-
10 agement is diffuse; and

11 (K) any other risk-related factors that the
12 Council deems appropriate.

13 (b) FOREIGN NONBANK FINANCIAL COMPANIES SU-
14 PERVISED BY THE BOARD OF GOVERNORS.—

15 (1) DETERMINATION.—The Council, on a non-
16 delegable basis and by a vote of not fewer than $\frac{2}{3}$
17 of the members then serving, including an affirma-
18 tive vote by the Chairperson, may determine that a
19 foreign nonbank financial company that has sub-
20 stantial assets or operations in the United States
21 shall be supervised by the Board of Governors and
22 shall be subject to prudential standards in accord-
23 ance with this title, if the Council determines that
24 material financial distress at the foreign nonbank fi-

1 nancial company would pose a threat to the financial
2 stability of the United States.

3 (2) CONSIDERATIONS.—Each determination
4 under paragraph (1) shall be based on a consider-
5 ation by the Council of—

6 (A) the degree of leverage of the company;

7 (B) the amount and nature of the United
8 States financial assets of the company;

9 (C) the amount and types of the liabilities
10 of the company used to fund activities and op-
11 erations in the United States, including the de-
12 gree of reliance on short-term funding;

13 (D) the extent of the United States-related
14 off-balance-sheet exposure of the company;

15 (E) the extent and type of the transactions
16 and relationships of the company with other
17 significant nonbank financial companies and
18 bank holding companies;

19 (F) the importance of the company as a
20 source of credit for United States households,
21 businesses, and State and local governments,
22 and as a source of liquidity for the United
23 States financial system;

24 (G) the importance of the company as a
25 source of credit for low income, minority, or un-

1 derserved communities, and the impact that the
2 failure of such company would have on the
3 availability of credit in such communities;

4 (H) the recommendation, if any, of a mem-
5 ber of the Council;

6 (I) the extent to which—

7 (i) assets are managed rather than
8 owned by the company; and

9 (ii) ownership of assets under man-
10 agement is diffuse; and

11 (J) any other risk-related factors that the
12 Council deems appropriate.

13 (c) ANTI-EVASION.—

14 (1) DETERMINATIONS.—In order to avoid eva-
15 sion of this title, the Council, on its own initiative
16 or at the request of the Board of Governors, may de-
17 termine, on a nondelegable basis and by a vote of
18 not fewer than $\frac{2}{3}$ of the members then serving, in-
19 cluding an affirmative vote by the Chairperson,
20 that—

21 (A) material financial distress related to fi-
22 nancial activities conducted directly or indi-
23 rectly by a company incorporated or organized
24 under the laws of the United States or any
25 State or the financial activities in the United

1 States of a company incorporated or organized
2 in a country other than the United States
3 would pose a threat to the financial stability of
4 the United States, based on consideration of the
5 factors in subsection (b)(2);

6 (B) the company is organized or operates
7 in such a manner as to evade the application of
8 this title; and

9 (C) such financial activities of the company
10 shall be supervised by the Board of Governors
11 and subject to prudential standards in accord-
12 ance with this title, consistent with paragraph
13 (3).

14 (2) REPORT.—Upon making a determination
15 under paragraph (1), the Council shall submit a re-
16 port to the appropriate committees of Congress de-
17 tailing the reasons for making such determination.

18 (3) CONSOLIDATED SUPERVISION OF ONLY FI-
19 NANCIAL ACTIVITIES; ESTABLISHMENT OF AN IN-
20 TERMEDIATE HOLDING COMPANY.—

21 (A) ESTABLISHMENT OF AN INTER-
22 MEDIATE HOLDING COMPANY.—Upon a deter-
23 mination under paragraph (1), the company
24 that is the subject of the determination may es-
25 tablish an intermediate holding company in

1 which the financial activities of such company
2 and its subsidiaries shall be conducted (other
3 than the activities described in section
4 167(b)(2)) in compliance with any regulations
5 or guidance provided by the Board of Gov-
6 ernors. Such intermediate holding company
7 shall be subject to the supervision of the Board
8 of Governors and to prudential standards under
9 this title as if the intermediate holding company
10 were a nonbank financial company supervised
11 by the Board of Governors.

12 (B) ACTION OF THE BOARD OF GOV-
13 ERNORS.—To facilitate the supervision of the
14 financial activities subject to the determination
15 in paragraph (1), the Board of Governors may
16 require a company to establish an intermediate
17 holding company, as provided for in section
18 167, which would be subject to the supervision
19 of the Board of Governors and to prudential
20 standards under this title, as if the intermediate
21 holding company were a nonbank financial com-
22 pany supervised by the Board of Governors.

23 (4) NOTICE AND OPPORTUNITY FOR HEARING
24 AND FINAL DETERMINATION; JUDICIAL REVIEW.—
25 Subsections (d), (f), and (g) shall apply to deter-

1 minations made by the Council pursuant to para-
2 graph (1) in the same manner as such subsections
3 apply to nonbank financial companies.

4 (5) COVERED FINANCIAL ACTIVITIES.—For
5 purposes of this subsection, the term “financial ac-
6 tivities”—

7 (A) means activities that are financial in
8 nature (as defined in section 4(k) of the Bank
9 Holding Company Act of 1956);

10 (B) includes the ownership or control of
11 one or more insured depository institutions; and

12 (C) does not include internal financial ac-
13 tivities conducted for the company or any affil-
14 iate thereof, including internal treasury, invest-
15 ment, and employee benefit functions.

16 (6) ONLY FINANCIAL ACTIVITIES SUBJECT TO
17 PRUDENTIAL SUPERVISION.—Nonfinancial activities
18 of the company shall not be subject to supervision
19 by the Board of Governors and prudential standards
20 of the Board. For purposes of this Act, the financial
21 activities that are the subject of the determination in
22 paragraph (1) shall be subject to the same require-
23 ments as a nonbank financial company. Nothing in
24 this paragraph shall prohibit or limit the authority
25 of the Board of Governors to apply prudential stand-

1 ards under this title to the financial activities that
2 are subject to the determination in paragraph (1).

3 (d) REEVALUATION AND RESCISSION.—The Council
4 shall—

5 (1) not less frequently than annually, reevaluate
6 each determination made under subsections (a) and
7 (b) with respect to such nonbank financial company
8 supervised by the Board of Governors; and

9 (2) rescind any such determination, if the
10 Council, by a vote of not fewer than $\frac{2}{3}$ of the mem-
11 bers then serving, including an affirmative vote by
12 the Chairperson, determines that the nonbank finan-
13 cial company no longer meets the standards under
14 subsection (a) or (b), as applicable.

15 (e) NOTICE AND OPPORTUNITY FOR HEARING AND
16 FINAL DETERMINATION.—

17 (1) IN GENERAL.—The Council shall provide to
18 a nonbank financial company written notice of a
19 proposed determination of the Council, including an
20 explanation of the basis of the proposed determina-
21 tion of the Council, that such nonbank financial
22 company shall be supervised by the Board of Gov-
23 ernors and shall be subject to prudential standards
24 in accordance with this title.

1 (2) HEARING.—Not later than 30 days after
2 the date of receipt of any notice of a proposed deter-
3 mination under paragraph (1), the nonbank finan-
4 cial company may request, in writing, an oppor-
5 tunity for a written or oral hearing before the Coun-
6 cil to contest the proposed determination. Upon re-
7 ceipt of a timely request, the Council shall fix a time
8 (not later than 30 days after the date of receipt of
9 the request) and place at which such company may
10 appear, personally or through counsel, to submit
11 written materials (or, at the sole discretion of the
12 Council, oral testimony and oral argument).

13 (3) FINAL DETERMINATION.—Not later than 60
14 days after the date of a hearing under paragraph
15 (2), the Council shall notify the nonbank financial
16 company of the final determination of the Council,
17 which shall contain a statement of the basis for the
18 decision of the Council.

19 (4) NO HEARING REQUESTED.—If a nonbank
20 financial company does not make a timely request
21 for a hearing, the Council shall notify the nonbank
22 financial company, in writing, of the final determina-
23 tion of the Council under subsection (a) or (b), as
24 applicable, not later than 10 days after the date by

1 which the company may request a hearing under
2 paragraph (2).

3 (f) EMERGENCY EXCEPTION.—

4 (1) IN GENERAL.—The Council may waive or
5 modify the requirements of subsection (d) with re-
6 spect to a nonbank financial company, if the Council
7 determines, by a vote of not fewer than $\frac{2}{3}$ of the
8 members then serving, including an affirmative vote
9 by the Chairperson, that such waiver or modification
10 is necessary or appropriate to prevent or mitigate
11 threats posed by the nonbank financial company to
12 the financial stability of the United States.

13 (2) NOTICE.—The Council shall provide notice
14 of a waiver or modification under this paragraph to
15 the nonbank financial company concerned as soon as
16 practicable, but not later than 24 hours after the
17 waiver or modification is granted.

18 (3) INTERNATIONAL COORDINATION.—In mak-
19 ing a determination under paragraph (1), the Coun-
20 cil shall consult with the appropriate home country
21 supervisor, if any, of the foreign nonbank financial
22 company that is being considered for such a deter-
23 mination.

24 (4) OPPORTUNITY FOR HEARING.—The Council
25 shall allow a nonbank financial company to request,

1 in writing, an opportunity for a written or oral hear-
2 ing before the Council to contest a waiver or modi-
3 fication under this paragraph, not later than 10
4 days after the date of receipt of notice of the waiver
5 or modification by the company. Upon receipt of a
6 timely request, the Council shall fix a time (not later
7 than 15 days after the date of receipt of the request)
8 and place at which the nonbank financial company
9 may appear, personally or through counsel, to sub-
10 mit written materials (or, at the sole discretion of
11 the Council, oral testimony and oral argument).

12 (5) NOTICE OF FINAL DETERMINATION.—Not
13 later than 30 days after the date of any hearing
14 under paragraph (4), the Council shall notify the
15 subject nonbank financial company of the final de-
16 termination of the Council under this paragraph,
17 which shall contain a statement of the basis for the
18 decision of the Council.

19 (g) CONSULTATION.—The Council shall consult with
20 the primary financial regulatory agency, if any, for each
21 nonbank financial company or subsidiary of a nonbank fi-
22 nancial company that is being considered for supervision
23 by the Board of Governors under this section before the
24 Council makes any final determination with respect to

1 such nonbank financial company under subsection (a), (b),
2 or (c).

3 (h) JUDICIAL REVIEW.—If the Council makes a final
4 determination under this section with respect to a
5 nonbank financial company, such nonbank financial com-
6 pany may, not later than 30 days after the date of receipt
7 of the notice of final determination under subsection
8 (d)(3) or (e)(4), bring an action in the United States dis-
9 trict court for the judicial district in which the home office
10 of such nonbank financial company is located, or in the
11 United States District Court for the District of Columbia,
12 for an order requiring that the final determination be re-
13 scinded, and the court shall, upon review, dismiss such ac-
14 tion or direct the final determination to be rescinded. Re-
15 view of such an action shall be limited to whether the final
16 determination made under this section was arbitrary and
17 capricious.

18 (i) INTERNATIONAL COORDINATION.—In exercising
19 its duties under this title with respect to foreign nonbank
20 financial companies, foreign-based bank holding compa-
21 nies, and cross-border activities and markets, the Council
22 shall consult with appropriate foreign regulatory authori-
23 ties, to the extent appropriate.

1 **SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.**
2
3

4 Not later than 180 days after the date of a final
5 Council determination under section 113 that a nonbank
6 financial company is to be supervised by the Board of Gov-
7 ernors, such company shall register with the Board of
8 Governors, on forms prescribed by the Board of Gov-
9 ernors, which shall include such information as the Board
10 of Governors, in consultation with the Council, may deem
11 necessary or appropriate to carry out this title.

12 **SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.**
13
14
15
16

17 (a) IN GENERAL.—

18 (1) PURPOSE.—In order to prevent or mitigate
19 risks to the financial stability of the United States
20 that could arise from the material financial distress
21 or failure of large, interconnected financial institu-
22 tions, the Council may make recommendations to
23 the Board of Governors concerning the establish-
24 ment and refinement of prudential standards and re-
25 porting and disclosure requirements applicable to
26 nonbank financial companies supervised by the

1 Board of Governors and large, interconnected bank
2 holding companies, that—

3 (A) are more stringent than those applica-
4 ble to other nonbank financial companies and
5 bank holding companies that do not present
6 similar risks to the financial stability of the
7 United States; and

8 (B) increase in stringency, based on the
9 considerations identified in subsection (b)(3).

10 (2) LIMITATION ON BANK HOLDING COMPA-
11 NIES.—Any standards recommended under sub-
12 sections (b) through (f) shall not apply to any bank
13 holding company with total consolidated assets of
14 less than \$50,000,000,000. The Council may rec-
15 ommend an asset threshold greater than
16 \$50,000,000,000 for the applicability of any par-
17 ticular standard under those subsections.

18 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

19 (1) IN GENERAL.—The recommendations of the
20 Council under subsection (a) may include—

21 (A) risk-based capital requirements;

22 (B) leverage limits;

23 (C) liquidity requirements;

24 (D) resolution plan and credit exposure re-
25 port requirements;

- 1 (E) concentration limits;
2 (F) a contingent capital requirement;
3 (G) enhanced public disclosures; and
4 (H) overall risk management requirements.

5 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-
6 NANCIAL COMPANIES.—In making recommendations
7 concerning the standards set forth in paragraph (1)
8 that would apply to foreign nonbank financial com-
9 panies supervised by the Board of Governors or for-
10 eign-based bank holding companies, the Council
11 shall—

12 (A) give due regard to the principle of na-
13 tional treatment and equality of competitive op-
14 portunity; and

15 (B) take into account the extent to which
16 the foreign nonbank financial company or for-
17 eign-based bank holding company is subject on
18 a consolidated basis to home country standards
19 that are comparable to those applied to finan-
20 cial companies in the United States.

21 (3) CONSIDERATIONS.—In making rec-
22 ommendations concerning prudential standards
23 under paragraph (1), the Council shall—

24 (A) take into account differences among
25 nonbank financial companies supervised by the

1 Board of Governors and bank holding compa-
2 nies described in subsection (a), based on—

3 (i) the factors described in subsections
4 (a) and (b) of section 113;

5 (ii) whether the company owns an in-
6 sured depository institution;

7 (iii) nonfinancial activities and affili-
8 ations of the company; and

9 (iv) any other factors that the Council
10 determines appropriate; and

11 (B) to the extent possible, ensure that
12 small changes in the factors listed in sub-
13 sections (a) and (b) of section 113 would not
14 result in sharp, discontinuous changes in the
15 prudential standards established under para-
16 graph (1).

17 (c) CONTINGENT CAPITAL.—

18 (1) STUDY REQUIRED.—The Council shall con-
19 duct a study of the feasibility, benefits, costs, and
20 structure of a contingent capital requirement for
21 nonbank financial companies supervised by the
22 Board of Governors and bank holding companies de-
23 scribed in subsection (a), which study shall in-
24 clude—

1 (A) an evaluation of the degree to which
2 such requirement would enhance the safety and
3 soundness of companies subject to the require-
4 ment, promote the financial stability of the
5 United States, and reduce risks to United
6 States taxpayers;

7 (B) an evaluation of the characteristics
8 and amounts of convertible debt that should be
9 required;

10 (C) an analysis of potential prudential
11 standards that should be used to determine
12 whether the contingent capital of a company
13 would be converted to equity in times of finan-
14 cial stress;

15 (D) an evaluation of the costs to compa-
16 nies, the effects on the structure and operation
17 of credit and other financial markets, and other
18 economic effects of requiring contingent capital;

19 (E) an evaluation of the effects of such re-
20 quirement on the international competitiveness
21 of companies subject to the requirement and
22 the prospects for international coordination in
23 establishing such requirement; and

24 (F) recommendations for implementing
25 regulations.

1 (2) REPORT.—The Council shall submit a re-
2 port to Congress regarding the study required by
3 paragraph (1) not later than 2 years after the date
4 of enactment of this Act.

5 (3) RECOMMENDATIONS.—

6 (A) IN GENERAL.—Subsequent to submit-
7 ting a report to Congress under paragraph (2),
8 the Council may make recommendations to the
9 Board of Governors to require any nonbank fi-
10 nancial company supervised by the Board of
11 Governors and any bank holding company de-
12 scribed in subsection (a) to maintain a min-
13 imum amount of long-term hybrid debt that is
14 convertible to equity in times of financial stress.

15 (B) FACTORS TO CONSIDER.—In making
16 recommendations under this subsection, the
17 Council shall consider—

18 (i) an appropriate transition period
19 for implementation of a conversion under
20 this subsection;

21 (ii) the factors described in subsection
22 (b)(3);

23 (iii) capital requirements applicable to
24 a nonbank financial company supervised by
25 the Board of Governors or a bank holding

1 company described in subsection (a), and
2 subsidiaries thereof;

3 (iv) results of the study required by
4 paragraph (1); and

5 (v) any other factor that the Council
6 deems appropriate.

7 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
8 PORTS.—

9 (1) RESOLUTION PLAN.—The Council may
10 make recommendations to the Board of Governors
11 concerning the requirement that each nonbank fi-
12 nancial company supervised by the Board of Gov-
13 ernors and each bank holding company described in
14 subsection (a) report periodically to the Council, the
15 Board of Governors, and the Corporation, the plan
16 of such company for rapid and orderly resolution in
17 the event of material financial distress or failure.

18 (2) CREDIT EXPOSURE REPORT.—The Council
19 may make recommendations to the Board of Gov-
20 ernors concerning the advisability of requiring each
21 nonbank financial company supervised by the Board
22 of Governors and bank holding company described in
23 subsection (a) to report periodically to the Council,
24 the Board of Governors, and the Corporation on—

1 (A) the nature and extent to which the
2 company has credit exposure to other signifi-
3 cant nonbank financial companies and signifi-
4 cant bank holding companies; and

5 (B) the nature and extent to which other
6 such significant nonbank financial companies
7 and significant bank holding companies have
8 credit exposure to that company.

9 (e) CONCENTRATION LIMITS.—In order to limit the
10 risks that the failure of any individual company could pose
11 to nonbank financial companies supervised by the Board
12 of Governors or bank holding companies described in sub-
13 section (a), the Council may make recommendations to the
14 Board of Governors to prescribe standards to limit such
15 risks, as set forth in section 165.

16 (f) ENHANCED PUBLIC DISCLOSURES.—The Council
17 may make recommendations to the Board of Governors
18 to require periodic public disclosures by bank holding com-
19 panies described in subsection (a) and by nonbank finan-
20 cial companies supervised by the Board of Governors, in
21 order to support market evaluation of the risk profile, cap-
22 ital adequacy, and risk management capabilities thereof.

23 **SEC. 116. REPORTS.**

24 (a) IN GENERAL.—Subject to subsection (b), the
25 Council, acting through the Office of Financial Research,

1 may require a bank holding company with total consoli-
2 dated assets of \$50,000,000,000 or greater or a nonbank
3 financial company supervised by the Board of Governors,
4 and any subsidiary thereof, to submit certified reports to
5 keep the Council informed as to—

6 (1) the financial condition of the company;

7 (2) systems for monitoring and controlling fi-
8 nancial, operating, and other risks;

9 (3) transactions with any subsidiary that is a
10 depository institution; and

11 (4) the extent to which the activities and oper-
12 ations of the company and any subsidiary thereof,
13 could, under adverse circumstances, have the poten-
14 tial to disrupt financial markets or affect the overall
15 financial stability of the United States.

16 (b) USE OF EXISTING REPORTS.—

17 (1) IN GENERAL.—For purposes of compliance
18 with subsection (a), the Council, acting through the
19 Office of Financial Research, shall, to the fullest ex-
20 tent possible, use—

21 (A) reports that a bank holding company,
22 nonbank financial company supervised by the
23 Board of Governors, or any functionally regu-
24 lated subsidiary of such company has been re-

1 required to provide to other Federal or State reg-
2 ulatory agencies;

3 (B) information that is otherwise required
4 to be reported publicly; and

5 (C) externally audited financial statements.

6 (2) AVAILABILITY.—Each bank holding com-
7 pany described in subsection (a) and nonbank finan-
8 cial company supervised by the Board of Governors,
9 and any subsidiary thereof, shall provide to the
10 Council, at the request of the Council, copies of all
11 reports referred to in paragraph (1).

12 (3) CONFIDENTIALITY.—The Council shall
13 maintain the confidentiality of the reports obtained
14 under subsection (a) and paragraph (1)(A) of this
15 subsection.

16 **SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT**
17 **CEASE TO BE BANK HOLDING COMPANIES.**

18 (a) APPLICABILITY.—This section shall apply to—

19 (1) any entity that—

20 (A) was a bank holding company having
21 total consolidated assets equal to or greater
22 than \$50,000,000,000 as of January 1, 2010;
23 and

24 (B) received financial assistance under or
25 participated in the Capital Purchase Program

1 established under the Troubled Asset Relief
2 Program authorized by the Emergency Eco-
3 nomic Stabilization Act of 2008; and

4 (2) any successor entity (as defined by the
5 Board of Governors, in consultation with the Coun-
6 cil) to an entity described in paragraph (1).

7 (b) TREATMENT.—If an entity described in sub-
8 section (a) ceases to be a bank holding company at any
9 time after January 1, 2010, then such entity shall be
10 treated as a nonbank financial company supervised by the
11 Board of Governors, as if the Council had made a deter-
12 mination under section 113 with respect to that entity.

13 (c) APPEAL.—

14 (1) REQUEST FOR HEARING.—An entity may
15 request, in writing, an opportunity for a written or
16 oral hearing before the Council to appeal its treat-
17 ment as a nonbank financial company supervised by
18 the Board of Governors in accordance with this sec-
19 tion. Upon receipt of the request, the Council shall
20 fix a time (not later than 30 days after the date of
21 receipt of the request) and place at which such enti-
22 ty may appear, personally or through counsel, to
23 submit written materials (or, at the sole discretion
24 of the Council, oral testimony and oral argument).

25 (2) DECISION.—

1 (A) PROPOSED DECISION.—Not later than
2 60 days after the date of a hearing under para-
3 graph (1), the Council shall submit a report to,
4 and may testify before, the Committee on
5 Banking, Housing, and Urban Affairs of the
6 Senate and the Committee on Financial Serv-
7 ices of the House of Representatives on the pro-
8 posed decision of the Council regarding an ap-
9 peal under paragraph (1), which report shall in-
10 clude a statement of the basis for the proposed
11 decision of the Council.

12 (B) NOTICE OF FINAL DECISION.—The
13 Council shall notify the subject entity of the
14 final decision of the Council regarding an ap-
15 peal under paragraph (1), which notice shall
16 contain a statement of the basis for the final
17 decision of the Council, not later than 60 days
18 after the later of—

19 (i) the date of the submission of the
20 report under subparagraph (A); or

21 (ii) if, not later than 1 year after the
22 date of submission of the report under sub-
23 paragraph (A), the Committee on Banking,
24 Housing, and Urban Affairs of the Senate
25 or the Committee on Financial Services of

1 the House of Representatives holds one or
2 more hearings regarding such report, the
3 date of the last such hearing.

4 (C) CONSIDERATIONS.—In making a deci-
5 sion regarding an appeal under paragraph (1),
6 the Council shall consider whether the company
7 meets the standards under section 113(a) or
8 113(b), as applicable, and the definition of the
9 term “nonbank financial company” under sec-
10 tion 102. The decision of the Council shall be
11 final, subject to the review under paragraph
12 (3).

13 (3) REVIEW.—If the Council denies an appeal
14 under this subsection, the Council shall, not less fre-
15 quently than annually, review and reevaluate the de-
16 cision.

17 **SEC. 118. COUNCIL FUNDING.**

18 Any expenses of the Council shall be treated as ex-
19 penses of, and paid by, the Office of Financial Research.

20 **SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL**
21 **DISPUTES AMONG MEMBER AGENCIES.**

22 (a) REQUEST FOR DISPUTE RESOLUTION.—The
23 Council shall resolve a dispute among 2 or more member
24 agencies, if—

1 (1) a member agency has a dispute with an-
2 other member agency about the respective jurisdic-
3 tion over a particular bank holding company,
4 nonbank financial company, or financial activity or
5 product (excluding matters for which another dis-
6 pute mechanism specifically has been provided under
7 Federal law);

8 (2) the Council determines that the disputing
9 agencies cannot, after a demonstrated good faith ef-
10 fort, resolve the dispute without the intervention of
11 the Council; and

12 (3) any of the member agencies involved in the
13 dispute—

14 (A) provides all other disputants prior no-
15 tice of the intent to request dispute resolution
16 by the Council; and

17 (B) requests in writing, not earlier than 14
18 days after providing the notice described in sub-
19 paragraph (A), that the Council resolve the dis-
20 pute.

21 (b) COUNCIL DECISION.—The Council shall resolve
22 each dispute described in subsection (a)—

23 (1) within a reasonable time after receiving the
24 dispute resolution request;

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

3 (3) by agreeing with 1 of the disputants regard-
4 ing the entirety of the matter, or by determining a
5 compromise position.

6 (c) FORM OF DECISION.—Any Council decision under
7 this section shall—

8 (1) be in writing;

9 (2) include an explanation of the reasons there-
10 for; and

11 (3) be approved by the affirmative vote of $\frac{2}{3}$ of
12 the members of the Council then serving.

13 (d) BINDING EFFECT.—Any decision made by the
14 Council under subsection (c) shall be binding on all Fed-
15 eral agencies that are parties to the dispute.

16 **SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVI-**
17 **TIES OR PRACTICES FOR FINANCIAL STA-**
18 **BILITY PURPOSES.**

19 (a) IN GENERAL.—The Council may issue rec-
20 ommendations to the primary financial regulatory agen-
21 cies to apply new or heightened standards and safeguards,
22 including standards enumerated in section 115, for a fi-
23 nancial activity or practice conducted by bank holding
24 companies or nonbank financial companies under their re-
25 spective jurisdictions, if the Council determines that the

1 conduct of such activity or practice could create or in-
2 crease the risk of significant liquidity, credit, or other
3 problems spreading among bank holding companies and
4 nonbank financial companies, financial markets of the
5 United States, or low-income, minority, or underserved
6 communities.

7 (b) PROCEDURE FOR RECOMMENDATIONS TO REGU-
8 LATORS.—

9 (1) NOTICE AND OPPORTUNITY FOR COM-
10 MENT.—The Council shall consult with the primary
11 financial regulatory agencies and provide notice to
12 the public and opportunity for comment for any pro-
13 posed recommendation that the primary financial
14 regulatory agencies apply new or heightened stand-
15 ards and safeguards for a financial activity or prac-
16 tice.

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

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

22 (B) may include prescribing the conduct of
23 the activity or practice in specific ways (such as
24 by limiting its scope, or applying particular cap-
25 ital or risk management requirements to the

1 conduct of the activity) or prohibiting the activ-
2 ity or practice.

3 (c) IMPLEMENTATION OF RECOMMENDED STAND-
4 ARDS.—

5 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
6 AGENCY.—

7 (A) IN GENERAL.—Each primary financial
8 regulatory agency may impose, require reports
9 regarding, examine for compliance with, and en-
10 force standards in accordance with this section
11 with respect to those entities for which it is the
12 primary financial regulatory agency.

13 (B) RULE OF CONSTRUCTION.—The au-
14 thority under this paragraph is in addition to,
15 and does not limit, any other authority of a pri-
16 mary financial regulatory agency. Compliance
17 by an entity with actions taken by a primary fi-
18 nancial regulatory agency under this section
19 shall be enforceable in accordance with the stat-
20 utes governing the respective jurisdiction of the
21 primary financial regulatory agency over the en-
22 tity, as if the agency action were taken under
23 those statutes.

24 (2) IMPOSITION OF STANDARDS.—The primary
25 financial regulatory agency shall impose the stand-

1 ards recommended by the Council in accordance
2 with subsection (a), or similar standards that the
3 Council deems acceptable, or shall explain in writing
4 to the Council, not later than 90 days after the date
5 on which the Council issues the recommendation,
6 why the agency has determined not to follow the rec-
7 ommendation of the Council.

8 (d) REPORT TO CONGRESS.—The Council shall re-
9 port to Congress on—

10 (1) any recommendations issued by the Council
11 under this section;

12 (2) the implementation of, or failure to imple-
13 ment such recommendation on the part of a primary
14 financial regulatory agency; and

15 (3) in any case in which no primary financial
16 regulatory agency exists for the nonbank financial
17 company conducting financial activities or practices
18 referred to in subsection (a), recommendations for
19 legislation that would prevent such activities or prac-
20 tices from threatening the stability of the financial
21 system of the United States.

22 (e) EFFECT OF RESCISSION OF IDENTIFICATION.—

23 (1) NOTICE.—The Council may recommend to
24 the relevant primary financial regulatory agency that
25 a financial activity or practice no longer requires any

1 standards or safeguards implemented under this sec-
2 tion.

3 (2) DETERMINATION OF PRIMARY FINANCIAL
4 REGULATORY AGENCY TO CONTINUE.—

5 (A) IN GENERAL.—Upon receipt of a rec-
6 ommendation under paragraph (1), a primary
7 financial regulatory agency that has imposed
8 standards under this section shall determine
9 whether such standards should remain in effect.

10 (B) APPEAL PROCESS.—Each primary fi-
11 nancial regulatory agency that has imposed
12 standards under this section shall promulgate
13 regulations to establish a procedure under
14 which entities under its jurisdiction may appeal
15 a determination by such agency under this
16 paragraph that standards imposed under this
17 section should remain in effect.

18 **SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.**

19 (a) MITIGATORY ACTIONS.—If the Board of Gov-
20 ernors determines that a bank holding company with total
21 consolidated assets of \$50,000,000,000 or more, or a
22 nonbank financial company supervised by the Board of
23 Governors, poses a grave threat to the financial stability
24 of the United States, the Board of Governors, upon an

1 affirmative vote of not fewer than $\frac{2}{3}$ of the Council mem-
2 bers then serving, shall require the subject company—

3 (1) to terminate one or more activities;

4 (2) to impose conditions on the manner in
5 which the company conducts 1 or more activities; or

6 (3) if the Board of Governors determines that
7 such action is inadequate to mitigate a threat to the
8 financial stability of the United States in its rec-
9 ommendation, to sell or otherwise transfer assets or
10 off-balance-sheet items to unaffiliated entities.

11 (b) NOTICE AND HEARING.—

12 (1) IN GENERAL.—The Board of Governors, in
13 consultation with the Council, shall provide to a
14 company described in subsection (a) written notice
15 that such company is being considered for mitiga-
16 tory action pursuant to this section, including an ex-
17 planation of the basis for, and description of, the
18 proposed mitigatory action.

19 (2) HEARING.—Not later than 30 days after
20 the date of receipt of notice under paragraph (1),
21 the company may request, in writing, an opportunity
22 for a written or oral hearing before the Board of
23 Governors to contest the proposed mitigatory action.
24 Upon receipt of a timely request, the Board of Gov-
25 ernors shall fix a time (not later than 30 days after

1 the date of receipt of the request) and place at
2 which such company may appear, personally or
3 through counsel, to submit written materials (or, at
4 the discretion of the Board of Governors, in con-
5 sultation with the Council, oral testimony and oral
6 argument).

7 (3) DECISION.—Not later than 60 days after
8 the date of a hearing under paragraph (2), or not
9 later than 60 days after the provision of a notice
10 under paragraph (1) if no hearing was held, the
11 Board of Governors shall notify the company of the
12 final decision of the Board of Governors, including
13 the results of the vote of the Council, as described
14 in subsection (a).

15 (c) FACTORS FOR CONSIDERATION.—The Board of
16 Governors and the Council shall take into consideration
17 the factors set forth in subsection (a) or (b) of section
18 113, as applicable, in making any determination under
19 subsection (a).

20 (d) APPLICATION TO FOREIGN FINANCIAL COMPA-
21 NIES.—The Board of Governors may prescribe regulations
22 regarding the application of this section to foreign
23 nonbank financial companies supervised by the Board of
24 Governors and foreign-based bank holding companies—

1 (1) giving due regard to the principles of na-
2 tional treatment and equality of competitive oppor-
3 tunity; and

4 (2) taking into account the extent to which the
5 foreign nonbank financial company or foreign-based
6 bank holding company is subject on a consolidated
7 basis to home country standards that are com-
8 parable to those applied to financial companies in
9 the United States.

10 **SEC. 122. GAO AUDIT OF COUNCIL.**

11 (a) **AUTHORITY TO AUDIT.**—The Comptroller Gen-
12 eral of the United States may audit the activities of—

13 (1) the Council; and

14 (2) any person or entity acting on behalf of or
15 under the authority of the Council, to the extent
16 that such activities relate to work for the Council by
17 such person or entity.

18 (b) **ACCESS TO INFORMATION.**—

19 (1) **IN GENERAL.**—Notwithstanding any other
20 provision of law, the Comptroller General shall, upon
21 request and at such reasonable time and in such rea-
22 sonable form as the Comptroller General may re-
23 quest, have access to—

24 (A) any records or other information under
25 the control of or used by the Council;

1 (B) any records or other information under
2 the control of a person or entity acting on be-
3 half of or under the authority of the Council, to
4 the extent that such records or other informa-
5 tion is relevant to an audit under subsection
6 (a); and

7 (C) the officers, directors, employees, fi-
8 nancial advisors, staff, working groups, and
9 agents and representatives of the Council (as
10 related to the activities on behalf of the Council
11 of such agent or representative), at such rea-
12 sonable times as the Comptroller General may
13 request.

14 (2) COPIES.—The Comptroller General may
15 make and retain copies of such books, accounts, and
16 other records, access to which is granted under this
17 section, as the Comptroller General considers appro-
18 priate.

19 **Subtitle B—Office of Financial** 20 **Research**

21 **SEC. 151. DEFINITIONS.**

22 For purposes of this subtitle—

23 (1) the terms “Office” and “Director” mean
24 the Office of Financial Research established under
25 this subtitle and the Director thereof, respectively;

1 (2) the term “financial company” has the same
2 meaning as in title II, and includes an insured de-
3 pository institution and an insurance company;

4 (3) the term “Data Center” means the data
5 center established under section 154;

6 (4) the term “Research and Analysis Center”
7 means the research and analysis center established
8 under section 154;

9 (5) the term “financial transaction data” means
10 the structure and legal description of a financial
11 contract, with sufficient detail to describe the rights
12 and obligations between counterparties and make
13 possible an independent valuation;

14 (6) the term “position data”—

15 (A) means data on financial assets or li-
16 abilities held on the balance sheet of a financial
17 company, where positions are created or
18 changed by the execution of a financial trans-
19 action; and

20 (B) includes information that identifies
21 counterparties, the valuation by the financial
22 company of the position, and information that
23 makes possible an independent valuation of the
24 position;

1 (7) the term “financial contract” means a le-
2 gally binding agreement between 2 or more counter-
3 parties, describing rights and obligations relating to
4 the future delivery of items of intrinsic or extrinsic
5 value among the counterparties; and

6 (8) the term “financial instrument” means a fi-
7 nancial contract in which the terms and conditions
8 are publicly available, and the roles of one or more
9 of the counterparties are assignable without the con-
10 sent of any of the other counterparties (including
11 common stock of a publicly traded company, govern-
12 ment bonds, or exchange traded futures and options
13 contracts).

14 **SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.**

15 (a) **ESTABLISHMENT.**—There is established within
16 the Department of the Treasury the Office of Financial
17 Research.

18 (b) **DIRECTOR.**—

19 (1) **IN GENERAL.**—The Office shall be headed
20 by a Director, who shall be appointed by the Presi-
21 dent, by and with the advice and consent of the Sen-
22 ate.

23 (2) **TERM OF SERVICE.**—The Director shall
24 serve for a term of 6 years, except that, in the event
25 that a successor is not nominated and confirmed by

1 the end of the term of service of a Director, the Di-
2 rector may continue to serve until such time as the
3 next Director is appointed and confirmed.

4 (3) EXECUTIVE LEVEL.—The Director shall be
5 compensated at level III of the Executive Schedule.

6 (4) PROHIBITION ON DUAL SERVICE.—The in-
7 dividual serving in the position of Director may not,
8 during such service, also serve as the head of any fi-
9 nancial regulatory agency.

10 (5) RESPONSIBILITIES, DUTIES, AND AUTHOR-
11 ITY.—The Director shall have sole discretion in the
12 manner in which the Director fulfills the responsibil-
13 ities and duties and exercises the authorities de-
14 scribed in this subtitle.

15 (c) BUDGET.—The Director, in consultation with the
16 Chairperson, shall establish the annual budget of the Of-
17 fice.

18 (d) OFFICE PERSONNEL.—

19 (1) IN GENERAL.—The Director, in consulta-
20 tion with the Chairperson, may fix the number of,
21 and appoint and direct, all employees of the Office.

22 (2) COMPENSATION.—The Director, in con-
23 sultation with the Chairperson, shall fix, adjust, and
24 administer the pay for all employees of the Office,
25 without regard to chapter 51 or subchapter III of

1 chapter 53 of title 5, United States Code, relating
2 to classification of positions and General Schedule
3 pay rates.

4 (3) COMPARABILITY.—Section 1206(a) of the
5 Financial Institutions Reform, Recovery, and En-
6 forcement Act of 1989 (12 U.S.C. 1833b(a)) is
7 amended—

8 (A) by striking “Finance Board,” and in-
9 serting “Finance Board, the Office of Financial
10 Research, and the Bureau of Consumer Finan-
11 cial Protection”; and

12 (B) by striking “and the Office of Thrift
13 Supervision,”.

14 (e) ASSISTANCE FROM FEDERAL AGENCIES.—Any
15 department or agency of the United States may provide
16 to the Office and any special advisory, technical, or profes-
17 sional committees appointed by the Office, such services,
18 funds, facilities, staff, and other support services as the
19 Office may determine advisable. Any Federal Government
20 employee may be detailed to the Office without reimburse-
21 ment, and such detail shall be without interruption or loss
22 of civil service status or privilege.

23 (f) PROCUREMENT OF TEMPORARY AND INTERMIT-
24 TENT SERVICES.—The Director may procure temporary
25 and intermittent services under section 3109(b) of title 5,

1 United States Code, at rates for individuals which do not
2 exceed the daily equivalent of the annual rate of basic pay
3 prescribed for level V of the Executive Schedule under sec-
4 tion 5316 of such title.

5 (g) CONTRACTING AND LEASING AUTHORITY.—Not-
6 withstanding the Federal Property and Administrative
7 Services Act of 1949 (41 U.S.C. 251 et seq.) or any other
8 provision of law, the Director may—

9 (1) enter into and perform contracts, execute
10 instruments, and acquire, in any lawful manner,
11 such goods and services, or personal or real property
12 (or property interest), as the Director deems nec-
13 essary to carry out the duties and responsibilities of
14 the Office; and

15 (2) hold, maintain, sell, lease, or otherwise dis-
16 pose of the property (or property interest) acquired
17 under paragraph (1).

18 (h) NON-COMPETE.—The Director and any staff of
19 the Office who has had access to the transaction or posi-
20 tion data maintained by the Data Center or other business
21 confidential information about financial entities required
22 to report to the Office, may not, for a period of 1 year
23 after last having access to such transaction or position
24 data or business confidential information, be employed by
25 or provide advice or consulting services to a financial com-

1 pany, regardless of whether that entity is required to re-
2 port to the Office. For staff whose access to business con-
3 fidential information was limited, the Director may pro-
4 vide, on a case-by-case basis, for a shorter period of post-
5 employment prohibition, provided that the shorter period
6 does not compromise business confidential information.

7 (i) TECHNICAL AND PROFESSIONAL ADVISORY COM-
8 MITTEES.—The Office, in consultation with the Chair-
9 person, may appoint such special advisory, technical, or
10 professional committees as may be useful in carrying out
11 the functions of the Office, and the members of such com-
12 mittees may be staff of the Office, or other persons, or
13 both.

14 (j) FELLOWSHIP PROGRAM.—The Office, in consulta-
15 tion with the Chairperson, may establish and maintain an
16 academic and professional fellowship program, under
17 which qualified academics and professionals shall be in-
18 vited to spend not longer than 2 years at the Office, to
19 perform research and to provide advanced training for Of-
20 fice personnel.

21 (k) EXECUTIVE SCHEDULE COMPENSATION.—Sec-
22 tion 5314 of title 5, United States Code, is amended by
23 adding at the end the following new item:

24 “Director of the Office of Financial Research.”.

1 **SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.**

2 (a) PURPOSE AND DUTIES.—The purpose of the Of-
3 fice is to support the Council in fulfilling the purposes and
4 duties of the Council, as set forth in subtitle A, and to
5 support member agencies, by—

6 (1) collecting data on behalf of the Council, and
7 providing such data to the Council and member
8 agencies;

9 (2) standardizing the types and formats of data
10 reported and collected;

11 (3) performing applied research and essential
12 long-term research;

13 (4) developing tools for risk measurement and
14 monitoring;

15 (5) performing other related services;

16 (6) making the results of the activities of the
17 Office available to financial regulatory agencies; and

18 (7) assisting such member agencies in deter-
19 mining the types and formats of data authorized by
20 this Act to be collected by such member agencies.

21 (b) ADMINISTRATIVE AUTHORITY.—The Office
22 may—

23 (1) share data and information, including soft-
24 ware developed by the Office, with the Council and
25 member agencies, which shared data, information,
26 and software—

1 (A) shall be maintained with at least the
2 same level of security as is used by the Office;
3 and

4 (B) may not be shared with any individual
5 or entity without the permission of the Council;

6 (2) sponsor and conduct research projects; and

7 (3) assist, on a reimbursable basis, with finan-
8 cial analyses undertaken at the request of other
9 Federal agencies that are not member agencies.

10 (c) RULEMAKING AUTHORITY.—

11 (1) SCOPE.—The Office, in consultation with
12 the Chairperson, shall issue rules, regulations, and
13 orders only to the extent necessary to carry out the
14 purposes and duties described in paragraphs (1),
15 (2), and (7) of subsection (a).

16 (2) STANDARDIZATION.—Member agencies, in
17 consultation with the Office, shall implement regula-
18 tions promulgated by the Office under paragraph (1)
19 to standardize the types and formats of data re-
20 ported and collected on behalf of the Council, as de-
21 scribed in subsection (a)(2). If a member agency
22 fails to implement such regulations prior to the expi-
23 ration of the 3-year period following the date of pub-
24 lication of final regulations, the Office, in consulta-
25 tion with the Chairperson, may implement such reg-

1 ulations with respect to the financial entities under
2 the jurisdiction of the member agency.

3 (d) TESTIMONY.—

4 (1) IN GENERAL.—The Director of the Office
5 shall report to and testify before the Committee on
6 Banking, Housing, and Urban Affairs of the Senate
7 and the Committee on Financial Services of the
8 House of Representatives annually on the activities
9 of the Office, including the work of the Data Center
10 and the Research and Analysis Center, and the as-
11 sessment of the Office of significant financial market
12 developments and potential emerging threats to the
13 financial stability of the United States.

14 (2) NO PRIOR REVIEW.—No officer or agency of
15 the United States shall have any authority to require
16 the Director to submit the testimony required under
17 paragraph (1) or other Congressional testimony to
18 any officer or agency of the United States for ap-
19 proval, comment, or review prior to the submission
20 of such testimony. Any such testimony to Congress
21 shall include a statement that the views expressed
22 therein are those of the Director and do not nec-
23 essarily represent the views of the President.

24 (e) ADDITIONAL REPORTS.—The Director may pro-
25 vide additional reports to Congress concerning the finan-

1 cial stability of the United States. The Director shall no-
2 tify the Council of any such additional reports provided
3 to Congress.

4 (f) SUBPOENA.—

5 (1) IN GENERAL.—The Director may require
6 from a financial company, by subpoena, the produc-
7 tion of the data requested under subsection (a)(1)
8 and section 154(b)(1), but only upon a written find-
9 ing by the Director that—

10 (A) such data is required to carry out the
11 functions described under this subtitle; and

12 (B) the Office has coordinated with the
13 relevant primary financial regulatory agency, as
14 required under section 154(b)(1)(B)(ii).

15 (2) FORMAT.—Subpoenas under paragraph (1)
16 shall bear the signature of the Director, and shall be
17 served by any person or class of persons designated
18 by the Director for that purpose.

19 (3) ENFORCEMENT.—In the case of contumacy
20 or failure to obey a subpoena, the subpoena shall be
21 enforceable by order of any appropriate district
22 court of the United States. Any failure to obey the
23 order of the court may be punished by the court as
24 a contempt of court.

1 **SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBIL-**
2 **ITIES OF PRIMARY PROGRAMMATIC UNITS.**

3 (a) IN GENERAL.—There are established within the
4 Office, to carry out the programmatic responsibilities of
5 the Office—

6 (1) the Data Center; and

7 (2) the Research and Analysis Center.

8 (b) DATA CENTER.—

9 (1) GENERAL DUTIES.—

10 (A) DATA COLLECTION.—The Data Cen-
11 ter, on behalf of the Council, shall collect, vali-
12 date, and maintain all data necessary to carry
13 out the duties of the Data Center, as described
14 in this subtitle. The data assembled shall be ob-
15 tained from member agencies, commercial data
16 providers, publicly available data sources, and
17 financial entities under subparagraph (B).

18 (B) AUTHORITY.—

19 (i) IN GENERAL.—The Office may, as
20 determined by the Council or by the Direc-
21 tor in consultation with the Council, re-
22 quire the submission of periodic and other
23 reports from any financial company for the
24 purpose of assessing the extent to which a
25 financial activity or financial market in
26 which the financial company participates,

1 or the financial company itself, poses a
2 threat to the financial stability of the
3 United States.

4 (ii) MITIGATION OF REPORT BUR-
5 DEN.—Before requiring the submission of
6 a report from any financial company that
7 is regulated by a member agency or any
8 primary financial regulatory agency, the
9 Office shall coordinate with such agencies
10 and shall, whenever possible, rely on infor-
11 mation available from such agencies.

12 (C) RULEMAKING.—The Office shall pro-
13 mulgate regulations pursuant to subsections
14 (a)(1), (a)(2), (a)(7), and (e)(1) of section 153
15 regarding the type and scope of the data to be
16 collected by the Data Center under this para-
17 graph.

18 (2) RESPONSIBILITIES.—

19 (A) PUBLICATION.—The Data Center shall
20 prepare and publish, in a manner that is easily
21 accessible to the public—

22 (i) a financial company reference
23 database;

24 (ii) a financial instrument reference
25 database; and

1 (iii) formats and standards for Office
2 data, including standards for reporting fi-
3 nancial transaction and position data to
4 the Office.

5 (B) CONFIDENTIALITY.—The Data Center
6 shall not publish any confidential data under
7 subparagraph (A).

8 (3) INFORMATION SECURITY.—The Director
9 shall ensure that data collected and maintained by
10 the Data Center are kept secure and protected
11 against unauthorized disclosure.

12 (4) CATALOG OF FINANCIAL ENTITIES AND IN-
13 STRUMENTS.—The Data Center shall maintain a
14 catalog of the financial entities and instruments re-
15 ported to the Office.

16 (5) AVAILABILITY TO THE COUNCIL AND MEM-
17 BER AGENCIES.—The Data Center shall make data
18 collected and maintained by the Data Center avail-
19 able to the Council and member agencies, as nec-
20 essary to support their regulatory responsibilities.

21 (6) OTHER AUTHORITY.—The Office shall,
22 after consultation with the member agencies, provide
23 certain data to financial industry participants and to
24 the general public to increase market transparency
25 and facilitate research on the financial system, to

1 the extent that intellectual property rights are not
2 violated, business confidential information is prop-
3 erly protected, and the sharing of such information
4 poses no significant threats to the financial system
5 of the United States.

6 (c) RESEARCH AND ANALYSIS CENTER.—

7 (1) GENERAL DUTIES.—The Research and
8 Analysis Center, on behalf of the Council, shall de-
9 velop and maintain independent analytical capabili-
10 ties and computing resources—

11 (A) to develop and maintain metrics and
12 reporting systems for risks to the financial sta-
13 bility of the United States;

14 (B) to monitor, investigate, and report on
15 changes in system-wide risk levels and patterns
16 to the Council and Congress;

17 (C) to conduct, coordinate, and sponsor re-
18 search to support and improve regulation of fi-
19 nancial entities and markets;

20 (D) to evaluate and report on stress tests
21 or other stability-related evaluations of financial
22 entities overseen by the member agencies;

23 (E) to maintain expertise in such areas as
24 may be necessary to support specific requests

1 for advice and assistance from financial regu-
2 lators;

3 (F) to investigate disruptions and failures
4 in the financial markets, report findings, and
5 make recommendations to the Council based on
6 those findings;

7 (G) to conduct studies and provide advice
8 on the impact of policies related to systemic
9 risk; and

10 (H) to promote best practices for financial
11 risk management.

12 (d) REPORTING RESPONSIBILITIES.—

13 (1) REQUIRED REPORTS.—Not later than 2
14 years after the date of enactment of this Act, and
15 not later than 120 days after the end of each fiscal
16 year thereafter, the Office shall prepare and submit
17 a report to Congress.

18 (2) CONTENT.—Each report required by this
19 subsection shall assess the state of the United States
20 financial system, including—

21 (A) an analysis of any threats to the finan-
22 cial stability of the United States;

23 (B) the status of the efforts of the Office
24 in meeting the mission of the Office; and

1 (C) key findings from the research and
2 analysis of the financial system by the Office.

3 **SEC. 155. FUNDING.**

4 (a) FINANCIAL RESEARCH FUND.—

5 (1) FUND ESTABLISHED.—There is established
6 in the Treasury of the United States a separate fund
7 to be known as the “Financial Research Fund”.

8 (2) FUND RECEIPTS.—All amounts provided to
9 the Office under subsection (c), and all assessments
10 that the Office receives under subsection (d) shall be
11 deposited into the Financial Research Fund.

12 (3) INVESTMENTS AUTHORIZED.—

13 (A) AMOUNTS IN FUND MAY BE IN-
14 VESTED.—The Director may request the Sec-
15 retary to invest the portion of the Financial Re-
16 search Fund that is not, in the judgment of the
17 Director, required to meet the needs of the Of-
18 fice.

19 (B) ELIGIBLE INVESTMENTS.—Invest-
20 ments shall be made by the Secretary in obliga-
21 tions of the United States or obligations that
22 are guaranteed as to principal and interest by
23 the United States, with maturities suitable to
24 the needs of the Financial Research Fund, as
25 determined by the Director.

1 (4) INTEREST AND PROCEEDS CREDITED.—The
2 interest on, and the proceeds from the sale or re-
3 demption of, any obligations held in the Financial
4 Research Fund shall be credited to and form a part
5 of the Financial Research Fund.

6 (b) USE OF FUNDS.—

7 (1) IN GENERAL.—Funds obtained by, trans-
8 ferred to, or credited to the Financial Research
9 Fund shall be immediately available to the Office,
10 and shall remain available until expended, to pay the
11 expenses of the Office in carrying out the duties and
12 responsibilities of the Office.

13 (2) FEES, ASSESSMENTS, AND OTHER FUNDS
14 NOT GOVERNMENT FUNDS.—Funds obtained by,
15 transferred to, or credited to the Financial Research
16 Fund shall not be construed to be Government funds
17 or appropriated monies.

18 (3) AMOUNTS NOT SUBJECT TO APPORTION-
19 MENT.—Notwithstanding any other provision of law,
20 amounts in the Financial Research Fund shall not
21 be subject to apportionment for purposes of chapter
22 15 of title 31, United States Code, or under any
23 other authority, or for any other purpose.

24 (c) INTERIM FUNDING.—During the 2-year period
25 following the date of enactment of this Act, the Board of

1 Governors shall provide to the Office an amount sufficient
2 to cover the expenses of the Office.

3 (d) PERMANENT SELF-FUNDING.—Beginning 2 years
4 after the date of enactment of this Act, the Secretary shall
5 establish, by regulation, and with the approval of the
6 Council, an assessment schedule, including the assessment
7 base and rates, applicable to bank holding companies with
8 total consolidated assets of \$50,000,000,000 or greater
9 and nonbank financial companies supervised by the Board
10 of Governors, that takes into account differences among
11 such companies, based on the considerations for estab-
12 lishing the prudential standards under section 115, to col-
13 lect assessments equal to the total expenses of the Office.

14 **SEC. 156. TRANSITION OVERSIGHT.**

15 (a) PURPOSE.—The purpose of this section is to en-
16 sure that the Office—

- 17 (1) has an orderly and organized startup;
18 (2) attracts and retains a qualified workforce;
19 and
20 (3) establishes comprehensive employee training
21 and benefits programs.

22 (b) REPORTING REQUIREMENT.—

- 23 (1) IN GENERAL.—The Office shall submit an
24 annual report to the Committee on Banking, Hous-
25 ing, and Urban Affairs of the Senate and the Com-

1 mittee on Financial Services of the House of Rep-
2 resentatives that includes the plans described in
3 paragraph (2).

4 (2) PLANS.—The plans described in this para-
5 graph are as follows:

6 (A) TRAINING AND WORKFORCE DEVELOP-
7 MENT PLAN.—The Office shall submit a train-
8 ing and workforce development plan that in-
9 cludes, to the extent practicable—

10 (i) identification of skill and technical
11 expertise needs and actions taken to meet
12 those requirements;

13 (ii) steps taken to foster innovation
14 and creativity;

15 (iii) leadership development and suc-
16 cession planning; and

17 (iv) effective use of technology by em-
18 ployees.

19 (B) WORKPLACE FLEXIBILITY PLAN.—The
20 Office shall submit a workforce flexibility plan
21 that includes, to the extent practicable—

22 (i) telework;

23 (ii) flexible work schedules;

24 (iii) phased retirement;

25 (iv) reemployed annuitants;

- 1 (v) part-time work;
- 2 (vi) job sharing;
- 3 (vii) parental leave benefits and
- 4 childcare assistance;
- 5 (viii) domestic partner benefits;
- 6 (ix) other workplace flexibilities; or
- 7 (x) any combination of the items de-
- 8 scribed in clauses (i) through (ix).

9 (C) RECRUITMENT AND RETENTION

10 PLAN.—The Office shall submit a recruitment

11 and retention plan that includes, to the extent

12 practicable, provisions relating to—

- 13 (i) the steps necessary to target highly
- 14 qualified applicant pools with diverse back-
- 15 grounds;
- 16 (ii) streamlined employment applica-
- 17 tion processes;
- 18 (iii) the provision of timely notifica-
- 19 tion of the status of employment applica-
- 20 tions to applicants; and
- 21 (iv) the collection of information to
- 22 measure indicators of hiring effectiveness.

23 (c) EXPIRATION.—The reporting requirement under

24 subsection (b) shall terminate 5 years after the date of

25 enactment of this Act.

1 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion may be construed to affect—

3 (1) a collective bargaining agreement, as that
4 term is defined in section 7103(a)(8) of title 5,
5 United States Code, that is in effect on the date of
6 enactment of this Act; or

7 (2) the rights of employees under chapter 71 of
8 title 5, United States Code.

9 **Subtitle C—Additional Board of**
10 **Governors Authority for Certain**
11 **Nonbank Financial Companies**
12 **and Bank Holding Companies**

13 **SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK**
14 **FINANCIAL COMPANIES BY THE BOARD OF**
15 **GOVERNORS.**

16 (a) REPORTS.—

17 (1) IN GENERAL.—The Board of Governors
18 may require each nonbank financial company super-
19 vised by the Board of Governors, and any subsidiary
20 thereof, to submit reports under oath, to keep the
21 Board of Governors informed as to—

22 (A) the financial condition of the company
23 or subsidiary, systems of the company or sub-
24 sidiary for monitoring and controlling financial,
25 operating, and other risks, and the extent to

1 which the activities and operations of the com-
2 pany or subsidiary pose a threat to the financial
3 stability of the United States; and

4 (B) compliance by the company or sub-
5 sidiary with the requirements of this subtitle.

6 (2) USE OF EXISTING REPORTS AND INFORMA-
7 TION.—In carrying out subsection (a), the Board of
8 Governors shall, to the fullest extent possible, use—

9 (A) reports and supervisory information
10 that a nonbank financial company or subsidiary
11 thereof has been required to provide to other
12 Federal or State regulatory agencies;

13 (B) information otherwise obtainable from
14 Federal or State regulatory agencies;

15 (C) information that is otherwise required
16 to be reported publicly; and

17 (D) externally audited financial statements
18 of such company or subsidiary.

19 (3) AVAILABILITY.—Upon the request of the
20 Board of Governors, a nonbank financial company
21 supervised by the Board of Governors, or a sub-
22 sidiary thereof, shall promptly provide to the Board
23 of Governors any information described in para-
24 graph (2).

25 (b) EXAMINATIONS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the Board of Governors may examine any nonbank
3 financial company supervised by the Board of Gov-
4 ernors and any subsidiary of such company, to in-
5 form the Board of Governors of—

6 (A) the nature of the operations and finan-
7 cial condition of the company and such sub-
8 sidiary;

9 (B) the financial, operational, and other
10 risks within the company that may pose a
11 threat to the safety and soundness of such com-
12 pany or to the financial stability of the United
13 States;

14 (C) the systems for monitoring and con-
15 trolling such risks; and

16 (D) compliance by the company with the
17 requirements of this subtitle.

18 (2) USE OF EXAMINATION REPORTS AND IN-
19 FORMATION.—For purposes of this subsection, the
20 Board of Governors shall, to the fullest extent pos-
21 sible, rely on reports of examination of any deposi-
22 tory institution subsidiary or functionally regulated
23 subsidiary made by the primary financial regulatory
24 agency for that subsidiary, and on information de-
25 scribed in subsection (a)(2).

1 (c) COORDINATION WITH PRIMARY FINANCIAL REG-
2 ULATORY AGENCY.—The Board of Governors shall—

3 (1) provide to the primary financial regulatory
4 agency for any company or subsidiary, reasonable
5 notice before requiring a report, requesting informa-
6 tion, or commencing an examination of such sub-
7 sidiary under this section; and

8 (2) avoid duplication of examination activities,
9 reporting requirements, and requests for informa-
10 tion, to the fullest extent possible.

11 **SEC. 162. ENFORCEMENT.**

12 (a) IN GENERAL.—Except as provided in subsection
13 (b), a nonbank financial company supervised by the Board
14 of Governors and any subsidiaries of such company (other
15 than any depository institution subsidiary) shall be subject
16 to the provisions of subsections (b) through (n) of section
17 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818),
18 in the same manner and to the same extent as if the com-
19 pany were a bank holding company, as provided in section
20 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C.
21 1818(b)(3)).

22 (b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY
23 REGULATED SUBSIDIARIES.—

24 (1) REFERRAL.—If the Board of Governors de-
25 termines that a condition, practice, or activity of a

1 depository institution subsidiary or functionally reg-
2 ulated subsidiary of a nonbank financial company
3 supervised by the Board of Governors does not com-
4 ply with the regulations or orders prescribed by the
5 Board of Governors under this Act, or otherwise
6 poses a threat to the financial stability of the United
7 States, the Board of Governors may recommend, in
8 writing, to the primary financial regulatory agency
9 for the subsidiary that such agency initiate a super-
10 visory action or enforcement proceeding. The rec-
11 ommendation shall be accompanied by a written ex-
12 planation of the concerns giving rise to the rec-
13 ommendation.

14 (2) BACK-UP AUTHORITY OF THE BOARD OF
15 GOVERNORS.—If, during the 60-day period begin-
16 ning on the date on which the primary financial reg-
17 ulatory agency receives a recommendation under
18 paragraph (1), the primary financial regulatory
19 agency does not take supervisory or enforcement ac-
20 tion against a subsidiary that is acceptable to the
21 Board of Governors, the Board of Governors (upon
22 a vote of its members) may take the recommended
23 supervisory or enforcement action, as if the sub-
24 sidiary were a bank holding company subject to su-
25 pervision by the Board of Governors.

1 **SEC. 163. 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 nonbank financial company supervised by the
6 Board of Governors shall be deemed to be, and shall be
7 treated as, a bank holding company.

8 (b) ACQUISITION OF NONBANK COMPANIES.—

9 (1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—
10 Notwithstanding section 4(k)(6)(B) of the Bank
11 Holding Company Act of 1956 (12 U.S.C.
12 1843(k)(6)(B)), a bank holding company with total
13 consolidated assets equal to or greater than
14 \$50,000,000,000 or a nonbank financial company
15 supervised by the Board of Governors shall not ac-
16 quire direct or indirect ownership or control of any
17 voting shares of any company (other than an insured
18 depository institution) that is engaged in activities
19 described in section 4(k) of the Bank Holding Com-
20 pany Act of 1956 having total consolidated assets of
21 \$10,000,000,000 or more, without providing written
22 notice to the Board of Governors in advance of the
23 transaction.

24 (2) EXEMPTIONS.—The prior notice require-
25 ment in paragraph (1) shall not apply with regard
26 to the acquisition of shares that would qualify for

1 the exemptions in section 4(c) or section 4(k)(4)(E)
2 of the Bank Holding Company Act of 1956 (12
3 U.S.C. 1843(c) and (k)(4)(E)).

4 (3) NOTICE PROCEDURES.—The notice proce-
5 dures set forth in section 4(j)(1) of the Bank Hold-
6 ing Company Act of 1956 (12 U.S.C. 1843(j)(1)),
7 without regard to section 4(j)(3) of that Act, shall
8 apply to an acquisition of any company (other than
9 an insured depository institution) by a bank holding
10 company with total consolidated assets equal to or
11 greater than \$50,000,000,000 or a nonbank finan-
12 cial company supervised by the Board of Governors,
13 as described in paragraph (1), including any such
14 company engaged in activities described in section
15 4(k) of that Act.

16 (4) STANDARDS FOR REVIEW.—In addition to
17 the standards provided in section 4(j)(2) of the
18 Bank Holding Company Act of 1956 (12 U.S.C.
19 1843(j)(2)), the Board of Governors shall consider
20 the extent to which the proposed acquisition would
21 result in greater or more concentrated risks to global
22 or United States financial stability or the United
23 States economy.

24 (5) HART-SCOTT-RODINO FILING REQUIRE-
25 MENT.—Solely for purposes of section 7A(c)(8) of

1 the Clayton Act (15 U.S.C. 18a(c)(8)), the trans-
2 actions subject to the requirements of paragraph (1)
3 shall be treated as if Board of Governors approval
4 is not required.

5 **SEC. 164. PROHIBITION AGAINST MANAGEMENT INTER-**
6 **LOCKS BETWEEN CERTAIN FINANCIAL COM-**
7 **PANIES.**

8 A nonbank financial company supervised by the
9 Board of Governors shall be treated as a bank holding
10 company for purposes of the Depository Institutions Man-
11 agement Interlocks Act (12 U.S.C. 3201 et seq.), except
12 that the Board of Governors shall not exercise the author-
13 ity provided in section 7 of that Act (12 U.S.C. 3207)
14 to permit service by a management official of a nonbank
15 financial company supervised by the Board of Governors
16 as a management official of any bank holding company
17 with total consolidated assets equal to or greater than
18 \$50,000,000,000, or other nonaffiliated nonbank financial
19 company supervised by the Board of Governors (other
20 than to provide a temporary exemption for interlocks re-
21 sulting from a merger, acquisition, or consolidation).

1 **SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL**
2 **STANDARDS FOR NONBANK FINANCIAL COM-**
3 **PANIES SUPERVISED BY THE BOARD OF GOV-**
4 **ERNORS AND CERTAIN BANK HOLDING COM-**
5 **PANIES.**

6 (a) IN GENERAL.—

7 (1) PURPOSE.—In order to prevent or mitigate
8 risks to the financial stability of the United States
9 that could arise from the material financial distress
10 or failure of large, interconnected financial institu-
11 tions, the Board of Governors shall, on its own or
12 pursuant to recommendations by the Council under
13 section 115, establish prudential standards and re-
14 porting and disclosure requirements applicable to
15 nonbank financial companies supervised by the
16 Board of Governors and large, interconnected bank
17 holding companies that—

18 (A) are more stringent than the standards
19 and requirements applicable to nonbank finan-
20 cial companies and bank holding companies
21 that do not present similar risks to the financial
22 stability of the United States; and

23 (B) increase in stringency, based on the
24 considerations identified in subsection (b)(3).

25 (2) LIMITATION ON BANK HOLDING COMPA-
26 NIES.—Any standards established under subsections

1 (b) through (f) shall not apply to any bank holding
2 company with total consolidated assets of less than
3 \$50,000,000,000, but the Board of Governors may
4 establish an asset threshold greater than
5 \$50,000,000,000 for the applicability of any par-
6 ticular standard under subsections (b) through (f).

7 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

8 (1) IN GENERAL.—

9 (A) REQUIRED STANDARDS.—The Board
10 of Governors shall, by regulation or order, es-
11 tablish prudential standards for nonbank finan-
12 cial companies supervised by the Board of Gov-
13 ernors and bank holding companies described in
14 subsection (a), that shall include—

- 15 (i) risk-based capital requirements;
16 (ii) leverage limits;
17 (iii) liquidity requirements;
18 (iv) resolution plan and credit expo-
19 sure report requirements; and
20 (v) concentration limits.

21 (B) ADDITIONAL STANDARDS AUTHOR-
22 IZED.—The Board of Governors may, by regu-
23 lation or order, establish prudential standards
24 for nonbank financial companies supervised by
25 the Board of Governors and bank holding com-

1 panies described in subsection (a), that in-
2 clude—

- 3 (i) a contingent capital requirement;
4 (ii) enhanced public disclosures; and
5 (iii) overall risk management require-
6 ments.

7 (2) STANDARDS FOR FOREIGN FINANCIAL COM-
8 PANIES.—In applying the standards set forth in
9 paragraph (1) to any foreign nonbank financial com-
10 pany supervised by the Board of Governors or for-
11 eign-based bank holding company, the Board of Gov-
12 ernors shall—

13 (A) give due regard to the principles of na-
14 tional treatment and equality of competitive op-
15 portunity; and

16 (B) take into account the extent to which
17 the foreign financial company is subject on a
18 consolidated basis to home country standards
19 that are comparable to those applied to finan-
20 cial companies in the United States.

21 (3) CONSIDERATIONS.—In prescribing pruden-
22 tial standards under paragraph (1), the Board of
23 Governors shall—

24 (A) take into account differences among
25 nonbank financial companies supervised by the

1 Board of Governors and bank holding compa-
2 nies described in subsection (a), based on—

3 (i) the factors described in subsections
4 (a) and (b) of section 113;

5 (ii) whether the company owns an in-
6 sured depository institution;

7 (iii) nonfinancial activities and affili-
8 ations of the company; and

9 (iv) any other factors that the Board
10 of Governors determines appropriate;

11 (B) to the extent possible, ensure that
12 small changes in the factors listed in sub-
13 sections (a) and (b) of section 113 would not
14 result in sharp, discontinuous changes in the
15 prudential standards established under para-
16 graph (1) of this subsection; and

17 (C) take into account any recommenda-
18 tions of the Council under section 115.

19 (4) REPORT.—The Board of Governors shall
20 submit an annual report to Congress regarding the
21 implementation of the prudential standards required
22 pursuant to paragraph (1), including the use of such
23 standards to mitigate risks to the financial stability
24 of the United States.

25 (c) CONTINGENT CAPITAL.—

1 (1) IN GENERAL.—Subsequent to submission by
2 the Council of a report to Congress under section
3 115(c), the Board of Governors may promulgate reg-
4 ulations that require each nonbank financial com-
5 pany supervised by the Board of Governors and
6 bank holding companies described in subsection (a)
7 to maintain a minimum amount of long-term hybrid
8 debt that is convertible to equity in times of finan-
9 cial stress.

10 (2) FACTORS TO CONSIDER.—In establishing
11 regulations under this subsection, the Board of Gov-
12 ernors shall consider—

13 (A) the results of the study undertaken by
14 the Council, and any recommendations of the
15 Council, under section 115(c);

16 (B) an appropriate transition period for
17 implementation of a conversion under this sub-
18 section;

19 (C) the factors described in subsection
20 (b)(3)(A);

21 (D) capital requirements applicable to the
22 nonbank financial company supervised by the
23 Board of Governors or a bank holding company
24 described in subsection (a), and subsidiaries
25 thereof; and

1 (E) any other factor that the Board of
2 Governors deems appropriate.

3 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
4 PORTS.—

5 (1) RESOLUTION PLAN.—The Board of Gov-
6 ernors shall require each nonbank financial company
7 supervised by the Board of Governors and bank
8 holding companies described in subsection (a) to re-
9 port periodically to the Board of Governors, the
10 Council, and the Corporation the plan of such com-
11 pany for rapid and orderly resolution in the event of
12 material financial distress or failure.

13 (2) CREDIT EXPOSURE REPORT.—The Board of
14 Governors shall require each nonbank financial com-
15 pany supervised by the Board of Governors and
16 bank holding companies described in subsection (a)
17 to report periodically to the Board of Governors, the
18 Council, and the Corporation on—

19 (A) the nature and extent to which the
20 company has credit exposure to other signifi-
21 cant nonbank financial companies and signifi-
22 cant bank holding companies; and

23 (B) the nature and extent to which other
24 significant nonbank financial companies and

1 significant bank holding companies have credit
2 exposure to that company.

3 (3) REVIEW.—The Board of Governors and the
4 Corporation shall review the information provided in
5 accordance with this subsection by each nonbank fi-
6 nancial company supervised by the Board of Gov-
7 ernors and bank holding company described in sub-
8 section (a).

9 (4) NOTICE OF DEFICIENCIES.—If the Board of
10 Governors and the Corporation jointly determine,
11 based on their review under paragraph (3), that the
12 resolution plan of a nonbank financial company su-
13 pervised by the Board of Governors or a bank hold-
14 ing company described in subsection (a) is not cred-
15 ible or would not facilitate an orderly resolution of
16 the company under title 11, United States Code—

17 (A) the Board of Governors and the Cor-
18 poration shall notify the company, as applica-
19 ble, of the deficiencies in the resolution plan;
20 and

21 (B) the company shall resubmit the resolu-
22 tion plan within a time frame determined by the
23 Board of Governors and the Corporation, with
24 revisions demonstrating that the plan is credible
25 and would result in an orderly resolution under

1 title 11, United States Code, including any pro-
2 posed changes in business operations and cor-
3 porate structure to facilitate implementation of
4 the plan.

5 (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

6 (A) IN GENERAL.—If a nonbank financial
7 company supervised by the Board of Governors
8 or a bank holding company described in sub-
9 section (a) fails to timely resubmit the resolu-
10 tion plan as required under paragraph (4), with
11 such revisions as are required under subpara-
12 graph (B), the Board of Governors and the
13 Corporation may jointly impose more stringent
14 capital, leverage, or liquidity requirements, or
15 restrictions on the growth, activities, or oper-
16 ations of the company, or any subsidiary there-
17 of, until such time as the company resubmits a
18 plan that remedies the deficiencies.

19 (B) DIVESTITURE.—The Board of Gov-
20 ernors and the Corporation, in consultation
21 with the Council, may direct a nonbank finan-
22 cial company supervised by the Board of Gov-
23 ernors or a bank holding company described in
24 subsection (a), by order, to divest certain assets
25 or operations identified by the Board of Gov-

1 ernors and the Corporation, to facilitate an or-
2 derly resolution of such company under title 11,
3 United States Code, in the event of the failure
4 of such company, in any case in which—

5 (i) the Board of Governors and the
6 Corporation have jointly imposed more
7 stringent requirements on the company
8 pursuant to subparagraph (A); and

9 (ii) the company has failed, within the
10 2-year period beginning on the date of the
11 imposition of such requirements under sub-
12 paragraph (A), to resubmit the resolution
13 plan with such revisions as were required
14 under paragraph (4)(B).

15 (6) RULES.—Not later than 18 months after
16 the date of enactment of this Act, the Board of Gov-
17 ernors and the Corporation shall jointly issue final
18 rules implementing this subsection.

19 (e) CONCENTRATION LIMITS.—

20 (1) STANDARDS.—In order to limit the risks
21 that the failure of any individual company could
22 pose to a nonbank financial company supervised by
23 the Board of Governors or a bank holding company
24 described in subsection (a), the Board of Governors,

1 by regulation, shall prescribe standards that limit
2 such risks.

3 (2) LIMITATION ON CREDIT EXPOSURE.—The
4 regulations prescribed by the Board of Governors
5 under paragraph (1) shall prohibit each nonbank fi-
6 nancial company supervised by the Board of Gov-
7 ernors and bank holding company described in sub-
8 section (a) from having credit exposure to any unaf-
9 filiated company that exceeds 25 percent of the cap-
10 ital stock and surplus (or such lower amount as the
11 Board of Governors may determine by regulation to
12 be necessary to mitigate risks to the financial sta-
13 bility of the United States) of the company.

14 (3) CREDIT EXPOSURE.—For purposes of para-
15 graph (2), “credit exposure” to a company means—

16 (A) all extensions of credit to the company,
17 including loans, deposits, and lines of credit;

18 (B) all repurchase agreements and reverse
19 repurchase agreements with the company, and
20 all securities borrowing and lending trans-
21 actions with the company, to the extent that
22 such transactions create credit exposure for the
23 nonbank financial company supervised by the
24 Board of Governors or a bank holding company
25 described in subsection (a);

1 (C) all guarantees, acceptances, or letters
2 of credit (including endorsement or standby let-
3 ters of credit) issued on behalf of the company;

4 (D) all purchases of or investment in secu-
5 rities issued by the company;

6 (E) counterparty credit exposure to the
7 company in connection with a derivative trans-
8 action between the nonbank financial company
9 supervised by the Board of Governors or a bank
10 holding company described in subsection (a)
11 and the company; and

12 (F) any other similar transactions that the
13 Board of Governors, by regulation, determines
14 to be a credit exposure for purposes of this sec-
15 tion.

16 (4) **ATTRIBUTION RULE.**—For purposes of this
17 subsection, any transaction by a nonbank financial
18 company supervised by the Board of Governors or a
19 bank holding company described in subsection (a)
20 with any person is a transaction with a company, to
21 the extent that the proceeds of the transaction are
22 used for the benefit of, or transferred to, that com-
23 pany.

24 (5) **RULEMAKING.**—The Board of Governors
25 may issue such regulations and orders, including

1 definitions consistent with this section, as may be
2 necessary to administer and carry out this sub-
3 section.

4 (6) EXEMPTIONS.—This subsection shall not
5 apply to any Federal home loan bank. The Board of
6 Governors may, by regulation or order, exempt
7 transactions, in whole or in part, from the definition
8 of the term “credit exposure” for purposes of this
9 subsection, if the Board of Governors finds that the
10 exemption is in the public interest and is consistent
11 with the purpose of this subsection.

12 (7) TRANSITION PERIOD.—

13 (A) IN GENERAL.—This subsection and
14 any regulations and orders of the Board of Gov-
15 ernors under this subsection shall not be effec-
16 tive until 3 years after the date of enactment
17 of this Act.

18 (B) EXTENSION AUTHORIZED.—The
19 Board of Governors may extend the period
20 specified in subparagraph (A) for not longer
21 than an additional 2 years.

22 (f) ENHANCED PUBLIC DISCLOSURES.—The Board
23 of Governors may prescribe, by regulation, periodic public
24 disclosures by nonbank financial companies supervised by
25 the Board of Governors and bank holding companies de-

1 scribed in subsection (a) in order to support market eval-
2 uation of the risk profile, capital adequacy, and risk man-
3 agement capabilities thereof.

4 (g) RISK COMMITTEE.—

5 (1) NONBANK FINANCIAL COMPANIES SUPER-
6 VISED BY THE BOARD OF GOVERNORS.—The Board
7 of Governors shall require each nonbank financial
8 company supervised by the Board of Governors that
9 is a publicly traded company to establish a risk com-
10 mittee, as set forth in paragraph (3), not later than
11 1 year after the date of receipt of a notice of final
12 determination under section 113(d)(3) with respect
13 to such nonbank financial company supervised by
14 the Board of Governors.

15 (2) CERTAIN BANK HOLDING COMPANIES.—

16 (A) MANDATORY REGULATIONS.—The
17 Board of Governors shall issue regulations re-
18 quiring each bank holding company that is a
19 publicly traded company and that has total con-
20 solidated assets of not less than
21 \$10,000,000,000 to establish a risk committee,
22 as set forth in paragraph (3).

23 (B) PERMISSIVE REGULATIONS.—The
24 Board of Governors may require each bank
25 holding company that is a publicly traded com-

1 pany and that has total consolidated assets of
2 less than \$10,000,000,000 to establish a risk
3 committee, as set forth in paragraph (3), as de-
4 termined necessary or appropriate by the Board
5 of Governors to promote sound risk manage-
6 ment practices.

7 (3) RISK COMMITTEE.—A risk committee re-
8 quired by this subsection shall—

9 (A) be responsible for the oversight of the
10 enterprise-wide risk management practices of
11 the nonbank financial company supervised by
12 the Board of Governors or bank holding com-
13 pany described in subsection (a), as applicable;

14 (B) include such number of independent
15 directors as the Board of Governors may deter-
16 mine appropriate, based on the nature of oper-
17 ations, size of assets, and other appropriate cri-
18 teria related to the nonbank financial company
19 supervised by the Board of Governors or a bank
20 holding company described in subsection (a), as
21 applicable; and

22 (C) include at least 1 risk management ex-
23 pert having experience in identifying, assessing,
24 and managing risk exposures of large, complex
25 firms.

1 (4) RULEMAKING.—The Board of Governors
2 shall issue final rules to carry out this subsection,
3 not later than 1 year after the transfer date, to take
4 effect not later than 15 months after the transfer
5 date.

6 (h) STRESS TESTS.—The Board of Governors shall
7 conduct analyses in which nonbank financial companies
8 supervised by the Board of Governors and bank holding
9 companies described in subsection (a) are subject to eval-
10 uation of whether the companies have the capital, on a
11 total consolidated basis, necessary to absorb losses as a
12 result of adverse economic conditions, and shall require
13 such companies to update their resolution plans required
14 under subsection (d)(1), as the Board of Governors deter-
15 mines appropriate, based on the results of the analyses.
16 The Board of Governors may develop and apply such other
17 analytic techniques as are necessary to identify, measure,
18 and monitor risks to the financial stability of the United
19 States.

20 **SEC. 166. EARLY REMEDIATION REQUIREMENTS.**

21 (a) IN GENERAL.—The Board of Governors, in con-
22 sultation with the Council and the Corporation, shall pre-
23 scribe regulations establishing requirements to provide for
24 the early remediation of financial distress of a nonbank
25 financial company supervised by the Board of Governors

1 or a bank holding company described in section 165(a),
2 except that nothing in this subsection authorizes the provi-
3 sion of financial assistance from the Federal Government.

4 (b) PURPOSE OF THE EARLY REMEDIATION RE-
5 QUIREMENTS.—The purpose of the early remediation re-
6 quirements under subsection (a) shall be to establish a se-
7 ries of specific remedial actions to be taken by a nonbank
8 financial company supervised by the Board of Governors
9 or a bank holding company described in section 165(a)
10 that is experiencing increasing financial distress, in order
11 to minimize the probability that the company will become
12 insolvent and the potential harm of such insolvency to the
13 financial stability of the United States.

14 (c) REMEDIATION REQUIREMENTS.—The regulations
15 prescribed by the Board of Governors under subsection (a)
16 shall—

17 (1) define measures of the financial condition of
18 the company, including regulatory capital, liquidity
19 measures, and other forward-looking indicators; and

20 (2) establish requirements that increase in
21 stringency as the financial condition of the company
22 declines, including—

23 (A) requirements in the initial stages of fi-
24 nancial decline, including limits on capital dis-
25 tributions, acquisitions, and asset growth; and

1 (B) requirements at later stages of finan-
2 cial decline, including a capital restoration plan
3 and capital-raising requirements, limits on
4 transactions with affiliates, management
5 changes, and asset sales.

6 **SEC. 167. AFFILIATIONS.**

7 (a) AFFILIATIONS.—Nothing in this subtitle shall be
8 construed to require a nonbank financial company super-
9 vised by the Board of Governors, or a company that con-
10 trols a nonbank financial company supervised by the
11 Board of Governors, to conform the activities thereof to
12 the requirements of section 4 of the Bank Holding Com-
13 pany Act of 1956 (12 U.S.C. 1843).

14 (b) REQUIREMENT.—

15 (1) IN GENERAL.—If a nonbank financial com-
16 pany supervised by the Board of Governors conducts
17 activities other than those that are determined to be
18 financial in nature or incidental thereto under sec-
19 tion 4(k) of the Bank Holding Company Act of
20 1956, the Board of Governors may require such
21 company to establish and conduct all or a portion of
22 such activities that are determined to be financial in
23 nature or incidental thereto in or through an inter-
24 mediate holding company established pursuant to
25 regulation of the Board of Governors, not later than

1 90 days (or such longer period as the Board of Gov-
2 ernors may deem appropriate) after the date on
3 which the nonbank financial company supervised by
4 the Board of Governors is notified of the determina-
5 tion of the Board of Governors under this section.

6 (2) INTERNAL FINANCIAL ACTIVITIES.—For
7 purposes of this subsection, activities that are deter-
8 mined to be financial in nature or incidental thereto
9 under section 4(k) of the Bank Holding Company
10 Act of 1956, as described in paragraph (1), shall not
11 include internal financial activities conducted for a
12 nonbank financial company supervised by the Board
13 of Governors or any affiliate, including internal
14 treasury, investment, and employee benefit func-
15 tions. With respect to any internal financial activity
16 of such company during the year prior to the date
17 of enactment of this Act, such company may con-
18 tinue to engage in such activity as long as at least
19 $\frac{2}{3}$ of the assets or $\frac{2}{3}$ of the revenues generated
20 from the activity are from or attributable to such
21 company, subject to review by the Board of Gov-
22 ernors, to determine whether engaging in such activ-
23 ity presents undue risk to such company or to the
24 financial stability of the United States.

25 (c) REGULATIONS.—The Board of Governors—

1 (1) shall promulgate regulations to establish the
2 criteria for determining whether to require a
3 nonbank financial company supervised by the Board
4 of Governors to establish an intermediate holding
5 company under subsection (a); and

6 (2) may promulgate regulations to establish any
7 restrictions or limitations on transactions between
8 an intermediate holding company or a nonbank fi-
9 nancial company supervised by the Board of Gov-
10 ernors and its affiliates, as necessary to prevent un-
11 safe and unsound practices in connection with trans-
12 actions between such company, or any subsidiary
13 thereof, and its parent company or affiliates that are
14 not subsidiaries of such company, except that such
15 regulations shall not restrict or limit any transaction
16 in connection with the bona fide acquisition or lease
17 by an unaffiliated person of assets, goods, or serv-
18 ices.

19 **SEC. 168. REGULATIONS.**

20 Except as otherwise specified in this subtitle, not
21 later than 18 months after the transfer date, the Board
22 of Governors shall issue final regulations to implement
23 this subtitle and the amendments made by this subtitle.

1 **SEC. 169. AVOIDING DUPLICATION.**

2 The Board of Governors shall take any action that
3 the Board of Governors deems appropriate to avoid impos-
4 ing requirements under this subtitle that are duplicative
5 of requirements applicable to bank holding companies and
6 nonbank financial companies under other provisions of
7 law.

8 **SEC. 170. SAFE HARBOR.**

9 (a) REGULATIONS.—The Board of Governors shall
10 promulgate regulations on behalf of, and in consultation
11 with, the Council setting forth the criteria for exempting
12 certain types or classes of U.S. nonbank financial compa-
13 nies or foreign nonbank financial companies from super-
14 vision by the Board of Governors.

15 (b) CONSIDERATIONS.—In developing the criteria
16 under subsection (a), the Board of Governors shall take
17 into account the factors for consideration described in sub-
18 sections (a) and (b) of section 113 in determining whether
19 a U.S. nonbank financial company or foreign nonbank fi-
20 nancial company shall be supervised by the Board of Gov-
21 ernors.

22 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to require supervision by the Board
24 of Governors of a U.S. nonbank financial company or for-
25 eign nonbank financial company, if such company does not

1 meet the criteria for exemption established under sub-
2 section (a).

3 (d) REVISIONS.—

4 (1) IN GENERAL.—The Board of Governors
5 shall, in consultation with the Council, review the
6 regulations promulgated under subsection (a), not
7 less frequently than every 5 years, and based upon
8 the review, the Board of Governors may revise such
9 regulations on behalf of, and in consultation with,
10 the Council to update as necessary the criteria set
11 forth in such regulations.

12 (2) TRANSITION PERIOD.—No revisions under
13 paragraph (1) shall take effect before the end of the
14 2-year period after the date of publication of such
15 revisions in final form.

16 (e) REPORT.—The Chairperson of the Board of Gov-
17 ernors and the Chairperson of the Council shall submit
18 a joint report to the Committee on Banking, Housing, and
19 Urban Affairs of the Senate and the Committee on Finan-
20 cial Services of the House of Representatives not later
21 than 30 days after the date of the issuance in final form
22 of regulations under subsection (a), or any subsequent re-
23 vision to such regulations under subsection (d), as applica-
24 ble. Such report shall include, at a minimum, the rationale

1 for exemption and empirical evidence to support the cri-
2 teria for exemption.

3 **SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIRE-**
4 **MENTS.**

5 (a) DEFINITIONS.—For purposes of this section, the
6 following definitions shall apply:

7 (1) GENERALLY APPLICABLE LEVERAGE CAP-
8 ITAL REQUIREMENTS.—The term “generally applica-
9 ble leverage capital requirements” means—

10 (A) the minimum ratios of tier 1 capital to
11 average total assets, as established by the ap-
12 propriate Federal banking agencies to apply to
13 insured depository institutions under the
14 prompt corrective action regulations imple-
15 menting section 38 of the Federal Deposit In-
16 surance Act, regardless of total consolidated
17 asset size or foreign financial exposure; and

18 (B) includes the regulatory capital compo-
19 nents in the numerator of that capital require-
20 ment, average total assets in the denominator
21 of that capital requirement, and the required
22 ratio of the numerator to the denominator.

23 (2) GENERALLY APPLICABLE RISK-BASED CAP-
24 ITAL REQUIREMENTS.—The term “generally applica-
25 ble risk-based capital requirements” means—

1 (A) the risk-based capital requirements, as
2 established by the appropriate Federal banking
3 agencies to apply to insured depository institu-
4 tions under the prompt corrective action regula-
5 tions implementing section 38 of the Federal
6 Deposit Insurance Act, regardless of total con-
7 solidated asset size or foreign financial expo-
8 sure; and

9 (B) includes the regulatory capital compo-
10 nents in the numerator of those capital require-
11 ments, the risk-weighted assets in the denomi-
12 nator of those capital requirements, and the re-
13 quired ratio of the numerator to the denomi-
14 nator.

15 (b) MINIMUM CAPITAL REQUIREMENTS.—

16 (1) MINIMUM LEVERAGE CAPITAL REQUIRE-
17 MENTS.—The appropriate Federal banking agencies
18 shall establish minimum leverage capital require-
19 ments on a consolidated basis for insured depository
20 institutions, depository institution holding compa-
21 nies, and nonbank financial companies identified
22 under section 113. The minimum leverage capital re-
23 quirements established under this paragraph shall
24 not be less than the generally applicable leverage
25 capital requirements, which shall serve as a floor for

1 any capital requirements that the agency may re-
2 quire, nor quantitatively lower than the generally ap-
3 plicable leverage capital requirements that were in
4 effect for insured depository institutions as of the
5 date of enactment of this Act.

6 (2) MINIMUM RISK-BASED CAPITAL REQUIRE-
7 MENTS.—The appropriate Federal banking agencies
8 shall establish minimum risk-based capital require-
9 ments on a consolidated basis for insured depository
10 institutions, depository institution holding compa-
11 nies, and nonbank financial companies identified
12 under section 113. The minimum risk-based capital
13 requirements established under this paragraph shall
14 not be less than the generally applicable risk-based
15 capital requirements, which shall serve as a floor for
16 any capital requirements that the agency may re-
17 quire, nor quantitatively lower than the generally ap-
18 plicable risk-based capital requirements that were in
19 effect for insured depository institutions as of the
20 date of enactment of this Act.

21 (3) CAPITAL REQUIREMENTS TO ADDRESS AC-
22 TIVITIES THAT POSE RISKS TO THE FINANCIAL SYS-
23 TEM.—

24 (A) IN GENERAL.—Subject to the rec-
25 ommendations of the Council, in accordance

1 with section 120, the Federal banking agencies
2 shall develop capital requirements applicable to
3 all institutions covered by this section that ad-
4 dress the risks that the activities of such insti-
5 tutions pose, not only to the institution engag-
6 ing in the activity, but to other public and pri-
7 vate stakeholders in the event of adverse per-
8 formance, disruption, or failure of the institu-
9 tion or the activity.

10 (B) CONTENT.—Such rules shall address,
11 at a minimum, the risks arising from—

12 (i) significant volumes of activity in
13 derivatives, securitized products purchased
14 and sold, financial guarantees purchased
15 and sold, securities borrowing and lending,
16 and repurchase agreements and reverse re-
17 purchase agreements;

18 (ii) concentrations in assets for which
19 the values presented in financial reports
20 are based on models rather than historical
21 cost or prices deriving from deep and liq-
22 uid 2-way markets; and

23 (iii) concentrations in market share
24 for any activity that would substantially

1 disrupt financial markets if the institution
2 is forced to unexpectedly cease the activity.

3 **TITLE II—ORDERLY**
4 **LIQUIDATION AUTHORITY**

5 **SEC. 201. DEFINITIONS.**

6 (a) IN GENERAL.—In this title, the following defini-
7 tions shall apply:

8 (1) ADMINISTRATIVE EXPENSES OF THE RE-
9 CEIVER.—The term “administrative expenses of the
10 receiver” includes—

11 (A) the actual, necessary costs and ex-
12 penses incurred by the Corporation as receiver
13 for a covered financial company in liquidating a
14 covered financial company; and

15 (B) any obligations that the Corporation
16 as receiver for a covered financial company de-
17 termines are necessary and appropriate to fa-
18 cilitate the smooth and orderly liquidation of
19 the covered financial company.

20 (2) BANKRUPTCY CODE.—The term “Bank-
21 ruptcy Code” means title 11, United States Code.

22 (3) BRIDGE FINANCIAL COMPANY.—The term
23 “bridge financial company” means a new financial
24 company organized by the Corporation in accordance

1 with section 210(h) for the purpose of resolving a
2 covered financial company.

3 (4) CLAIM.—The term “claim” means any right
4 of payment, whether or not such right is reduced to
5 judgment, liquidated, unliquidated, fixed, contingent,
6 matured, unmatured, disputed, undisputed, legal, eq-
7 uitable, secured, or unsecured.

8 (5) COMPANY.—The term “company” has the
9 same meaning as in section 2(b) of the Bank Hold-
10 ing Company Act of 1956 (12 U.S.C. 1841(b)), ex-
11 cept that such term includes any company described
12 in paragraph (11), the majority of the securities of
13 which are owned by the United States or any State.

14 (6) COURT.—The term “Court” means the
15 United States District Court for the District of Co-
16 lumbia, unless the context otherwise requires.

17 (7) COVERED BROKER OR DEALER.—The term
18 “covered broker or dealer” means a covered financial
19 company that is a broker or dealer that—

20 (A) is registered with the Commission
21 under section 15(b) of the Securities Exchange
22 Act of 1934 (15 U.S.C. 78o(b)); and

23 (B) is a member of SIPC.

24 (8) COVERED FINANCIAL COMPANY.—The term
25 “covered financial company”—

1 (A) means a financial company for which
2 a determination has been made under section
3 203(b); and

4 (B) does not include an insured depository
5 institution.

6 (9) COVERED SUBSIDIARY.—The term “covered
7 subsidiary” means a subsidiary of a covered finan-
8 cial company, other than—

9 (A) an insured depository institution;

10 (B) an insurance company; or

11 (C) a covered broker or dealer.

12 (10) DEFINITIONS RELATING TO COVERED BRO-
13 KERS AND DEALERS.—The terms “customer”, “cus-
14 tomer name securities”, “customer property”, and
15 “net equity” in the context of a covered broker or
16 dealer, have the same meanings as in section 16 of
17 the Securities Investor Protection Act of 1970 (15
18 U.S.C. 78lll).

19 (11) FINANCIAL COMPANY.—The term “finan-
20 cial company” means any company that—

21 (A) is incorporated or organized under any
22 provision of Federal law or the laws of any
23 State;

24 (B) is—

1 (i) a bank holding company, as de-
2 fined in section 2(a) of the Bank Holding
3 Company Act of 1956 (12 U.S.C.
4 1841(a)), and including any company de-
5 scribed in paragraph (5);

6 (ii) a nonbank financial company su-
7 pervised by the Board of Governors;

8 (iii) any company that is predomi-
9 nantly engaged in activities that the Board
10 of Governors has determined are financial
11 in nature or incidental thereto for purposes
12 of section 4(k) of the Bank Holding Com-
13 pany Act of 1956 (12 U.S.C. 1843(k))
14 other than a company described in clause
15 (i) or (ii); or

16 (iv) any subsidiary of any company
17 described in any of clauses (i) through (iii)
18 that is predominantly engaged in activities
19 that the Board of Governors has deter-
20 mined are financial in nature or incidental
21 thereto for purposes of section 4(k) of the
22 Bank Holding Company Act of 1956 (12
23 U.S.C. 1843(k)) (other than a subsidiary
24 that is an insured depository institution or
25 an insurance company); and

1 (C) is not a Farm Credit System institu-
2 tion chartered under and subject to the provi-
3 sions of the Farm Credit Act of 1971, as
4 amended (12 U.S.C. 2001 et seq.), a govern-
5 mental entity, or a regulated entity, as defined
6 under section 1303(20) of the Federal Housing
7 Enterprises Financial Safety and Soundness
8 Act of 1992 (12 U.S.C. 4502(20)).

9 (12) FUND.—The term “Fund” means the Or-
10 derly Liquidation Fund established under section
11 210(n).

12 (13) INSURANCE COMPANY.—The term “insur-
13 ance company” means any entity that is—

14 (A) engaged in the business of insurance;

15 (B) subject to regulation by a State insur-
16 ance regulator; and

17 (C) covered by a State law that is designed
18 to specifically deal with the rehabilitation, liq-
19 uidation, or insolvency of an insurance com-
20 pany.

21 (14) NONBANK FINANCIAL COMPANY.—The
22 term “nonbank financial company” has the same
23 meaning as in section 102(a)(4)(C).

24 (15) NONBANK FINANCIAL COMPANY SUPER-
25 VISED BY THE BOARD OF GOVERNORS.—The term

1 “nonbank financial company supervised by the
2 Board of Governors” has the same meaning as in
3 section 102(a)(3)(D).

4 (16) SIPC.—The term “SIPC” means the Se-
5 curities Investor Protection Corporation.

6 (b) DEFINITIONAL CRITERIA.—For purpose of the
7 definition of the term “financial company” under sub-
8 section (a)(11), no company shall be deemed to be pre-
9 dominantly engaged in activities that the Board of Gov-
10 ernors has determined are financial in nature or incidental
11 thereto for purposes of section 4(k) of the Bank Holding
12 Company Act of 1956 (12 U.S.C. 1843(k)), if the consoli-
13 dated revenues of such company from such activities con-
14 stitute less than 85 percent of the total consolidated reve-
15 nues of such company, as the Corporation, in consultation
16 with the Secretary, shall establish by regulation. In deter-
17 mining whether a company is a financial company under
18 this title, the consolidated revenues derived from the own-
19 ership or control of a depository institution shall be in-
20 cluded.

21 **SEC. 202. JUDICIAL REVIEW.**

22 (a) COMMENCEMENT OF ORDERLY LIQUIDATION.—

23 (1) PETITION TO DISTRICT COURT.—

24 (A) DISTRICT COURT REVIEW.—

1 (i) PETITION TO DISTRICT COURT.—

2 Subsequent to a determination by the Sec-
3 retary under section 203 that a financial
4 company satisfies the criteria in section
5 203(b), the Secretary shall notify the Cor-
6 poration and the covered financial com-
7 pany. If the board of directors (or body
8 performing similar functions) of the cov-
9 ered financial company acquiesces or con-
10 sents to the appointment of the Corpora-
11 tion as receiver, the Secretary shall ap-
12 point the Corporation as receiver. If the
13 board of directors (or body performing
14 similar functions) of the covered financial
15 company does not acquiesce or consent to
16 the appointment of the Corporation as re-
17 ceiver, the Secretary shall petition the
18 United States District Court for the Dis-
19 trict of Columbia for an order authorizing
20 the Secretary to appoint the Corporation
21 as receiver.

22 (ii) FORM AND CONTENT OF
23 ORDER.—The Secretary shall present all
24 relevant findings and the recommendation
25 made pursuant to section 203(a) to the

1 Court. The petition shall be filed under
2 seal.

3 (iii) DETERMINATION.—On a strictly
4 confidential basis, and without any prior
5 public disclosure, the Court, after notice to
6 the covered financial company and a hear-
7 ing in which the covered financial company
8 may oppose the petition, shall determine
9 whether the determination of the Secretary
10 that the covered financial company is in
11 default or in danger of default and satis-
12 fies the definition of a financial company
13 under section 201(a)(11) is arbitrary and
14 capricious.

15 (iv) ISSUANCE OF ORDER.—If the
16 Court determines that the determination of
17 the Secretary that the covered financial
18 company is in default or in danger of de-
19 fault and satisfies the definition of a finan-
20 cial company under section 201(a)(11)—

21 (I) is not arbitrary and capri-
22 cious, the Court shall issue an order
23 immediately authorizing the Secretary
24 to appoint the Corporation as receiver
25 of the covered financial company; or

1 (II) is arbitrary and capricious,
2 the Court shall immediately provide to
3 the Secretary a written statement of
4 each reason supporting its determina-
5 tion, and afford the Secretary an im-
6 mediate opportunity to amend and
7 refile the petition under clause (i).

8 (v) PETITION GRANTED BY OPER-
9 ATION OF LAW.—If the Court does not
10 make a determination within 24 hours of
11 receipt of the petition—

12 (I) the petition shall be granted
13 by operation of law;

14 (II) the Secretary shall appoint
15 the Corporation as receiver; and

16 (III) liquidation under this title
17 shall automatically and without fur-
18 ther notice or action be commenced
19 and the Corporation may immediately
20 take all actions authorized under this
21 title.

22 (B) EFFECT OF DETERMINATION.—The
23 determination of the Court under subparagraph
24 (A) shall be final, and shall be subject to appeal
25 only in accordance with paragraph (2). The de-

1 board of directors, notwithstanding section
2 210(a)(1)(A)(i), not later than 30 days
3 after the date on which the decision of the
4 Court is rendered or deemed rendered
5 under this subsection.

6 (ii) CONDITION OF JURISDICTION.—
7 The Court of Appeals shall have jurisdic-
8 tion of an appeal by a covered financial
9 company only if the covered financial com-
10 pany did not acquiesce or consent to the
11 appointment of a receiver by the Secretary
12 under paragraph (1)(A).

13 (iii) EXPEDITION.—The Court of Ap-
14 peals shall consider any appeal under this
15 subparagraph on an expedited basis.

16 (iv) SCOPE OF REVIEW.—For an ap-
17 peal taken under this subparagraph, review
18 shall be limited to whether the determina-
19 tion of the Secretary that a covered finan-
20 cial company is in default or in danger of
21 default and satisfies the definition of a fi-
22 nancial company under section 201(a)(11)
23 is arbitrary and capricious.

24 (B) APPEAL TO THE SUPREME COURT.—

1 (i) IN GENERAL.—A petition for a
2 writ of certiorari to review a decision of
3 the Court of Appeals under subparagraph
4 (A) may be filed by the Secretary or the
5 covered financial company, through its
6 board of directors, notwithstanding section
7 210(a)(1)(A)(i), with the Supreme Court
8 of the United States, not later than 30
9 days after the date of the final decision of
10 the Court of Appeals, and the Supreme
11 Court shall have discretionary jurisdiction
12 to review such decision.

13 (ii) WRITTEN STATEMENT.—In the
14 event of a petition under clause (i), the
15 Court of Appeals shall immediately provide
16 for the record a written statement of each
17 reason for its decision.

18 (iii) EXPEDITION.—The Supreme
19 Court shall consider any petition under
20 this subparagraph on an expedited basis.

21 (iv) SCOPE OF REVIEW.—Review by
22 the Supreme Court under this subpara-
23 graph shall be limited to whether the de-
24 termination of the Secretary that the cov-
25 ered financial company is in default or in

1 danger of default and satisfies the defini-
2 tion of a financial company under section
3 201(a)(11) is arbitrary and capricious.

4 (b) ESTABLISHMENT AND TRANSMITTAL OF RULES
5 AND PROCEDURES.—

6 (1) IN GENERAL.—Not later than 6 months
7 after the date of enactment of this Act, the Court
8 shall establish such rules and procedures as may be
9 necessary to ensure the orderly conduct of pro-
10 ceedings, including rules and procedures to ensure
11 that the 24-hour deadline is met and that the Sec-
12 retary shall have an ongoing opportunity to amend
13 and refile petitions under subsection (a)(1).

14 (2) PUBLICATION OF RULES.—The rules and
15 procedures established under paragraph (1), and any
16 modifications of such rules and procedures, shall be
17 recorded and shall be transmitted to—

18 (A) the Committee on the Judiciary of the
19 Senate;

20 (B) the Committee on Banking, Housing,
21 and Urban Affairs of the Senate;

22 (C) the Committee on the Judiciary of the
23 House of Representatives; and

24 (D) the Committee on Financial Services
25 of the House of Representatives.

1 (c) PROVISIONS APPLICABLE TO FINANCIAL COMPA-
2 NIES.—

3 (1) BANKRUPTCY CODE.—Except as provided in
4 this subsection, the provisions of the Bankruptcy
5 Code and rules issued thereunder, and not the provi-
6 sions of this title, shall apply to financial companies
7 that are not covered financial companies for which
8 the Corporation has been appointed as receiver.

9 (2) THIS TITLE.—The provisions of this title
10 shall exclusively apply to and govern all matters re-
11 lating to covered financial companies for which the
12 Corporation is appointed as receiver, and no provi-
13 sions of the Bankruptcy Code or the rules issued
14 thereunder shall apply in such cases.

15 (d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

16 (1) BASELINE PERIOD.—Any appointment of
17 the Corporation as receiver under this section shall
18 terminate at the end of the 3-year period beginning
19 on the date on which such appointment is made.

20 (2) EXTENSION OF TIME LIMIT.—The time
21 limit established in paragraph (1) may be extended
22 by the Corporation for up to 1 additional year, if the
23 Chairperson of the Corporation determines and cer-
24 tifies in writing to the Committee on Banking,
25 Housing, and Urban Affairs of the Senate and the

1 Committee on Financial Services of the House of
2 Representatives that continuation of the receivership
3 is necessary—

4 (A) to—

5 (i) maximize the net present value re-
6 turn from the sale or other disposition of
7 the assets of the covered financial com-
8 pany; or

9 (ii) minimize the amount of loss real-
10 ized upon the sale or other disposition of
11 the assets of the covered financial com-
12 pany; and

13 (B) to protect the stability of the financial
14 system of the United States.

15 (3) SECOND EXTENSION OF TIME LIMIT.—

16 (A) IN GENERAL.—The time limit under
17 this subsection, as extended under paragraph
18 (2), may be extended for up to 1 additional
19 year, if the Chairperson of the Corporation,
20 with the concurrence of the Secretary, submits
21 the certifications described in paragraph (2).

22 (B) ADDITIONAL REPORT REQUIRED.—Not
23 later than 30 days after the date of commence-
24 ment of the extension under subparagraph (A),
25 the Corporation shall submit a report to the

1 Committee on Banking, Housing, and Urban
2 Affairs of the Senate and the Committee on Fi-
3 nancial Services of the House of Representa-
4 tives describing the need for the extension and
5 the specific plan of the Corporation to conclude
6 the receivership before the end of the second ex-
7 tension.

8 (4) ONGOING LITIGATION.—The time limit
9 under this subsection, as extended under paragraph
10 (3), may be further extended solely for the purpose
11 of completing ongoing litigation in which the Cor-
12 poration as receiver is a party, provided that the ap-
13 pointment of the Corporation as receiver shall termi-
14 nate not later than 90 days after the date of comple-
15 tion of such litigation, if—

16 (A) the Council determines that the Cor-
17 poration used its best efforts to conclude the re-
18 ceivership in accordance with its plan before the
19 end of the time limit described in paragraph
20 (3);

21 (B) the Council determines that the com-
22 pletion of longer-term responsibilities in the
23 form of ongoing litigation justifies the need for
24 an extension; and

1 (C) the Corporation submits a report ap-
2 proved by the Council not later than 30 days
3 after the date of the determinations by the
4 Council under subparagraphs (A) and (B) to
5 the Committee on Banking, Housing, and
6 Urban Affairs of the Senate and the Committee
7 on Financial Services of the House of Rep-
8 resentatives, describing—

9 (i) the ongoing litigation justifying the
10 need for an extension; and

11 (ii) the specific plan of the Corpora-
12 tion to complete the litigation and conclude
13 the receivership.

14 (5) REGULATIONS.—The Corporation may issue
15 regulations governing the termination of receiver-
16 ships under this title.

17 (6) NO LIABILITY.—The Corporation and the
18 Deposit Insurance Fund shall not be liable for unre-
19 solved claims arising from the receivership after the
20 termination of the receivership.

21 (e) STUDY OF BANKRUPTCY AND ORDERLY LIQUIDA-
22 TION PROCESS FOR FINANCIAL COMPANIES.—

23 (1) STUDY.—

24 (A) IN GENERAL.—The Administrative Of-
25 fice of the United States Courts and the Comp-

1 troller General of the United States shall each
2 monitor the activities of the Court, and each
3 such Office shall conduct separate studies re-
4 garding the bankruptcy and orderly liquidation
5 process for financial companies under the
6 Bankruptcy Code.

7 (B) ISSUES TO BE STUDIED.—In con-
8 ducting the study under subparagraph (A), the
9 Administrative Office of the United States
10 Courts and the Comptroller General of the
11 United States each shall evaluate—

12 (i) the effectiveness of chapter 7 or
13 chapter 11 of the Bankruptcy Code in fa-
14 cilitating the orderly liquidation or reorga-
15 nization of financial companies;

16 (ii) ways to maximize the efficiency
17 and effectiveness of the Court; and

18 (iii) ways to make the orderly liquida-
19 tion process under the Bankruptcy Code
20 for financial companies more effective.

21 (2) REPORTS.—Not later than 1 year after the
22 date of enactment of this Act, in each successive
23 year until the third year, and every fifth year after
24 that date of enactment, the Administrative Office of
25 the United States Courts and the Comptroller Gen-

1 (ii) current mechanisms and struc-
2 tures for facilitating international coopera-
3 tion;

4 (iii) barriers to effective international
5 coordination; and

6 (iv) ways to increase and make more
7 effective international coordination.

8 (2) REPORT.—Not later than 1 year after the
9 date of enactment of this Act, the Comptroller Gen-
10 eral of the United States shall submit to the Com-
11 mittee on Banking, Housing, and Urban Affairs and
12 the Committee on the Judiciary of the Senate and
13 the Committee on Financial Services and the Com-
14 mittee on the Judiciary of the House of Representa-
15 tives and the Secretary a report summarizing the re-
16 sults of the study conducted under paragraph (1).

17 (g) STUDY OF PROMPT CORRECTIVE ACTION IMPLE-
18 MENTATION BY THE APPROPRIATE FEDERAL AGEN-
19 CIES.—

20 (1) STUDY.—The Comptroller General of the
21 United States shall conduct a study regarding the
22 implementation of prompt corrective action by the
23 appropriate Federal banking agencies.

1 (2) ISSUES TO BE STUDIED.—In conducting the
2 study under paragraph (1), the Comptroller General
3 shall evaluate—

4 (A) the effectiveness of implementation of
5 prompt corrective action by the appropriate
6 Federal banking agencies and the resolution of
7 insured depository institutions by the Corpora-
8 tion; and

9 (B) ways to make prompt corrective action
10 a more effective tool to resolve the insured de-
11 pository institutions at the least possible long-
12 term cost to the Deposit Insurance Fund.

13 (3) REPORT TO COUNCIL.—Not later than 1
14 years after the date of enactment of this Act, the
15 Comptroller General shall submit a report to the
16 Council on the results of the study conducted under
17 this subsection.

18 (4) COUNCIL REPORT OF ACTION.—Not later
19 than 6 months after the date of receipt of the report
20 from the Comptroller General under paragraph (3),
21 the Council shall submit a report to the Committee
22 on Banking, Housing, and Urban Affairs of the Sen-
23 ate and the Committee on Financial Services of the
24 House of Representatives on actions taken in re-
25 sponse to the report, including any recommendations

1 made to the Federal primary financial regulatory
2 agencies under section 120.

3 **SEC. 203. SYSTEMIC RISK DETERMINATION.**

4 (a) WRITTEN RECOMMENDATION AND DETERMINA-
5 TION.—

6 (1) VOTE REQUIRED.—

7 (A) IN GENERAL.—On their own initiative,
8 or at the request of the Secretary, the Corpora-
9 tion and the Board of Governors shall consider
10 whether to make a written recommendation de-
11 scribed in paragraph (2) with respect to wheth-
12 er the Secretary should appoint the Corporation
13 as receiver for a financial company. Such rec-
14 ommendation shall be made upon a vote of not
15 fewer than $\frac{2}{3}$ of the members of the Board of
16 Governors then serving and $\frac{2}{3}$ of the members
17 of the board of directors of the Corporation
18 then serving.

19 (B) CASES INVOLVING COVERED BROKERS
20 OR DEALERS.—In the case of a covered broker
21 or dealer, or in which the largest United States
22 subsidiary (as measured by total assets as of
23 the end of the previous calendar quarter) of a
24 financial company is a covered broker or dealer,
25 the Commission and the Board of Governors, at

1 the request of the Secretary, or on their own
2 initiative, shall consider whether to make the
3 written recommendation described in paragraph
4 (2) with respect to the financial company. Sub-
5 ject to the requirements in paragraph (2), such
6 recommendation shall be made upon a vote of
7 not fewer than $\frac{2}{3}$ of the members of the Board
8 of Governors then serving and the members of
9 the Commission then serving, and in consulta-
10 tion with the Corporation.

11 (2) RECOMMENDATION REQUIRED.—Any writ-
12 ten recommendation pursuant to paragraph (1) shall
13 contain—

14 (A) an evaluation of whether the financial
15 company is in default or in danger of default;

16 (B) a description of the effect that the de-
17 fault of the financial company would have on fi-
18 nancial stability in the United States;

19 (C) a description of the effect that the de-
20 fault of the financial company would have on
21 economic conditions or financial stability for
22 low income, minority, or underserved commu-
23 nities;

1 (D) a recommendation regarding the na-
2 ture and the extent of actions to be taken under
3 this title regarding the financial company;

4 (E) an evaluation of the likelihood of a pri-
5 vate sector alternative to prevent the default of
6 the financial company;

7 (F) an evaluation of why a case under the
8 Bankruptcy Code is not appropriate for the fi-
9 nancial company;

10 (G) an evaluation of the effects on credi-
11 tors, counterparties, and shareholders of the fi-
12 nancial company and other market participants;
13 and

14 (H) an evaluation of whether the company
15 satisfies the definition of a financial company
16 under section 201.

17 (b) DETERMINATION BY THE SECRETARY.—Notwith-
18 standing any other provision of Federal or State law, the
19 Secretary shall take action in accordance with section
20 202(a)(1)(A), if, upon the written recommendation under
21 subsection (a), the Secretary (in consultation with the
22 President) determines that—

23 (1) the financial company is in default or in
24 danger of default;

1 (2) the failure of the financial company and its
2 resolution under otherwise applicable Federal or
3 State law would have serious adverse effects on fi-
4 nancial stability in the United States;

5 (3) no viable private sector alternative is avail-
6 able to prevent the default of the financial company;

7 (4) any effect on the claims or interests of
8 creditors, counterparties, and shareholders of the fi-
9 nancial company and other market participants as a
10 result of actions to be taken under this title is ap-
11 propriate, given the impact that any action taken
12 under this title would have on financial stability in
13 the United States;

14 (5) any action under section 204 would avoid or
15 mitigate such adverse effects, taking into consider-
16 ation the effectiveness of the action in mitigating po-
17 tential adverse effects on the financial system, the
18 cost to the general fund of the Treasury, and the po-
19 tential to increase excessive risk taking on the part
20 of creditors, counterparties, and shareholders in the
21 financial company;

22 (6) a Federal regulatory agency has ordered the
23 financial company to convert all of its convertible
24 debt instruments that are subject to the regulatory
25 order; and

1 (7) the company satisfies the definition of a fi-
2 nancial company under section 201.

3 (c) DOCUMENTATION AND REVIEW.—

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

5 (A) document any determination under
6 subsection (b);

7 (B) retain the documentation for review
8 under paragraph (2); and

9 (C) notify the covered financial company
10 and the Corporation of such determination.

11 (2) REPORT TO CONGRESS.—Not later than 24
12 hours after the date of appointment of the Corpora-
13 tion as receiver for a covered financial company, the
14 Secretary shall provide written notice of the rec-
15 ommendations and determinations reached in ac-
16 cordance with subsections (a) and (b) to the Major-
17 ity Leader and the Minority Leader of the Senate
18 and the Speaker and the Minority Leader of the
19 House of Representatives, the Committee on Bank-
20 ing, Housing, and Urban Affairs of the Senate, and
21 the Committee on Financial Services of the House of
22 Representatives, which shall consist of a summary of
23 the basis for the determination, including, to the ex-
24 tent available at the time of the determination—

1 (A) the size and financial condition of the
2 covered financial company;

3 (B) the sources of capital and credit sup-
4 port that were available to the covered financial
5 company;

6 (C) the operations of the covered financial
7 company that could have had a significant im-
8 pact on financial stability, markets, or both;

9 (D) identification of the banks and finan-
10 cial companies which may be able to provide the
11 services offered by the covered financial com-
12 pany;

13 (E) any potential international ramifica-
14 tions of resolution of the covered financial com-
15 pany under other applicable insolvency law;

16 (F) an estimate of the potential effect of
17 the resolution of the covered financial company
18 under other applicable insolvency law on the fi-
19 nancial stability of the United States;

20 (G) the potential effect of the appointment
21 of a receiver by the Secretary on consumers;

22 (H) the potential effect of the appointment
23 of a receiver by the Secretary on the financial
24 system, financial markets, and banks and other
25 financial companies; and

1 (I) whether resolution of the covered finan-
2 cial company under other applicable insolvency
3 law would cause banks or other financial com-
4 panies to experience severe liquidity distress.

5 (3) REPORTS TO CONGRESS AND THE PUB-
6 LIC.—

7 (A) IN GENERAL.—Not later than 60 days
8 after the date of appointment of the Corpora-
9 tion as receiver for a covered financial company,
10 the Corporation shall file a report with the
11 Committee on Banking, Housing, and Urban
12 Affairs of the Senate and the Committee on Fi-
13 nancial Services of the House of Representa-
14 tives—

15 (i) setting forth information on the fi-
16 nancial condition of the covered financial
17 company as of the date of the appoint-
18 ment, including a description of its assets
19 and liabilities;

20 (ii) describing the plan of, and actions
21 taken by, the Corporation to wind down
22 the covered financial company;

23 (iii) explaining each instance in which
24 the Corporation waived any applicable re-
25 quirements of part 366 of title 12, Code of

1 Federal Regulations (or any successor
2 thereto) with respect to conflicts of interest
3 by any person in the private sector who
4 was retained to provide services to the Cor-
5 poration in connection with such receiver-
6 ship;

7 (iv) describing the reasons for the
8 provision of any funding to the receivership
9 out of the Fund;

10 (v) setting forth the expected costs of
11 the orderly liquidation of the covered fi-
12 nancial company;

13 (vi) setting forth the identity of any
14 claimant that is treated in a manner dif-
15 ferent from other similarly situated claim-
16 ants under subsection (b)(4), (d)(4), or
17 (h)(5)(E), the amount of any additional
18 payment to such claimant under subsection
19 (d)(4), and the reason for any such action;
20 and

21 (vii) which report the Corporation
22 shall publish on an online website main-
23 tained by the Corporation, subject to main-
24 taining appropriate confidentiality.

1 (B) AMENDMENTS.—The Corporation
2 shall, on a timely basis, not less frequently than
3 quarterly, amend or revise and resubmit the re-
4 ports prepared under this paragraph, as nec-
5 essary.

6 (C) CONGRESSIONAL TESTIMONY.—The
7 Corporation and the primary financial regu-
8 latory agency, if any, of the financial company
9 for which the Corporation was appointed re-
10 ceiver under this title shall appear before Con-
11 gress, if requested, not later than 30 days after
12 the date on which the Corporation first files the
13 reports required under subparagraph (A).

14 (4) DEFAULT OR IN DANGER OF DEFAULT.—
15 For purposes of this title, a financial company shall
16 be considered to be in default or in danger of default
17 if, as determined in accordance with subsection
18 (b)—

19 (A) a case has been, or likely will promptly
20 be, commenced with respect to the financial
21 company under the Bankruptcy Code;

22 (B) the financial company has incurred, or
23 is likely to incur, losses that will deplete all or
24 substantially all of its capital, and there is no

1 reasonable prospect for the company to avoid
2 such depletion;

3 (C) the assets of the financial company
4 are, or are likely to be, less than its obligations
5 to creditors and others; or

6 (D) the financial company is, or is likely to
7 be, unable to pay its obligations (other than
8 those subject to a bona fide dispute) in the nor-
9 mal course of business.

10 (5) GAO REVIEW.—The Comptroller General of
11 the United States shall review and report to Con-
12 gress on any determination under subsection (b),
13 that results in the appointment of the Corporation
14 as receiver, including—

15 (A) the basis for the determination;

16 (B) the purpose for which any action was
17 taken pursuant thereto;

18 (C) the likely effect of the determination
19 and such action on the incentives and conduct
20 of financial companies and their creditors,
21 counterparties, and shareholders; and

22 (D) the likely disruptive effect of the deter-
23 mination and such action on the reasonable ex-
24 pectations of creditors, counterparties, and
25 shareholders, taking into account the impact

1 any action under this title would have on finan-
2 cial stability in the United States, including
3 whether the rights of such parties will be dis-
4 rupted.

5 (d) CORPORATION POLICIES AND PROCEDURES.—As
6 soon as is practicable after the date of enactment of this
7 Act, the Corporation shall establish policies and proce-
8 dures that are acceptable to the Secretary governing the
9 use of funds available to the Corporation to carry out this
10 title, including the terms and conditions for the provision
11 and use of funds under sections 204(d), 210(h)(2)(G)(iv),
12 and 210(h)(9).

13 (e) TREATMENT OF INSURANCE COMPANIES AND IN-
14 SURANCE COMPANY SUBSIDIARIES.—

15 (1) IN GENERAL.—Notwithstanding subsection
16 (b), if an insurance company is a covered financial
17 company or a subsidiary or affiliate of a covered fi-
18 nancial company, the liquidation or rehabilitation of
19 such insurance company, and any subsidiary or affil-
20 iate of such company that is not excepted under
21 paragraph (2), shall be conducted as provided under
22 such State law.

23 (2) EXCEPTION FOR SUBSIDIARIES AND AFFILI-
24 ATES.—The requirement of paragraph (1) shall not
25 apply with respect to any subsidiary or affiliate of

1 an insurance company that is not itself an insurance
2 company.

3 (3) **BACKUP AUTHORITY.**—Notwithstanding
4 paragraph (1), with respect to a covered financial
5 company described in paragraph (1), if, after the
6 end of the 60-day period beginning on the date on
7 which a determination is made under section 202(a)
8 with respect to such company, the appropriate regu-
9 latory agency has not filed the appropriate judicial
10 action in the appropriate State court to place such
11 company into orderly liquidation under the laws and
12 requirements of the State, the Corporation shall
13 have the authority to stand in the place of the ap-
14 propriate regulatory agency and file the appropriate
15 judicial action in the appropriate State court to
16 place such company into orderly liquidation under
17 the laws and requirements of the State.

18 **SEC. 204. ORDERLY LIQUIDATION OF COVERED FINANCIAL**
19 **COMPANIES.**

20 (a) **PURPOSE OF ORDERLY LIQUIDATION AUTHOR-**
21 **ITY.**—It is the purpose of this title to provide the nec-
22 essary authority to liquidate failing financial companies
23 that pose a significant risk to the financial stability of the
24 United States in a manner that mitigates such risk and
25 minimizes moral hazard. The authority provided in this

1 title shall be exercised in the manner that best fulfills such
2 purpose, so that—

3 (1) creditors and shareholders will bear the
4 losses of the financial company;

5 (2) management responsible for the condition of
6 the financial company will not be retained; and

7 (3) the Corporation and other appropriate
8 agencies will take all steps necessary and appro-
9 priate to assure that all parties, including manage-
10 ment and third parties, having responsibility for the
11 condition of the financial company bear losses con-
12 sistent with their responsibility, including actions for
13 damages, restitution, and recoupment of compensa-
14 tion and other gains not compatible with such re-
15 sponsibility.

16 (b) CORPORATION AS RECEIVER.—Upon the appoint-
17 ment of the Corporation under section 202, the Corpora-
18 tion shall act as the receiver for the covered financial com-
19 pany, with all of the rights and obligations set forth in
20 this title.

21 (c) CONSULTATION.—The Corporation, as receiver—

22 (1) shall consult with the primary financial reg-
23 ulatory agency or agencies of the covered financial
24 company and its covered subsidiaries for purposes of

1 ensuring an orderly liquidation of the covered finan-
2 cial company;

3 (2) may consult with, or under subsection
4 (a)(1)(B)(v) or (a)(1)(L) of section 210, acquire the
5 services of, any outside experts, as appropriate to in-
6 form and aid the Corporation in the orderly liquida-
7 tion process;

8 (3) shall consult with the primary financial reg-
9 ulatory agency or agencies of any subsidiaries of the
10 covered financial company that are not covered sub-
11 sidiaries, and coordinate with such regulators re-
12 garding the treatment of such solvent subsidiaries
13 and the separate resolution of any such insolvent
14 subsidiaries under other governmental authority, as
15 appropriate; and

16 (4) shall consult with the Commission and the
17 Securities Investor Protection Corporation in the
18 case of any covered financial company for which the
19 Corporation has been appointed as receiver that is a
20 broker or dealer registered with the Commission
21 under section 15(b) of the Securities Exchange Act
22 of 1934 (15 U.S.C. 78o(b)) and is a member of the
23 Securities Investor Protection Corporation, for the
24 purpose of determining whether to transfer to a
25 bridge financial company organized by the Corpora-

1 tion as receiver, without consent of any customer,
2 customer accounts of the covered financial company.

3 (d) FUNDING FOR ORDERLY LIQUIDATION.—Upon
4 its appointment as receiver for a covered financial com-
5 pany, and thereafter as the Corporation may, in its discre-
6 tion, determine to be necessary or appropriate, the Cor-
7 poration may make available to the receivership, subject
8 to the conditions set forth in section 206 and subject to
9 the plan described in section 210(n)(11), funds for the or-
10 derly liquidation of the covered financial company. All
11 funds provided by the Corporation under this subsection
12 shall have a priority of claims under subparagraph (A) or
13 (B) of section 210(b)(1), as applicable, including funds
14 used for—

15 (1) making loans to, or purchasing any debt ob-
16 ligation of, the covered financial company or any
17 covered subsidiary;

18 (2) purchasing or guaranteeing against loss the
19 assets of the covered financial company or any cov-
20 ered subsidiary, directly or through an entity estab-
21 lished by the Corporation for such purpose;

22 (3) assuming or guaranteeing the obligations of
23 the covered financial company or any covered sub-
24 sidiary to 1 or more third parties;

1 (4) taking a lien on any or all assets of the cov-
2 ered financial company or any covered subsidiary,
3 including a first priority lien on all unencumbered
4 assets of the covered financial company or any cov-
5 ered subsidiary to secure repayment of any trans-
6 actions conducted under this subsection;

7 (5) selling or transferring all, or any part, of
8 such acquired assets, liabilities, or obligations of the
9 covered financial company or any covered subsidiary;
10 and

11 (6) making payments pursuant to subsections
12 (b)(4), (d)(4), and (h)(5)(E) of section 210.

13 **SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS**
14 **AND DEALERS.**

15 (a) APPOINTMENT OF SIPC AS TRUSTEE.—

16 (1) APPOINTMENT.—Upon the appointment of
17 the Corporation as receiver for any covered broker
18 or dealer, the Corporation shall appoint, without any
19 need for court approval, the Securities Investor Pro-
20 tection Corporation to act as trustee for the liquida-
21 tion under the Securities Investor Protection Act of
22 1970 (15 U.S.C. 78aaa et seq.) of the covered
23 broker or dealer.

24 (2) ACTIONS BY SIPC.—

1 (A) FILING.—Upon appointment of SIPC
2 under paragraph (1), SIPC shall promptly file
3 with any Federal district court of competent ju-
4 risdiction specified in section 21 or 27 of the
5 Securities Exchange Act of 1934 (15 U.S.C.
6 78u, 78aa), an application for a protective de-
7 cree under the Securities Investor Protection
8 Act of 1970 (15 U.S.C. 78aaa et seq.) as to the
9 covered broker or dealer. The Federal district
10 court shall accept and approve the filing, in-
11 cluding outside of normal business hours, and
12 shall immediately issue the protective decree as
13 to the covered broker or dealer.

14 (B) ADMINISTRATION BY SIPC.—Following
15 entry of the protective decree, and except as
16 otherwise provided in this section, the deter-
17 mination of claims and the liquidation of assets
18 retained in the receivership of the covered
19 broker or dealer and not transferred to the
20 bridge financial company shall be administered
21 under the Securities Investor Protection Act of
22 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as
23 trustee for the covered broker or dealer.

24 (C) DEFINITION OF FILING DATE.—For
25 purposes of the liquidation proceeding, the term

1 “filing date” means the date on which the Cor-
2 poration is appointed as receiver of the covered
3 broker or dealer.

4 (D) DETERMINATION OF CLAIMS.—As
5 trustee for the covered broker or dealer, SIPC
6 shall determine and satisfy, consistent with this
7 title and with the Securities Investor Protection
8 Act of 1970 (15 U.S.C. 78aaa et seq.), all
9 claims against the covered broker or dealer aris-
10 ing on or before the filing date.

11 (b) POWERS AND DUTIES OF SIPC.—

12 (1) IN GENERAL.—Except as provided in this
13 section, upon its appointment as trustee for the liq-
14 uidation of a covered broker or dealer, SIPC shall
15 have all of the powers and duties provided by the Se-
16 curities Investor Protection Act of 1970 (15 U.S.C.
17 78aaa et seq.), including, without limitation, all
18 rights of action against third parties, and shall con-
19 duct such liquidation in accordance with the terms
20 of the Securities Investor Protection Act of 1970 (15
21 U.S.C. 78aaa et seq.), except that SIPC shall have
22 no powers or duties with respect to assets and liabil-
23 ities transferred by the Corporation from the covered
24 broker or dealer to any bridge financial company es-
25 tablished in accordance with this title.

1 (2) LIMITATION OF POWERS.—The exercise by
2 SIPC of powers and functions as trustee under sub-
3 section (a) shall not impair or impede the exercise
4 of the powers and duties of the Corporation with re-
5 gard to—

6 (A) any action, except as otherwise pro-
7 vided in this title—

8 (i) to make funds available under sec-
9 tion 204(d);

10 (ii) to organize, establish, operate, or
11 terminate any bridge financial company;

12 (iii) to transfer assets and liabilities;

13 (iv) to enforce or repudiate contracts;

14 or

15 (v) to take any other action relating
16 to such bridge financial company under
17 section 210; or

18 (B) determining claims under subsection

19 (e).

20 (3) PROTECTIVE DECREE.—SIPC and the Cor-
21 poration, in consultation with the Commission, shall
22 jointly determine the terms of the protective decree
23 to be filed by SIPC with any court of competent ju-
24 risdiction under section 21 or 27 of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78u, 78aa), as re-
2 quired by subsection (a).

3 (4) QUALIFIED FINANCIAL CONTRACTS.—Not-
4 withstanding any provision of the Securities Investor
5 Protection Act of 1970 to the contrary (including
6 section 5(b)(2)(C) of that Act (15 U.S.C.
7 78eee(b)(2)(C))), the rights and obligations of any
8 party to a qualified financial contract (as that term
9 is defined in section 210(e)(8)) to which a covered
10 broker or dealer for which the Corporation has been
11 appointed receiver is a party shall be governed exclu-
12 sively by section 210, including the limitations and
13 restrictions contained in section 210(e)(10)(B).

14 (c) LIMITATION ON COURT ACTION.—Except as oth-
15 erwise provided in this title, no court may take any action,
16 including any action pursuant to the Securities Investor
17 Protection Act of 1970 or the Bankruptcy Code, to re-
18 strain or affect the exercise of powers or functions of the
19 Corporation as receiver for a covered broker or dealer and
20 any claims against the Corporation as such receiver shall
21 be determined in accordance with subsection (e) and such
22 claims shall be limited to money damages.

23 (d) ACTIONS BY CORPORATION AS RECEIVER.—

24 (1) IN GENERAL.—Notwithstanding any other
25 provision of this title, no action taken by the Cor-

1 poration as receiver with respect to a covered broker
2 or dealer shall—

3 (A) adversely affect the rights of a cus-
4 tomer to customer property or customer name
5 securities;

6 (B) diminish the amount or timely pay-
7 ment of net equity claims of customers; or

8 (C) otherwise impair the recoveries pro-
9 vided to a customer under the Securities Inves-
10 tor Protection Act of 1970 (15 U.S.C. 78aaa et
11 seq.).

12 (2) NET PROCEEDS.—The net proceeds from
13 any transfer, sale, or disposition of assets of the cov-
14 ered broker or dealer, or proceeds thereof by the
15 Corporation as receiver for the covered broker or
16 dealer shall be for the benefit of the estate of the
17 covered broker or dealer, as provided in this title.

18 (e) CLAIMS AGAINST THE CORPORATION AS RE-
19 CEIVER.—Any claim against the Corporation as receiver
20 for a covered broker or dealer for assets transferred to
21 a bridge financial company established with respect to
22 such covered broker or dealer—

23 (1) shall be determined in accordance with sec-
24 tion 210(a)(2); and

1 (2) may be reviewed by the appropriate district
2 or territorial court of the United States in accord-
3 ance with section 210(a)(5).

4 (f) SATISFACTION OF CUSTOMER CLAIMS.—

5 (1) OBLIGATIONS TO CUSTOMERS.—Notwith-
6 standing any other provision of this title, all obliga-
7 tions of a covered broker or dealer or of any bridge
8 financial company established with respect to such
9 covered broker or dealer to a customer relating to,
10 or net equity claims based upon, customer property
11 or customer name securities shall be promptly dis-
12 charged by SIPC, the Corporation, or the bridge fi-
13 nancial company, as applicable, by the delivery of se-
14 curities or the making of payments to or for the ac-
15 count of such customer, in a manner and in an
16 amount at least as beneficial to the customer as
17 would have been the case had the actual proceeds re-
18 alized from the liquidation of the covered broker or
19 dealer under this title been distributed in a pro-
20 ceeding under the Securities Investor Protection Act
21 of 1970 (15 U.S.C. 78aaa et seq.) without the ap-
22 pointment of the Corporation as receiver and with-
23 out any transfer of assets or liabilities to a bridge
24 financial company, and with a filing date as of the

1 date on which the Corporation is appointed as re-
2 ceiver.

3 (2) SATISFACTION OF CLAIMS BY SIPC.—SIPC,
4 as trustee for a covered broker or dealer, shall sat-
5 isfy customer claims in the manner and amount pro-
6 vided under the Securities Investor Protection Act of
7 1970 (15 U.S.C. 78aaa et seq.), as if the appoint-
8 ment of the Corporation as receiver had not oc-
9 curred, and with a filing date as of the date on
10 which the Corporation is appointed as receiver. The
11 Corporation shall satisfy customer claims, to the ex-
12 tent that a customer would have received more secu-
13 rities or cash with respect to the allocation of cus-
14 tomer property had the covered financial company
15 been subject to a proceeding under the Securities In-
16 vestor Protection Act (15 U.S.C. 78aaa et seq.)
17 without the appointment of the Corporation as re-
18 ceiver, and with a filing date as of the date on which
19 the Corporation is appointed as receiver.

20 (g) PRIORITIES.—

21 (1) CUSTOMER PROPERTY.—As trustee for a
22 covered broker or dealer, SIPC shall allocate cus-
23 tomer property and deliver customer name securities
24 in accordance with section 8(c) of the Securities In-

1 investor Protection Act of 1970 (15 U.S.C. 78fff–
2 2(c)).

3 (2) OTHER CLAIMS.—All claims other than
4 those described in paragraph (1) (including any un-
5 paid claim by a customer for the allowed net equity
6 claim of such customer from customer property)
7 shall be paid in accordance with the priorities in sec-
8 tion 210(b).

9 (h) RULEMAKING.—The Commission and the Cor-
10 poration, after consultation with SIPC, shall jointly issue
11 rules to implement this section.

12 **SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL**
13 **ORDERLY LIQUIDATION ACTIONS.**

14 In taking action under this title, the Corporation
15 shall—

16 (1) determine that such action is necessary for
17 purposes of the financial stability of the United
18 States, and not for the purpose of preserving the
19 covered financial company;

20 (2) ensure that the shareholders of a covered fi-
21 nancial company do not receive payment until after
22 all other claims and the Fund are fully paid;

23 (3) ensure that unsecured creditors bear losses
24 in accordance with the priority of claim provisions in
25 section 210;

1 (4) ensure that management responsible for the
2 failed condition of the covered financial company is
3 removed (if such management has not already been
4 removed at the time at which the Corporation is ap-
5 pointed receiver); and

6 (5) not take an equity interest in or become a
7 shareholder of any covered financial company or any
8 covered subsidiary.

9 **SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN**
10 **APPOINTMENT OF RECEIVER.**

11 The members of the board of directors (or body per-
12 forming similar functions) of a covered financial company
13 shall not be liable to the shareholders or creditors thereof
14 for acquiescing in or consenting in good faith to the ap-
15 pointment of the Corporation as receiver for the covered
16 financial company under section 203.

17 **SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.**

18 (a) IN GENERAL.—Effective as of the date of the ap-
19 pointment of the Corporation as receiver for the covered
20 financial company under section 202 or the appointment
21 of SIPC as trustee for a covered broker or dealer under
22 section 205, as applicable, any case or proceeding com-
23 menced with respect to the covered financial company
24 under the Bankruptcy Code or the Securities Investor
25 Protection Act of 1970 shall be dismissed, upon notice to

1 the Bankruptcy Court (with respect to a case commenced
2 under the Bankruptcy Code), and upon notice to SIPC
3 (with respect to a covered broker or dealer) and no such
4 case or proceeding may be commenced with respect to a
5 covered financial company at any time while the orderly
6 liquidation is pending.

7 (b) REVESTING OF ASSETS.—Effective as of the date
8 of appointment of the Corporation as receiver, the assets
9 of a covered financial company shall, to the extent they
10 have vested in any entity other than the covered financial
11 company as a result of any case or proceeding commenced
12 with respect to the covered financial company under the
13 Bankruptcy Code, the Securities Investor Protection Act
14 of 1970, or any similar provision of State liquidation or
15 insolvency law applicable to the covered financial company,
16 revert in the covered financial company.

17 (c) LIMITATION.—Notwithstanding subsections (a)
18 and (b), any order entered or other relief granted by a
19 bankruptcy court prior to the date of appointment of the
20 Corporation as receiver shall continue with the same valid-
21 ity as if an orderly liquidation had not been commenced.

22 **SEC. 209. RULEMAKING; NON-CONFLICTING LAW.**

23 The Corporation shall, in consultation with the Coun-
24 cil, prescribe such rules or regulations as the Corporation
25 considers necessary or appropriate to implement this title,

1 including rules and regulations with respect to the rights,
2 interests, and priorities of creditors, counterparties, secu-
3 rity entitlement holders, or other persons with respect to
4 any covered financial company or any assets or other prop-
5 erty of or held by such covered financial company, and
6 address the potential for conflicts of interest between or
7 among individual receiverships established under this title
8 or under the Federal Deposit Insurance Act. To the extent
9 possible, the Corporation shall seek to harmonize applica-
10 ble rules and regulations promulgated under this section
11 with the insolvency laws that would otherwise apply to a
12 covered financial company.

13 **SEC. 210. POWERS AND DUTIES OF THE CORPORATION.**

14 (a) POWERS AND AUTHORITIES.—

15 (1) GENERAL POWERS.—

16 (A) SUCCESSOR TO COVERED FINANCIAL
17 COMPANY.—The Corporation shall, upon ap-
18 pointment as receiver for a covered financial
19 company under this title, succeed to—

20 (i) all rights, titles, powers, and privi-
21 leges of the covered financial company and
22 its assets, and of any stockholder, member,
23 officer, or director of such company; and

24 (ii) title to the books, records, and as-
25 sets of any previous receiver or other legal

1 custodian of such covered financial com-
2 pany.

3 (B) OPERATION OF THE COVERED FINAN-
4 CIAL COMPANY DURING THE PERIOD OF OR-
5 DERLY LIQUIDATION.—The Corporation, as re-
6 ceiver for a covered financial company, may—

7 (i) take over the assets of and operate
8 the covered financial company with all of
9 the powers of the members or share-
10 holders, the directors, and the officers of
11 the covered financial company, and con-
12 duct all business of the covered financial
13 company;

14 (ii) collect all obligations and money
15 owed to the covered financial company;

16 (iii) perform all functions of the cov-
17 ered financial company, in the name of the
18 covered financial company;

19 (iv) manage the assets and property
20 of the covered financial company, con-
21 sistent with maximization of the value of
22 the assets in the context of the orderly liq-
23 uidation; 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.

19 (D) ADDITIONAL POWERS AS RECEIVER.—
20 The Corporation shall, as receiver for a covered
21 financial company, and subject to all legally en-
22 forceable and perfected security interests and
23 all legally enforceable security entitlements in
24 respect of assets held by the covered financial
25 company, liquidate, and wind-up the affairs of

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

10 (E) ADDITIONAL POWERS WITH RESPECT
11 TO FAILING SUBSIDIARIES OF A COVERED FI-
12 NANCIAL COMPANY.—

13 (i) IN GENERAL.—In any case in
14 which a receiver is appointed for a covered
15 financial company under section 202, the
16 Corporation may appoint itself as receiver
17 of any covered subsidiary of the covered fi-
18 nancial company that is organized under
19 Federal law or the laws of any State, if the
20 Corporation and the Secretary jointly de-
21 termine that—

22 (I) the covered subsidiary is in
23 default or in danger of default;

24 (II) such action would avoid or
25 mitigate serious adverse effects on the

1 financial stability or economic condi-
2 tions of the United States; and

3 (III) such action would facilitate
4 the orderly liquidation of the covered
5 financial company.

6 (ii) TREATMENT AS COVERED FINAN-
7 CIAL COMPANY.—If the Corporation is ap-
8 pointed as receiver of a covered subsidiary
9 of a covered financial company under
10 clause (i), the covered subsidiary shall
11 thereafter be considered a covered financial
12 company under this title, and the Corpora-
13 tion shall thereafter have all the powers
14 and rights with respect to that covered
15 subsidiary as it has with respect to a cov-
16 ered financial company under this title.

17 (F) ORGANIZATION OF BRIDGE COMPA-
18 NIES.—The Corporation, as receiver for a cov-
19 ered financial company, may organize a bridge
20 financial company under subsection (h).

21 (G) MERGER; TRANSFER OF ASSETS AND
22 LIABILITIES.—

23 (i) IN GENERAL.—Subject to clauses
24 (ii) and (iii), the Corporation, as receiver
25 for a covered financial company, may—

1 (I) merge the covered financial
2 company with another company; or

3 (II) transfer any asset or liability
4 of the covered financial company (in-
5 cluding any assets and liabilities held
6 by the covered financial company for
7 security entitlement holders, any cus-
8 tomer property, or any assets and li-
9 abilities associated with any trust or
10 custody business) without obtaining
11 any approval, assignment, or consent
12 with respect to such transfer.

13 (ii) FEDERAL AGENCY APPROVAL;
14 ANTITRUST REVIEW.—With respect to a
15 transaction described in clause (i)(I) that
16 requires approval by a Federal agency—

17 (I) the transaction may not be
18 consummated before the 5th calendar
19 day after the date of approval by the
20 Federal agency responsible for such
21 approval;

22 (II) if, in connection with any
23 such approval, a report on competitive
24 factors is required, the Federal agency
25 responsible for such approval shall

1 promptly notify the Attorney General
2 of the United States of the proposed
3 transaction, and the Attorney General
4 shall provide the required report not
5 later than 10 days after the date of
6 the request; and

7 (III) if notification under section
8 7A of the Clayton Act is required with
9 respect to such transaction, then the
10 required waiting period shall end on
11 the 15th day after the date on which
12 the Attorney General and the Federal
13 Trade Commission receive such notifi-
14 cation, unless the waiting period is
15 terminated earlier under subsection
16 (b)(2) of such section 7A, or is ex-
17 tended pursuant to subsection (e)(2)
18 of such section 7A.

19 (iii) SETOFF.—Subject to the other
20 provisions of this title, any transferee of
21 assets from a receiver, including a bridge
22 financial company, shall be subject to such
23 claims or rights as would prevail over the
24 rights of such transferee in such assets
25 under applicable noninsolvency law.

1 (H) PAYMENT OF VALID OBLIGATIONS.—

2 The Corporation, as receiver for a covered fi-
3 nancial company, shall, to the extent that funds
4 are available, pay all valid obligations of the
5 covered financial company that are due and
6 payable at the time of the appointment of the
7 Corporation as receiver, in accordance with the
8 prescriptions and limitations of this title.

9 (I) APPLICABLE NONINSOLVENCY LAW.—

10 Except as may otherwise be provided in this
11 title, the applicable noninsolvency law shall be
12 determined by the noninsolvency choice of law
13 rules otherwise applicable to the claims, rights,
14 titles, persons, or entities at issue.

15 (J) SUBPOENA AUTHORITY.—

16 (i) IN GENERAL.—The Corporation,
17 as receiver for a covered financial com-
18 pany, may, for purposes of carrying out
19 any power, authority, or duty with respect
20 to the covered financial company (includ-
21 ing determining any claim against the cov-
22 ered financial company and determining
23 and realizing upon any asset of any person
24 in the course of collecting money due the
25 covered financial company), exercise any

1 power established under section 8(n) of the
2 Federal Deposit Insurance Act, as if the
3 Corporation were the appropriate Federal
4 banking agency for the covered financial
5 company, and the covered financial com-
6 pany were an insured depository institu-
7 tion.

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

14 (K) INCIDENTAL POWERS.—The Corpora-
15 tion, as receiver for a covered financial com-
16 pany, may exercise all powers and authorities
17 specifically granted to receivers under this title,
18 and such incidental powers as shall be nec-
19 essary to carry out such powers under this title.

20 (L) UTILIZATION OF PRIVATE SECTOR.—
21 In carrying out its responsibilities in the man-
22 agement and disposition of assets from the cov-
23 ered financial company, the Corporation, as re-
24 ceiver for a covered financial company, may uti-
25 lize the services of private persons, including

1 real estate and loan portfolio asset manage-
2 ment, property management, auction mar-
3 keting, legal, and brokerage services, if such
4 services are available in the private sector, and
5 the Corporation determines that utilization of
6 such services is practicable, efficient, and cost
7 effective.

8 (M) SHAREHOLDERS AND CREDITORS OF
9 COVERED FINANCIAL COMPANY.—Notwith-
10 standing any other provision of law, the Cor-
11 poration, as receiver for a covered financial
12 company, shall succeed by operation of law to
13 the rights, titles, powers, and privileges de-
14 scribed in subparagraph (A), and shall termi-
15 nate all rights and claims that the stockholders
16 and creditors of the covered financial company
17 may have against the assets of the covered fi-
18 nancial company or the Corporation arising out
19 of their status as stockholders or creditors, ex-
20 cept for their right to payment, resolution, or
21 other satisfaction of their claims, as permitted
22 under this section. The Corporation shall en-
23 sure that shareholders and unsecured creditors
24 bear losses, consistent with the priority of
25 claims provisions under this section.

1 (N) COORDINATION WITH FOREIGN FINAN-
2 CIAL AUTHORITIES.—The Corporation, as re-
3 ceiver for a covered financial company, shall co-
4 ordinate, to the maximum extent possible, with
5 the appropriate foreign financial authorities re-
6 garding the orderly liquidation of any covered
7 financial company that has assets or operations
8 in a country other than the United States.

9 (O) RESTRICTION ON TRANSFERS.—

10 (i) SELECTION OF ACCOUNTS FOR
11 TRANSFER.—If the Corporation establishes
12 one or more bridge financial companies
13 with respect to a covered broker or dealer,
14 the Corporation shall transfer to one of
15 such bridge financial companies, all cus-
16 tomer accounts of the covered broker or
17 dealer, and all associated customer name
18 securities and customer property, unless
19 the Corporation, after consulting with the
20 Commission and SIPC, determines that—

21 (I) the customer accounts, cus-
22 tomer name securities, and customer
23 property are likely to be promptly
24 transferred to another broker or deal-
25 er that is registered with the Commis-

1 (iv) NOTIFICATION OF SIPC AND
2 SHARING OF INFORMATION.—The Corpora-
3 tion shall identify to SIPC the customer
4 accounts and associated customer name se-
5 curities and customer property transferred
6 to the bridge financial company. The Cor-
7 poration and SIPC shall cooperate in the
8 sharing of any information necessary for
9 each entity to discharge its obligations
10 under this title and under the Securities
11 Investor Protection Act of 1970 (15 U.S.C.
12 78aaa et seq.) including by providing ac-
13 cess to the books and records of the cov-
14 ered financial company and any bridge fi-
15 nancial company established in accordance
16 with this title.

17 (2) DETERMINATION OF CLAIMS.—

18 (A) IN GENERAL.—The Corporation, as re-
19 ceiver for a covered financial company, shall re-
20 port on claims, as set forth in section 203(c)(3).
21 Subject to paragraph (4) of this subsection, the
22 Corporation, as receiver for a covered financial
23 company, shall determine claims in accordance
24 with the requirements of this subsection and
25 regulations prescribed under section 209.

1 (B) NOTICE REQUIREMENTS.—The Cor-
2 poration, as receiver for a covered financial
3 company, in any case involving the liquidation
4 or winding up of the affairs of a covered finan-
5 cial company, shall—

6 (i) promptly publish a notice to the
7 creditors of the covered financial company
8 to present their claims, together with
9 proof, to the receiver by a date specified in
10 the notice, which shall be not earlier than
11 90 days after the date of publication of
12 such notice; and

13 (ii) republish such notice 1 month and
14 2 months, respectively, after the date of
15 publication under clause (i).

16 (C) MAILING REQUIRED.—The Corpora-
17 tion as receiver shall mail a notice similar to
18 the notice published under clause (i) or (ii) of
19 subparagraph (B), at the time of such publica-
20 tion, to any creditor shown on the books and
21 records of the covered financial company—

22 (i) at the last address of the creditor
23 appearing in such books;

24 (ii) in any claim filed by the claimant;

25 or

1 (iii) upon discovery of the name and
2 address of a claimant not appearing on the
3 books and records of the covered financial
4 company, not later than 30 days after the
5 date of the discovery of such name and ad-
6 dress.

7 (3) PROCEDURES FOR RESOLUTION OF
8 CLAIMS.—

9 (A) DECISION PERIOD.—

10 (i) IN GENERAL.—Prior to the 180th
11 day after the date on which a claim
12 against a covered financial company is
13 filed with the Corporation as receiver, or
14 such later date as may be agreed as pro-
15 vided in clause (ii), the Corporation shall
16 notify the claimant whether it accepts or
17 objects to the claim, in accordance with
18 subparagraphs (B), (C), and (D).

19 (ii) EXTENSION OF TIME.—By written
20 agreement executed not later than 180
21 days after the date on which a claim
22 against a covered financial company is
23 filed with the Corporation, the period de-
24 scribed in clause (i) may be extended by
25 written agreement between the claimant

1 and the Corporation. Failure to notify the
2 claimant of any disallowance within the
3 time period set forth in clause (i), as it
4 may be extended by agreement under this
5 clause, shall be deemed to be a disallow-
6 ance of such claim, and the claimant may
7 file or continue an action in court, as pro-
8 vided in paragraph (4).

9 (iii) MAILING OF NOTICE SUFFI-
10 CIENT.—The requirements of clause (i)
11 shall be deemed to be satisfied if the notice
12 of any decision with respect to any claim
13 is mailed to the last address of the claim-
14 ant which appears—

15 (I) on the books, records, or both
16 of the covered financial company;

17 (II) in the claim filed by the
18 claimant; or

19 (III) in documents submitted in
20 proof of the claim.

21 (iv) CONTENTS OF NOTICE OF DIS-
22 ALLOWANCE.—If the Corporation as re-
23 ceiver objects to any claim filed under
24 clause (i), the notice to the claimant shall
25 contain—

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1 (I) a statement of each reason
2 for the disallowance; and

3 (II) the procedures required to
4 file or continue an action in court, as
5 provided in paragraph (4).

6 (B) ALLOWANCE OF PROVEN CLAIM.—The
7 receiver shall allow any claim received by the
8 receiver on or before the date specified in the
9 notice under paragraph (2)(B)(i), which is
10 proved to the satisfaction of the receiver.

11 (C) DISALLOWANCE OF CLAIMS FILED
12 AFTER END OF FILING PERIOD.—

13 (i) IN GENERAL.—Except as provided
14 in clause (ii), claims filed after the date
15 specified in the notice published under
16 paragraph (2)(B)(i) shall be disallowed,
17 and such disallowance shall be final.

18 (ii) CERTAIN EXCEPTIONS.—Clause
19 (i) shall not apply with respect to any
20 claim filed by a claimant after the date
21 specified in the notice published under
22 paragraph (2)(B)(i), and such claim may
23 be considered by the receiver under sub-
24 paragraph (B), if—

1 (I) the claimant did not receive
2 notice of the appointment of the re-
3 ceiver in time to file such claim before
4 such date; and

5 (II) such claim is filed in time to
6 permit payment of such claim.

7 (D) AUTHORITY TO DISALLOW CLAIMS.—

8 (i) IN GENERAL.—The Corporation
9 may object to any portion of any claim by
10 a creditor or claim of a security, pref-
11 erence, setoff, or priority which is not
12 proved to the satisfaction of the Corpora-
13 tion.

14 (ii) PAYMENTS TO UNDERSECURED
15 CREDITORS.—In the case of a claim
16 against a covered financial company that is
17 secured by any property or other asset of
18 such covered financial company, the re-
19 ceiver—

20 (I) may treat the portion of such
21 claim which exceeds an amount equal
22 to the fair market value of such prop-
23 erty or other asset as an unsecured
24 claim; and

1 (II) may not make any payment
2 with respect to such unsecured por-
3 tion of the claim, other than in con-
4 nection with the disposition of all
5 claims of unsecured creditors of the
6 covered financial company.

7 (iii) EXCEPTIONS.—No provision of
8 this paragraph shall apply with respect
9 to—

10 (I) any extension of credit from
11 any Federal reserve bank, or the Cor-
12 poration, to any covered financial
13 company; or

14 (II) subject to clause (ii), any le-
15 gally enforceable and perfected secu-
16 rity interest in the assets of the cov-
17 ered financial company securing any
18 such extension of credit.

19 (E) LEGAL EFFECT OF FILING.—

20 (i) STATUTE OF LIMITATIONS
21 TOLLED.—For purposes of any applicable
22 statute of limitations, the filing of a claim
23 with the receiver shall constitute a com-
24 mencement of an action.

1 (ii) NO PREJUDICE TO OTHER AC-
2 TIONS.—Subject to paragraph (8), the fil-
3 ing of a claim with the receiver shall not
4 prejudice any right of the claimant to con-
5 tinue any action which was filed before the
6 date of appointment of the receiver for the
7 covered financial company.

8 (4) JUDICIAL DETERMINATION OF CLAIMS.—

9 (A) IN GENERAL.—Subject to subpara-
10 graph (B), a claimant may file suit on a claim
11 (or continue an action commenced before the
12 date of appointment of the Corporation as re-
13 ceiver) in the district or territorial court of the
14 United States for the district within which the
15 principal place of business of the covered finan-
16 cial company is located (and such court shall
17 have jurisdiction to hear such claim).

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

21 (i) the end of the period described in
22 paragraph (3)(A)(i) (or, if extended by
23 agreement of the Corporation and the
24 claimant, the period described in para-
25 graph (3)(A)(ii)) with respect to any claim

1 against a covered financial company for
2 which the Corporation is receiver; or

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

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

18 (5) EXPEDITED DETERMINATION OF CLAIMS.—

19 (A) PROCEDURE REQUIRED.—The Cor-
20 poration shall establish a procedure for expe-
21 dited relief outside of the claims process estab-
22 lished under paragraph (3), for any claimant
23 that alleges—

24 (i) the existence of a legally valid and
25 enforceable or perfected security interest in

1 property of a covered financial company, or
2 is an entitlement holder that has obtained
3 control of any legally valid and enforceable
4 security entitlement in respect of any asset
5 held by the covered financial company for
6 which the Corporation has been appointed
7 receiver; and

8 (ii) that irreparable injury will occur
9 if the claims procedure established under
10 paragraph (3) is followed.

11 (B) DETERMINATION PERIOD.—Prior to
12 the end of the 90-day period beginning on the
13 date on which a claim is filed in accordance
14 with the procedures established pursuant to
15 subparagraph (A), the Corporation shall—

16 (i) determine—

17 (I) whether to allow or disallow
18 such claim, or any portion thereof; or

19 (II) whether such claim should be
20 determined pursuant to the proce-
21 dures established pursuant to para-
22 graph (3);

23 (ii) notify the claimant of the deter-
24 mination; and

1 (iii) if the claim is disallowed, provide
2 a statement of each reason for the dis-
3 allowance and the procedure for obtaining
4 a judicial determination.

5 (C) PERIOD FOR FILING OR RENEWING
6 SUIT.—Any claimant who files a request for ex-
7 pedited relief shall be permitted to file suit (or
8 continue a suit filed before the date of appoint-
9 ment of the Corporation as receiver seeking a
10 determination of the rights of the claimant with
11 respect to such security interest (or such secu-
12 rity entitlement) after the earlier of—

13 (i) the end of the 90-day period begin-
14 ning on the date of the filing of a request
15 for expedited relief; or

16 (ii) the date on which the Corporation
17 denies the claim or a portion thereof.

18 (D) STATUTE OF LIMITATIONS.—If an ac-
19 tion described in subparagraph (C) is not filed,
20 or the motion to renew a previously filed suit is
21 not made, before the end of the 30-day period
22 beginning on the date on which such action or
23 motion may be filed in accordance with sub-
24 paragraph (C), the claim shall be deemed to be
25 disallowed as of the end of such period (other

1 than any portion of such claim which was al-
2 lowed by the receiver), such disallowance shall
3 be final, and the claimant shall have no further
4 rights or remedies with respect to such claim.

5 (E) LEGAL EFFECT OF FILING.—

6 (i) STATUTE OF LIMITATIONS
7 TOLLED.—For purposes of any applicable
8 statute of limitations, the filing of a claim
9 with the receiver shall constitute a com-
10 mencement of an action.

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

18 (6) AGREEMENTS AGAINST INTEREST OF THE
19 RECEIVER.—No agreement that tends to diminish or
20 defeat the interest of the Corporation as receiver in
21 any asset acquired by the receiver under this section
22 shall be valid against the receiver, unless such agree-
23 ment—

24 (A) is in writing;

1 (B) was executed by an authorized officer
2 or representative of the covered financial com-
3 pany, or confirmed in the ordinary course of
4 business by the covered financial company; and

5 (C) has been, since the time of its execu-
6 tion, an official record of the company or the
7 party claiming under the agreement provides
8 documentation, acceptable to the receiver, of
9 such agreement and its authorized execution or
10 confirmation by the covered financial company.

11 (7) PAYMENT OF CLAIMS.—

12 (A) IN GENERAL.—Subject to subpara-
13 graph (B), the Corporation as receiver may, in
14 its discretion and to the extent that funds are
15 available, pay creditor claims, in such manner
16 and amounts as are authorized under this sec-
17 tion, which are—

18 (i) allowed by the receiver;

19 (ii) approved by the receiver pursuant
20 to a final determination pursuant to para-
21 graph (3) or (5), as applicable; or

22 (iii) determined by the final judgment
23 of a court of competent jurisdiction.

24 (B) LIMITATION.—A creditor shall, in no
25 event, receive less than the amount that the

1 creditor is entitled to receive under paragraphs
2 (2) and (3) of subsection (d), as applicable.

3 (C) PAYMENT OF DIVIDENDS ON
4 CLAIMS.—The Corporation as receiver may, in
5 its sole discretion, and to the extent otherwise
6 permitted by this section, pay dividends on
7 proven claims at any time, and no liability shall
8 attach to the Corporation as receiver, by reason
9 of any such payment or for failure to pay divi-
10 dends to a claimant whose claim is not proved
11 at the time of any such payment.

12 (D) RULEMAKING BY THE CORPORA-
13 TION.—The Corporation may prescribe such
14 rules, including definitions of terms, as the Cor-
15 poration deems appropriate to establish an in-
16 terest rate for or to make payments of post-in-
17 solvency interest to creditors holding proven
18 claims against the receivership estate of a cov-
19 ered financial company, except that no such in-
20 terest shall be paid until the Corporation as re-
21 ceiver has satisfied the principal amount of all
22 creditor claims.

23 (8) SUSPENSION OF LEGAL ACTIONS.—

24 (A) IN GENERAL.—After the appointment
25 of the Corporation as receiver for a covered fi-

1 nancial company, the Corporation may request
2 a stay in any judicial action or proceeding in
3 which such covered financial company is or be-
4 comes a party, for a period of not to exceed 90
5 days.

6 (B) GRANT OF STAY BY ALL COURTS RE-
7 QUIRED.—Upon receipt of a request by the Cor-
8 poration pursuant to subparagraph (A), the
9 court shall grant such stay as to all parties.

10 (9) ADDITIONAL RIGHTS AND DUTIES.—

11 (A) PRIOR FINAL ADJUDICATION.—The
12 Corporation shall abide by any final, non-ap-
13 pealable judgment of any court of competent ju-
14 risdiction that was rendered before the appoint-
15 ment of the Corporation as receiver.

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

19 (i) have all the rights and remedies
20 available to the covered financial company
21 (before the date of appointment of the Cor-
22 poration as receiver under section 202)
23 and the Corporation, including removal to
24 Federal court and all appellate rights; and

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

3 (C) NO ATTACHMENT OR EXECUTION.—No
4 attachment or execution may be issued by any
5 court upon assets in the possession of the Cor-
6 poration as receiver for a covered financial com-
7 pany.

8 (D) LIMITATION ON JUDICIAL REVIEW.—
9 Except as otherwise provided in this title, no
10 court shall have jurisdiction over—

11 (i) any claim or action for payment
12 from, or any action seeking a determina-
13 tion of rights with respect to, the assets of
14 any covered financial company for which
15 the Corporation has been appointed re-
16 ceiver, including any assets which the Cor-
17 poration may acquire from itself as such
18 receiver; or

19 (ii) any claim relating to any act or
20 omission of such covered financial company
21 or the Corporation as receiver.

22 (E) DISPOSITION OF ASSETS.—In exer-
23 cising any right, power, privilege, or authority
24 as receiver in connection with any covered fi-
25 nancial company for which the Corporation is

1 acting as receiver under this section, the Cor-
2 poration shall, to the greatest extent prac-
3 ticable, conduct its operations in a manner
4 that—

5 (i) maximizes the net present value
6 return from the sale or disposition of such
7 assets;

8 (ii) minimizes the amount of any loss
9 realized in the resolution of cases;

10 (iii) mitigates the potential for serious
11 adverse effects to the financial system;

12 (iv) ensures timely and adequate com-
13 petition and fair and consistent treatment
14 of offerors; and

15 (v) prohibits discrimination on the
16 basis of race, sex, or ethnic group in the
17 solicitation and consideration of offers.

18 (10) STATUTE OF LIMITATIONS FOR ACTIONS
19 BROUGHT BY RECEIVER.—

20 (A) IN GENERAL.—Notwithstanding any
21 provision of any contract, the applicable statute
22 of limitations with regard to any action brought
23 by the Corporation as receiver for a covered fi-
24 nancial company shall be—

1 (i) in the case of any contract claim,
2 the longer of—

3 (I) the 6-year period beginning
4 on the date on which the claim ac-
5 crues; or

6 (II) the period applicable under
7 State law; and

8 (ii) in the case of any tort claim, the
9 longer of—

10 (I) the 3-year period beginning
11 on the date on which the claim ac-
12 crues; or

13 (II) the period applicable under
14 State law.

15 (B) DATE ON WHICH A CLAIM ACCRUES.—

16 For purposes of subparagraph (A), the date on
17 which the statute of limitations begins to run
18 on any claim described in subparagraph (A)
19 shall be the later of—

20 (i) the date of the appointment of the
21 Corporation as receiver under this title; or

22 (ii) the date on which the cause of ac-
23 tion accrues.

24 (C) REVIVAL OF EXPIRED STATE CAUSES

25 OF ACTION.—

1 (i) IN GENERAL.—In the case of any
2 tort claim described in clause (ii) for which
3 the applicable statute of limitations under
4 State law has expired not more than 5
5 years before the date of appointment of the
6 Corporation as receiver for a covered fi-
7 nancial company, the Corporation may
8 bring an action as receiver on such claim
9 without regard to the expiration of the
10 statute of limitations.

11 (ii) CLAIMS DESCRIBED.—A tort
12 claim referred to in clause (i) is a claim
13 arising from fraud, intentional misconduct
14 resulting in unjust enrichment, or inten-
15 tional misconduct resulting in substantial
16 loss to the covered financial company.

17 (11) AVOIDABLE TRANSFERS.—

18 (A) FRAUDULENT TRANSFERS.—The Cor-
19 poration, as receiver for any covered financial
20 company, may avoid a transfer of any interest
21 of the covered financial company in property, or
22 any obligation incurred by the covered financial
23 company, that was made or incurred at or with-
24 in 2 years before the time of commencement,
25 if—

1 (i) the covered financial company vol-
2 untarily or involuntarily—

3 (I) made such transfer or in-
4 curred such obligation with actual in-
5 tent to hinder, delay, or defraud any
6 entity to which the covered financial
7 company was or became, on or after
8 the date on which such transfer was
9 made or such obligation was incurred,
10 indebted; or

11 (II) received less than a reason-
12 ably equivalent value in exchange for
13 such transferor obligation; and

14 (ii) the covered financial company vol-
15 untarily or involuntarily—

16 (I) was insolvent on the date that
17 such transfer was made or such obli-
18 gation was incurred, or became insol-
19 vent as a result of such transfer or
20 obligation;

21 (II) was engaged in business or a
22 transaction, or was about to engage in
23 business or a transaction, for which
24 any property remaining with the cov-

1 ered financial company was an unrea-
2 sonably small capital;

3 (III) intended to incur, or be-
4 lieved that the covered financial com-
5 pany would incur, debts that would be
6 beyond the ability of the covered fi-
7 nancial company to pay as such debts
8 matured; or

9 (IV) made such transfer to or for
10 the benefit of an insider, or incurred
11 such obligation to or for the benefit of
12 an insider, under an employment con-
13 tract and not in the ordinary course
14 of business.

15 (B) PREFERENTIAL TRANSFERS.—The
16 Corporation as receiver for any covered finan-
17 cial company may avoid a transfer of an inter-
18 est of the covered financial company in prop-
19 erty—

20 (i) to or for the benefit of a creditor;

21 (ii) for or on account of an antecedent
22 debt that was owed by the covered finan-
23 cial company before the transfer was made;

24 (iii) that was made while the covered
25 financial company was insolvent;

1 (iv) that was made—

2 (I) 90 days or less before the
3 date on which the Corporation was
4 appointed receiver; or

5 (II) more than 90 days, but less
6 than 1 year before the date on which
7 the Corporation was appointed re-
8 ceiver, if such creditor at the time of
9 the transfer was an insider; and

10 (v) that enables the creditor to receive
11 more than the creditor would receive if—

12 (I) the covered financial company
13 had been liquidated under chapter 7
14 of the Bankruptcy Code;

15 (II) the transfer had not been
16 made; and

17 (III) the creditor received pay-
18 ment of such debt to the extent pro-
19 vided by the provisions of chapter 7 of
20 the Bankruptcy Code.

21 (C) POST-RECEIVERSHIP TRANSACTIONS.—

22 The Corporation as receiver for any covered fi-
23 nancial company may avoid a transfer of prop-
24 erty of the receivership that occurred after the
25 Corporation was appointed receiver that was

1 not authorized under this title by the Corpora-
2 tion as receiver.

3 (D) RIGHT OF RECOVERY.—To the extent
4 that a transfer is avoided under subparagraph
5 (A), (B), or (C), the Corporation may recover,
6 for the benefit of the covered financial com-
7 pany, the property transferred or, if a court so
8 orders, the value of such property (at the time
9 of such transfer) from—

10 (i) the initial transferee of such trans-
11 fer or the person for whose benefit such
12 transfer was made; or

13 (ii) any immediate or mediate trans-
14 feree of any such initial transferee.

15 (E) RIGHTS OF TRANSFEREE OR OBLI-
16 GEE.—The Corporation may not recover under
17 subparagraph (D)(ii) from—

18 (i) any transferee that takes for value,
19 including in satisfaction of or to secure a
20 present or antecedent debt, in good faith,
21 and without knowledge of the voidability of
22 the transfer avoided; or

23 (ii) any immediate or mediate good
24 faith transferee of such transferee.

1 (F) DEFENSES.—Subject to the other pro-
2 visions of this title—

3 (i) a transferee or obligee from which
4 the Corporation seeks to recover a transfer
5 or to avoid an obligation under subpara-
6 graph (A), (B), (C), or (D) shall have the
7 same defenses available to a transferee or
8 obligee from which a trustee seeks to re-
9 cover a transfer or avoid an obligation
10 under; and

11 (ii) the authority of the Corporation
12 to recover a transfer or avoid an obligation
13 shall be subject to subsections (b) and (c)
14 of section 546, section 547(c), and section
15 548(c) of the Bankruptcy Code.

16 (G) RIGHTS UNDER THIS SECTION.—The
17 rights of the Corporation as receiver under this
18 section shall be superior to any rights of a
19 trustee or any other party (other than a Fed-
20 eral agency) under the Bankruptcy Code.

21 (H) RULES OF CONSTRUCTION; DEFINI-
22 TIONS.—For purposes of—

23 (i) subparagraphs (A) and (B)—

1 (I) the term “insider” has the
2 same meaning as in section 101(31)
3 of the Bankruptcy Code;

4 (II) a transfer is made when
5 such transfer is so perfected that a
6 bona fide purchaser from the covered
7 financial company against whom ap-
8 plicable law permits such transfer to
9 be perfected cannot acquire an inter-
10 est in the property transferred that is
11 superior to the interest in such prop-
12 erty of the transferee, but if such
13 transfer is not so perfected before the
14 date on which the Corporation is ap-
15 pointed as receiver for the covered fi-
16 nancial company, such transfer is
17 made immediately before the date of
18 such appointment; and

19 (III) the term “value” means
20 property, or satisfaction or securing of
21 a present or antecedent debt of the
22 covered financial company, but does
23 not include an unperformed promise
24 to furnish support to the covered fi-
25 nancial company; and

1 (ii) subparagraph (B)—

2 (I) the covered financial company
3 is presumed to have been insolvent on
4 and during the 90-day period imme-
5 diately preceding the date of appoint-
6 ment of the Corporation as receiver;
7 and

8 (II) the term “insolvent” has the
9 same meaning as in section 101(32)
10 of the Bankruptcy Code.

11 (12) SETOFF.—

12 (A) GENERALLY.—Except as otherwise
13 provided in this title, any right of a creditor to
14 offset a mutual debt owed by the creditor to
15 any covered financial company that arose before
16 the Corporation was appointed as receiver for
17 the covered financial company against a claim
18 of such creditor may be asserted if enforceable
19 under applicable noninsolvency law, except to
20 the extent that—

21 (i) the claim of the creditor against
22 the covered financial company is dis-
23 allowed;

1 (ii) the claim was transferred, by an
2 entity other than the covered financial
3 company, to the creditor—

4 (I) after the Corporation was ap-
5 pointed as receiver of the covered fi-
6 nancial company; or

7 (II)(aa) after the 90-day period
8 preceding the date on which the Cor-
9 poration was appointed as receiver for
10 the covered financial company; and

11 (bb) while the covered financial
12 company was insolvent (except for a
13 setoff in connection with a qualified
14 financial contract); or

15 (iii) the debt owed to the covered fi-
16 nancial company was incurred by the cov-
17 ered financial company—

18 (I) after the 90-day period pre-
19 ceding the date on which the Corpora-
20 tion was appointed as receiver for the
21 covered financial company;

22 (II) while the covered financial
23 company was insolvent; and

24 (III) for the purpose of obtaining
25 a right of setoff against the covered

1 financial company (except for a setoff
2 in connection with a qualified finan-
3 cial contract).

4 (B) INSUFFICIENCY.—

5 (i) IN GENERAL.—Except with respect
6 to a setoff in connection with a qualified fi-
7 nancial contract, if a creditor offsets a mu-
8 tual debt owed to the covered financial
9 company against a claim of the covered fi-
10 nancial company on or within the 90-day
11 period preceding the date on which the
12 Corporation is appointed as receiver for
13 the covered financial company, the Cor-
14 poration may recover from the creditor the
15 amount so offset, to the extent that any in-
16 sufficiency on the date of such setoff is less
17 than the insufficiency on the later of—

18 (I) the date that is 90 days be-
19 fore the date on which the Corpora-
20 tion is appointed as receiver for the
21 covered financial company; or

22 (II) the first day on which there
23 is an insufficiency during the 90-day
24 period preceding the date on which
25 the Corporation is appointed as re-

1 ceiver for the covered financial com-
2 pany.

3 (ii) DEFINITION OF INSUFFI-
4 CIENCY.—In this subparagraph, the term
5 “insufficiency” means the amount, if any,
6 by which a claim against the covered finan-
7 cial company exceeds a mutual debt owed
8 to the covered financial company by the
9 holder of such claim.

10 (C) INSOLVENCY.—The term “insolvent”
11 has the same meaning as in section 101(32) of
12 the Bankruptcy Code.

13 (D) PRESUMPTION OF INSOLVENCY.—For
14 purposes of this paragraph, the covered finan-
15 cial company is presumed to have been insol-
16 vent on and during the 90-day period preceding
17 the date of appointment of the Corporation as
18 receiver.

19 (E) LIMITATION.—Nothing in this para-
20 graph (12) shall be the basis for any right of
21 setoff where no such right exists under applica-
22 ble noninsolvency law.

23 (F) PRIORITY CLAIM.—Except as other-
24 wise provided in this title, the Corporation as
25 receiver for the covered financial company may

1 sell or transfer any assets free and clear of the
2 setoff rights of any party, except that such
3 party shall be entitled to a claim, subordinate
4 to the claims payable under subparagraphs (A),
5 (B), (C), and (D) of subsection (b)(1), but sen-
6 ior to all other unsecured liabilities defined in
7 subsection (b)(1)(E), in an amount equal to the
8 value of such setoff rights.

9 (13) ATTACHMENT OF ASSETS AND OTHER IN-
10 JUNCTIVE RELIEF.—Subject to paragraph (14), any
11 court of competent jurisdiction may, at the request
12 of the Corporation as receiver for a covered financial
13 company, issue an order in accordance with Rule 65
14 of the Federal Rules of Civil Procedure, including an
15 order placing the assets of any person designated by
16 the Corporation under the control of the court and
17 appointing a trustee to hold such assets.

18 (14) STANDARDS.—

19 (A) SHOWING.—Rule 65 of the Federal
20 Rules of Civil Procedure shall apply with re-
21 spect to any proceeding under paragraph (13),
22 without regard to the requirement that the ap-
23 plicant show that the injury, loss, or damage is
24 irreparable and immediate.

1 (B) STATE PROCEEDING.—If, in the case
2 of any proceeding in a State court, the court
3 determines that rules of civil procedure avail-
4 able under the laws of the State provide sub-
5 stantially similar protections of the right of the
6 parties to due process as provided under Rule
7 65 (as modified with respect to such proceeding
8 by subparagraph (A)), the relief sought by the
9 Corporation pursuant to paragraph (14) may be
10 requested under the laws of such State.

11 (15) TREATMENT OF CLAIMS ARISING FROM
12 BREACH OF CONTRACTS EXECUTED BY THE COR-
13 PORATION AS RECEIVER.—Notwithstanding any
14 other provision of this title, any final and non-ap-
15 pealable judgment for monetary damages entered
16 against the Corporation as receiver for a covered fi-
17 nancial company for the breach of an agreement exe-
18 cuted or approved by the Corporation after the date
19 of its appointment shall be paid as an administrative
20 expense of the receiver. Nothing in this paragraph
21 shall be construed to limit the power of a receiver
22 to exercise any rights under contract or law, includ-
23 ing to terminate, breach, cancel, or otherwise dis-
24 continue such agreement.

1 (16) ACCOUNTING AND RECORDKEEPING RE-
2 QUIREMENTS.—

3 (A) IN GENERAL.—The Corporation as re-
4 ceiver for a covered financial company shall,
5 consistent with the accounting and reporting
6 practices and procedures established by the
7 Corporation, maintain a full accounting of each
8 receivership or other disposition of any covered
9 financial company.

10 (B) ANNUAL ACCOUNTING OR REPORT.—
11 With respect to each receivership to which the
12 Corporation is appointed, the Corporation shall
13 make an annual accounting or report, as appro-
14 priate, available to the Secretary and the Comp-
15 troller General of the United States.

16 (C) AVAILABILITY OF REPORTS.—Any re-
17 port prepared pursuant to subparagraph (B)
18 and section 203(c)(3) shall be made available to
19 the public by the Corporation.

20 (D) RECORDKEEPING REQUIREMENT.—

21 (i) IN GENERAL.—The Corporation
22 shall prescribe such regulations and estab-
23 lish such retention schedules as are nec-
24 essary to maintain the documents and
25 records of the Corporation generated in ex-

1 ercising the authorities of this title and the
2 records of a covered financial company for
3 which the Corporation is appointed re-
4 ceiver, with due regard for—

5 (I) the avoidance of duplicative
6 record retention; and

7 (II) the expected evidentiary
8 needs of the Corporation as receiver
9 for a covered financial company and
10 the public regarding the records of
11 covered financial companies.

12 (ii) RETENTION OF RECORDS.—Un-
13 less otherwise required by applicable Fed-
14 eral law or court order, the Corporation
15 may not, at any time, destroy any records
16 that are subject to clause (i).

17 (iii) RECORDS DEFINED.—As used in
18 this subparagraph, the terms “records”
19 and “records of a covered financial com-
20 pany” mean any document, book, paper,
21 map, photograph, microfiche, microfilm,
22 computer or electronically-created record
23 generated or maintained by the covered fi-
24 nancial company in the course of and nec-
25 essary to its transaction of business.

1 (b) PRIORITY OF EXPENSES AND UNSECURED
2 CLAIMS.—

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

8 (A) Administrative expenses of the re-
9 ceiver.

10 (B) Any amounts owed to the United
11 States, unless the United States agrees or con-
12 sents otherwise.

13 (C) Wages, salaries, or commissions, in-
14 cluding vacation, severance, and sick leave pay
15 earned by an individual (other than an indi-
16 vidual described in subparagraph (G)), but only
17 to the extent of \$11,725 for each individual (as
18 indexed for inflation, by regulation of the Cor-
19 poration) earned not later than 180 days before
20 the date of appointment of the Corporation as
21 receiver.

22 (D) Contributions owed to employee ben-
23 efit plans arising from services rendered not
24 later than 180 days before the date of appoint-
25 ment of the Corporation as receiver, to the ex-

1 tent of the number of employees covered by
2 each such plan, multiplied by \$11,725 (as in-
3 dexed for inflation, by regulation of the Cor-
4 poration), less the aggregate amount paid to
5 such employees under subparagraph (C), plus
6 the aggregate amount paid by the receivership
7 on behalf of such employees to any other em-
8 ployee benefit plan.

9 (E) Any other general or senior liability of
10 the covered financial company (which is not a
11 liability described under subparagraph (F), (G),
12 or (H)).

13 (F) Any obligation subordinated to general
14 creditors (which is not an obligation described
15 under subparagraph (G) or (H)).

16 (G) Any wages, salaries, or commissions,
17 including vacation, severance, and sick leave
18 pay earned, owed to senior executives and direc-
19 tors of the covered financial company.

20 (H) Any obligation to shareholders, mem-
21 bers, general partners, limited partners, or
22 other persons, with interests in the equity of
23 the covered financial company arising as a re-
24 sult of their status as shareholders, members,
25 general partners, limited partners, or other per-

1 sons with interests in the equity of the covered
2 financial company.

3 (2) POST-RECEIVERSHIP FINANCING PRI-
4 ORITY.—In the event that the Corporation, as re-
5 ceiver for a covered financial company, is unable to
6 obtain unsecured credit for the covered financial
7 company from commercial sources, the Corporation
8 as receiver may obtain credit or incur debt on the
9 part of the covered financial company, which shall
10 have priority over any or all administrative expenses
11 of the receiver under paragraph (1)(A).

12 (3) CLAIMS OF THE UNITED STATES.—Unse-
13 cured claims of the United States shall, at a min-
14 imum, have a higher priority than liabilities of the
15 covered financial company that count as regulatory
16 capital.

17 (4) CREDITORS SIMILARLY SITUATED.—All
18 claimants of a covered financial company that are
19 similarly situated under paragraph (1) shall be
20 treated in a similar manner, except that the Cor-
21 poration may take any action (including making
22 payments, subject to subsection (o)(1)(E)(ii)) that
23 does not comply with this subsection, if—

24 (A) the Corporation determines that such
25 action is necessary—

1 (i) to maximize the value of the assets
2 of the covered financial company;

3 (ii) to initiate and continue operations
4 essential to implementation of the receiver-
5 ship or any bridge financial company;

6 (iii) to maximize the present value re-
7 turn from the sale or other disposition of
8 the assets of the covered financial com-
9 pany; or

10 (iv) to minimize the amount of any
11 loss realized upon the sale or other disposi-
12 tion of the assets of the covered financial
13 company; and

14 (B) all claimants that are similarly situ-
15 ated under paragraph (1) receive not less than
16 the amount provided in paragraphs (2) and (3)
17 of subsection (d).

18 (5) SECURED CLAIMS UNAFFECTED.—This sec-
19 tion shall not affect secured claims or security enti-
20 tlements in respect of assets or property held by the
21 covered financial company, except to the extent that
22 the security is insufficient to satisfy the claim, and
23 then only with regard to the difference between the
24 claim and the amount realized from the security.

1 (6) PRIORITY OF EXPENSES AND UNSECURED
2 CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC
3 MEMBER.—Where the Corporation is appointed as
4 receiver for a covered broker or dealer, unsecured
5 claims against such covered broker or dealer, or the
6 Corporation as receiver for such covered broker or
7 dealer under this section, that are proven to the sat-
8 isfaction of the receiver under section 205(e), shall
9 have the priority prescribed in paragraph (1), except
10 that—

11 (A) SIPC shall be entitled to recover ad-
12 ministrative expenses incurred in performing its
13 responsibilities under section 205 on an equal
14 basis with the Corporation, in accordance with
15 paragraph (1)(A);

16 (B) the Corporation shall be entitled to re-
17 cover any amounts paid to customers or to
18 SIPC pursuant to section 205(f), in accordance
19 with paragraph (1)(B);

20 (C) SIPC shall be entitled to recover any
21 amounts paid out of the SIPC Fund to meet its
22 obligations under section 205 and under the Se-
23 curities Investor Protection Act of 1970 (15
24 U.S.C. 78aaa et seq.), which claim shall be sub-
25 ordinate to the claims payable under subpara-

1 graphs (A) and (B) of paragraph (1), but sen-
2 ior to all other claims; and

3 (D) the Corporation may, after paying any
4 proven claims to customers under section 205
5 and the Securities Investor Protection Act of
6 1970 (15 U.S.C. 78aaa et seq.), and as pro-
7 vided above, pay dividends on other proven
8 claims, in its discretion, and to the extent that
9 funds are available, in accordance with the pri-
10 orities set forth in paragraph (1).

11 (c) PROVISIONS RELATING TO CONTRACTS ENTERED
12 INTO BEFORE APPOINTMENT OF RECEIVER.—

13 (1) AUTHORITY TO REPUDIATE CONTRACTS.—

14 In addition to any other rights that a receiver may
15 have, the Corporation as receiver for any covered fi-
16 nancial company may disaffirm or repudiate any
17 contract or lease—

18 (A) to which the covered financial company
19 is a party;

20 (B) the performance of which the Corpora-
21 tion as receiver, in the discretion of the Cor-
22 poration, determines to be burdensome; and

23 (C) the disaffirmance or repudiation of
24 which the Corporation as receiver determines,
25 in the discretion of the Corporation, will pro-

1 repudiation of such contract or agree-
2 ment.

3 (B) NO LIABILITY FOR OTHER DAM-
4 AGES.—For purposes of subparagraph (A), the
5 term “actual direct compensatory damages”
6 does not include—

7 (i) punitive or exemplary damages;

8 (ii) damages for lost profits or oppor-
9 tunity; or

10 (iii) damages for pain and suffering.

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

16 (i) deemed to include normal and rea-
17 sonable costs of cover or other reasonable
18 measures of damages utilized in the indus-
19 tries for such contract and agreement
20 claims; and

21 (ii) paid in accordance with this para-
22 graph and subsection (d), except as other-
23 wise specifically provided in this sub-
24 section.

1 (D) MEASURE OF DAMAGES FOR REPUDI-
2 ATION OR DISAFFIRMANCE OF DEBT OBLIGA-
3 TION.—In the case of any debt for borrowed
4 money or evidenced by a security, actual direct
5 compensatory damages shall be no less than the
6 amount lent plus accrued interest plus any
7 accreted original issue discount as of the date
8 the Corporation was appointed receiver of the
9 covered financial company and, to the extent
10 that an allowed secured claim is secured by
11 property the value of which is greater than the
12 amount of such claim and any accrued interest
13 through the date of repudiation or
14 disaffirmance, such accrued interest pursuant
15 to paragraph (1).

16 (E) MEASURE OF DAMAGES FOR REPUDI-
17 ATION OR DISAFFIRMANCE OF CONTINGENT OB-
18 LIGATION.—In the case of any contingent obli-
19 gation of a covered financial company con-
20 sisting of any obligation under a guarantee, let-
21 ter of credit, loan commitment, or similar credit
22 obligation, the Corporation may, by rule or reg-
23 ulation, prescribe that actual direct compen-
24 satory damages shall be no less than the esti-
25 mated value of the claim as of the date the Cor-

1 sor is in default or breach of the
2 terms of the lease;

3 (ii) have no claim for damages under
4 any acceleration clause or other penalty
5 provision in the lease; and

6 (iii) have a claim for any unpaid rent,
7 subject to all appropriate offsets and de-
8 fenses, due as of the date of the appoint-
9 ment which shall be paid in accordance
10 with this paragraph and subsection (d).

11 (5) LEASES UNDER WHICH THE COVERED FI-
12 NANCIAL COMPANY IS THE LESSOR.—

13 (A) IN GENERAL.—If the Corporation as
14 receiver for a covered financial company repudi-
15 ates an unexpired written lease of real property
16 of the covered financial company under which
17 the covered financial company is the lessor and
18 the lessee is not, as of the date of such repudi-
19 ation, in default, the lessee under such lease
20 may either—

21 (i) treat the lease as terminated by
22 such repudiation; or

23 (ii) remain in possession of the lease-
24 hold interest for the balance of the term of
25 the lease, unless the lessee defaults under

1 (6) CONTRACTS FOR THE SALE OF REAL PROP-
2 ERTY.—

3 (A) IN GENERAL.—If the receiver repudi-
4 ates any contract (which meets the require-
5 ments of subsection (a)(6)) for the sale of real
6 property, and the purchaser of such real prop-
7 erty under such contract is in possession and is
8 not, as of the date of such repudiation, in de-
9 fault, such purchaser may either—

10 (i) treat the contract as terminated by
11 such repudiation; or

12 (ii) remain in possession of such real
13 property.

14 (B) PROVISIONS APPLICABLE TO PUR-
15 CHASER REMAINING IN POSSESSION.—If any
16 purchaser of real property under any contract
17 described in subparagraph (A) remains in pos-
18 session of such property pursuant to clause (ii)
19 of subparagraph (A)—

20 (i) the purchaser—

21 (I) shall continue to make all
22 payments due under the contract after
23 the date of the repudiation of the con-
24 tract; and

1 (II) may offset against any such
2 payments any damages which accrue
3 after such date due to the non-
4 performance (after such date) of any
5 obligation of the covered financial
6 company under the contract; and

7 (ii) the Corporation as receiver shall—

8 (I) not be liable to the purchaser
9 for any damages arising after such
10 date as a result of the repudiation,
11 other than the amount of any offset
12 allowed under clause (i)(II);

13 (II) deliver title to the purchaser
14 in accordance with the provisions of
15 the contract; and

16 (III) have no obligation under
17 the contract other than the perform-
18 ance required under subclause (II).

19 (C) ASSIGNMENT AND SALE ALLOWED.—

20 (i) IN GENERAL.—No provision of this
21 paragraph shall be construed as limiting
22 the right of the Corporation as receiver to
23 assign the contract described in subpara-
24 graph (A) and sell the property, subject to

1 the contract and the provisions of this
2 paragraph.

3 (ii) NO LIABILITY AFTER ASSIGNMENT
4 AND SALE.—If an assignment and sale de-
5 scribed in clause (i) is consummated, the
6 Corporation as receiver shall have no fur-
7 ther liability under the contract described
8 in subparagraph (A) or with respect to the
9 real property which was the subject of such
10 contract.

11 (7) PROVISIONS APPLICABLE TO SERVICE CON-
12 TRACTS.—

13 (A) SERVICES PERFORMED BEFORE AP-
14 POINTMENT.—In the case of any contract for
15 services between any person and any covered fi-
16 nancial company for which the Corporation has
17 been appointed receiver, any claim of such per-
18 son for services performed before the date of
19 appointment shall be—

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

22 (ii) deemed to have arisen as of the
23 date on which the receiver was appointed.

24 (B) SERVICES PERFORMED AFTER AP-
25 POINTMENT AND PRIOR TO REPUDIATION.—If,

1 in the case of any contract for services de-
2 scribed in subparagraph (A), the Corporation as
3 receiver accepts performance by the other per-
4 son before making any determination to exer-
5 cise the right of repudiation of such contract
6 under this section—

7 (i) the other party shall be paid under
8 the terms of the contract for the services
9 performed; and

10 (ii) the amount of such payment shall
11 be treated as an administrative expense of
12 the receivership.

13 (C) ACCEPTANCE OF PERFORMANCE NO
14 BAR TO SUBSEQUENT REPUDIATION.—The ac-
15 ceptance by the Corporation as receiver for
16 services referred to in subparagraph (B) in con-
17 nection with a contract described in subpara-
18 graph (B) shall not affect the right of the Cor-
19 poration as receiver to repudiate such contract
20 under this section at any time after such per-
21 formance.

22 (8) CERTAIN QUALIFIED FINANCIAL CON-
23 TRACTS.—

24 (A) RIGHTS OF PARTIES TO CONTRACTS.—

25 Subject to subsection (a)(8) and paragraphs (9)

1 and (10) of this subsection, and notwith-
2 standing any other provision of this section, any
3 other provision of Federal law, or the law of
4 any State, no person shall be stayed or prohib-
5 ited from exercising—

6 (i) any right that such person has to
7 cause the termination, liquidation, or accel-
8 eration of any qualified financial contract
9 with a covered financial company which
10 arises upon the date of appointment of the
11 Corporation as receiver for such covered fi-
12 nancial company at any time after such
13 appointment;

14 (ii) any right under any security
15 agreement or arrangement or other credit
16 enhancement related to one or more quali-
17 fied financial contracts described in clause
18 (i); or

19 (iii) any right to offset or net out any
20 termination value, payment amount, or
21 other transfer obligation arising under or
22 in connection with 1 or more contracts or
23 agreements described in clause (i), includ-
24 ing any master agreement for such con-
25 tracts or agreements.

1 (B) APPLICABILITY OF OTHER PROVI-
2 SIONS.—Subsection (a)(8) shall apply in the
3 case of any judicial action or proceeding
4 brought against the Corporation as receiver re-
5 ferred to in subparagraph (A), or the subject
6 covered financial company, by any party to a
7 contract or agreement described in subpara-
8 graph (A)(i) with such covered financial com-
9 pany.

10 (C) CERTAIN TRANSFERS NOT AVOID-
11 ABLE.—

12 (i) IN GENERAL.—Notwithstanding
13 subsection (a)(11), (a)(12), or (c)(12), sec-
14 tion 5242 of the Revised Statutes of the
15 United States, or any other provision of
16 Federal or State law relating to the avoid-
17 ance of preferential or fraudulent trans-
18 fers, the Corporation, whether acting as
19 the Corporation or as receiver for a cov-
20 ered financial company, may not avoid any
21 transfer of money or other property in con-
22 nection with any qualified financial con-
23 tract with a covered financial company.

24 (ii) EXCEPTION FOR CERTAIN TRANS-
25 FERS.—Clause (i) shall not apply to any

1 transfer of money or other property in con-
2 nection with any qualified financial con-
3 tract with a covered financial company if
4 the transferee had actual intent to hinder,
5 delay, or defraud such company, the credi-
6 tors of such company, or the Corporation
7 as receiver appointed for such company.

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

11 (i) QUALIFIED FINANCIAL CON-
12 TRACT.—The term “qualified financial
13 contract” means any securities contract,
14 commodity contract, forward contract, re-
15 purchase agreement, swap agreement, and
16 any similar agreement that the Corpora-
17 tion determines by regulation, resolution,
18 or order to be a qualified financial contract
19 for purposes of this paragraph.

20 (ii) SECURITIES CONTRACT.—The
21 term “securities contract”—

22 (I) means a contract for the pur-
23 chase, sale, or loan of a security, a
24 certificate of deposit, a mortgage loan,
25 any interest in a mortgage loan, a

1 group or index of securities, certifi-
2 cates of deposit, or mortgage loans or
3 interests therein (including any inter-
4 est therein or based on the value
5 thereof), or any option on any of the
6 foregoing, including any option to
7 purchase or sell any such security,
8 certificate of deposit, mortgage loan,
9 interest, group or index, or option,
10 and including any repurchase or re-
11 verse repurchase transaction on any
12 such security, certificate of deposit,
13 mortgage loan, interest, group or
14 index, or option (whether or not such
15 repurchase or reverse repurchase
16 transaction is a “repurchase agree-
17 ment”, as defined in clause (v));

18 (II) does not include any pur-
19 chase, sale, or repurchase obligation
20 under a participation in a commercial
21 mortgage loan unless the Corporation
22 determines by regulation, resolution,
23 or order to include any such agree-
24 ment within the meaning of such
25 term;

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1 (III) means any option entered
2 into on a national securities exchange
3 relating to foreign currencies;

4 (IV) means the guarantee (in-
5 cluding by novation) by or to any se-
6 curities clearing agency of any settle-
7 ment of cash, securities, certificates of
8 deposit, mortgage loans or interests
9 therein, group or index of securities,
10 certificates of deposit or mortgage
11 loans or interests therein (including
12 any interest therein or based on the
13 value thereof) or an option on any of
14 the foregoing, including any option to
15 purchase or sell any such security,
16 certificate of deposit, mortgage loan,
17 interest, group or index, or option
18 (whether or not such settlement is in
19 connection with any agreement or
20 transaction referred to in subclauses
21 (I) through (XII) (other than sub-
22 clause (II)));

23 (V) means any margin loan;

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1 (VI) means any extension of
2 credit for the clearance or settlement
3 of securities transactions;

4 (VII) means any loan transaction
5 coupled with a securities collar trans-
6 action, any prepaid securities forward
7 transaction, or any total return swap
8 transaction coupled with a securities
9 sale transaction;

10 (VIII) means any other agree-
11 ment or transaction that is similar to
12 any agreement or transaction referred
13 to in this clause;

14 (IX) means any combination of
15 the agreements or transactions re-
16 ferred to in this clause;

17 (X) means any option to enter
18 into any agreement or transaction re-
19 ferred to in this clause;

20 (XI) means a master agreement
21 that provides for an agreement or
22 transaction referred to in any of sub-
23 clauses (I) through (X), other than
24 subclause (II), together with all sup-
25 plements to any such master agree-

1 ment, without regard to whether the
2 master agreement provides for an
3 agreement or transaction that is not a
4 securities contract under this clause,
5 except that the master agreement
6 shall be considered to be a securities
7 contract under this clause only with
8 respect to each agreement or trans-
9 action under the master agreement
10 that is referred to in any of sub-
11 clauses (I) through (X), other than
12 subclause (II); and

13 (XII) means any security agree-
14 ment or arrangement or other credit
15 enhancement related to any agree-
16 ment or transaction referred to in this
17 clause, including any guarantee or re-
18 imbursement obligation in connection
19 with any agreement or transaction re-
20 ferred to in this clause.

21 (iii) COMMODITY CONTRACT.—The
22 term “commodity contract” means—

23 (I) with respect to a futures com-
24 mission merchant, a contract for the
25 purchase or sale of a commodity for

1 future delivery on, or subject to the
2 rules of, a contract market or board
3 of trade;

4 (II) with respect to a foreign fu-
5 tures commission merchant, a foreign
6 future;

7 (III) with respect to a leverage
8 transaction merchant, a leverage
9 transaction;

10 (IV) with respect to a clearing
11 organization, a contract for the pur-
12 chase or sale of a commodity for fu-
13 ture delivery on, or subject to the
14 rules of, a contract market or board
15 of trade that is cleared by such clear-
16 ing organization, or commodity option
17 traded on, or subject to the rules of,
18 a contract market or board of trade
19 that is cleared by such clearing orga-
20 nization;

21 (V) with respect to a commodity
22 options dealer, a commodity option;

23 (VI) any other agreement or
24 transaction that is similar to any

1 agreement or transaction referred to
2 in this clause;

3 (VII) any combination of the
4 agreements or transactions referred to
5 in this clause;

6 (VIII) any option to enter into
7 any agreement or transaction referred
8 to in this clause;

9 (IX) a master agreement that
10 provides for an agreement or trans-
11 action referred to in any of subclauses
12 (I) through (VIII), together with all
13 supplements to any such master
14 agreement, without regard to whether
15 the master agreement provides for an
16 agreement or transaction that is not a
17 commodity contract under this clause,
18 except that the master agreement
19 shall be considered to be a commodity
20 contract under this clause only with
21 respect to each agreement or trans-
22 action under the master agreement
23 that is referred to in any of sub-
24 clauses (I) through (VIII); or

1 (X) any security agreement or
2 arrangement or other credit enhance-
3 ment related to any agreement or
4 transaction referred to in this clause,
5 including any guarantee or reimburse-
6 ment obligation in connection with
7 any agreement or transaction referred
8 to in this clause.

9 (iv) FORWARD CONTRACT.—The term
10 “forward contract” means—

11 (I) a contract (other than a com-
12 modity contract) for the purchase,
13 sale, or transfer of a commodity or
14 any similar good, article, service,
15 right, or interest which is presently or
16 in the future becomes the subject of
17 dealing in the forward contract trade,
18 or product or byproduct thereof, with
19 a maturity date that is more than 10
20 days after the date on which the con-
21 tract is entered into, including a re-
22 purchase or reverse repurchase trans-
23 action (whether or not such repur-
24 chase or reverse repurchase trans-
25 action is a “repurchase agreement”,

1 as defined in clause (v)), consignment,
2 lease, swap, hedge transaction, de-
3 posit, loan, option, allocated trans-
4 action, unallocated transaction, or any
5 other similar agreement;

6 (II) any combination of agree-
7 ments or transactions referred to in
8 subclauses (I) and (III);

9 (III) any option to enter into any
10 agreement or transaction referred to
11 in subclause (I) or (II);

12 (IV) a master agreement that
13 provides for an agreement or trans-
14 action referred to in subclause (I),
15 (II), or (III), together with all supple-
16 ments to any such master agreement,
17 without regard to whether the master
18 agreement provides for an agreement
19 or transaction that is not a forward
20 contract under this clause, except that
21 the master agreement shall be consid-
22 ered to be a forward contract under
23 this clause only with respect to each
24 agreement or transaction under the

1 master agreement that is referred to
2 in subclause (I), (II), or (III); or

3 (V) any security agreement or ar-
4 rangement or other credit enhance-
5 ment related to any agreement or
6 transaction referred to in subclause
7 (I), (II), (III), or (IV), 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 (v) REPURCHASE AGREEMENT.—The
13 term “repurchase agreement” (which defi-
14 nition also applies to a reverse repurchase
15 agreement)—

16 (I) means an agreement, includ-
17 ing related terms, which provides for
18 the transfer of one or more certifi-
19 cates of deposit, mortgage related se-
20 curities (as such term is defined in
21 section 3 of the Securities Exchange
22 Act of 1934), mortgage loans, inter-
23 ests in mortgage-related securities or
24 mortgage loans, eligible bankers’ ac-
25 ceptances, qualified foreign govern-

1 ment securities (which, for purposes
2 of this clause, means a security that is
3 a direct obligation of, or that is fully
4 guaranteed by, the central government
5 of a member of the Organization for
6 Economic Cooperation and Develop-
7 ment, as determined by regulation or
8 order adopted by the Board of Gov-
9 ernors), or securities that are direct
10 obligations of, or that are fully guar-
11 anteed by, the United States or any
12 agency of the United States against
13 the transfer of funds by the transferee
14 of such certificates of deposit, eligible
15 bankers' acceptances, securities, mort-
16 gage loans, or interests with a simul-
17 taneous agreement by such transferee
18 to transfer to the transferor thereof
19 certificates of deposit, eligible bank-
20 ers' acceptances, securities, mortgage
21 loans, or interests as described above,
22 at a date certain not later than 1 year
23 after such transfers or on demand,
24 against the transfer of funds, or any
25 other similar agreement;

1 (II) does not include any repur-
2 chase obligation under a participation
3 in a commercial mortgage loan, unless
4 the Corporation determines, by regu-
5 lation, resolution, or order to include
6 any such participation within the
7 meaning of such term;

8 (III) means any combination of
9 agreements or transactions referred to
10 in subclauses (I) and (IV);

11 (IV) means any option to enter
12 into any agreement or transaction re-
13 ferred to in subclause (I) or (III);

14 (V) means a master agreement
15 that provides for an agreement or
16 transaction referred to in subclause
17 (I), (III), or (IV), together with all
18 supplements to any such master
19 agreement, without regard to whether
20 the master agreement provides for an
21 agreement or transaction that is not a
22 repurchase agreement under this
23 clause, except that the master agree-
24 ment shall be considered to be a re-
25 purchase agreement under this sub-

1 clause only with respect to each agree-
2 ment or transaction under the master
3 agreement that is referred to in sub-
4 clause (I), (III), or (IV); and

5 (VI) means any security agree-
6 ment or arrangement or other credit
7 enhancement related to any agree-
8 ment or transaction referred to in
9 subclause (I), (III), (IV), or (V), in-
10 cluding any guarantee or reimburse-
11 ment obligation in connection with
12 any agreement or transaction referred
13 to in any such subclause.

14 (vi) SWAP AGREEMENT.—The term
15 “swap agreement” means—

16 (I) any agreement, including the
17 terms and conditions incorporated by
18 reference in any such agreement,
19 which is an interest rate swap, option,
20 future, or forward agreement, includ-
21 ing a rate floor, rate cap, rate collar,
22 cross-currency rate swap, and basis
23 swap; a spot, same day-tomorrow, to-
24 morrow-next, forward, or other for-
25 eign exchange, precious metals, or

1 other commodity agreement; a cur-
2 rency swap, option, future, or forward
3 agreement; an equity index or equity
4 swap, option, future, or forward
5 agreement; a debt index or debt swap,
6 option, future, or forward agreement;
7 a total return, credit spread or credit
8 swap, option, future, or forward
9 agreement; a commodity index or
10 commodity swap, option, future, or
11 forward agreement; weather swap, op-
12 tion, future, or forward agreement; an
13 emissions swap, option, future, or for-
14 ward agreement; or an inflation swap,
15 option, future, or forward agreement;

16 (II) any agreement or transaction
17 that is similar to any other agreement
18 or transaction referred to in this
19 clause and that is of a type that has
20 been, is presently, or in the future be-
21 comes, the subject of recurrent deal-
22 ings in the swap or other derivatives
23 markets (including terms and condi-
24 tions incorporated by reference in
25 such agreement) and that is a for-

1 ward, swap, future, option, or spot
2 transaction on one or more rates, cur-
3 rencies, commodities, equity securities
4 or other equity instruments, debt se-
5 curities or other debt instruments,
6 quantitative measures associated with
7 an occurrence, extent of an occur-
8 rence, or contingency associated with
9 a financial, commercial, or economic
10 consequence, or economic or financial
11 indices or measures of economic or fi-
12 nancial risk or value;

13 (III) any combination of agree-
14 ments or transactions referred to in
15 this clause;

16 (IV) any option to enter into any
17 agreement or transaction referred to
18 in this clause;

19 (V) a master agreement that pro-
20 vides for an agreement or transaction
21 referred to in subclause (I), (II), (III),
22 or (IV), together with all supplements
23 to any such master agreement, with-
24 out regard to whether the master
25 agreement contains an agreement or

1 transaction that is not a swap agree-
2 ment under this clause, except that
3 the master agreement shall be consid-
4 ered to be a swap agreement under
5 this clause only with respect to each
6 agreement or transaction under the
7 master agreement that is referred to
8 in subclause (I), (II), (III), or (IV);
9 and

10 (VI) any security agreement or
11 arrangement or other credit enhance-
12 ment related to any agreement or
13 transaction referred to in any of
14 clauses (I) through (V), including any
15 guarantee or reimbursement obliga-
16 tion in connection with any agreement
17 or transaction referred to in any such
18 clause.

19 (vii) DEFINITIONS RELATING TO DE-
20 FAULT.—When used in this paragraph and
21 paragraph (10)—

22 (I) the term “default” means,
23 with respect to a covered financial
24 company, any adjudication or other
25 official decision by any court of com-

1 petent jurisdiction, or other public au-
2 thority pursuant to which the Cor-
3 poration has been appointed receiver;
4 and

5 (II) the term “in danger of de-
6 fault” means a covered financial com-
7 pany with respect to which the Cor-
8 poration or appropriate State author-
9 ity has determined that—

10 (aa) in the opinion of the
11 Corporation or such authority—

12 (AA) the covered finan-
13 cial company is not likely to
14 be able to pay its obligations
15 in the normal course of busi-
16 ness; and

17 (BB) there is no rea-
18 sonable prospect that the
19 covered financial company
20 will be able to pay such obli-
21 gations without Federal as-
22 sistance; or

23 (bb) in the opinion of the
24 Corporation or such authority—

1 (AA) the covered finan-
2 cial company has incurred or
3 is likely to incur losses that
4 will deplete all or substan-
5 tially all of its capital; and

6 (BB) there is no rea-
7 sonable prospect that the
8 capital will be replenished
9 without Federal assistance.

10 (viii) TREATMENT OF MASTER AGREE-
11 MENT AS ONE AGREEMENT.—Any master
12 agreement for any contract or agreement
13 described in any of clauses (i) through (vi)
14 (or any master agreement for such master
15 agreement or agreements), together with
16 all supplements to such master agreement,
17 shall be treated as a single agreement and
18 a single qualified financial contract. If a
19 master agreement contains provisions re-
20 lating to agreements or transactions that
21 are not themselves qualified financial con-
22 tracts, the master agreement shall be
23 deemed to be a qualified financial contract
24 only with respect to those transactions that

1 are themselves qualified financial con-
2 tracts.

3 (ix) TRANSFER.—The term “transfer”
4 means every mode, direct or indirect, abso-
5 lute or conditional, voluntary or involun-
6 tary, of disposing of or parting with prop-
7 erty or with an interest in property, includ-
8 ing retention of title as a security interest
9 and foreclosure of the equity of redemption
10 of the covered financial company.

11 (x) PERSON.—The term “person” in-
12 cludes any governmental entity in addition
13 to any entity included in the definition of
14 such term in section 1, title 1, United
15 States Code.

16 (E) CLARIFICATION.—No provision of law
17 shall be construed as limiting the right or
18 power of the Corporation, or authorizing any
19 court or agency to limit or delay, in any man-
20 ner, the right or power of the Corporation to
21 transfer any qualified financial contract or to
22 disaffirm or repudiate any such contract in ac-
23 cordance with this subsection.

24 (F) WALKAWAY CLAUSES NOT EFFEC-
25 TIVE.—

1 (i) IN GENERAL.—Notwithstanding
2 the provisions of subparagraph (A) of this
3 paragraph and sections 403 and 404 of the
4 Federal Deposit Insurance Corporation
5 Improvement Act of 1991, no walkaway
6 clause shall be enforceable in a qualified fi-
7 nancial contract of a covered financial
8 company in default.

9 (ii) LIMITED SUSPENSION OF CERTAIN
10 OBLIGATIONS.—In the case of a qualified
11 financial contract referred to in clause (i),
12 any payment or delivery obligations other-
13 wise due from a party pursuant to the
14 qualified financial contract shall be sus-
15 pended from the time at which the Cor-
16 poration is appointed as receiver until the
17 earlier of—

18 (I) the time at which such party
19 receives notice that such contract has
20 been transferred pursuant to para-
21 graph (10)(A); or

22 (II) 5:00 p.m. (eastern time) on
23 the 3rd business day following the
24 date of the appointment of the Cor-
25 poration as receiver.

1 (iii) WALKAWAY CLAUSE DEFINED.—

2 For purposes of this subparagraph, the
3 term “walkaway clause” means any provi-
4 sion in a qualified financial contract that
5 suspends, conditions, or extinguishes a
6 payment obligation of a party, in whole or
7 in part, or does not create a payment obli-
8 gation of a party that would otherwise
9 exist, solely because of the status of such
10 party as a nondefaulting party in connec-
11 tion with the insolvency of a covered finan-
12 cial company that is a party to the con-
13 tract or the appointment of or the exercise
14 of rights or powers by the Corporation as
15 receiver for such covered financial com-
16 pany, and not as a result of the exercise by
17 a party of any right to offset, setoff, or net
18 obligations that exist under the contract,
19 any other contract between those parties,
20 or applicable law.

21 (G) CERTAIN OBLIGATIONS TO CLEARING
22 ORGANIZATIONS.—In the event that the Cor-
23 poration has been appointed as receiver for a
24 covered financial company which is a party to
25 any qualified financial contract cleared by or

1 subject to the rules of a clearing organization
2 (as defined in paragraph (9)(D)), the receiver
3 shall use its best efforts to meet all margin, col-
4 lateral, and settlement obligations of the cov-
5 ered financial company that arise under quali-
6 fied financial contracts (other than any margin,
7 collateral, or settlement obligation that is not
8 enforceable against the receiver under para-
9 graph (8)(F)(i) or paragraph (10)(B)), as re-
10 quired by the rules of the clearing organization
11 when due. Notwithstanding any other provision
12 of this title, if the receiver fails to satisfy any
13 such margin, collateral, or settlement obliga-
14 tions under the rules of the clearing organiza-
15 tion, the clearing organization shall have the
16 immediate right to exercise, and shall not be
17 stayed from exercising, all of its rights and
18 remedies under its rules and applicable law with
19 respect to any qualified financial contract of the
20 covered financial company, including, without
21 limitation, the right to liquidate all positions
22 and collateral of such covered financial com-
23 pany under the company's qualified financial
24 contracts, and suspend or cease to act for such

1 covered financial company, all in accordance
2 with the rules of the clearing organization.

3 (H) RECORDKEEPING.—

4 (i) JOINT RULEMAKING.—The Federal
5 primary financial regulatory agencies shall
6 jointly prescribe regulations requiring that
7 financial companies maintain such records
8 with respect to qualified financial contracts
9 (including market valuations) that the
10 Federal primary financial regulatory agen-
11 cies determine to be necessary or appro-
12 priate in order to assist the Corporation as
13 receiver for a covered financial company in
14 being able to exercise its rights and fulfill
15 its obligations under this paragraph or
16 paragraph (9) or (10).

17 (ii) TIME FRAME.—The Federal pri-
18 mary financial regulatory agencies shall
19 prescribe joint final or interim final regula-
20 tions not later than 24 months after the
21 date of enactment of this Act.

22 (iii) BACK-UP RULEMAKING AUTHOR-
23 ITY.—If the Federal primary financial reg-
24 ulatory agencies do not prescribe joint final
25 or interim final regulations within the time

1 frame in clause (ii), the Chairperson of the
2 Council shall prescribe, in consultation
3 with the Corporation, the regulations re-
4 quired by clause (i).

5 (iv) CATEGORIZATION AND
6 TIERING.—The joint regulations prescribed
7 under clause (i) shall, as appropriate, dif-
8 ferentiate among financial companies by
9 taking into consideration their size, risk,
10 complexity, leverage, frequency and dollar
11 amount of qualified financial contracts,
12 interconnectedness to the financial system,
13 and any other factors deemed appropriate.

14 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
15 TRACTS.—

16 (A) IN GENERAL.—In making any transfer
17 of assets or liabilities of a covered financial
18 company in default, which includes any quali-
19 fied financial contract, the Corporation as re-
20 ceiver for such covered financial company shall
21 either—

22 (i) transfer to one financial institu-
23 tion, other than a financial institution for
24 which a conservator, receiver, trustee in
25 bankruptcy, or other legal custodian has

1 been appointed or which is otherwise the
2 subject of a bankruptcy or insolvency pro-
3 ceeding—

4 (I) all qualified financial con-
5 tracts between any person or any af-
6 filiate of such person and the covered
7 financial company in default;

8 (II) all claims of such person or
9 any affiliate of such person against
10 such covered financial company under
11 any such contract (other than any
12 claim which, under the terms of any
13 such contract, is subordinated to the
14 claims of general unsecured creditors
15 of such company);

16 (III) all claims of such covered fi-
17 nancial company against such person
18 or any affiliate of such person under
19 any such contract; and

20 (IV) all property securing or any
21 other credit enhancement for any con-
22 tract described in subclause (I) or any
23 claim described in subclause (II) or
24 (III) under any such contract; or

1 (ii) transfer none of the qualified fi-
2 nancial contracts, claims, property or other
3 credit enhancement referred to in clause (i)
4 (with respect to such person and any affil-
5 iate of such person).

6 (B) TRANSFER TO FOREIGN BANK, FINAN-
7 CIAL INSTITUTION, OR BRANCH OR AGENCY
8 THEREOF.—In transferring any qualified finan-
9 cial contracts and related claims and property
10 under subparagraph (A)(i), the Corporation as
11 receiver for the covered financial company shall
12 not make such transfer to a foreign bank, fi-
13 nancial institution organized under the laws of
14 a foreign country, or a branch or agency of a
15 foreign bank or financial institution unless,
16 under the law applicable to such bank, financial
17 institution, branch or agency, to the qualified
18 financial contracts, and to any netting contract,
19 any security agreement or arrangement or other
20 credit enhancement related to one or more
21 qualified financial contracts, the contractual
22 rights of the parties to such qualified financial
23 contracts, netting contracts, security agree-
24 ments or arrangements, or other credit en-

1 hancements are enforceable substantially to the
2 same extent as permitted under this section.

3 (C) TRANSFER OF CONTRACTS SUBJECT
4 TO THE RULES OF A CLEARING ORGANIZA-
5 TION.—In the event that the Corporation as re-
6 ceiver for a financial institution transfers any
7 qualified financial contract and related claims,
8 property, or credit enhancement pursuant to
9 subparagraph (A)(i) and such contract is
10 cleared by or subject to the rules of a clearing
11 organization, the clearing organization shall not
12 be required to accept the transferee as a mem-
13 ber by virtue of the transfer.

14 (D) DEFINITIONS.—For purposes of this
15 paragraph—

16 (i) the term “financial institution”
17 means a broker or dealer, a depository in-
18 stitution, a futures commission merchant,
19 a bridge financial company, or any other
20 institution determined by the Corporation,
21 by regulation, to be a financial institution;
22 and

23 (ii) the term “clearing organization”
24 has the same meaning as in section 402 of

1 the Federal Deposit Insurance Corporation
2 Improvement Act of 1991.

3 (10) NOTIFICATION OF TRANSFER.—

4 (A) IN GENERAL.—

5 (i) NOTICE.—The Corporation shall
6 provide notice in accordance with clause

7 (ii), if—

8 (I) the Corporation as receiver
9 for a covered financial company in de-
10 fault or in danger of default transfers
11 any assets or liabilities of the covered
12 financial company; and

13 (II) the transfer includes any
14 qualified financial contract.

15 (ii) TIMING.—The Corporation as re-
16 ceiver for a covered financial company
17 shall notify any person who is a party to
18 any contract described in clause (i) of such
19 transfer not later than 5:00 p.m. (eastern
20 time) on the 3rd business day following the
21 date of the appointment of the Corporation
22 as receiver.

23 (B) CERTAIN RIGHTS NOT ENFORCE-
24 ABLE.—

1 (i) RECEIVERSHIP.—A person who is
2 a party to a qualified financial contract
3 with a covered financial company may not
4 exercise any right that such person has to
5 terminate, liquidate, or net such contract
6 under paragraph (8)(A) solely by reason of
7 or incidental to the appointment under this
8 section of the Corporation as receiver for
9 the covered financial company (or the in-
10 solvency or financial condition of the cov-
11 ered financial company for which the Cor-
12 poration has been appointed as receiver)—

13 (I) until 5:00 p.m. (eastern time)
14 on the 3rd business day following the
15 date of the appointment; or

16 (II) after the person has received
17 notice that the contract has been
18 transferred pursuant to paragraph
19 (9)(A).

20 (ii) NOTICE.—For purposes of this
21 paragraph, the Corporation as receiver for
22 a covered financial company shall be
23 deemed to have notified a person who is a
24 party to a qualified financial contract with
25 such covered financial company, if the Cor-

1 poration has taken steps reasonably cal-
2 culated to provide notice to such person by
3 the time specified in subparagraph (A).

4 (C) TREATMENT OF BRIDGE FINANCIAL
5 COMPANY.—For purposes of paragraph (9), a
6 bridge financial company shall not be consid-
7 ered to be a covered financial company for
8 which a conservator, receiver, trustee in bank-
9 ruptcy, or other legal custodian has been ap-
10 pointed, or which is otherwise the subject of a
11 bankruptcy or insolvency proceeding.

12 (D) BUSINESS DAY DEFINED.—For pur-
13 poses of this paragraph, the term “business
14 day” means any day other than any Saturday,
15 Sunday, or any day on which either the New
16 York Stock Exchange or the Federal Reserve
17 Bank of New York is closed.

18 (11) DISAFFIRMANCE OR REPUDIATION OF
19 QUALIFIED FINANCIAL CONTRACTS.—In exercising
20 the rights of disaffirmance or repudiation of the
21 Corporation as receiver with respect to any qualified
22 financial contract to which a covered financial com-
23 pany is a party, the Corporation shall either—

24 (A) disaffirm or repudiate all qualified fi-
25 nancial contracts between—

1 (i) any person or any affiliate of such
2 person; and

3 (ii) the covered financial company in
4 default; or

5 (B) disaffirm or repudiate none of the
6 qualified financial contracts referred to in sub-
7 paragraph (A) (with respect to such person or
8 any affiliate of such person).

9 (12) CERTAIN SECURITY AND CUSTOMER IN-
10 TERESTS NOT AVOIDABLE.—No provision of this
11 subsection shall be construed as permitting the
12 avoidance of any—

13 (A) legally enforceable or perfected secu-
14 rity interest in any of the assets of any covered
15 financial company, except in accordance with
16 subsection (a)(11); or

17 (B) legally enforceable interest in customer
18 property, security entitlements in respect of as-
19 sets or property held by the covered financial
20 company for any security entitlement holder.

21 (13) AUTHORITY TO ENFORCE CONTRACTS.—

22 (A) IN GENERAL.—The Corporation, as re-
23 ceiver for a covered financial company, may en-
24 force any contract, other than a liability insur-
25 ance contract of a director or officer, a financial

1 institution bond entered into by the covered fi-
2 nancial company, notwithstanding any provision
3 of the contract providing for termination, de-
4 fault, acceleration, or exercise of rights upon, or
5 solely by reason of, insolvency, the appointment
6 of or the exercise of rights or powers by the
7 Corporation as receiver, the filing of the peti-
8 tion pursuant to section 202(a)(1), or the
9 issuance of the recommendations or determina-
10 tion, or any actions or events occurring in con-
11 nection therewith or as a result thereof, pursu-
12 ant to section 203.

13 (B) CERTAIN RIGHTS NOT AFFECTED.—
14 No provision of this paragraph may be con-
15 strued as impairing or affecting any right of the
16 Corporation as receiver to enforce or recover
17 under a liability insurance contract of a director
18 or officer or financial institution bond under
19 other applicable law.

20 (C) CONSENT REQUIREMENT AND IPSO
21 FACTO CLAUSES.—

22 (i) IN GENERAL.—Except as otherwise
23 provided by this section, no person may ex-
24 ercise any right or power to terminate, ac-
25 celerate, or declare a default under any

1 contract to which the covered financial
2 company is a party (and no provision in
3 any such contract providing for such de-
4 fault, termination, or acceleration shall be
5 enforceable), or to obtain possession of or
6 exercise control over any property of the
7 covered financial company or affect any
8 contractual rights of the covered financial
9 company, without the consent of the Cor-
10 poration as receiver for the covered finan-
11 cial company during the 90 day period be-
12 ginning from the appointment of the Cor-
13 poration as receiver.

14 (ii) EXCEPTIONS.—No provision of
15 this subparagraph shall apply to a director
16 or officer liability insurance contract or a
17 financial institution bond, to the rights of
18 parties to certain qualified financial con-
19 tracts pursuant to paragraph (8), or to the
20 rights of parties to netting contracts pur-
21 suant to subtitle A of title IV of the Fed-
22 eral Deposit Insurance Corporation Im-
23 provement Act of 1991 (12 U.S.C. 4401 et
24 seq.), or shall be construed as permitting
25 the Corporation as receiver to fail to com-

1 ply with otherwise enforceable provisions of
2 such contract.

3 (D) CONTRACTS TO EXTEND CREDIT.—

4 Notwithstanding any other provision in this
5 title, if the Corporation as receiver enforces any
6 contract to extend credit to the covered finan-
7 cial company or bridge financial company, any
8 valid and enforceable obligation to repay such
9 debt shall be paid by the Corporation as re-
10 ceiver, as an administrative expense of the re-
11 ceivership.

12 (14) EXCEPTION FOR FEDERAL RESERVE
13 BANKS AND CORPORATION SECURITY INTEREST.—

14 No provision of this subsection shall apply with re-
15 spect to—

16 (A) any extension of credit from any Fed-
17 eral reserve bank or the Corporation to any cov-
18 ered financial company; or

19 (B) any security interest in the assets of
20 the covered financial company securing any
21 such extension of credit.

22 (15) SAVINGS CLAUSE.—The meanings of terms
23 used in this subsection are applicable for purposes of
24 this subsection only, and shall not be construed or
25 applied so as to challenge or affect the characteriza-

1 tion, definition, or treatment of any similar terms
2 under any other statute, regulation, or rule, includ-
3 ing the Gramm-Leach-Bliley Act, the Legal Cer-
4 tainty for Bank Products Act of 2000, the securities
5 laws (as that term is defined in section 3(a)(47) of
6 the Securities Exchange Act of 1934), and the Com-
7 modity Exchange Act.

8 (16) ENFORCEMENT OF CONTRACTS GUARAN-
9 TEED BY THE COVERED FINANCIAL COMPANY.—

10 (A) IN GENERAL.—The Corporation, as re-
11 ceiver for a covered financial company or as re-
12 ceiver for a subsidiary of a covered financial
13 company (including an insured depository insti-
14 tution) shall have the power to enforce con-
15 tracts of subsidiaries or affiliates of the covered
16 financial company, the obligations under which
17 are guaranteed or otherwise supported by or
18 linked to the covered financial company, not-
19 withstanding any contractual right to cause the
20 termination, liquidation, or acceleration of such
21 contracts based solely on the insolvency, finan-
22 cial condition, or receivership of the covered fi-
23 nancial company, if—

24 (i) such guaranty or other support
25 and all related assets and liabilities are

1 transferred to and assumed by a bridge fi-
2 nancial company or a third party (other
3 than a third party for which a conservator,
4 receiver, trustee in bankruptcy, or other
5 legal custodian has been appointed, or
6 which is otherwise the subject of a bank-
7 ruptcy or insolvency proceeding) within the
8 same period of time as the Corporation is
9 entitled to transfer the qualified financial
10 contracts of such covered financial com-
11 pany; or

12 (ii) the Corporation, as receiver, oth-
13 erwise provides adequate protection with
14 respect to such obligations.

15 (B) RULE OF CONSTRUCTION.—For pur-
16 poses of this paragraph, a bridge financial com-
17 pany shall not be considered to be a third party
18 for which a conservator, receiver, trustee in
19 bankruptcy, or other legal custodian has been
20 appointed, or which is otherwise the subject of
21 a bankruptcy or insolvency proceeding.

22 (d) VALUATION OF CLAIMS IN DEFAULT.—

23 (1) IN GENERAL.—Notwithstanding any other
24 provision of Federal law or the law of any State, and
25 regardless of the method utilized by the Corporation

1 for a covered financial company, including trans-
2 actions authorized under subsection (h), this sub-
3 section shall govern the rights of the creditors of any
4 such covered financial company.

5 (2) MAXIMUM LIABILITY.—The maximum li-
6 ability of the Corporation, acting as receiver for a
7 covered financial company or in any other capacity,
8 to any person having a claim against the Corpora-
9 tion as receiver or the covered financial company for
10 which the Corporation is appointed shall equal the
11 amount that such claimant would have received if—

12 (A) the Corporation had not been ap-
13 pointed receiver with respect to the covered fi-
14 nancial company; and

15 (B) the covered financial company had
16 been liquidated under chapter 7 of the Bank-
17 ruptcy Code, or any similar provision of State
18 insolvency law applicable to the covered finan-
19 cial company.

20 (3) SPECIAL PROVISION FOR ORDERLY LIQ-
21 UIDATION BY SIPC.—The maximum liability of the
22 Corporation, acting as receiver or in its corporate
23 capacity for any covered broker or dealer to any cus-
24 tomer of such covered broker or dealer, with respect
25 to customer property of such customer, shall be—

1 (A) equal to the amount that such cus-
2 tomer would have received with respect to such
3 customer property in a case initiated by SIPC
4 under the Securities Investor Protection Act of
5 1970 (15 U.S.C. 78aaa et seq.); and

6 (B) determined as of the close of business
7 on the date on which the Corporation is ap-
8 pointed as receiver.

9 (4) ADDITIONAL PAYMENTS AUTHORIZED.—

10 (A) IN GENERAL.—Subject to subsection
11 (o)(1)(E)(ii), the Corporation, with the approval
12 of the Secretary, may make additional pay-
13 ments or credit additional amounts to or with
14 respect to or for the account of any claimant or
15 category of claimants of the covered financial
16 company, if the Corporation determines that
17 such payments or credits are necessary or ap-
18 propriate to minimize losses to the Corporation
19 as receiver from the orderly liquidation of the
20 covered financial company under this section.

21 (B) LIMITATIONS.—

22 (i) PROHIBITION.—The Corporation
23 shall not make any payments or credit
24 amounts to any claimant or category of
25 claimants that would result in any claim-

1 ant receiving more than the face value
2 amount of any claim that is proven to the
3 satisfaction of the Corporation.

4 (ii) NO OBLIGATION.—Notwith-
5 standing any other provision of Federal or
6 State law, or the Constitution of any State,
7 the Corporation shall not be obligated, as
8 a result of having made any payment
9 under subparagraph (A) or credited any
10 amount described in subparagraph (A) to
11 or with respect to, or for the account, of
12 any claimant or category of claimants, to
13 make payments to any other claimant or
14 category of claimants.

15 (C) MANNER OF PAYMENT.—The Corpora-
16 tion may make payments or credit amounts
17 under subparagraph (A) directly to the claim-
18 ants or may make such payments or credit such
19 amounts to a company other than a covered fi-
20 nancial company or a bridge financial company
21 established with respect thereto in order to in-
22 duce such other company to accept liability for
23 such claims.

24 (e) LIMITATION ON COURT ACTION.—Except as pro-
25 vided in this title, no court may take any action to restrain

1 or affect the exercise of powers or functions of the receiver
2 hereunder, and any remedy against the Corporation or re-
3 ceiver shall be limited to money damages determined in
4 accordance with this title.

5 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

6 (1) IN GENERAL.—A director or officer of a
7 covered financial company may be held personally
8 liable for monetary damages in any civil action de-
9 scribed in paragraph (2) by, on behalf of, or at the
10 request or direction of the Corporation, which action
11 is prosecuted wholly or partially for the benefit of
12 the Corporation—

13 (A) acting as receiver for such covered fi-
14 nancial company;

15 (B) acting based upon a suit, claim, or
16 cause of action purchased from, assigned by, or
17 otherwise conveyed by the Corporation as re-
18 ceiver; or

19 (C) acting based upon a suit, claim, or
20 cause of action purchased from, assigned by, or
21 otherwise conveyed in whole or in part by a cov-
22 ered financial company or its affiliate in con-
23 nection with assistance provided under this
24 title.

1 (2) ACTIONS COVERED.—Paragraph (1) shall
2 apply with respect to actions for gross negligence,
3 including any similar conduct or conduct that dem-
4 onstrates a greater disregard of a duty of care (than
5 gross negligence) including intentional tortious con-
6 duct, as such terms are defined and determined
7 under applicable State law.

8 (3) SAVINGS CLAUSE.—Nothing in this sub-
9 section shall impair or affect any right of the Cor-
10 poration under other applicable law.

11 (g) DAMAGES.—In any proceeding related to any
12 claim against a director, officer, employee, agent, attorney,
13 accountant, or appraiser of a covered financial company,
14 or any other party employed by or providing services to
15 a covered financial company, recoverable damages deter-
16 mined to result from the improvident or otherwise im-
17 proper use or investment of any assets of the covered fi-
18 nancial company shall include principal losses and appro-
19 priate interest.

20 (h) BRIDGE FINANCIAL COMPANIES.—

21 (1) ORGANIZATION.—

22 (A) PURPOSE.—The Corporation, as re-
23 ceiver for one or more covered financial compa-
24 nies or in anticipation of being appointed re-
25 ceiver for one or more covered financial compa-

1 nies, may organize one or more bridge financial
2 companies in accordance with this subsection.

3 (B) AUTHORITIES.—Upon the creation of
4 a bridge financial company under subparagraph
5 (A) with respect to a covered financial com-
6 pany, such bridge financial company may—

7 (i) assume such liabilities (including
8 liabilities associated with any trust or cus-
9 tody business, but excluding any liabilities
10 that count as regulatory capital) of such
11 covered financial company as the Corpora-
12 tion may, in its discretion, determine to be
13 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.—Except as provided
25 in subparagraph (H), where the covered finan-

1 cial company is a covered broker or dealer, the
2 Corporation, as receiver for a covered financial
3 company, may grant a Federal charter to and
4 approve articles of association for one or more
5 bridge financial company or companies, with re-
6 spect to such covered financial company which
7 shall, by operation of law and immediately upon
8 issuance of its charter and approval of its arti-
9 cles of association, be established and operate
10 in accordance with, and subject to, such char-
11 ter, articles, and this section.

12 (B) MANAGEMENT.—Upon its establish-
13 ment, a bridge financial company shall be under
14 the management of a board of directors ap-
15 pointed by the Corporation.

16 (C) ARTICLES OF ASSOCIATION.—The arti-
17 cles of association and organization certificate
18 of a bridge financial company shall have such
19 terms as the Corporation may provide, and
20 shall be executed by such representatives as the
21 Corporation may designate.

22 (D) TERMS OF CHARTER; RIGHTS AND
23 PRIVILEGES.—Subject to and in accordance
24 with the provisions of this subsection, the Cor-
25 poration shall—

1 (i) establish the terms of the charter
2 of a bridge financial company and the
3 rights, powers, authorities, and privileges
4 of a bridge financial company granted by
5 the charter or as an incident thereto; and
6 (ii) provide for, and establish the
7 terms and conditions governing, the man-
8 agement (including the bylaws and the
9 number of directors of the board of direc-
10 tors) and operations of the bridge financial
11 company.

12 (E) TRANSFER OF RIGHTS AND PRIVI-
13 LEGES OF COVERED FINANCIAL COMPANY.—

14 (i) IN GENERAL.—Notwithstanding
15 any other provision of Federal or State
16 law, the Corporation may provide for a
17 bridge financial company to succeed to and
18 assume any rights, powers, authorities, or
19 privileges of the covered financial company
20 with respect to which the bridge financial
21 company was established and, upon such
22 determination by the Corporation, the
23 bridge financial company shall immediately
24 and by operation of law succeed to and as-

1 sume such rights, powers, authorities, and
2 privileges.

3 (ii) EFFECTIVE WITHOUT AP-
4 PROVAL.—Any succession to or assumption
5 by a bridge financial company of rights,
6 powers, authorities, or privileges of a cov-
7 ered financial company under clause (i) or
8 otherwise shall be effective without any
9 further approval under Federal or State
10 law, assignment, or consent with respect
11 thereto.

12 (F) CORPORATE GOVERNANCE AND ELEC-
13 TION AND DESIGNATION OF BODY OF LAW.—To
14 the extent permitted by the Corporation and
15 consistent with this section and any rules, regu-
16 lations, or directives issued by the Corporation
17 under this section, a bridge financial company
18 may elect to follow the corporate governance
19 practices and procedures that are applicable to
20 a corporation incorporated under the general
21 corporation law of the State of Delaware, or the
22 State of incorporation or organization of the
23 covered financial company with respect to which
24 the bridge financial company was established,
25 as such law may be amended from time to time.

1 (G) CAPITAL.—

2 (i) CAPITAL NOT REQUIRED.—Not-
3 withstanding any other provision of Fed-
4 eral or State law, a bridge financial com-
5 pany may, if permitted by the Corporation,
6 operate without any capital or surplus, or
7 with such capital or surplus as the Cor-
8 poration may in its discretion determine to
9 be appropriate.

10 (ii) NO CONTRIBUTION BY THE COR-
11 PORATION REQUIRED.—The Corporation is
12 not required to pay capital into a bridge fi-
13 nancial company or to issue any capital
14 stock on behalf of a bridge financial com-
15 pany established 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 Corporation
24 may, in its discretion, determine.

1 (iv) OPERATING FUNDS IN LIEU OF
2 CAPITAL AND IMPLEMENTATION PLAN.—
3 Upon the organization of a bridge financial
4 company, and thereafter as the Corpora-
5 tion may, in its discretion, determine to be
6 necessary or advisable, the Corporation
7 may make available to the bridge financial
8 company, subject to the plan described in
9 subsection (n)(11), funds for the operation
10 of the bridge financial company in lieu of
11 capital.

12 (H) BRIDGE BROKERS OR DEALERS.—

13 (i) IN GENERAL.—The Corporation,
14 as receiver for a covered broker or dealer,
15 may approve articles of association for one
16 or more bridge financial companies with
17 respect to such covered broker or dealer,
18 which bridge financial company or compa-
19 nies shall, by operation of law and imme-
20 diately upon approval of its articles of as-
21 sociation—

22 (I) be established and deemed
23 registered with the Commission under
24 the Securities Exchange Act of 1934
25 and a member of SIPC;

1 (II) operate in accordance with
2 such articles and this section; and

3 (III) succeed to any and all reg-
4 istrations and memberships of the
5 covered financial company with or in
6 any self-regulatory organizations.

7 (ii) OTHER REQUIREMENTS.—Except
8 as provided in clause (i), and notwith-
9 standing any other provision of this sec-
10 tion, the bridge financial company shall be
11 subject to the Federal securities laws and
12 all requirements with respect to being a
13 member of a self-regulatory organization,
14 unless exempted from any such require-
15 ments by the Commission, as is necessary
16 or appropriate in the public interest or for
17 the protection of investors.

18 (iii) TREATMENT OF CUSTOMERS.—
19 Except as otherwise provided by this title,
20 any customer of the covered broker or
21 dealer whose account is transferred to a
22 bridge financial company shall have all the
23 rights, privileges, and protections under
24 section 205(f) and under the Securities In-
25 vestor Protection Act of 1970 (15 U.S.C.

1 78aaa et seq.), that such customer would
2 have had if the account were not trans-
3 ferred from the covered financial company
4 under this subparagraph.

5 (iv) OPERATION OF BRIDGE BROKERS
6 OR DEALERS.—Notwithstanding any other
7 provision of this title, the Corporation shall
8 not operate any bridge financial company
9 created by the Corporation under this title
10 with respect to a covered broker or dealer
11 in such a manner as to adversely affect the
12 ability of customers to promptly access
13 their customer property in accordance with
14 applicable law.

15 (3) INTERESTS IN AND ASSETS AND OBLIGA-
16 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
17 standing paragraph (1) or (2) or any other provision
18 of law—

19 (A) a bridge financial company shall as-
20 sume, acquire, or succeed to the assets or liabil-
21 ities of a covered financial company (including
22 the assets or liabilities associated with any trust
23 or custody business) only to the extent that
24 such assets or liabilities are transferred by the
25 Corporation to the bridge financial company in

1 accordance with, and subject to the restrictions
2 set forth in, paragraph (1)(B); and

3 (B) a bridge financial company shall not
4 assume, acquire, or succeed to any obligation
5 that a covered financial company for which the
6 Corporation has been appointed receiver may
7 have to any shareholder, member, general part-
8 ner, limited partner, or other person with an in-
9 terest in the equity of the covered financial
10 company that arises as a result of the status of
11 that person having an equity claim in the cov-
12 ered financial company.

13 (4) BRIDGE FINANCIAL COMPANY TREATED AS
14 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A
15 bridge financial company shall be treated as a cov-
16 ered financial company in default at such times and
17 for such purposes as the Corporation may, in its dis-
18 cretion, determine.

19 (5) TRANSFER OF ASSETS AND LIABILITIES.—

20 (A) AUTHORITY OF CORPORATION.—The
21 Corporation, as receiver for a covered financial
22 company, may transfer any assets and liabilities
23 of a covered financial company (including any
24 assets or liabilities associated with any trust or
25 custody business) to one or more bridge finan-

1 cial companies, in accordance with and subject
2 to the restrictions of paragraph (1).

3 (B) SUBSEQUENT TRANSFERS.—At any
4 time after the establishment of a bridge finan-
5 cial company with respect to a covered financial
6 company, the Corporation, as receiver, may
7 transfer any assets and liabilities of such cov-
8 ered financial company as the Corporation may,
9 in its discretion, determine to be appropriate in
10 accordance with and subject to the restrictions
11 of paragraph (1).

12 (C) TREATMENT OF TRUST OR CUSTODY
13 BUSINESS.—For purposes of this paragraph,
14 the trust or custody business, including fidu-
15 ciary appointments, held by any covered finan-
16 cial company is included among its assets and
17 liabilities.

18 (D) EFFECTIVE WITHOUT APPROVAL.—
19 The transfer of any assets or liabilities, includ-
20 ing those associated with any trust or custody
21 business of a covered financial company, to a
22 bridge financial company shall be effective with-
23 out any further approval under Federal or
24 State law, assignment, or consent with respect
25 thereto.

1 other disposition of the assets of the
2 covered financial company; and

3 (ii) all creditors that are similarly sit-
4 uated under subsection (b)(1) receive not
5 less than the amount provided under para-
6 graphs (2) and (3) of subsection (d).

7 (F) LIMITATION ON TRANSFER OF LIABIL-
8 ITIES.—Notwithstanding any other provision of
9 law, the aggregate amount of liabilities of a cov-
10 ered financial company that are transferred to,
11 or assumed by, a bridge financial company from
12 a covered financial company may not exceed the
13 aggregate amount of the assets of the covered
14 financial company that are transferred to, or
15 purchased by, the bridge financial company
16 from the covered financial company.

17 (6) STAY OF JUDICIAL ACTION.—Any judicial
18 action to which a bridge financial company becomes
19 a party by virtue of its acquisition of any assets or
20 assumption of any liabilities of a covered financial
21 company shall be stayed from further proceedings
22 for a period of not longer than 45 days (or such
23 longer period as may be agreed to upon the consent
24 of all parties) at the request of the bridge financial
25 company.

1 (7) AGREEMENTS AGAINST INTEREST OF THE
2 BRIDGE FINANCIAL COMPANY.—No agreement that
3 tends to diminish or defeat the interest of the bridge
4 financial company in any asset of a covered financial
5 company acquired by the bridge financial company
6 shall be valid against the bridge financial company,
7 unless such agreement—

8 (A) is in writing;

9 (B) was executed by an authorized officer
10 or representative of the covered financial com-
11 pany or confirmed in the ordinary course of
12 business by the covered financial company; and

13 (C) has been on the official record of the
14 company, since the time of its execution, or
15 with which, the party claiming under the agree-
16 ment provides documentation of such agreement
17 and its authorized execution or confirmation by
18 the covered financial company that is acceptable
19 to the receiver.

20 (8) NO FEDERAL STATUS.—

21 (A) AGENCY STATUS.—A bridge financial
22 company is not an agency, establishment, or in-
23 strumentality of the United States.

24 (B) EMPLOYEE STATUS.—Representatives
25 for purposes of paragraph (1)(B), directors, of-

1 ficers, employees, or agents of a bridge financial
2 company are not, solely by virtue of service in
3 any such capacity, officers or employees of the
4 United States. Any employee of the Corporation
5 or of any Federal instrumentality who serves at
6 the request of the Corporation as a representa-
7 tive for purposes of paragraph (1)(B), director,
8 officer, employee, or agent of a bridge financial
9 company shall not—

10 (i) solely by virtue of service in any
11 such capacity lose any existing status as
12 an officer or employee of the United States
13 for purposes of title 5, United States Code,
14 or any other provision of law; or

15 (ii) receive any salary or benefits for
16 service in any such capacity with respect to
17 a bridge financial company in addition to
18 such salary or benefits as are obtained
19 through employment with the Corporation
20 or such Federal instrumentality.

21 (9) FUNDING AUTHORIZED.—The Corporation
22 may, subject to the plan described in subsection
23 (n)(11), provide funding to facilitate any transaction
24 described in subparagraph (A), (B), (C), or (D) of
25 paragraph (13) with respect to any bridge financial

1 company, or facilitate the acquisition by a bridge fi-
2 nancial company of any assets, or the assumption of
3 any liabilities, of a covered financial company for
4 which the Corporation has been appointed receiver.

5 (10) EXEMPT TAX STATUS.—Notwithstanding
6 any other provision of Federal or State law, a bridge
7 financial company, its franchise, property, and in-
8 come shall be exempt from all taxation now or here-
9 after imposed by the United States, by any territory,
10 dependency, or possession thereof, or by any State,
11 county, municipality, or local taxing authority.

12 (11) FEDERAL AGENCY APPROVAL; ANTITRUST
13 REVIEW.—If a transaction involving the merger or
14 sale of a bridge financial company requires approval
15 by a Federal agency, the transaction may not be
16 consummated before the 5th calendar day after the
17 date of approval by the Federal agency responsible
18 for such approval with respect thereto. If, in connec-
19 tion with any such approval a report on competitive
20 factors from the Attorney General is required, the
21 Federal agency responsible for such approval shall
22 promptly notify the Attorney General of the pro-
23 posed transaction and the Attorney General shall
24 provide the required report within 10 days of the re-
25 quest. If a notification is required under section 7A

1 of the Clayton Act with respect to such transaction,
2 the required waiting period shall end on the 15th
3 day after the date on which the Attorney General
4 and the Federal Trade Commission receive such no-
5 tification, unless the waiting period is terminated
6 earlier under section 7A(b)(2) of the Clayton Act, or
7 extended under section 7A(e)(2) of that Act.

8 (12) DURATION OF BRIDGE FINANCIAL COM-
9 PANY.—Subject to paragraphs (13) and (14), the
10 status of a bridge financial company as such shall
11 terminate at the end of the 2-year period following
12 the date on which it was granted a charter. The
13 Corporation may, in its discretion, extend the status
14 of the bridge financial company as such for no more
15 than 3 additional 1-year periods.

16 (13) TERMINATION OF BRIDGE FINANCIAL COM-
17 PANY STATUS.—The status of any bridge financial
18 company as such shall terminate upon the earliest
19 of—

20 (A) the date of the merger or consolidation
21 of the bridge financial company with a company
22 that is not a bridge financial company;

23 (B) at the election of the Corporation, the
24 sale of a majority of the capital stock of the
25 bridge financial company to a company other

1 than the Corporation and other than another
2 bridge financial company;

3 (C) the sale of 80 percent, or more, of the
4 capital stock of the bridge financial company to
5 a person other than the Corporation and other
6 than another bridge financial company;

7 (D) at the election of the Corporation, ei-
8 ther the assumption of all or substantially all of
9 the liabilities of the bridge financial company by
10 a company that is not a bridge financial com-
11 pany, or the acquisition of all or substantially
12 all of the assets of the bridge financial company
13 by a company that is not a bridge financial
14 company, or other entity as permitted under
15 applicable law; and

16 (E) the expiration of the period provided in
17 paragraph (12), or the earlier dissolution of the
18 bridge financial company, as provided in para-
19 graph (15).

20 (14) EFFECT OF TERMINATION EVENTS.—

21 (A) MERGER OR CONSOLIDATION.—A
22 merger or consolidation, described in paragraph
23 (12)(A) shall be conducted in accordance with,
24 and shall have the effect provided in, the provi-
25 sions of applicable law. For the purpose of ef-

1 fecting such a merger or consolidation, the
2 bridge financial company shall be treated as a
3 corporation organized under the laws of the
4 State of Delaware (unless the law of another
5 State has been selected by the bridge financial
6 company in accordance with paragraph (2)(F)),
7 and the Corporation shall be treated as the sole
8 shareholder thereof, notwithstanding any other
9 provision of State or Federal law.

10 (B) CHARTER CONVERSION.—Following
11 the sale of a majority of the capital stock of the
12 bridge financial company, as provided in para-
13 graph (13)(B), the Corporation may amend the
14 charter of the bridge financial company to re-
15 flect the termination of the status of the bridge
16 financial company as such, whereupon the com-
17 pany shall have all of the rights, powers, and
18 privileges under its constituent documents and
19 applicable Federal or State law. In connection
20 therewith, the Corporation may take such steps
21 as may be necessary or convenient to reincor-
22 porate the bridge financial company under the
23 laws of a State and, notwithstanding any provi-
24 sions of Federal or State law, such State-char-
25 tered corporation shall be deemed to succeed by

1 operation of law to such rights, titles, powers,
2 and interests of the bridge financial company as
3 the Corporation may provide, with the same ef-
4 fect as if the bridge financial company had
5 merged with the State-chartered corporation
6 under provisions of the corporate laws of such
7 State.

8 (C) SALE OF STOCK.—Following the sale
9 of 80 percent or more of the capital stock of a
10 bridge financial company, as provided in para-
11 graph (13)(C), the company shall have all of
12 the rights, powers, and privileges under its con-
13 stituent documents and applicable Federal or
14 State law. In connection therewith, the Cor-
15 poration may take such steps as may be nec-
16 essary or convenient to reincorporate the bridge
17 financial company under the laws of a State
18 and, notwithstanding any provisions of Federal
19 or State law, the State-chartered corporation
20 shall be deemed to succeed by operation of law
21 to such rights, titles, powers and interests of
22 the bridge financial company as the Corpora-
23 tion may provide, with the same effect as if the
24 bridge financial company had merged with the

1 State-chartered corporation under provisions of
2 the corporate laws of such State.

3 (D) ASSUMPTION OF LIABILITIES AND
4 SALE OF ASSETS.—Following the assumption of
5 all or substantially all of the liabilities of the
6 bridge financial company, or the sale of all or
7 substantially all of the assets of the bridge fi-
8 nancial company, as provided in paragraph
9 (13)(D), at the election of the Corporation, the
10 bridge financial company may retain its status
11 as such for the period provided in paragraph
12 (12) or may be dissolved at the election of the
13 Corporation.

14 (E) AMENDMENTS TO CHARTER.—Fol-
15 lowing the consummation of a transaction de-
16 scribed in subparagraph (A), (B), (C), or (D)
17 of paragraph (13), the charter of the resulting
18 company shall be amended to reflect the termi-
19 nation of bridge financial company status, if ap-
20 propriate.

21 (15) DISSOLUTION OF BRIDGE FINANCIAL COM-
22 PANY.—

23 (A) IN GENERAL.—Notwithstanding any
24 other provision of Federal or State law, if the
25 status of a bridge financial company as such

1 has not previously been terminated by the oc-
2 currence of an event specified in subparagraph
3 (A), (B), (C), or (D) of paragraph (13)—

4 (i) the Corporation may, in its discre-
5 tion, dissolve the bridge financial company
6 in accordance with this paragraph at any
7 time; and

8 (ii) the Corporation shall promptly
9 commence dissolution proceedings in ac-
10 cordance with this paragraph upon the ex-
11 piration of the 2-year period following the
12 date on which the bridge financial com-
13 pany was chartered, or any extension
14 thereof, as provided in paragraph (12).

15 (B) PROCEDURES.—The Corporation shall
16 remain the receiver for a bridge financial com-
17 pany for the purpose of dissolving the bridge fi-
18 nancial company. The Corporation as receiver
19 for a bridge financial company shall wind up
20 the affairs of the bridge financial company in
21 conformity with the provisions of law relating to
22 the liquidation of covered financial companies
23 under this title. With respect to any such bridge
24 financial company, the Corporation as receiver
25 shall have all the rights, powers, and privileges

1 and shall perform the duties related to the exer-
2 cise of such rights, powers, or privileges granted
3 by law to the Corporation as receiver for a cov-
4 ered financial company under this title and,
5 notwithstanding any other provision of law, in
6 the exercise of such rights, powers, and privi-
7 leges, the Corporation shall not be subject to
8 the direction or supervision of any State agency
9 or other Federal agency.

10 (16) AUTHORITY TO OBTAIN CREDIT.—

11 (A) IN GENERAL.—A bridge financial com-
12 pany may obtain unsecured credit and issue un-
13 secured debt.

14 (B) INABILITY TO OBTAIN CREDIT.—If a
15 bridge financial company is unable to obtain
16 unsecured credit or issue unsecured debt, the
17 Corporation may authorize the obtaining of
18 credit or the issuance of debt by the bridge fi-
19 nancial company—

20 (i) with priority over any or all of the
21 obligations of the bridge financial com-
22 pany;

23 (ii) secured by a lien on property of
24 the bridge financial company that is not
25 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 (ii) HEARING.—The hearing required
21 pursuant to this subparagraph shall be be-
22 fore a court of the United States, which
23 shall have jurisdiction to conduct such
24 hearing and to authorize a bridge financial

1 company to obtain secured credit under
2 clause (i).

3 (D) BURDEN OF PROOF.—In any hearing
4 under this paragraph, the Corporation has the
5 burden of proof on the issue of adequate protec-
6 tion.

7 (E) QUALIFIED FINANCIAL CONTRACTS.—
8 No credit or debt obtained or issued by a bridge
9 financial company may contain terms that im-
10 pair the rights of a counterparty to a qualified
11 financial contract upon a default by the bridge
12 financial company, other than the priority of
13 such counterparty's unsecured claim (after the
14 exercise of rights) relative to the priority of the
15 bridge financial company's obligations in re-
16 spect of such credit or debt, unless such
17 counterparty consents in writing to any such
18 impairment.

19 (17) EFFECT ON DEBTS AND LIENS.—The re-
20 versal or modification on appeal of an authorization
21 under this subsection to obtain credit or issue debt,
22 or of a grant under this section of a priority or a
23 lien, does not affect the validity of any debt so
24 issued, or any priority or lien so granted, to an enti-
25 ty that extended such credit in good faith, whether

1 or not such entity knew of the pendency of the ap-
2 peal, unless such authorization and the issuance of
3 such debt, or the granting of such priority or lien,
4 were stayed pending appeal.

5 (i) SHARING RECORDS.—If the Corporation has been
6 appointed as receiver for a covered financial company,
7 other Federal regulators shall make all records relating
8 to the covered financial company available to the Corpora-
9 tion, which may be used by the Corporation in any manner
10 that the Corporation determines to be appropriate.

11 (j) EXPEDITED PROCEDURES FOR CERTAIN
12 CLAIMS.—

13 (1) TIME FOR FILING NOTICE OF APPEAL.—

14 The notice of appeal of any order, whether interlocu-
15 tory or final, entered in any case brought by the
16 Corporation against a director, officer, employee,
17 agent, attorney, accountant, or appraiser of the cov-
18 ered financial company, or any other person em-
19 ployed by or providing services to a covered financial
20 company, shall be filed not later than 30 days after
21 the date of entry of the order. The hearing of the
22 appeal shall be held not later than 120 days after
23 the date of the notice of appeal. The appeal shall be
24 decided not later than 180 days after the date of the
25 notice of appeal.

1 (2) SCHEDULING.—The court shall expedite the
2 consideration of any case brought by the Corpora-
3 tion against a director, officer, employee, agent, at-
4 torney, accountant, or appraiser of a covered finan-
5 cial company or any other person employed by or
6 providing services to a covered financial company.
7 As far as practicable, the court shall give such case
8 priority on its docket.

9 (3) JUDICIAL DISCRETION.—The court may
10 modify the schedule and limitations stated in para-
11 graphs (1) and (2) in a particular case, based on a
12 specific finding that the ends of justice that would
13 be served by making such a modification would out-
14 weigh the best interest of the public in having the
15 case resolved expeditiously.

16 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
17 receiver for any covered financial company, and for pur-
18 poses of carrying out any power, authority, or duty with
19 respect to a covered financial company—

20 (1) may request the assistance of any foreign fi-
21 nancial authority and provide assistance to any for-
22 eign financial authority in accordance with section
23 8(v) of the Federal Deposit Insurance Act, as if the
24 covered financial company were an insured deposi-
25 tory institution, the Corporation were the appro-

1 appropriate Federal banking agency for the company, and
2 any foreign financial authority were the foreign
3 banking authority; and

4 (2) may maintain an office to coordinate for-
5 eign investigations or investigations on behalf of for-
6 eign financial authorities.

7 (l) PROHIBITION ON ENTERING SECRECY AGREE-
8 MENTS AND PROTECTIVE ORDERS.—The Corporation
9 may not enter into any agreement or approve any protec-
10 tive order which prohibits the Corporation from disclosing
11 the terms of any settlement of an administrative or other
12 action for damages or restitution brought by the Corpora-
13 tion in its capacity as receiver for a covered financial com-
14 pany.

15 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
16 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

17 (1) IN GENERAL.—Except as specifically pro-
18 vided in this section, and notwithstanding any other
19 provision of law, the Corporation, in connection with
20 the liquidation of any covered financial company or
21 bridge financial company with respect to which the
22 Corporation has been appointed as receiver, shall—

23 (A) in the case of any covered financial
24 company or bridge financial company that is or
25 has a subsidiary that is a stockbroker, but is

1 not a member of the Securities Investor Protec-
2 tion Corporation, apply the provisions of sub-
3 chapter III of chapter 7 of the Bankruptcy
4 Code, in respect of the distribution to any cus-
5 tomer of all customer name securities and cus-
6 tomer property, as if such covered financial
7 company or bridge financial company were a
8 debtor for purposes of such subchapter; or

9 (B) in the case of any covered financial
10 company or bridge financial company that is a
11 commodity broker, apply the provisions of sub-
12 chapter IV of chapter 7 the Bankruptcy Code,
13 in respect of the distribution to any customer of
14 all customer property, as if such covered finan-
15 cial company or bridge financial company were
16 a debtor for purposes of such subchapter.

17 (2) DEFINITIONS.—For purposes of this sub-
18 section—

19 (A) the terms “customer”, “customer
20 name securities”, and “customer property”
21 have the same meanings as in section 741 of
22 title 11, United States Code; and

23 (B) the terms “commodity broker” and
24 “stockbroker” have the same meanings as in
25 section 101 of the Bankruptcy Code.

1 (n) ORDERLY LIQUIDATION FUND.—

2 (1) ESTABLISHMENT.—There is established in
3 the Treasury of the United States a separate fund
4 to be known as the “Orderly Liquidation Fund”,
5 which shall be available to the Corporation to carry
6 out the authorities contained in this title, for the
7 cost of actions authorized by this title, including the
8 orderly liquidation of covered financial companies,
9 payment of administrative expenses, the payment of
10 principal and interest by the Corporation on obliga-
11 tions issued under paragraph (6), and the exercise
12 of the authorities of the Corporation under this title.

13 (2) PROCEEDS.—Amounts received by the Cor-
14 poration, including assessments received under sub-
15 section (o), proceeds of obligations issued under
16 paragraph (6), interest and other earnings from in-
17 vestments, and repayments to the Corporation by
18 covered financial companies, shall be deposited into
19 the Fund.

20 (3) MANAGEMENT.—The Corporation shall
21 manage the Fund in accordance with this subsection
22 and the policies and procedures established under
23 section 203(d).

24 (4) INVESTMENTS.—At the request of the Cor-
25 poration, the Secretary may invest such portion of

1 amounts held in the Fund that are not, in the judg-
2 ment of the Corporation, required to meet the cur-
3 rent needs of the Corporation, in obligations of the
4 United States having suitable maturities, as deter-
5 mined by the Corporation. The interest on and the
6 proceeds from the sale or redemption of such obliga-
7 tions shall be credited to the Fund.

8 (5) AUTHORITY TO ISSUE OBLIGATIONS.—

9 (A) CORPORATION AUTHORIZED TO ISSUE
10 OBLIGATIONS.—Upon appointment by the Sec-
11 retary of the Corporation as receiver for a cov-
12 ered financial company, the Corporation is au-
13 thorized to issue obligations to the Secretary.

14 (B) SECRETARY AUTHORIZED TO PUR-
15 CHASE OBLIGATIONS.—The Secretary may,
16 under such terms and conditions as the Sec-
17 retary may require, purchase or agree to pur-
18 chase any obligations issued under subpara-
19 graph (A), and for such purpose, the Secretary
20 is authorized to use as a public debt transaction
21 the proceeds of the sale of any securities issued
22 under chapter 31 of title 31, United States
23 Code, and the purposes for which securities
24 may be issued under chapter 31 of title 31,

1 United States Code, are extended to include
2 such purchases.

3 (C) INTEREST RATE.—Each purchase of
4 obligations by the Secretary under this para-
5 graph shall be upon such terms and conditions
6 as to yield a return at a rate determined by the
7 Secretary, taking into consideration the current
8 average yield on outstanding marketable obliga-
9 tions of the United States of comparable matu-
10 rity, plus an interest rate surcharge to be deter-
11 mined by the Secretary, which shall be greater
12 than the difference between—

13 (i) the current average rate on an
14 index of corporate obligations of com-
15 parable maturity; and

16 (ii) the current average rate on out-
17 standing marketable obligations of the
18 United States of comparable maturity.

19 (D) SECRETARY AUTHORIZED TO SELL OB-
20 LIGATIONS.—The Secretary may sell, upon such
21 terms and conditions as the Secretary shall de-
22 termine, any of the obligations acquired under
23 this paragraph.

24 (E) PUBLIC DEBT TRANSACTIONS.—All
25 purchases and sales by the Secretary of such

1 obligations under this paragraph shall be treat-
2 ed as public debt transactions of the United
3 States, and the proceeds from the sale of any
4 obligations acquired by the Secretary under this
5 paragraph shall be deposited into the Treasury
6 of the United States as miscellaneous receipts.

7 (6) MAXIMUM OBLIGATION LIMITATION.—The
8 Corporation may not, in connection with the orderly
9 liquidation of a covered financial company, issue or
10 incur any obligation, if, after issuing or incurring
11 the obligation, the aggregate amount of such obliga-
12 tions outstanding under this subsection for each cov-
13 ered financial company would exceed—

14 (A) an amount that is equal to 10 percent
15 of the total consolidated assets of the covered
16 financial company, based on the most recent fi-
17 nancial statement available, during the 30-day
18 period immediately following the date of ap-
19 pointment of the Corporation as receiver (or a
20 shorter time period if the Corporation has cal-
21 culated the amount described under subpara-
22 graph (B)); and

23 (B) the amount that is equal to 90 percent
24 of the fair value of the total consolidated assets
25 of each covered financial company that are

1 available for repayment, after the time period
2 described in subparagraph (A).

3 (7) RULEMAKING.—The Corporation and the
4 Secretary shall jointly, in consultation with the
5 Council, prescribe regulations governing the calcula-
6 tion of the maximum obligation limitation defined in
7 this paragraph.

8 (8) RULE OF CONSTRUCTION.—

9 (A) IN GENERAL.—Nothing in this section
10 shall be construed to affect the authority of the
11 Corporation under subsection (a) or (b) of sec-
12 tion 14 or section 15(c)(5) of the Federal De-
13 posit Insurance Act (12 U.S.C. 1824,
14 1825(c)(5)), the management of the Deposit In-
15 surance Fund by the Corporation, or the resolu-
16 tion of insured depository institutions, provided
17 that—

18 (i) the authorities of the Corporation
19 contained in this title shall not be used to
20 assist the Deposit Insurance Fund or to
21 assist any financial company under appli-
22 cable law other than this Act;

23 (ii) the authorities of the Corporation
24 relating to the Deposit Insurance Fund, or
25 any other responsibilities of the Corpora-

1 (h)(2)(G)(iv) and (h)(9) of this section, and pay-
2 ments to third parties. The orderly liquidation plan
3 shall take into account actions to avoid or mitigate
4 potential adverse effects on low income, minority, or
5 underserved communities affected by the failure of
6 the covered financial company, and shall provide for
7 coordination with the primary financial regulatory
8 agencies, as appropriate, to ensure that such actions
9 are taken. The Corporation may, at any time, amend
10 any orderly liquidation plan approved by the Sec-
11 retary with the concurrence of the Secretary.

12 (10) IMPLEMENTATION EXPENSES.—

13 (A) IN GENERAL.—Reasonable implemen-
14 tation expenses of the Corporation incurred
15 after the date of enactment of this Act shall be
16 treated as expenses of the Council.

17 (B) REQUESTS FOR REIMBURSEMENT.—
18 The Corporation shall periodically submit a re-
19 quest for reimbursement for implementation ex-
20 penses to the Chairperson of the Council, who
21 shall arrange for prompt reimbursement to the
22 Corporation of reasonable implementation ex-
23 penses.

24 (C) DEFINITION.—As used in this para-
25 graph, the term “implementation expenses”—

1 (i) means costs incurred by the Cor-
2 poration beginning on the date of enact-
3 ment of this Act, as part of its efforts to
4 implement this title that do not relate to a
5 particular covered financial company; and

6 (ii) includes the costs incurred in con-
7 nection with the development of policies,
8 procedures, rules, and regulations and
9 other planning activities of the Corporation
10 consistent with carrying out this title.

11 (o) ASSESSMENTS.—

12 (1) RISK-BASED ASSESSMENTS.—

13 (A) ELIGIBLE FINANCIAL COMPANIES DE-
14 FINED.—For purposes of this subsection, the
15 term “eligible financial company” means any
16 bank holding company with total consolidated
17 assets equal to or greater than
18 \$50,000,000,000 and any nonbank financial
19 company supervised by the Board of Governors.

20 (B) ASSESSMENTS.—The Corporation shall
21 charge one or more risk-based assessments in
22 accordance with the provisions of subparagraph
23 (D), if such assessments are necessary to pay
24 in full the obligations issued by the Corporation

1 to the Secretary within 60 months of the date
2 of issuance of such obligations.

3 (C) EXTENSIONS AUTHORIZED.—The Cor-
4 poration may, with the approval of the Sec-
5 retary, extend the time period under subpara-
6 graph (C)(iii), if the Corporation determines
7 that an extension is necessary to avoid a serious
8 adverse effect on the financial system of the
9 United States.

10 (D) APPLICATION OF ASSESSMENTS.—To
11 meet the requirements of subparagraph (C), the
12 Corporation shall—

13 (i) impose assessments, as soon as
14 practicable, on any claimant that received
15 additional payments or amounts from the
16 Corporation pursuant to subsection (b)(4),
17 (d)(4), or (h)(5)(E), except for payments
18 or amounts necessary to initiate and con-
19 tinue operations essential to implementa-
20 tion of the receivership or any bridge fi-
21 nancial company, to recover on a cumu-
22 lative basis, the entire difference be-
23 tween—

24 (I) the aggregate value the claim-
25 ant received from the Corporation on

1 a claim pursuant to this title (includ-
2 ing pursuant to subsection (b)(4),
3 (d)(4), and (h)(5)(E)), as of the date
4 on which such value was received; and

5 (II) the value the claimant was
6 entitled to receive from the Corpora-
7 tion on such claim solely from the
8 proceeds of the liquidation of the cov-
9 ered financial company under this
10 title; and

11 (ii) if the amounts to be recovered on
12 a cumulative basis under clause (i) are in-
13 sufficient to meet the requirements of sub-
14 paragraph (C), after taking into account
15 the considerations set forth in paragraph
16 (4), impose assessments on—

17 (I) eligible financial companies;
18 and

19 (II) financial companies with
20 total consolidated assets equal to or
21 greater than \$50,000,000,000 that
22 are not eligible financial companies.

23 (E) PROVISION OF FINANCING.—Payments
24 or amounts necessary to initiate and continue
25 operations essential to implementation of the

1 receivership or any bridge financial company
2 described in subparagraph (E)(i) shall not in-
3 clude the provision of financing, as defined by
4 rule of the Corporation, to third parties.

5 (2) GRADUATED ASSESSMENT RATE.—The Cor-
6 poration shall impose assessments on a graduated
7 basis, with financial companies having greater assets
8 and risk being assessed at a higher rate.

9 (3) NOTIFICATION AND PAYMENT.—The Cor-
10 poration shall notify each financial company of that
11 company's assessment under this subsection. Any fi-
12 nancial company subject to assessment under this
13 subsection shall pay such assessment in accordance
14 with the regulations prescribed pursuant to para-
15 graph (6).

16 (4) RISK-BASED ASSESSMENT CONSIDER-
17 ATIONS.—In imposing assessments under this sub-
18 section, the Corporation shall—

19 (A) take into account economic conditions
20 generally affecting financial companies, so as to
21 allow assessments to be lower during less favor-
22 able economic conditions;

23 (B) take into account any assessments im-
24 posed on—

1 (i) an insured depository institution
2 subsidiary of a financial company pursuant
3 to section 7 or section 13(c)(4)(G) of the
4 Federal Deposit Insurance Act (12 U.S.C.
5 1817, 1823(c)(4)(G));

6 (ii) a financial company or subsidiary
7 of such company that is a member of SIPC
8 pursuant to section 4 of the Securities In-
9 vestor Protection Act of 1970 (15 U.S.C.
10 78ddd); and

11 (iii) a financial company or subsidiary
12 of such company that is an insurance com-
13 pany pursuant to applicable State law to
14 cover (or reimburse payments made to
15 cover) the costs of rehabilitation, liquida-
16 tion, or other State insolvency proceeding
17 with respect to one or more insurance com-
18 panies;

19 (C) take into account the financial condi-
20 tion of the financial company, including the ex-
21 tent and type of off-balance-sheet exposures of
22 the financial company;

23 (D) take into account the risks presented
24 by the financial company to the financial sta-
25 bility of the United States economy;

1 (E) take into account the extent to which
2 the financial company or group of financial
3 companies has benefitted, or likely would ben-
4 efit, from the orderly liquidation of a covered fi-
5 nancial company and the use of the Fund under
6 this title;

7 (F) distinguish among different classes of
8 assets or different types of financial companies
9 (including distinguishing among different types
10 of financial companies, based on their levels of
11 capital and leverage) in order to establish com-
12 parable assessment bases among financial com-
13 panies subject to this subsection;

14 (G) take into account the extent to which
15 assets are managed rather than owned by the
16 financial company and the extent to which own-
17 ership of assets under management is diffuse;

18 (H) establish the parameters for the grad-
19 uated assessment requirement in paragraph (2);
20 and

21 (I) take into account such other risk-re-
22 lated factors as the Corporation, in consultation
23 with the Secretary, deems appropriate.

24 (5) COLLECTION OF INFORMATION.—The Cor-
25 poration may impose on covered financial companies

1 such collection of information requirements as the
2 Corporation deems necessary to carry out this sub-
3 section after the appointment of the Corporation as
4 receiver under this title.

5 (6) RULEMAKING.—

6 (A) IN GENERAL.—The Corporation shall
7 prescribe regulations to carry out this sub-
8 section. The Corporation shall consult with the
9 Secretary in the development and finalization of
10 such regulations.

11 (B) EQUITABLE TREATMENT.—The regu-
12 lations prescribed under subparagraph (A) shall
13 take into account the differences in risks posed
14 to the financial stability of the United States by
15 financial companies, the differences in the li-
16 ability structures of financial companies, and
17 the different bases for other assessments that
18 such financial companies may be required to
19 pay, to ensure that assessed financial compa-
20 nies are treated equitably and that assessments
21 under this subsection reflect such differences.

22 (p) UNENFORCEABILITY OF CERTAIN AGREE-
23 MENTS.—

24 (1) IN GENERAL.—No provision described in
25 paragraph (2) shall be enforceable against or impose

1 any liability on any person, as such enforcement or
2 liability shall be contrary to public policy.

3 (2) PROHIBITED PROVISIONS.—A provision de-
4 scribed in this paragraph is any term contained in
5 any existing or future standstill, confidentiality, or
6 other agreement that, directly or indirectly—

7 (A) affects, restricts, or limits the ability
8 of any person to offer to acquire or acquire;

9 (B) prohibits any person from offering to
10 acquire or acquiring; or

11 (C) prohibits any person from using any
12 previously disclosed information in connection
13 with any such offer to acquire or acquisition of,
14 all or part of any covered financial company, includ-
15 ing any liabilities, assets, or interest therein, in con-
16 nection with any transaction in which the Corpora-
17 tion exercises its authority under this title.

18 (q) OTHER EXEMPTIONS.—

19 (1) IN GENERAL.—When acting as a receiver
20 under this title—

21 (A) the Corporation, including its fran-
22 chise, its capital, reserves and surplus, and its
23 income, shall be exempt from all taxation im-
24 posed by any State, county, municipality, or
25 local taxing authority, except that any real

1 property of the Corporation shall be subject to
2 State, territorial, county, municipal, or local
3 taxation to the same extent according to its
4 value as other real property is taxed, except
5 that, notwithstanding the failure of any person
6 to challenge an assessment under State law of
7 the value of such property, such value, and the
8 tax thereon, shall be determined as of the pe-
9 riod for which such tax is imposed;

10 (B) no property of the Corporation shall be
11 subject to levy, attachment, garnishment, fore-
12 closure, or sale without the consent of the Cor-
13 poration, nor shall any involuntary lien attach
14 to the property of the Corporation; and

15 (C) the Corporation shall not be liable for
16 any amounts in the nature of penalties or fines,
17 including those arising from the failure of any
18 person to pay any real property, personal prop-
19 erty, probate, or recording tax or any recording
20 or filing fees when due; and

21 (D) the Corporation shall be exempt from
22 all prosecution by the United States or any
23 State, county, municipality, or local authority
24 for any criminal offense arising under Federal,
25 State, county, municipal, or local law, which

1 was allegedly committed by the covered finan-
2 cial company, or persons acting on behalf of the
3 covered financial company, prior to the appoint-
4 ment of the Corporation as receiver.

5 (2) LIMITATION.—Paragraph (1) shall not
6 apply with respect to any tax imposed (or other
7 amount arising) under the Internal Revenue Code of
8 1986.

9 (f) CERTAIN SALES OF ASSETS PROHIBITED.—

10 (1) PERSONS WHO ENGAGED IN IMPROPER CON-
11 DUCT WITH, OR CAUSED LOSSES TO, COVERED FI-
12 NANCIAL COMPANIES.—The Corporation shall pre-
13 scribe regulations which, at a minimum, shall pro-
14 hibit the sale of assets of a covered financial com-
15 pany by the Corporation to—

16 (A) any person who—

17 (i) has defaulted, or was a member of
18 a partnership or an officer or director of a
19 corporation that has defaulted, on 1 or
20 more obligations, the aggregate amount of
21 which exceeds \$1,000,000, to such covered
22 financial company;

23 (ii) has been found to have engaged in
24 fraudulent activity in connection with any
25 obligation referred to in clause (i); and

1 (iii) proposes to purchase any such
2 asset in whole or in part through the use
3 of the proceeds of a loan or advance of
4 credit from the Corporation or from any
5 covered financial company;

6 (B) any person who participated, as an of-
7 ficer or director of such covered financial com-
8 pany or of any affiliate of such company, in a
9 material way in any transaction that resulted in
10 a substantial loss to such covered financial com-
11 pany; or

12 (C) any person who has demonstrated a
13 pattern or practice of defalcation regarding ob-
14 ligations to such covered financial company.

15 (2) CONVICTED DEBTORS.—Except as provided
16 in paragraph (3), a person may not purchase any
17 asset of such institution from the receiver, if that
18 person—

19 (A) has been convicted of an offense under
20 section 215, 656, 657, 1005, 1006, 1007, 1008,
21 1014, 1032, 1341, 1343, or 1344 of title 18,
22 United States Code, or of conspiring to commit
23 such an offense, affecting any covered financial
24 company; and

1 (B) is in default on any loan or other ex-
2 tension of credit from such covered financial
3 company which, if not paid, will cause substan-
4 tial loss to the Fund or the Corporation.

5 (3) SETTLEMENT OF CLAIMS.—Paragraphs (1)
6 and (2) shall not apply to the sale or transfer by the
7 Corporation of any asset of any covered financial
8 company to any person, if the sale or transfer of the
9 asset resolves or settles, or is part of the resolution
10 or settlement, of 1 or more claims that have been,
11 or could have been, asserted by the Corporation
12 against the person.

13 (4) DEFINITION OF DEFAULT.—For purposes
14 of this subsection, the term “default” means a fail-
15 ure to comply with the terms of a loan or other obli-
16 gation to such an extent that the property securing
17 the obligation is foreclosed upon.

18 (s) RECOUPMENT OF COMPENSATION FROM SENIOR
19 EXECUTIVES AND DIRECTORS.—

20 (1) IN GENERAL.—The Corporation, as receiver
21 of a covered financial company, may recover from
22 any current or former senior executive or director
23 substantially responsible for the failed condition of
24 the covered financial company any compensation re-
25 ceived during the 2-year period preceding the date

1 on which the Corporation was appointed as the re-
2 ceiver of the covered financial company, except that,
3 in the case of fraud, no time limit shall apply.

4 (2) COST CONSIDERATIONS.—In seeking to re-
5 cover any such compensation, the Corporation shall
6 weigh the financial and deterrent benefits of such re-
7 covery against the cost of executing the recovery.

8 (3) RULEMAKING.—The Corporation shall pro-
9 mulgate regulations to implement the requirements
10 of this subsection, including defining the term “com-
11 pensation” to mean any financial remuneration, in-
12 cluding salary, bonuses, incentives, benefits, sever-
13 ance, deferred compensation, or golden parachute
14 benefits, and any profits realized from the sale of
15 the securities of the covered financial company.

16 **SEC. 211. MISCELLANEOUS PROVISIONS.**

17 (a) CLARIFICATION OF PROHIBITION REGARDING
18 CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUI-
19 DATING AGENT.—Section 1032(1) of title 18, United
20 States Code, is amended by inserting “the Federal Deposit
21 Insurance Corporation acting as receiver for a covered fi-
22 nancial company, in accordance with title II of the Restor-
23 ing American Financial Stability Act of 2010,” before “or
24 the National Credit”.

1 (b) CONFORMING AMENDMENT.—Section 1032 of
2 title 18, United States Code, is amended in the section
3 heading, by striking “**of financial institution**”.

4 (c) FEDERAL DEPOSIT INSURANCE CORPORATION
5 IMPROVEMENT ACT OF 1991.—Section 403(a) of the Fed-
6 eral Deposit Insurance Corporation Improvement Act of
7 1991 (12 U.S.C. 4403(a)) is amended by inserting “sec-
8 tion 210(c) of the Restoring American Financial Stability
9 Act of 2010, section 1367 of the Federal Housing Enter-
10 prises Financial Safety and Soundness Act of 1992 (12
11 U.S.C. 4617(d)),” after “section 11(e) of the Federal De-
12 posit Insurance Act,”.

13 (d) FDIC INSPECTOR GENERAL REVIEWS.—

14 (1) SCOPE.—The Inspector General of the Cor-
15 poration shall conduct, supervise, and coordinate au-
16 dits and investigations of the liquidation of any cov-
17 ered financial company by the Corporation as re-
18 ceiver under this title, including collecting and sum-
19 marizing—

20 (A) a description of actions taken by the
21 Corporation as receiver;

22 (B) a description of any material sales,
23 transfers, mergers, obligations, purchases, and
24 other material transactions entered into by the
25 Corporation;

1 (C) an evaluation of the adequacy of the
2 policies and procedures of the Corporation
3 under section 203(d) and orderly liquidation
4 plan under section 210(n)(14);

5 (D) an evaluation of the utilization by the
6 Corporation of the private sector in carrying
7 out its functions, including the adequacy of any
8 conflict-of-interest reviews; and

9 (E) an evaluation of the overall perform-
10 ance of the Corporation in liquidating the cov-
11 ered financial company, including administra-
12 tive costs, timeliness of liquidation process, and
13 impact on the financial system.

14 (2) FREQUENCY.—Not later than 6 months
15 after the date of appointment of the Corporation as
16 receiver under this title and every 6 months there-
17 after, the Inspector General of the Corporation shall
18 conduct the audit and investigation described in
19 paragraph (1).

20 (3) REPORTS AND TESTIMONY.—The Inspector
21 General of the Corporation shall include in the semi-
22 annual reports required by section 5(a) of the In-
23 spector General Act of 1978 (5 U.S.C. App.), a sum-
24 mary of the findings and evaluations under para-
25 graph (1), and shall appear before the appropriate

1 committees of Congress, if requested, to present
2 each such report.

3 (4) FUNDING.—

4 (A) INITIAL FUNDING.—The expenses of
5 the Inspector General of the Corporation in car-
6 rying out this subsection shall be considered ad-
7 ministrative expenses of the receivership.

8 (B) ADDITIONAL FUNDING.—If the max-
9 imum amount available to the Corporation as
10 receiver under this title is insufficient to enable
11 the Inspector General of the Corporation to
12 carry out the duties under this subsection, the
13 Corporation shall pay such additional amounts
14 from assessments imposed under section 210.

15 (5) TERMINATION OF RESPONSIBILITIES.—The
16 duties and responsibilities of the Inspector General
17 of the Corporation under this subsection shall termi-
18 nate 1 year after the date of termination of the re-
19 ceivership under this title.

20 (e) TREASURY INSPECTOR GENERAL REVIEWS.—

21 (1) SCOPE.—The Inspector General of the De-
22 partment of the Treasury shall conduct, supervise,
23 and coordinate audits and investigations of actions
24 taken by the Secretary related to the liquidation of

1 any covered financial company under this title, in-
2 cluding collecting and summarizing—

3 (A) a description of actions taken by the
4 Secretary under this title;

5 (B) an analysis of the approval by the Sec-
6 retary of the policies and procedures of the Cor-
7 poration under section 203 and acceptance of
8 the orderly liquidation plan of the Corporation
9 under section 210; and

10 (C) an assessment of the terms and condi-
11 tions underlying the purchase by the Secretary
12 of obligations of the Corporation under section
13 210.

14 (2) FREQUENCY.—Not later than 6 months
15 after the date of appointment of the Corporation as
16 receiver under this title and every 6 months there-
17 after, the Inspector General of the Department of
18 the Treasury shall conduct the audit and investiga-
19 tion described in paragraph (1).

20 (3) REPORTS AND TESTIMONY.—The Inspector
21 General of the Department of the Treasury shall in-
22 clude in the semiannual reports required by section
23 5(a) of the Inspector General Act of 1978 (5 U.S.C.
24 App.), a summary of the findings and assessments
25 under paragraph (1), and shall appear before the

1 appropriate committees of Congress, if requested, to
2 present each such report.

3 (4) TERMINATION OF RESPONSIBILITIES.—The
4 duties and responsibilities of the Inspector General
5 of the Department of the Treasury under this sub-
6 section shall terminate 1 year after the date on
7 which the obligations purchased by the Secretary
8 from the Corporation under section 210 are fully re-
9 deemed.

10 (f) PRIMARY FINANCIAL REGULATORY AGENCY IN-
11 SPECTOR GENERAL REVIEWS.—

12 (1) SCOPE.—Upon the appointment of the Cor-
13 poration as receiver for a covered financial company
14 supervised by a Federal primary financial regulatory
15 agency or the Board of Governors under section
16 165, the Inspector General of the agency or the
17 Board of Governors shall make a written report re-
18 viewing the supervision by the agency or the Board
19 of Governors of the covered financial company,
20 which shall—

21 (A) evaluate the effectiveness of the agency
22 or the Board of Governors in carrying out its
23 supervisory responsibilities with respect to the
24 covered financial company;

1 (B) identify any acts or omissions on the
2 part of agency or Board of Governors officials
3 that contributed to the covered financial com-
4 pany being in default or in danger of default;

5 (C) identify any actions that could have
6 been taken by the agency or the Board of Gov-
7 ernors that would have prevented the company
8 from being in default or in danger of default;
9 and

10 (D) recommend appropriate administrative
11 or legislative action.

12 (2) REPORTS AND TESTIMONY.—Not later than
13 1 year after the date of appointment of the Corpora-
14 tion as receiver under this title, the Inspector Gen-
15 eral of the Federal primary financial regulatory
16 agency or the Board of Governors shall provide the
17 report required by paragraph (1) to such agency or
18 the Board of Governors, and along with such agency
19 or the Board of Governors, as applicable, shall ap-
20 pear before the appropriate committees of Congress,
21 if requested, to present the report required by para-
22 graph (1). Not later than 90 days after the date of
23 receipt of the report required by paragraph (1), such
24 agency or the Board of Governors, as applicable,
25 shall provide a written report to Congress describing

1 any actions taken in response to the recommenda-
2 tions in the report, and if no such actions were
3 taken, describing the reasons why no actions were
4 taken.

5 **SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVEN-**
6 **TION OF CONFLICTS OF INTEREST.**

7 (a) **NO OTHER FUNDING.**—Funds for the orderly liq-
8 uidation of any covered financial company under this title
9 shall only be provided as specified under this title.

10 (b) **LIMIT ON GOVERNMENTAL ACTIONS.**—No gov-
11 ernmental entity may take any action to circumvent the
12 purposes of this title.

13 (c) **CONFLICT OF INTEREST.**—In the event that the
14 Corporation is appointed receiver for more than 1 covered
15 financial company or is appointed receiver for a covered
16 financial company and receiver for any insured depository
17 institution that is an affiliate of such covered financial
18 company, the Corporation shall take appropriate action,
19 as necessary to avoid any conflicts of interest that may
20 arise in connection with multiple receiverships.

21 **SEC. 213. BAN ON CERTAIN ACTIVITIES BY SENIOR EXECU-**
22 **TIVES AND DIRECTORS.**

23 (a) **PROHIBITION AUTHORITY.**—The Board of Gov-
24 ernors or, if the covered financial company was not super-

1 vised by the Board of Governors, the Corporation, may
2 exercise the authority provided by this section.

3 (b) AUTHORITY TO ISSUE ORDER.—The appropriate
4 agency described in subsection (a) may take any action
5 authorized by subsection (c), if the agency determines
6 that—

7 (1) a senior executive or a director of the cov-
8 ered financial company, prior to the appointment of
9 the Corporation as receiver, has, directly or indi-
10 rectly—

11 (A) violated—

12 (i) any law or regulation;

13 (ii) any cease-and-desist order which
14 has become final;

15 (iii) any condition imposed in writing
16 by a Federal agency in connection with
17 any action on any application, notice, or
18 request by such company or senior execu-
19 tive; or

20 (iv) any written agreement between
21 such company and such agency;

22 (B) engaged or participated in any unsafe
23 or unsound practice in connection with any fi-
24 nancial company; or

1 (C) committed or engaged in any act,
2 omission, or practice which constitutes a breach
3 of the fiduciary duty of such senior executive or
4 director;

5 (2) by reason of the violation, practice, or
6 breach described in any subparagraph of paragraph
7 (1), such senior executive or director has received fi-
8 nancial gain or other benefit by reason of such viola-
9 tion, practice, or breach and such violation, practice,
10 or breach contributed to the failure of the company;
11 and

12 (3) such violation, practice, or breach—

13 (A) involves personal dishonesty on the
14 part of such senior executive or director; or

15 (B) demonstrates willful or continuing dis-
16 regard by such senior executive or director for
17 the safety or soundness of such company.

18 (c) AUTHORIZED ACTIONS.—

19 (1) IN GENERAL.—The appropriate agency for
20 a financial company, as described in subsection (a),
21 may serve upon a senior executive or director de-
22 scribed in subsection (b) a written notice of the in-
23 tention of the agency to prohibit any further partici-
24 pation by such person, in any manner, in the con-
25 duct of the affairs of any financial company for a

1 period of time determined by the appropriate agency
2 to be commensurate with such violation, practice, or
3 breach, provided such period shall be not less than
4 2 years.

5 (2) PROCEDURES.—The due process require-
6 ments and other procedures under section 8(e) of
7 the Federal Deposit Insurance Act (12 U.S.C.
8 1818(e)) shall apply to actions under this section as
9 if the covered financial company were an insured de-
10 pository institution and the senior executive or direc-
11 tor were an institution-affiliated party, as those
12 terms are defined in that Act.

13 (d) REGULATIONS.—The Corporation and the Board
14 of Governors, in consultation with the Council, shall joint-
15 ly prescribe rules or regulations to administer and carry
16 out this section, including rules, regulations, or guidelines
17 to further define the term senior executive for the pur-
18 poses of this section.

19 **SEC. 214. PROHIBITION ON TAXPAYER FUNDING.**

20 (a) LIQUIDATION REQUIRED.—All financial compa-
21 nies put into receivership under this title shall be liq-
22 uidated. No taxpayer funds shall be used to prevent the
23 liquidation of any financial company under this title.

24 (b) RECOVERY OF FUNDS.—All funds expended in
25 the liquidation of a financial company under this title shall

1 be recovered from the disposition of assets of such finan-
2 cial company, or shall be the responsibility of the financial
3 sector, through assessments.

4 (c) NO LOSSES TO TAXPAYERS.—Taxpayers shall
5 bear no losses from the exercise of any authority under
6 this title.

7 **TITLE III—TRANSFER OF POW-**
8 **ERS TO THE COMPTROLLER**
9 **OF THE CURRENCY, THE COR-**
10 **PORATION, AND THE BOARD**
11 **OF GOVERNORS**

12 **SEC. 300. SHORT TITLE.**

13 This title may be cited as the “Enhancing Financial
14 Institution Safety and Soundness Act of 2010”.

15 **SEC. 301. PURPOSES.**

16 The purposes of this title are—

17 (1) to provide for the safe and sound operation
18 of the banking system of the United States;

19 (2) to preserve and protect the dual system of
20 Federal and State-chartered depository institutions;

21 (3) to ensure the fair and appropriate super-
22 vision of each depository institution, regardless of
23 the size or type of charter of the depository institu-
24 tion; and

1 (4) to streamline and rationalize the supervision
2 of depository institutions and the holding companies
3 of depository institutions.

4 **SEC. 302. DEFINITION.**

5 In this title, the term “transferred employee” means,
6 as the context requires, an employee transferred to the
7 Office of the Comptroller of the Currency or the Corpora-
8 tion under section 322.

9 **Subtitle A—Transfer of Powers and**
10 **Duties**

11 **SEC. 311. TRANSFER DATE.**

12 (a) TRANSFER DATE.—Except as provided in sub-
13 section (b), the term “transfer date” means the date that
14 is 1 year after the date of enactment of this Act.

15 (b) EXTENSION PERMITTED.—

16 (1) NOTICE REQUIRED.—The Secretary, in con-
17 sultation with the Comptroller of the Currency, the
18 Director of the Office of Thrift Supervision, the
19 Chairman of the Board of Governors, and the Chair-
20 person of the Corporation, may extend the period
21 under subsection (a) and designate a transfer date
22 that is not later than 18 months after the date of
23 enactment of this Act, if the Secretary transmits to
24 the Committee on Banking, Housing, and Urban Af-

1 fairs of the Senate and the Committee on Financial
2 Services of the House of Representatives—

3 (A) a written determination that com-
4 mencement of the orderly process to implement
5 this title is not feasible by the date that is 1
6 year after the date of enactment of this Act;

7 (B) an explanation of why an extension is
8 necessary to commence the process of orderly
9 implementation of this title;

10 (C) the transfer date designated under this
11 subsection; and

12 (D) a description of the steps that will be
13 taken to initiate the process of an orderly and
14 timely implementation of this title within the
15 extended time period.

16 (2) PUBLICATION OF NOTICE.—Not later than
17 270 days after the date of enactment of this Act, the
18 Secretary shall publish in the Federal Register no-
19 tice of any transfer date designated under paragraph
20 (1).

21 **SEC. 312. POWERS AND DUTIES TRANSFERRED.**

22 (a) EFFECTIVE DATE.—This section, and the amend-
23 ments made by this section, shall take effect on the trans-
24 fer date.

1 (b) FUNCTIONS OF THE OFFICE OF THRIFT SUPER-
2 VISION.—

3 (1) SAVINGS AND LOAN HOLDING COMPANY
4 FUNCTIONS TRANSFERRED.—

5 (A) TRANSFER OF FUNCTIONS.—There are
6 transferred to the Board of Governors all func-
7 tions of the Office of Thrift Supervision and the
8 Director of the Office of Thrift Supervision (in-
9 cluding the authority to issue orders) relating
10 to—

11 (i) the supervision of—

12 (I) any savings and loan holding
13 company; and

14 (II) any subsidiary (other than a
15 depository institution) of a savings
16 and loan holding company; and

17 (ii) all rulemaking authority of the Of-
18 fice of Thrift Supervision and the Director
19 of the Office of Thrift Supervision relating
20 to savings and loan holding companies.

21 (B) POWERS, AUTHORITIES, RIGHTS, AND
22 DUTIES.—The Board of Governors shall suc-
23 ceed to all powers, authorities, rights, and du-
24 ties that were vested in the Office of Thrift Su-
25 pervision and the Director of the Office of

1 Thrift Supervision on the day before the trans-
2 fer date relating to the functions and authority
3 transferred under subparagraph (A).

4 (2) ALL OTHER FUNCTIONS TRANSFERRED.—

5 (A) BOARD OF GOVERNORS.—All rule-
6 making authority of the Office of Thrift Super-
7 vision and the Director of the Office of Thrift
8 Supervision under section 11 of the Home Own-
9 ers' Loan Act (12 U.S.C. 1468) relating to
10 transactions with affiliates and extensions of
11 credit to executive officers, directors, and prin-
12 cipal shareholders and under section 5(q) of
13 such Act relating to tying arrangements is
14 transferred to the Board of Governors.

15 (B) COMPTROLLER OF THE CURRENCY.—
16 Except as provided in paragraph (1) and sub-
17 paragraph (A)—

18 (i) there are transferred to the Office
19 of the Comptroller of the Currency and the
20 Comptroller of the Currency—

21 (I) all functions of the Office of
22 Thrift Supervision and the Director of
23 the Office of Thrift Supervision, re-
24 spectively, relating to Federal savings
25 associations; and

1 (II) all rulemaking authority of
2 the Office of Thrift Supervision and
3 the Director of the Office of Thrift
4 Supervision, respectively, relating to
5 savings associations; and

6 (ii) the Office of the Comptroller of
7 the Currency and the Comptroller of the
8 Currency shall succeed to all powers, au-
9 thorities, rights, and duties that were vest-
10 ed in the Office of Thrift Supervision and
11 the Director of the Office of Thrift Super-
12 vision, respectively, on the day before the
13 transfer date relating to the functions and
14 authority transferred under clause (i).

15 (C) CORPORATION.—Except as provided in
16 paragraph (1) and subparagraphs (A) and
17 (B)—

18 (i) all functions of the Office of Thrift
19 Supervision and the Director of the Office
20 of Thrift Supervision relating to State sav-
21 ings associations are transferred to the
22 Corporation; and

23 (ii) the Corporation shall succeed to
24 all powers, authorities, rights, and duties
25 that were vested in the Office of Thrift Su-

1 pervision and the Director of the Office of
2 Thrift Supervision on the day before the
3 transfer date relating to the functions
4 transferred under clause (i).

5 (c) CONFORMING AMENDMENTS.—Section 3(q) of
6 the Federal Deposit Insurance Act (12 U.S.C. 1813(q))
7 is amended by striking paragraphs (1) through (4) and
8 inserting the following:

9 “(1) the Office of the Comptroller of the Cur-
10 rency, in the case of—

11 “(A) any national banking association;

12 “(B) any Federal branch or agency of a
13 foreign bank; and

14 “(C) any Federal savings association;

15 “(2) the Federal Deposit Insurance Corpora-
16 tion, in the case of—

17 “(A) any State nonmember insured bank;

18 “(B) any foreign bank having an insured
19 branch; and

20 “(C) any State savings association;

21 “(3) the Board of Governors of the Federal Re-
22 serve System, in the case of—

23 “(A) any State member bank;

24 “(B) any branch or agency of a foreign
25 bank with respect to any provision of the Fed-

1 eral Reserve Act which is made applicable
2 under the International Banking Act of 1978;

3 “(C) any foreign bank which does not op-
4 erate an insured branch;

5 “(D) any agency or commercial lending
6 company other than a Federal agency;

7 “(E) supervisory or regulatory proceedings
8 arising from the authority given to the Board
9 of Governors under section 7(c)(1) of the Inter-
10 national Banking Act of 1978, including such
11 proceedings under the Financial Institutions
12 Supervisory Act of 1966;

13 “(F) any bank holding company and any
14 subsidiary (other than a depository institution)
15 of a bank holding company; and

16 “(G) any savings and loan holding com-
17 pany and any subsidiary (other than a deposi-
18 tory institution) of a savings and loan holding
19 company.”.

20 (d) CONSUMER PROTECTION.—Nothing in this sec-
21 tion may be construed to limit or otherwise affect the
22 transfer of powers under title X.

1 **SEC. 313. ABOLISHMENT.**

2 Effective 90 days after the transfer date, the Office
3 of Thrift Supervision and the position of Director of the
4 Office of Thrift Supervision are abolished.

5 **SEC. 314. AMENDMENTS TO THE REVISED STATUTES.**

6 (a) AMENDMENT TO SECTION 324.—Section 324 of
7 the Revised Statutes of the United States (12 U.S.C. 1)
8 is amended to read as follows:

9 **“SEC. 324. COMPTROLLER OF THE CURRENCY.**

10 “(a) OFFICE OF THE COMPTROLLER OF THE CUR-
11 RENCY ESTABLISHED.—There is established in the De-
12 partment of the Treasury a bureau to be known as the
13 ‘Office of the Comptroller of the Currency’ which is
14 charged with assuring the safety and soundness of, and
15 compliance with laws and regulations, fair access to finan-
16 cial services, and fair treatment of customers by, the insti-
17 tutions and other persons subject to its jurisdiction.

18 “(b) COMPTROLLER OF THE CURRENCY.—

19 “(1) IN GENERAL.—The chief officer of the Of-
20 fice of the Comptroller of the Currency shall be
21 known as the Comptroller of the Currency. The
22 Comptroller of the Currency shall perform the duties
23 of the Comptroller of the Currency under the gen-
24 eral direction of the Secretary of the Treasury. The
25 Secretary of the Treasury may not delay or prevent
26 the issuance of any rule or the promulgation of any

1 regulation by the Comptroller of the Currency, and
2 may not intervene in any matter or proceeding be-
3 fore the Comptroller of the Currency (including
4 agency enforcement actions), unless otherwise spe-
5 cifically provided by law.

6 “(2) **ADDITIONAL AUTHORITY.**—The Comp-
7 troller of the Currency shall have the same authority
8 with respect to functions transferred to the Comp-
9 troller of the Currency under the Enhancing Finan-
10 cial Institution Safety and Soundness Act of 2010
11 as was vested in the Director of the Office of Thrift
12 Supervision on the transfer date, as defined in sec-
13 tion 311 of that Act.”.

14 (b) **SUPERVISION OF FEDERAL SAVINGS ASSOCIA-**
15 **TIONS.**—Chapter 9 of title VII of the Revised Statutes of
16 the United States (12 U.S.C. 1 et seq.) is amended by
17 inserting after section 327A (12 U.S.C. 4a) the following:
18 **“SEC. 327B. DEPUTY COMPTROLLER FOR THE SUPER-**
19 **VISION AND EXAMINATION OF FEDERAL SAV-**
20 **INGS ASSOCIATIONS.**

21 “The Comptroller of the Currency shall designate a
22 Deputy Comptroller, who shall be responsible for the su-
23 pervision and examination of Federal savings associa-
24 tions.”.

1 (c) AMENDMENT TO SECTION 329.—Section 329 of
2 the Revised Statutes of the United States (12 U.S.C. 11)
3 is amended by inserting before the period at the end the
4 following: “or any Federal savings association”.

5 (d) EFFECTIVE DATE.—This section, and the amend-
6 ments made by this section, shall take effect on the trans-
7 fer date.

8 **SEC. 315. FEDERAL INFORMATION POLICY.**

9 Section 3502(5) of title 44, United States Code, is
10 amended by inserting “Office of the Comptroller of the
11 Currency,” after “the Securities and Exchange Commis-
12 sion,”.

13 **SEC. 316. SAVINGS PROVISIONS.**

14 (a) OFFICE OF THRIFT SUPERVISION.—

15 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
16 TIONS NOT AFFECTED.—Sections 312(b) and 313
17 shall not affect the validity of any right, duty, or ob-
18 ligation of the United States, the Director of the Of-
19 fice of Thrift Supervision, the Office of Thrift Su-
20 pervision, or any other person, that existed on the
21 day before the transfer date.

22 (2) CONTINUATION OF SUITS.—This title shall
23 not abate any action or proceeding commenced by or
24 against the Director of the Office of Thrift Super-

1 vision or the Office of Thrift Supervision before the
2 transfer date, except that—

3 (A) for any action or proceeding arising
4 out of a function of the Office of Thrift Super-
5 vision or the Director of the Office of Thrift
6 Supervision transferred to the Board of Gov-
7 ernors by this title, the Board of Governors
8 shall be substituted for the Office of Thrift Su-
9 pervision or the Director of the Office of Thrift
10 Supervision as a party to the action or pro-
11 ceeding on and after the transfer date;

12 (B) for any action or proceeding arising
13 out of a function of the Office of Thrift Super-
14 vision or the Director of the Office of Thrift
15 Supervision transferred to the Office of the
16 Comptroller of the Currency or the Comptroller
17 of the Currency by this title, the Office of the
18 Comptroller of the Currency or the Comptroller
19 of the Currency shall be substituted for the Of-
20 fice of Thrift Supervision or the Director of the
21 Office of Thrift Supervision, as the case may
22 be, as a party to the action or proceeding on
23 and after the transfer date; and

24 (C) for any action or proceeding arising
25 out of a function of the Office of Thrift Super-

1 vision or the Director of the Office of Thrift
2 Supervision transferred to the Corporation by
3 this title, the Corporation shall be substituted
4 for the Office of Thrift Supervision or the Di-
5 rector of the Office of Thrift Supervision as a
6 party to the action or proceeding on and after
7 the transfer date.

8 (b) CONTINUATION OF EXISTING OTS ORDERS, RES-
9 OLUTIONS, DETERMINATIONS, AGREEMENTS, REGULA-
10 TIONS, ETC.—All orders, resolutions, determinations,
11 agreements, and regulations, interpretative rules, other in-
12 terpretations, guidelines, procedures, and other advisory
13 materials, that have been issued, made, prescribed, or al-
14 lowed to become effective by the Office of Thrift Super-
15 vision or the Director of the Office of Thrift Supervision,
16 or by a court of competent jurisdiction, in the performance
17 of functions that are transferred by this title and that are
18 in effect on the day before the transfer date, shall continue
19 in effect according to the terms of such orders, resolutions,
20 determinations, agreements, and regulations, interpreta-
21 tive rules, other interpretations, guidelines, procedures,
22 and other advisory materials, and shall be enforceable by
23 or against—

24 (1) the Board of Governors, in the case of a
25 function of the Office of Thrift Supervision or the

1 Director of the Office of Thrift Supervision trans-
2 ferred to the Board of Governors, until modified,
3 terminated, set aside, or superseded in accordance
4 with applicable law by the Board of Governors, by
5 any court of competent jurisdiction, or by operation
6 of law;

7 (2) the Office of the Comptroller of the Cur-
8 rency or the Comptroller of the Currency, in the
9 case of a function of the Office of Thrift Supervision
10 or the Director of the Office of Thrift Supervision
11 transferred to the Office of the Comptroller of the
12 Currency or the Comptroller of the Currency, re-
13 spectively, until modified, terminated, set aside, or
14 superseded in accordance with applicable law by the
15 Office of the Comptroller of the Currency or the
16 Comptroller of the Currency, by any court of com-
17 petent jurisdiction, or by operation of law; and

18 (3) the Corporation, in the case of a function
19 of the Office of Thrift Supervision or the Director
20 of the Office of Thrift Supervision transferred to the
21 Corporation, until modified, terminated, set aside, or
22 superseded in accordance with applicable law by the
23 Corporation, by any court of competent jurisdiction,
24 or by operation of law.

1 (c) IDENTIFICATION OF REGULATIONS CONTIN-
2 UED.—

3 (1) BY THE BOARD OF GOVERNORS.—Not later
4 than the transfer date, the Board of Governors
5 shall—

6 (A) identify the regulations continued
7 under subsection (b) that will be enforced by
8 the Board of Governors; and

9 (B) publish a list of the regulations identi-
10 fied under subparagraph (A) in the Federal
11 Register.

12 (2) BY OFFICE OF THE COMPTROLLER OF THE
13 CURRENCY.—Not later than the transfer date, the
14 Office of the Comptroller of the Currency shall—

15 (A) after consultation with the Corpora-
16 tion, identify the regulations continued under
17 subsection (b) that will be enforced by the Of-
18 fice of the Comptroller of the Currency; and

19 (B) publish a list of the regulations identi-
20 fied under subparagraph (A) in the Federal
21 Register.

22 (3) BY THE CORPORATION.—Not later than the
23 transfer date, the Corporation shall—

24 (A) after consultation with the Office of
25 the Comptroller of the Currency, identify the

1 regulations continued under subsection (b) that
2 will be enforced by the Corporation; and

3 (B) publish a list of the regulations identi-
4 fied under subparagraph (A) in the Federal
5 Register.

6 (d) STATUS OF REGULATIONS PROPOSED OR NOT
7 YET EFFECTIVE.—

8 (1) PROPOSED REGULATIONS.—Any proposed
9 regulation of the Office of Thrift Supervision, which
10 the Office of Thrift Supervision in performing func-
11 tions transferred by this title, has proposed before
12 the transfer date but has not published as a final
13 regulation before such date, shall be deemed to be
14 a proposed regulation of the Office of the Comp-
15 troller of the Currency or the Board of Governors,
16 as appropriate, according to the terms of the pro-
17 posed regulation.

18 (2) REGULATIONS NOT YET EFFECTIVE.—Any
19 interim or final regulation of the Office of Thrift Su-
20 pervision, which the Office of Thrift Supervision, in
21 performing functions transferred by this title, has
22 published before the transfer date but which has not
23 become effective before that date, shall become effec-
24 tive as a regulation of the Office of the Comptroller
25 of the Currency or the Board of Governors, as ap-

1 appropriate, according to the terms of the interim or
2 final regulation.

3 **SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL**
4 **BANKING AGENCIES.**

5 On and after the transfer date, any reference in Fed-
6 eral law to the Director of the Office of Thrift Supervision
7 or the Office of Thrift Supervision, in connection with any
8 function of the Director of the Office of Thrift Supervision
9 or the Office of Thrift Supervision transferred under sec-
10 tion 312(b) or any other provision of this subtitle, shall
11 be deemed to be a reference to the Comptroller of the Cur-
12 rency, the Office of the Comptroller of the Currency, the
13 Chairperson of the Corporation, the Corporation, the
14 Chairman of the Board of Governors, or the Board of Gov-
15 ernors, as appropriate and consistent with the amend-
16 ments made in subtitle E.

17 **SEC. 318. FUNDING.**

18 (a) COMPENSATION OF EXAMINERS.—Section 5240
19 of the Revised Statutes of the United States (12 U.S.C.
20 481 et seq.) is amended—

21 (1) in the second undesignated paragraph (12
22 U.S.C. 481), in the fourth sentence, by striking
23 “without regard to the provisions of other laws ap-
24 plicable to officers or employees of the United
25 States” and inserting the following: “set and ad-

1 justed subject to chapter 71 of title 5, United States
2 Code, and without regard to the provisions of other
3 laws applicable to officers or employees of the
4 United States”; and

5 (2) in the third undesignated paragraph (12
6 U.S.C. 482), in the first sentence, by striking “shall
7 fix” and inserting “shall, subject to chapter 71 of
8 title 5, United States Code, fix”.

9 (b) FUNDING OF OFFICE OF THE COMPTROLLER OF
10 THE CURRENCY.—Chapter 4 of title LXII of the Revised
11 Statutes is amended by inserting after section 5240 (12
12 U.S.C. 481, 482) the following:

13 “SEC. 5240A. The Comptroller of the Currency may
14 collect an assessment, fee, or other charge from any entity
15 described in section 3(q)(1) of the Federal Deposit Insur-
16 ance Act (12 U.S.C. 1813(q)(1)), as the Comptroller de-
17 termines is necessary or appropriate to carry out the re-
18 sponsibilities of the Office of the Comptroller of the Cur-
19 rency. In establishing the amount of an assessment, fee,
20 or charge collected from an entity under this section, the
21 Comptroller of the Currency may take into account the
22 nature and scope of the activities of the entity, the amount
23 and type of assets that the entity holds, the financial and
24 managerial condition of the entity, and any other factor,
25 as the Comptroller of the Currency determines is appro-

1 priate. Funds derived from any assessment, fee, or charge
2 collected or payment made pursuant to this section may
3 be deposited by the Comptroller of the Currency in accord-
4 ance with the provisions of section 5234. Such funds shall
5 not be construed to be Government funds or appropriated
6 monies, and shall not be subject to apportionment for pur-
7 poses of chapter 15 of title 31, United States Code, or
8 any other provision of law. The authority of the Comp-
9 troller of the Currency under this section shall be in addi-
10 tion to the authority under section 5240.

11 “The Comptroller of the Currency shall have sole au-
12 thority to determine the manner in which the obligations
13 of the Office of the Comptroller of the Currency shall be
14 incurred and its disbursements and expenses allowed and
15 paid, in accordance with this section, except as provided
16 in chapter 71 of title 5, United States Code (with respect
17 to compensation).”.

18 (c) FUNDING OF BOARD OF GOVERNORS.—Section
19 11 of the Federal Reserve Act (12 U.S.C. 248) is amended
20 by adding at the end the following:

21 “(s) ASSESSMENTS, FEES, AND OTHER CHARGES
22 FOR CERTAIN COMPANIES.—

23 “(1) IN GENERAL.—The Board shall collect a
24 total amount of assessments, fees, or other charges
25 from the companies described in paragraph (2) that

1 is equal to the total expenses the Board estimates
2 are necessary or appropriate to carry out the respon-
3 sibilities of the Board with respect to such compa-
4 nies.

5 “(2) COMPANIES.—The companies described in
6 this paragraph are—

7 “(A) all bank holding companies having
8 total consolidated assets of \$50,000,000,000 or
9 more;

10 “(B) all savings and loan holding compa-
11 nies having total consolidated assets of
12 \$50,000,000,000 or more; and

13 “(C) all nonbank financial companies su-
14 pervised by the Board under section 113 of the
15 Restoring American Financial Stability Act of
16 2010.”.

17 (d) CORPORATION EXAMINATION FEES.—Section
18 10(e) of the Federal Deposit Insurance Act (12 U.S.C.
19 1820(e)) is amended by striking paragraph (1) and insert-
20 ing the following:

21 “(1) REGULAR AND SPECIAL EXAMINATIONS OF
22 DEPOSITORY INSTITUTIONS.—The cost of conducting
23 any regular examination or special examination of
24 any depository institution under subsection (b)(2),
25 (b)(3), or (d) or of any entity described in section

1 3(q)(2) may be assessed by the Corporation against
2 the institution or entity to meet the expenses of the
3 Corporation in carrying out such examinations, or as
4 the Corporation determines is necessary or appro-
5 priate to carry out the responsibilities of the Cor-
6 poration.”.

7 (e) EFFECTIVE DATE.—This section, and the amend-
8 ments made by this section, shall take effect on the trans-
9 fer date.

10 **SEC. 319. CONTRACTING AND LEASING AUTHORITY.**

11 Notwithstanding the Federal Property and Adminis-
12 trative Services Act of 1949 (41 U.S.C. 251 et seq.) or
13 any other provision of law, the Office of the Comptroller
14 of the Currency may—

15 (1) enter into and perform contracts, execute
16 instruments, and acquire, in any lawful manner,
17 such goods and services, or personal or real property
18 (or property interest) as the Comptroller deems nec-
19 essary to carry out the duties and responsibilities of
20 the Office of the Comptroller of the Currency; and

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

1 **Subtitle B—Transitional Provisions**

2 **SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROP-** 3 **ERTY OF THE OFFICE OF THRIFT SUPER-** 4 **VISION.**

5 (a) IN GENERAL.—Before the transfer date, the Of-
6 fice of the Comptroller of the Currency, the Corporation,
7 and the Board of Governors shall—

8 (1) consult and cooperate with the Office of
9 Thrift Supervision to facilitate the orderly transfer
10 of functions to the Office of the Comptroller of the
11 Currency, the Corporation, and the Board of Gov-
12 ernors in accordance with this title;

13 (2) determine jointly, from time to time—

14 (A) the amount of funds necessary to pay
15 any expenses associated with the transfer of
16 functions (including expenses for personnel,
17 property, and administrative services) during
18 the period beginning on the date of enactment
19 of this Act and ending on the transfer date;

20 (B) which personnel are appropriate to fa-
21 cilitate the orderly transfer of functions by this
22 title; and

23 (C) what property and administrative serv-
24 ices are necessary to support the Office of the
25 Comptroller of the Currency, the Corporation,

1 and the Board of Governors during the period
2 beginning on the date of enactment of this Act
3 and ending on the transfer date; and

4 (3) take such actions as may be necessary to
5 provide for the orderly implementation of this title.

6 (b) AGENCY CONSULTATION.—When requested joint-
7 ly by the Office of the Comptroller of the Currency, the
8 Corporation, and the Board of Governors to do so before
9 the transfer date, the Office of Thrift Supervision shall—

10 (1) pay to the Office of the Comptroller of the
11 Currency, the Corporation, or the Board of Gov-
12 ernors, as applicable, from funds obtained by the Of-
13 fice of Thrift Supervision through assessments, fees,
14 or other charges that the Office of Thrift Super-
15 vision is authorized by law to impose, such amounts
16 as the Office of the Comptroller of the Currency, the
17 Corporation, and the Board of Governors jointly de-
18 termine to be necessary under subsection (a);

19 (2) detail to the Office of the Comptroller of the
20 Currency, the Corporation, or the Board of Gov-
21 ernors, as applicable, such personnel as the Office of
22 the Comptroller of the Currency, the Corporation,
23 and the Board of Governors jointly determine to be
24 appropriate under subsection (a); and

1 (3) make available to the Office of the Comp-
2 troller of the Currency, the Corporation, or the
3 Board of Governors, as applicable, such property
4 and provide to the Office of the Comptroller of the
5 Currency, the Corporation, or the Board of Gov-
6 ernors, as applicable, such administrative services as
7 the Office of the Comptroller of the Currency, the
8 Corporation, and the Board of Governors jointly de-
9 termine to be necessary under subsection (a).

10 (c) NOTICE REQUIRED.—The Office of the Comp-
11 troller of the Currency, the Corporation, and the Board
12 of Governors shall jointly give the Office of Thrift Super-
13 vision reasonable prior notice of any request that the Of-
14 fice of the Comptroller of the Currency, the Corporation,
15 and the Board of Governors jointly intend to make under
16 subsection (b).

17 **SEC. 322. TRANSFER OF EMPLOYEES.**

18 (a) IN GENERAL.—

19 (1) OFFICE OF THRIFT SUPERVISION EMPLOY-
20 EES.—

21 (A) IN GENERAL.—All employees of the
22 Office of Thrift Supervision shall be transferred
23 to the Office of the Comptroller of the Currency
24 or the Corporation for employment in accord-
25 ance with this section.

1 (B) ALLOCATING EMPLOYEES FOR TRANS-
2 FER TO RECEIVING AGENCIES.—The Director of
3 the Office of Thrift Supervision, the Comp-
4 troller of the Currency, and the Chairperson of
5 the Corporation shall—

6 (i) jointly determine the number of
7 employees of the Office of Thrift Super-
8 vision necessary to perform or support the
9 functions that are transferred to the Office
10 of the Comptroller of the Currency or the
11 Corporation by this title; and

12 (ii) consistent with the determination
13 under clause (i), jointly identify employees
14 of the Office of Thrift Supervision for
15 transfer to the Office of the Comptroller of
16 the Currency or the Corporation.

17 (2) EMPLOYEES TRANSFERRED; SERVICE PERI-
18 ODS CREDITED.—For purposes of this section, peri-
19 ods of service with a Federal home loan bank, a
20 joint office of Federal home loan banks, or a Federal
21 reserve bank shall be credited as periods of service
22 with a Federal agency.

23 (3) APPOINTMENT AUTHORITY FOR EXCEPTED
24 SERVICE TRANSFERRED.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), any appointment authority
3 of the Office of Thrift Supervision under Fed-
4 eral law that relates to the functions trans-
5 ferred under section 312, including the regula-
6 tions of the Office of Personnel Management,
7 for filling the positions of employees in the ex-
8 cepted service shall be transferred to the Comp-
9 troller of the Currency or the Chairperson of
10 the Corporation, as appropriate.

11 (B) DECLINING TRANSFERS ALLOWED.—
12 The Comptroller of the Currency or the Chair-
13 person of the Corporation may decline to accept
14 a transfer of authority under subparagraph (A)
15 (and the employees appointed under that au-
16 thority) to the extent that such authority re-
17 lates to positions excepted from the competitive
18 service because of their confidential, policy-mak-
19 ing, policy-determining, or policy-advocating
20 character.

21 (4) ADDITIONAL APPOINTMENT AUTHORITY.—
22 Notwithstanding any other provision of law, the Of-
23 fice of the Comptroller of the Currency and the Cor-
24 poration may appoint transferred employees to posi-

1 tions in the Office of the Comptroller of the Cur-
2 rency or the Corporation, respectively.

3 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
4 MENTS.—Each employee to be transferred under sub-
5 section (a)(1) shall—

6 (1) be transferred not later than 90 days after
7 the transfer date; and

8 (2) receive notice of the position assignment of
9 the employee not later than 120 days after the effec-
10 tive date of the transfer of the employee.

11 (c) TRANSFER OF FUNCTIONS.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of law, the transfer of employees under
14 this subtitle shall be deemed a transfer of functions
15 for the purpose of section 3503 of title 5, United
16 States Code.

17 (2) PRIORITY.—If any provision of this subtitle
18 conflicts with any protection provided to a trans-
19 ferred employee under section 3503 of title 5,
20 United States Code, the provisions of this subtitle
21 shall control.

22 (d) EMPLOYEE STATUS AND ELIGIBILITY.—The
23 transfer of functions and employees under this subtitle,
24 and the abolishment of the Office of Thrift Supervision
25 under section 313, shall not affect the status of the trans-

1 ferred employees as employees of an agency of the United
2 States under any provision of law.

3 (e) EQUAL STATUS AND TENURE POSITIONS.—

4 (1) STATUS AND TENURE.—Each transferred
5 employee from the Office of Thrift Supervision shall
6 be placed in a position at the Office of the Comp-
7 troller of the Currency or the Corporation with the
8 same status and tenure as the transferred employee
9 held on the day before the date on which the em-
10 ployee was transferred.

11 (2) FUNCTIONS.—To the extent practicable,
12 each transferred employee shall be placed in a posi-
13 tion at the Office of the Comptroller of the Currency
14 or the Corporation, as applicable, responsible for the
15 same functions and duties as the transferred em-
16 ployee had on the day before the date on which the
17 employee was transferred, in accordance with the ex-
18 pertise and preferences of the transferred employee.

19 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
20 MENTS.—An examiner who is a transferred employee shall
21 not be subject to any additional certification requirements
22 before being placed in a comparable position at the Office
23 of the Comptroller of the Currency or the Corporation,
24 if the examiner carries out examinations of the same type
25 of institutions as an employee of the Office of the Comp-

1 troller of the Currency or the Corporation as the employee
2 was responsible for carrying out before the date on which
3 the employee was transferred.

4 (g) PERSONNEL ACTIONS LIMITED.—

5 (1) 2-YEAR PROTECTION.—Except as provided
6 in paragraph (2), during the 2-year period beginning
7 on the transfer date, an employee holding a perma-
8 nent position on the day before the date on which
9 the employee was transferred shall not be involun-
10 tarily separated or involuntarily reassigned outside
11 the locality pay area (as defined by the Office of
12 Personnel Management) of the employee.

13 (2) EXCEPTIONS.—The Comptroller of the Cur-
14 rency and the Chairperson of the Corporation, as
15 applicable, may—

16 (A) separate a transferred employee for
17 cause, including for unacceptable performance;
18 or

19 (B) terminate an appointment to a position
20 excepted from the competitive service because of
21 its confidential policy-making, policy-deter-
22 mining, or policy-advocating character.

23 (h) PAY.—

24 (1) 2-YEAR PROTECTION.—Except as provided
25 in paragraph (2), during the 2-year period beginning

1 on the date on which the employee was transferred
2 under this subtitle, a transferred employee shall be
3 paid at a rate that is not less than the basic rate
4 of pay, including any geographic differential, that
5 the transferred employee received during the pay pe-
6 riod immediately preceding the date on which the
7 employee was transferred.

8 (2) EXCEPTIONS.—The Comptroller of the Cur-
9 rency or the Corporation may reduce the rate of
10 basic pay of a transferred employee—

11 (A) for cause, including for unacceptable
12 performance; or

13 (B) with the consent of the transferred
14 employee.

15 (3) PROTECTION ONLY WHILE EMPLOYED.—
16 This subsection shall apply to a transferred em-
17 ployee only during the period that the transferred
18 employee remains employed by Office of the Comp-
19 troller of the Currency or the Corporation.

20 (4) PAY INCREASES PERMITTED.—Nothing in
21 this subsection shall limit the authority of the Comp-
22 troller of the Currency or the Chairperson of the
23 Corporation to increase the pay of a transferred em-
24 ployee.

25 (i) BENEFITS.—

1 (1) RETIREMENT BENEFITS FOR TRANSFERRED
2 EMPLOYEES.—

3 (A) IN GENERAL.—

4 (i) CONTINUATION OF EXISTING RE-
5 TIREMENT PLAN.—Each transferred em-
6 ployee shall remain enrolled in the retire-
7 ment plan of the transferred employee, for
8 as long as the transferred employee is em-
9 ployed by the Office of the Comptroller of
10 the Currency or the Corporation.

11 (ii) EMPLOYER'S CONTRIBUTION.—
12 The Comptroller of the Currency or the
13 Chairperson of the Corporation, as appro-
14 priate, shall pay any employer contribu-
15 tions to the existing retirement plan of
16 each transferred employee, as required
17 under each such existing retirement plan.

18 (B) DEFINITION.—In this paragraph, the
19 term “existing retirement plan” means, with re-
20 spect to a transferred employee, the retirement
21 plan (including the Financial Institutions Re-
22 tirement Fund), and any associated thrift sav-
23 ings plan, of the agency from which the em-
24 ployee was transferred in which the employee

1 was enrolled on the day before the date on
2 which the employee was transferred.

3 (2) BENEFITS OTHER THAN RETIREMENT BEN-
4 EFITS.—

5 (A) DURING FIRST YEAR.—

6 (i) EXISTING PLANS CONTINUE.—

7 During the 1-year period following the
8 transfer date, each transferred employee
9 may retain membership in any employee
10 benefit program (other than a retirement
11 benefit program) of the agency from which
12 the employee was transferred under this
13 title, including any dental, vision, long
14 term care, or life insurance program to
15 which the employee belonged on the day
16 before the transfer date.

17 (ii) EMPLOYER'S CONTRIBUTION.—

18 The Office of the Comptroller of the Cur-
19 rency or the Corporation, as appropriate,
20 shall pay any employer cost required to ex-
21 tend coverage in the benefit program to
22 the transferred employee as required under
23 that program or negotiated agreements.

24 (B) DENTAL, VISION, OR LIFE INSURANCE
25 AFTER FIRST YEAR.—If, after the 1-year period

1 beginning on the transfer date, the Office of the
2 Comptroller of the Currency or the Corporation
3 determines that the Office of the Comptroller of
4 the Currency or the Corporation, as the case
5 may be, will not continue to participate in any
6 dental, vision, or life insurance program of an
7 agency from which an employee was trans-
8 ferred, a transferred employee who is a member
9 of the program may, before the decision takes
10 effect and without regard to any regularly
11 scheduled open season, elect to enroll in—

12 (i) the enhanced dental benefits pro-
13 gram established under chapter 89A of
14 title 5, United States Code;

15 (ii) the enhanced vision benefits estab-
16 lished under chapter 89B of title 5, United
17 States Code; and

18 (iii) the Federal Employees' Group
19 Life Insurance Program established under
20 chapter 87 of title 5, United States Code,
21 without regard to any requirement of in-
22 surability.

23 (C) LONG TERM CARE INSURANCE AFTER
24 1ST YEAR.—If, after the 1-year period begin-
25 ning on the transfer date, the Office of the

1 Comptroller of the Currency or the Corporation
2 determines that the Office of the Comptroller of
3 the Currency or the Corporation, as appro-
4 priate, will not continue to participate in any
5 long term care insurance program of an agency
6 from which an employee transferred, a trans-
7 ferred employee who is a member of such a pro-
8 gram may, before the decision takes effect, elect
9 to apply for coverage under the Federal Long
10 Term Care Insurance Program established
11 under chapter 90 of title 5, United States Code,
12 under the underwriting requirements applicable
13 to a new active workforce member, as described
14 in part 875 of title 5, Code of Federal Regula-
15 tions (or any successor thereto).

16 (D) CONTRIBUTION OF TRANSFERRED EM-
17 PLOYEE.—

18 (i) IN GENERAL.—Subject to clause
19 (ii), a transferred employee who is enrolled
20 in a plan under the Federal Employees
21 Health Benefits Program shall pay any
22 employee contribution required under the
23 plan.

24 (ii) COST DIFFERENTIAL.—The Office
25 of the Comptroller of the Currency or the

1 Corporation, as applicable, shall pay any
2 difference in cost between the employee
3 contribution required under the plan pro-
4 vided to transferred employees by the
5 agency from which the employee trans-
6 ferred on the date of enactment of this Act
7 and the plan provided by the Office of the
8 Comptroller of the Currency or the Cor-
9 poration, as the case may be, under this
10 section.

11 (iii) FUNDS TRANSFER.—The Office
12 of the Comptroller of the Currency or the
13 Corporation, as the case may be, shall
14 transfer to the Employees Health Benefits
15 Fund established under section 8909 of
16 title 5, United States Code, an amount de-
17 termined by the Director of the Office of
18 Personnel Management, after consultation
19 with the Comptroller of the Currency or
20 the Chairperson of the Corporation, as the
21 case may be, and the Office of Manage-
22 ment and Budget, to be necessary to reim-
23 burse the Fund for the cost to the Fund
24 of providing any benefits under this sub-

1 paragraph that are not otherwise paid for
2 by a transferred employee under clause (i).

3 (E) SPECIAL PROVISIONS TO ENSURE CON-
4 TINUATION OF LIFE INSURANCE BENEFITS.—

5 (i) IN GENERAL.—An annuitant, as
6 defined in section 8901 of title 5, United
7 States Code, who is enrolled in a life insur-
8 ance plan administered by an agency from
9 which employees are transferred under this
10 title on the day before the transfer date
11 shall be eligible for coverage by a life in-
12 surance plan under sections 8706(b),
13 8714a, 8714b, or 8714c of title 5, United
14 States Code, or by a life insurance plan es-
15 tablished by the Office of the Comptroller
16 of the Currency or the Corporation, as ap-
17 plicable, without regard to any regularly
18 scheduled open season or any requirement
19 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
25 this subparagraph shall pay any em-

1 ployee contribution required by the
2 plan.

3 (II) COST DIFFERENTIAL.—The
4 Office of the Comptroller of the Cur-
5 rency or the Corporation, as the case
6 may be, shall pay any difference in
7 cost between the benefits provided by
8 the agency from which the employee
9 transferred on the date of enactment
10 of this Act and the benefits provided
11 under this section.

12 (III) FUNDS TRANSFER.—The
13 Office of the Comptroller of the Cur-
14 rency or the Corporation, as the case
15 may be, shall transfer to the Federal
16 Employees' Group Life Insurance
17 Fund established under section 8714
18 of title 5, United States Code, an
19 amount determined by the Director of
20 the Office of Personnel Management,
21 after consultation with the Comp-
22 troller of the Currency or the Chair-
23 person of the Corporation, as the case
24 may be, and the Office of Manage-
25 ment and Budget, to be necessary to

1 reimburse the Federal Employees'
2 Group Life Insurance Fund for the
3 cost to the Federal Employees' Group
4 Life Insurance Fund of providing ben-
5 efits under this subparagraph not oth-
6 erwise paid for by a transferred em-
7 ployee under subclause (I).

8 (IV) CREDIT FOR TIME EN-
9 ROLLED IN OTHER PLANS.—For any
10 transferred employee, enrollment in a
11 life insurance plan administered by
12 the agency from which the employee
13 transferred, immediately before enroll-
14 ment in a life insurance plan under
15 chapter 87 of title 5, United States
16 Code, shall be considered as enroll-
17 ment in a life insurance plan under
18 that chapter for purposes of section
19 8706(b)(1)(A) of title 5, United
20 States Code.

21 (j) INCORPORATION INTO AGENCY PAY SYSTEM.—
22 Not later than 2 years after the transfer date, the Comp-
23 troller of the Currency and the Chairperson of the Cor-
24 poration shall place each transferred employee into the es-

1 established pay system and structure of the appropriate em-
2 ploying agency.

3 (k) **EQUITABLE TREATMENT.**—In administering the
4 provisions of this section, the Comptroller of the Currency
5 and the Chairperson of the Corporation—

6 (1) may not take any action that would unfairly
7 disadvantage a transferred employee relative to any
8 other employee of the Office of the Comptroller of
9 the Currency or the Corporation on the basis of
10 prior employment by the Office of Thrift Super-
11 vision; and

12 (2) may take such action as is appropriate in
13 an individual case to ensure that a transferred em-
14 ployee receives equitable treatment, with respect to
15 the status, tenure, pay, benefits (other than benefits
16 under programs administered by the Office of Per-
17 sonnel Management), and accrued leave or vacation
18 time for prior periods of service with any Federal
19 agency of the transferred employee.

20 (l) **REORGANIZATION.**—

21 (1) **IN GENERAL.**—If the Comptroller of the
22 Currency or the Chairperson of the Corporation de-
23 termines, during the 2-year period beginning 1 year
24 after the transfer date, that a reorganization of the
25 staff of the Office of the Comptroller of the Cur-

1 rency or the Corporation, respectively, is required,
2 the reorganization shall be deemed a “major reorga-
3 nization” for purposes of affording affected employ-
4 ees retirement under section 8336(d)(2) or
5 8414(b)(1)(B) of title 5, United States Code.

6 (2) SERVICE CREDIT.—For purposes of this
7 subsection, periods of service with a Federal home
8 loan bank or a joint office of Federal home loan
9 banks shall be credited as periods of service with a
10 Federal agency.

11 **SEC. 323. 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) PROPERTY OF THE OFFICE OF THRIFT SUPER-
20 VISION.—Not later than 90 days after the transfer date,
21 all property of the Office of Thrift Supervision that the
22 Comptroller of the Currency and the Chairperson of the
23 Corporation jointly determine is used, on the day before
24 the transfer date, to perform or support the functions of
25 the Office of Thrift Supervision transferred to the Office

1 of the Comptroller of the Currency or the Corporation
2 under this title, shall be transferred to the Office of the
3 Comptroller of the Currency or the Corporation in a man-
4 ner consistent with the transfer of employees under this
5 subtitle.

6 (c) **CONTRACTS RELATED TO PROPERTY TRANS-**
7 **FERRED.**—Each contract, agreement, lease, license, per-
8 mit, and similar arrangement relating to property trans-
9 ferred to the Office of the Comptroller of the Currency
10 or the Corporation by this section shall be transferred to
11 the Office of the Comptroller of the Currency or the Cor-
12 poration, as appropriate, together with the property to
13 which it relates.

14 (d) **PRESERVATION OF PROPERTY.**—Property identi-
15 fied for transfer under this section shall not be altered,
16 destroyed, or deleted before transfer under this section.

17 **SEC. 324. FUNDS TRANSFERRED.**

18 The funds that, on the day before the transfer date,
19 the Director of the Office of Thrift Supervision (in con-
20 sultation with the Comptroller of the Currency, the Chair-
21 person of the Corporation, and the Chairman of the Board
22 of Governors) determines are not necessary to dispose of
23 the affairs of the Office of Thrift Supervision under sec-
24 tion 325 and are available to the Office of Thrift Super-

1 vision to pay the expenses of the Office of Thrift Super-
2 vision—

3 (1) relating to the functions of the Office of
4 Thrift Supervision transferred under section
5 312(b)(2)(B), shall be transferred to the Office of
6 the Comptroller of the Currency on the transfer
7 date;

8 (2) relating to the functions of the Office of
9 Thrift Supervision transferred under section
10 312(b)(2)(C), shall be transferred to the Corporation
11 on the transfer date; and

12 (3) relating to the functions of the Office of
13 Thrift Supervision transferred under section
14 312(b)(1)(A), shall be transferred to the Board of
15 Governors on the transfer date.

16 **SEC. 325. DISPOSITION OF AFFAIRS.**

17 (a) **AUTHORITY OF DIRECTOR.**—During the 90-day
18 period beginning on the transfer date, the Director of the
19 Office of Thrift Supervision—

20 (1) shall, solely for the purpose of winding up
21 the affairs of the Office of Thrift Supervision relat-
22 ing to any function transferred to the Office of the
23 Comptroller of the Currency, the Corporation, or the
24 Board of Governors under this title—

1 (A) manage the employees of the Office of
2 Thrift Supervision who have not yet been trans-
3 ferred and provide for the payment of the com-
4 pensation and benefits of the employees that ac-
5 crue before the date on which the employees are
6 transferred under this title; and

7 (B) manage any property of the Office of
8 Thrift Supervision, until the date on which the
9 property is transferred under section 323; and

10 (2) may take any other action necessary to
11 wind up the affairs of the Office of Thrift Super-
12 vision.

13 (b) STATUS OF DIRECTOR.—

14 (1) IN GENERAL.—Notwithstanding the trans-
15 fer of functions under this subtitle, during the 90-
16 day period beginning on the transfer date, the Direc-
17 tor of the Office of Thrift Supervision shall retain
18 and may exercise any authority vested in the Direc-
19 tor of the Office of Thrift Supervision on the day be-
20 fore the transfer date, only to the extent necessary—

21 (A) to wind up the Office of Thrift Super-
22 vision; and

23 (B) to carry out the transfer under this
24 subtitle during such 90-day period.

1 (2) OTHER PROVISIONS.—For purposes of
2 paragraph (1), the Director of the Office of Thrift
3 Supervision shall, during the 90-day period begin-
4 ning on the transfer date, continue to be—

5 (A) treated as an officer of the United
6 States; and

7 (B) entitled to receive compensation at the
8 same annual rate of basic pay that the Director
9 of the Office of Thrift Supervision received on
10 the day before the transfer date.

11 **SEC. 326. CONTINUATION OF SERVICES.**

12 Any agency, department, or other instrumentality of
13 the United States, and any successor to any such agency,
14 department, or instrumentality, that was, before the trans-
15 fer date, providing support services to the Office of Thrift
16 Supervision in connection with functions transferred to
17 the Office of the Comptroller of the Currency, the Cor-
18 poration or the Board of Governors under this title,
19 shall—

20 (1) continue to provide such services, subject to
21 reimbursement by the Office of the Comptroller of
22 the Currency, the Corporation, or the Board of Gov-
23 ernors, until the transfer of functions under this
24 title is complete; and

1 (2) consult with the Comptroller of the Cur-
2 rency, the Chairperson of the Corporation, or the
3 Chairman of the Board of Governors, as appro-
4 priate, to coordinate and facilitate a prompt and or-
5 derly transition.

6 **Subtitle C—Federal Deposit**
7 **Insurance Corporation**

8 **SEC. 331. DEPOSIT INSURANCE REFORMS.**

9 (a) **SIZE DISTINCTIONS.**—Section 7(b)(2) of the Fed-
10 eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is
11 amended—

12 (1) by striking subparagraph (D); and

13 (2) by redesignating subparagraph (C) as sub-
14 paragraph (D).

15 (b) **ASSESSMENT BASE.**—The Corporation shall
16 amend the regulations issued by the Corporation under
17 section 7(b)(2) of the Federal Deposit Insurance Act (12
18 U.S.C. 1817(b)(2)) to define the term “assessment base”
19 with respect to an insured depository institution for pur-
20 poses of that section 7(b)(2), as an amount equal to—

21 (1) the average consolidated total assets of the
22 insured depository institution during the assessment
23 period; minus

24 (2) the sum of—

1 (A) the average tangible equity of the in-
2 sured depository institution during the assess-
3 ment period; and

4 (B) in the case of an insured depository in-
5 stitution that is a custodial bank (as defined by
6 the Corporation, based on factors including the
7 percentage of total revenues generated by custo-
8 dial businesses and the level of assets under
9 custody) or a banker's bank (as that term is
10 used in section 5136 of the Revised Statutes
11 (12 U.S.C. 24)), an amount that the Corpora-
12 tion determines is necessary to establish assess-
13 ments consistent with the definition under sec-
14 tion 7(b)(1) of the Federal Deposit Insurance
15 Act (12 U.S.C. 1817(b)(1)) for a custodial
16 bank or a banker's bank.

17 **SEC. 332. MANAGEMENT OF THE FEDERAL DEPOSIT INSUR-**
18 **ANCE CORPORATION.**

19 (a) IN GENERAL.—Section 2 of the Federal Deposit
20 Insurance Act (12 U.S.C. 1812) is amended—

21 (1) in subsection (a)(1)(B), by striking “Direc-
22 tor of the Office of Thrift Supervision” and insert-
23 ing “Director of the Consumer Financial Protection
24 Bureau”;

1 (2) by amending subsection (d)(2) to read as
2 follows:

3 “(2) ACTING OFFICIALS MAY SERVE.—In the
4 event of a vacancy in the office of the Comptroller
5 of the Currency and pending the appointment of a
6 successor, or during the absence or disability of the
7 Comptroller of the Currency, the acting Comptroller
8 of the Currency shall be a member of the Board of
9 Directors in the place of the Comptroller of the Cur-
10 rency.”; and

11 (3) in subsection (f)(2), by striking “or of the
12 Office of Thrift Supervision”.

13 (b) EFFECTIVE DATE.—This section, and the amend-
14 ments made by this section, shall take effect on the trans-
15 fer date.

16 **Subtitle D—Other Matters**

17 **SEC. 341. BRANCHING.**

18 Notwithstanding the Federal Deposit Insurance Act
19 (12 U.S.C. 1811 et seq.), the Bank Holding Company Act
20 of 1956 (12 U.S.C. 1841 et seq.), or any other provision
21 of Federal or State law, a savings association that be-
22 comes a bank may—

23 (1) continue to operate any branch or agency
24 that the savings association operated immediately
25 before the savings association became a bank; and

1 (2) establish, acquire, and operate additional
2 branches and agencies at any location within any
3 State in which the savings association operated a
4 branch immediately before the savings association
5 became a bank, if the law of the State in which the
6 branch is located, or is to be located, would permit
7 establishment of the branch if the bank were a State
8 bank chartered by such State.

9 **SEC. 342. OFFICE OF MINORITY AND WOMEN INCLUSION.**

10 (a) OFFICE OF MINORITY AND WOMEN INCLU-
11 SION.—

12 (1) ESTABLISHMENT.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), not later than 6 months
15 after the date of enactment of this Act, each
16 agency shall establish an Office of Minority and
17 Women Inclusion that shall be responsible for
18 all matters of the agency relating to diversity in
19 management, employment, and business activi-
20 ties.

21 (B) BUREAU.—The Bureau shall establish
22 an Office of Minority and Women Inclusion not
23 later than 6 months after the designated trans-
24 fer date established under section 1062.

1 (2) TRANSFER OF RESPONSIBILITIES.—Each
2 agency that, on the day before the date of enactment
3 of this Act, assigned the responsibilities described in
4 paragraph (1) (or comparable responsibilities) to an-
5 other office of the agency shall ensure that such re-
6 sponsibilities are transferred to the Office.

7 (b) DIRECTOR.—

8 (1) IN GENERAL.—The Director of each Office
9 shall be appointed by, and shall report to, the agen-
10 cy administrator.

11 (2) DUTIES.—Each Director shall develop
12 standards for—

13 (A) equal employment opportunity and the
14 racial, ethnic, and gender diversity of the work-
15 force and senior management of the agency;

16 (B) increased participation of minority-
17 owned and women-owned businesses in the pro-
18 grams and contracts of the agency; and

19 (C) assessing the diversity policies and
20 practices of entities regulated by the agency.

21 (c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVI-
22 TIES.—

23 (1) IN GENERAL.—The Director of each Office
24 shall develop and implement standards and proce-
25 dures to ensure, to the maximum extent possible, the

1 inclusion and utilization of minorities, women, and
2 minority-owned and women-owned businesses in all
3 business and activities of the agency at all levels, in-
4 cluding in procurement, insurance, and all types of
5 contracts.

6 (2) CONTRACTS.—The processes established by
7 each agency for review and evaluation for contract
8 proposals and for hiring service providers shall in-
9 clude a component that gives consideration to the di-
10 versity of the applicant.

11 (3) TERMINATION.—

12 (A) DETERMINATION.—The standards and
13 procedures developed and implemented under
14 paragraph (1) shall include a procedure for the
15 Director to make a determination that an agen-
16 cy contractor has failed to make a good faith
17 effort to include minorities and women in the
18 workforce of the contractor. Such procedure
19 shall include a written statement, in a form and
20 with such content as the Director shall pre-
21 scribe, that the contractor shall ensure, to the
22 maximum extent possible, the inclusion of
23 women and minorities in the workforce of the
24 contractor and, as applicable, by subcontrac-
25 tors.

1 (B) EFFECT OF DETERMINATION.—

2 (i) RECOMMENDATION TO AGENCY AD-
3 MINISTRATOR.—Upon a determination de-
4 scribed in subparagraph (A), the Director
5 shall make a recommendation to the agen-
6 cy administrator that the contract be ter-
7 minated.

8 (ii) ACTION BY AGENCY ADMINIS-
9 TRATOR.—Upon receipt of a recommenda-
10 tion under clause (i), the agency adminis-
11 trator may—

12 (I) terminate the contract;

13 (II) make a referral to the Office
14 of Federal Contract Compliance Pro-
15 grams of the Department of Labor; or

16 (III) take other appropriate ac-
17 tion.

18 (d) APPLICABILITY.—This section shall apply to all
19 contracts of an agency for services of any kind, including
20 the services of financial institutions, investment banking
21 firms, mortgage banking firms, asset management firms,
22 brokers, dealers, financial services entities, underwriters,
23 accountants, investment consultants, and providers of
24 legal services. The contracts referred to in this subsection
25 include all contracts for all business and activities of an

1 agency, at all levels, including contracts for the issuance
2 or guarantee of any debt, equity, or security, the sale of
3 assets, the management of the assets of the agency, the
4 making of equity investments by the agency, and the im-
5 plementation by the agency of programs to address eco-
6 nomic recovery.

7 (e) REPORTS.—Each Office shall submit to Congress
8 an annual report regarding the actions taken by the agen-
9 cy and the Office pursuant to this section, which shall in-
10 clude—

11 (1) a statement of the total amounts paid by
12 the agency to contractors since the previous report;

13 (2) the percentage of the amounts described in
14 paragraph (1) that were paid to contractors de-
15 scribed in subsection (c)(1);

16 (3) the successes achieved and challenges faced
17 by the agency in operating minority and women out-
18 reach programs;

19 (4) the challenges the agency may face in hiring
20 qualified minority and women employees and con-
21 tracting with qualified minority-owned and women-
22 owned businesses; and

23 (5) any other information, findings, conclusions,
24 and recommendations for legislative or agency ac-
25 tion, as the Director determines appropriate.

1 (f) DIVERSITY IN AGENCY WORKFORCE.—Each
2 agency shall take affirmative steps to seek diversity in the
3 workforce of the agency, at all levels of the agency, con-
4 sistent with the demographic diversity of the United
5 States and the Federal Government, which shall include—

6 (1) recruiting at historically black colleges and
7 universities, Hispanic-serving institutions, women’s
8 colleges, and colleges that typically serve majority
9 minority populations;

10 (2) sponsoring and recruiting at job fairs in
11 urban communities;

12 (3) placing employment advertisements in news-
13 papers and magazines oriented toward minorities
14 and women;

15 (4) partnering with organizations that are fo-
16 cused on developing opportunities for minorities and
17 women to place talented young minorities and
18 women in industry internships, summer employment,
19 and full-time positions;

20 (5) where feasible, partnering with inner-city
21 high schools, girls’ high schools, and high schools
22 with majority minority populations to establish or
23 enhance financial literacy programs and provide
24 mentoring; and

1 (6) any other mass media communications that
2 the Office determines necessary.

3 (g) DEFINITIONS.—For purposes of this section, the
4 following definitions shall apply:

5 (1) AGENCY.—The term “agency” means—

6 (A) the Department of the Treasury;

7 (B) the Corporation;

8 (C) the Federal Housing Finance Agency;

9 (D) each of the Federal reserve banks;

10 (E) the Board;

11 (F) the National Credit Union Administra-
12 tion;

13 (G) the Office of the Comptroller of the
14 Currency;

15 (H) the Commission; and

16 (I) the Bureau.

17 (2) AGENCY ADMINISTRATOR.—The term
18 “agency administrator” means the head of an agen-
19 cy.

20 (3) MINORITY.—The term “minority” has the
21 same meaning as in section 1204(c) of the Financial
22 Institutions Reform, Recovery, and Enforcement Act
23 of 1989 (12 U.S.C. 1811 note).

24 (4) MINORITY-OWNED BUSINESS.—The term
25 “minority-owned business” has the same meaning as

1 in section 21A(r)(4)(A) of the Federal Home Loan
2 Bank Act (12 U.S.C. 1441a(r)(4)(A)), as in effect
3 on the day before the transfer date.

4 (5) OFFICE.—The term “Office” means the Of-
5 fice of Minority and Women Inclusion established by
6 an agency under subsection (a).

7 (6) WOMEN-OWNED BUSINESS.—The term
8 “women-owned business” has the meaning given the
9 term “women’s business” in section 21A(r)(4)(B) of
10 the Federal Home Loan Bank Act (12 U.S.C.
11 1441a(r)(4)(B)), as in effect on the day before the
12 transfer date.

13 **Subtitle E—Technical and** 14 **Conforming Amendments**

15 **SEC. 351. EFFECTIVE DATE.**

16 Except as provided in section 365(a), the amend-
17 ments made by this subtitle shall take effect on the trans-
18 fer date.

19 **SEC. 352. ALTERNATIVE MORTGAGE TRANSACTION PARITY** 20 **ACT OF 1982.**

21 Section 804(a)(3) of the Alternative Mortgage Trans-
22 action Parity Act of 1982 (12 U.S.C. 3803(a)(3)) is
23 amended—

24 (1) by striking “savings and loan associations”
25 and inserting “savings associations”; and

1 (2) by striking “Director of the Office of Thrift
2 Supervision” each place that terms appears and in-
3 serting “Board of Governors of the Federal Reserve
4 System”.

5 **SEC. 353. BALANCED BUDGET AND EMERGENCY DEFICIT**
6 **CONTROL ACT OF 1985.**

7 Section 256(h) of the Balanced Budget and Emer-
8 gency Deficit Control Act of 1985 (2 U.S.C. 906(h)) is
9 amended—

10 (1) in paragraph (4), by striking subparagraphs
11 (C) and (G); and

12 (2) by redesignating subparagraphs (D), (E),
13 (F), and (H) as subparagraphs (C), (D), (E), and
14 (F), respectively.

15 **SEC. 354. BANK ENTERPRISE ACT OF 1991.**

16 Section 232(a) of the Bank Enterprise Act of 1991
17 (12 U.S.C. 1834(a)) is amended—

18 (1) in the subsection heading, by striking “BY
19 FEDERAL RESERVE BOARD”;

20 (2) in paragraph (1)—

21 (A) by striking “The Board of Governors
22 of the Federal Reserve System,” and inserting
23 “The Comptroller of the Currency”; and

24 (B) by striking “section 7(b)(2)(H)” and
25 inserting “section 7(b)(2)(E)”;

1 (bb) by striking “Board”
2 and all that follows through the
3 end of the subparagraph and in-
4 serting “Board shall solicit com-
5 ments and recommendations
6 from—

7 “(i) the Comptroller of the Currency,
8 with respect to the acquisition of a Federal
9 savings association; and

10 “(ii) the Federal Deposit Insurance
11 Corporation, with respect to the acquisition
12 of a State savings association.”.

13 (II) in subparagraph (B), by
14 striking “Director” each place that
15 term appears and inserting “Comp-
16 troller of the Currency or the Federal
17 Deposit Insurance Corporation, as ap-
18 plicable,”;

19 (ii) in paragraph (5)—

20 (I) in subparagraph (B), by
21 striking “Director with” and inserting
22 “Comptroller of the Currency or the
23 Federal Deposit Insurance Corpora-
24 tion, as applicable, with”; and

1 (II) by striking “Director” each
2 place that term appears and inserting
3 “Comptroller of the Currency or the
4 Federal Deposit Insurance Corpora-
5 tion”;

6 (iii) in paragraph (6), by striking “Di-
7 rector” and inserting “Comptroller of the
8 Currency or the Federal Deposit Insurance
9 Corporation, as applicable,”; and

10 (iv) by striking paragraph (7); and

11 (3) in section 5(f) (12 U.S.C. 1844(f))—

12 (A) by striking “subpena” each place that
13 term appears and inserting “subpoena”;

14 (B) by striking “subpenas” each place that
15 term appears and inserting “subpoenas”; and

16 (C) by striking “subpenaed” and inserting
17 “subpoenaed”.

18 **SEC. 356. BANK HOLDING COMPANY ACT AMENDMENTS OF**

19 **1970.**

20 Section 106(b)(1) of the Bank Holding Company Act
21 Amendments of 1970 (12 U.S.C. 1972(1)) is amended in
22 the undesignated matter following subparagraph (E) by
23 inserting “issue such regulations as are necessary to carry
24 out this section, and, in consultation with the Comptroller

1 of the Currency and the Federal Deposit Insurance Com-
2 pany, may” after “The Board may”.

3 **SEC. 357. BANK PROTECTION ACT OF 1968.**

4 The Bank Protection Act of 1968 (12 U.S.C. 1881
5 et seq.) is amended—

6 (1) in section 2 (12 U.S.C. 1881), by striking
7 “the term” and all that follows through the end of
8 the section and inserting “the term ‘Federal super-
9 visory agency’ means the appropriate Federal bank-
10 ing agency, as defined in section 3(q) of the Federal
11 Deposit Insurance Act (12 U.S.C. 1813(q)).”;

12 (2) in section 3 (12 U.S.C. 1882), by striking
13 “and loan” each place that term appears; and

14 (3) in section 5 (12 U.S.C. 1884), by striking
15 “and loan”.

16 **SEC. 358. BANK SERVICE COMPANY ACT.**

17 The Bank Service Company Act (12 U.S.C. 1861 et
18 seq.) is amended—

19 (1) in section 1(b)(4) (12 U.S.C. 1861(b)(4))—

20 (A) by striking “Director of the Office of
21 Thrift Supervision” and inserting “appropriate
22 Federal banking agency”; and

23 (B) by striking “, the Federal Savings and
24 Loan Insurance Corporation,”; and

1 (2) in section 7(c)(2) (12 U.S.C. 1867(c)(2)),
2 by inserting “each” after “notify”.

3 **SEC. 359. COMMUNITY REINVESTMENT ACT OF 1977.**

4 The Community Reinvestment Act of 1977 (12
5 U.S.C. 2901 et seq.) is amended—

6 (1) in section 803 (12 U.S.C. 2902)—

7 (A) in paragraph (1)—

8 (i) in subparagraph (A), by inserting
9 “and Federal savings associations (the de-
10 posits of which are insured by the Federal
11 Deposit Insurance Corporation)” after
12 “banks”;

13 (ii) in subparagraph (B), by striking
14 “and bank holding companies” and insert-
15 ing “, bank holding companies, and sav-
16 ings and loan holding companies”; and

17 (iii) in subparagraph (C), by striking
18 “; and” and inserting “, and State savings
19 associations (the deposits of which are in-
20 sured by the Federal Deposit Insurance
21 Corporation).”; and

22 (B) by striking paragraph (2) (relating to
23 the Office of Thrift Supervision), as added by
24 section 744(q) of the Financial Institutions Re-

1 form, Recovery, and Enforcement Act of 1989
2 (Public Law 101–73; 103 Stat. 440); and
3 (2) in section 806 (12 U.S.C. 2905), by insert-
4 ing “, except that the Comptroller of the Currency
5 shall prescribe regulations applicable to savings asso-
6 ciations and the Board of Governors shall prescribe
7 regulations applicable to noninsured State member
8 banks, bank holding companies and savings and loan
9 holding companies,” after “supervisory agency”.

10 **SEC. 360. CRIME CONTROL ACT OF 1990.**

11 The Crime Control Act of 1990 is amended—

12 (1) in section 2539(c)(2) (28 U.S.C. 509
13 note)—

14 (A) by striking subparagraphs (C) and
15 (D); and

16 (B) by redesignating subparagraphs (E)
17 through (H) as subparagraphs (C) through (G),
18 respectively; and

19 (2) in section 2554(b)(2) (Public Law 101–647;
20 104 Stat. 4890)—

21 (A) in subparagraph (A), by striking “, the
22 Director of the Office of Thrift Supervision,”;
23 and

24 (B) in subparagraph (B), by striking “,
25 the Director” and all that follows through

1 “Trust Corporation” and inserting “or the Fed-
2 eral Deposit Insurance Corporation”.

3 **SEC. 361. DEPOSITORY INSTITUTION MANAGEMENT INTER-**
4 **LOCKS ACT.**

5 The Depository Institution Management Interlocks
6 Act (12 U.S.C. 3201 et seq.) is amended—

7 (1) in section 207 (12 U.S.C. 3206)—

8 (A) in paragraph (1), by inserting before
9 the comma at the end the following: “and Fed-
10 eral savings associations (the deposits of which
11 are insured by the Federal Deposit Insurance
12 Corporation)”;

13 (B) in paragraph (2), by striking “, and
14 bank holding companies” and inserting “, bank
15 holding companies, and savings and loan hold-
16 ing companies”;

17 (C) in paragraph (3), by striking “Cor-
18 poration,” and inserting “Corporation and
19 State savings associations (the deposits of
20 which are insured by the Federal Deposit In-
21 surance Corporation),”;

22 (D) by striking paragraph (4);

23 (E) by redesignating paragraphs (5) and
24 (6) as paragraphs (4) and (5), respectively; and

1 (F) in paragraph (5), as so redesignated,
2 by striking “through (5)” and inserting
3 “through (4)”;

4 (2) in section 209 (12 U.S.C. 3207)—

5 (A) in paragraph (1), by inserting before
6 the comma at the end the following: “and Fed-
7 eral savings associations (the deposits of which
8 are insured by the Federal Deposit Insurance
9 Corporation)”;

10 (B) in paragraph (2), by striking “, and
11 bank holding companies” and inserting “, bank
12 holding companies, and savings and loan hold-
13 ing companies”;

14 (C) in paragraph (3), by striking “Cor-
15 poration,” and inserting “Corporation and
16 State savings associations (the deposits of
17 which are insured by the Federal Deposit In-
18 surance Corporation),”;

19 (D) by striking paragraph (4); and

20 (E) by redesignating paragraph (5) as
21 paragraph (4); and

22 (3) in section 210(a) (12 U.S.C. 3208(a))—

23 (A) by striking “his” and inserting “the”;
24 and

1 (B) by inserting “of the Attorney General”
2 after “enforcement functions”.

3 **SEC. 362. EMERGENCY HOMEOWNERS’ RELIEF ACT.**

4 Section 110 of the Emergency Homeowners’ Relief
5 Act (12 U.S.C. 2709) is amended in the second sentence,
6 by striking “Home Loan Bank Board, the Federal Savings
7 and Loan Insurance Corporation” and inserting “Housing
8 Finance Agency”.

9 **SEC. 363. FEDERAL CREDIT UNION ACT.**

10 The Federal Credit Union Act (12 U.S.C. 1781 et
11 seq.) is amended—

12 (1) in section 107(8) (12 U.S.C. 1757(8)), by
13 striking “or the Federal Savings and Loan Insur-
14 ance Corporation”;

15 (2) in section 205 (12 U.S.C. 1785)—

16 (A) in subsection (b)(2)(G)(i), by striking
17 “the Office of Thrift Supervision and”; and

18 (B) in subsection (i)(1), by striking “or the
19 Federal Savings and Loan Insurance Corpora-
20 tion”; and

21 (3) in section 206(g)(7) (12 U.S.C.
22 1786(g)(7))—

23 (A) in subparagraph (A)—

24 (i) in clause (ii), by striking “(b)(8)”
25 and inserting “(b)(9)”;

- 1 (ii) in clause (v)—
- 2 (I) by striking “depository” and
- 3 inserting “financial”; and
- 4 (II) by adding “and” at the end;
- 5 (iii) in clause (vi)—
- 6 (I) by striking “Board” and in-
- 7 serting “Agency”; and
- 8 (II) by striking “; and” and in-
- 9 serting a period; and
- 10 (iv) by striking clause (vii); and
- 11 (B) in subparagraph (D)—
- 12 (i) in clause (iii), by adding “and” at
- 13 the end;
- 14 (ii) in clause (iv)—
- 15 (I) by striking “Board” and in-
- 16 serting “Agency”; and
- 17 (II) by striking “and” at the end;
- 18 and
- 19 (iii) by striking clause (v).

20 **SEC. 364. FEDERAL DEPOSIT INSURANCE ACT.**

21 The Federal Deposit Insurance Act (12 U.S.C. 1811

22 et seq.) is amended—

- 23 (1) in section 3 (12 U.S.C. 1813)—

1 (A) in subsection (b)(1)(C), by striking
2 “Director of the Office of Thrift Supervision”
3 and inserting “Comptroller of the Currency”;

4 (B) in subsection (l)(5), in the matter pre-
5 ceding subparagraph (A), by striking “Director
6 of the Office of Thrift Supervision,”; and

7 (C) in subsection (z), by striking “the Di-
8 rector of the Office of Thrift Supervision,”;
9 (2) in section 7 (12 U.S.C. 1817)—

10 (A) in subsection (a)—

11 (i) in paragraph (2)—

12 (I) in subparagraph (A)—

13 (aa) in the first sentence, by
14 striking “the Director of the Of-
15 fice of Thrift Supervision,”;

16 (bb) in the second sen-
17 tence—

18 (AA) by striking “the
19 Director of the Office of
20 Thrift Supervision,” and in-
21 serting “to”; and

22 (BB) by inserting “to”
23 before “any Federal home”;
24 and

1 (cc) by striking “Finance
2 Board” each place that term ap-
3 pears and inserting “Finance
4 Agency”; and

5 (II) in subparagraph (B), by
6 striking “the Comptroller of the Cur-
7 rency, the Board of Governors of the
8 Federal Reserve System, and the Di-
9 rector of the Office of Thrift Super-
10 vision,” and inserting “the Comp-
11 troller of the Currency and the Board
12 of Governors of the Federal Reserve
13 System,”;

14 (ii) in paragraph (3), in the first sen-
15 tence, by striking “Comptroller of the Cur-
16 rency, the Chairman of the Board of Gov-
17 ernors of the Federal Reserve System, and
18 the Director of the Office of Thrift Super-
19 vision.” and inserting “Comptroller of the
20 Currency, and the Chairman of the Board
21 of Governors of the Federal Reserve Sys-
22 tem.”;

23 (iii) in paragraph (6), by striking
24 “section 232(a)(3)(C)” and inserting “sec-
25 tion 232(a)(3)(D)”;

1 (iv) in paragraph (7), by striking “,
2 the Director of the Office of Thrift Super-
3 vision,”; and

4 (B) in subsection (n)—

5 (i) in the heading, by striking “DI-
6 RECTOR OF THE OFFICE OF THRIFT SU-
7 PERVISION” and inserting “COMPTROLLER
8 OF THE CURRENCY”;

9 (ii) in the first sentence—

10 (I) by striking “the Director of
11 the Office of Thrift Supervision” and
12 inserting “the Comptroller of the Cur-
13 rency”; and

14 (II) by inserting “Federal” be-
15 fore “savings associations”;

16 (iii) in the third sentence, by striking
17 “, the Financing Corporation, and the Res-
18 olution Funding Corporation”; and

19 (iv) by striking “the Director” each
20 place that term appears and inserting “the
21 Comptroller”;

22 (3) in section 8 (12 U.S.C. 1818)—

23 (A) in subsection (a)(8)(B)(ii), in the last
24 sentence, by striking “Director of the Office of
25 Thrift Supervision” each place that term ap-

1 pears and inserting “Comptroller of the Cur-
2 rency”;

3 (B) in subsection (e)(7)—

4 (i) in subparagraph (A)—

5 (I) in clause (v), by inserting
6 “and” after the semicolon;

7 (II) in clause (vi)—

8 (aa) by striking “Board”
9 and inserting “Agency”; and

10 (bb) by striking “; and” and
11 inserting a period; and

12 (III) by striking clause (vii); and

13 (ii) in subparagraph (D)—

14 (I) in clause (iii), by inserting
15 “and” after the semicolon;

16 (II) in clause (iv)—

17 (aa) by striking “Board”
18 and inserting “Agency”; and

19 (bb) by striking “; and” and
20 inserting a period; and

21 (III) by striking clause (v);

22 (C) in subsection (j)—

23 (i) in paragraph (3), by inserting “or”
24 after the semicolon;

1 (ii) in paragraph (4), by striking “;
2 or” and inserting a period; and

3 (iii) by striking paragraph (5);

4 (D) in subsection (o), by striking “Director
5 of the Office of Thrift Supervision” and insert-
6 ing “Comptroller of the Currency”; and

7 (E) in subsection (w)(3)(A), by striking
8 “Office of Thrift Supervision”;

9 (4) in section 10 (12 U.S.C. 1820)—

10 (A) in subsection (d)(5), by striking “or
11 the Resolution Trust Corporation” each place
12 that term appears; and

13 (B) in subsection (k)(5)(B)—

14 (i) in clause (ii), by inserting “and”
15 after the semicolon;

16 (ii) in clause (iii), by striking “; and”
17 and inserting a period; and

18 (iii) by striking clause (iv);

19 (5) in section 11 (12 U.S.C. 1821)—

20 (A) in subsection (c)—

21 (i) in paragraph (2)(A)(ii), by striking
22 “(other than section 21A of the Federal
23 Home Loan Bank Act)”;

24 (ii) in paragraph (4), by striking “Ex-
25 cept as otherwise provided in section 21A

1 of the Federal Home Loan Bank Act and
2 notwithstanding” and inserting “Notwith-
3 standing”;

4 (iii) in paragraph (6)—

5 (I) in the heading, by striking
6 “DIRECTOR OF THE OFFICE OF
7 THRIFT SUPERVISION” and inserting
8 “COMPTROLLER OF THE CURRENCY”;

9 (II) in subparagraph (A)—

10 (aa) by striking “or the Res-
11 olution Trust Corporation”; and

12 (bb) by striking “Director of
13 the Office of Thrift Supervision”
14 and inserting “Comptroller of the
15 Currency”; and

16 (III) in subparagraph (B)—

17 (aa) by striking “Director of
18 the Office of Thrift Supervision”
19 and inserting “Comptroller of the
20 Currency”; and

21 (bb) by striking “affairs—”
22 and all that follows through the
23 period at the end and inserting
24 “affairs.”; and

1 (iv) in paragraph (12)(A), by striking
2 “or the Resolution Trust Corporation”;

3 (B) in subsection (d)—

4 (i) in paragraph (17)(A), by striking
5 “, or the Director of the Office of Thrift
6 Supervision”; and

7 (ii) in paragraph (18)(B), by striking
8 “or the Director of the Office of Thrift Su-
9 pervision”;

10 (C) in subsection (m)—

11 (i) in paragraph (9), by striking “or
12 the Director of the Office of Thrift Super-
13 vision, as appropriate”;

14 (ii) in paragraph (16), by striking “or
15 the Director of the Office of Thrift Super-
16 vision, as appropriate” each place that
17 term appears; and

18 (iii) in paragraph (18), by striking
19 “or the Director of the Office of Thrift Su-
20 pervision, as appropriate” each place that
21 term appears;

22 (D) in subsection (n)—

23 (i) in paragraph (1)(A)—

24 (I) by striking “, or the Director
25 of the Office of Thrift Supervision,

1 with respect to” and inserting “or”;

2 and

3 (II) by striking “applicable,,”

4 and inserting “applicable,”;

5 (ii) in paragraph (2)(A), by striking

6 “or the Director of the Office of Thrift Su-

7 pervision”;

8 (iii) in paragraph (4)(D), by striking

9 “and the Director of the Office of Thrift

10 Supervision, as appropriate,”;

11 (iv) in paragraph (4)(G), by striking

12 “and the Director of the Office of Thrift

13 Supervision, as appropriate,”; and

14 (v) in paragraph (12)(B), by striking

15 “or the Director of the Office of Thrift Su-

16 pervision, as appropriate,” each place that

17 term appears;

18 (E) in subsection (p)—

19 (i) in paragraph (2)(B), by striking

20 “the Corporation, the FSLIC Resolution

21 Fund, or the Resolution Trust Corpora-

22 tion,” and inserting “or the Corporation,”;

23 and

- 1 (ii) in paragraph (3)(B), by striking
2 “, the FSLIC Resolution Fund, the Reso-
3 lution Trust Corporation,”; and
4 (F) in subsection (r), by striking “and the
5 Resolution Trust Corporation”;
- 6 (6) in section 13(k)(1)(A)(iv) (12 U.S.C.
7 1823(k)(1)(A)(iv)), by striking “Director of the Of-
8 fice of Thrift Supervision” and inserting “Comp-
9 troller of the Currency”;
- 10 (7) in section 18 (12 U.S.C. 1828)—
- 11 (A) in subsection (c)(2)—
- 12 (i) in subparagraph (A), by inserting
13 “or a Federal savings association” before
14 the semicolon;
- 15 (ii) in subparagraph (B), by adding
16 “and” at the end;
- 17 (iii) in subparagraph (C), by striking
18 “(except” and all that follows through “;
19 and” and inserting “or a State savings as-
20 sociation.”; and
- 21 (iv) by striking subparagraph (D);
- 22 (B) in subsection (g), by striking “and the
23 Director of the Office of Thrift Supervision” and
24 inserting “the Comptroller of the Currency”;

1 (C) in subsection (i)(2)(C), by striking
2 “Director of the Office of Thrift Supervision”
3 and inserting “Corporation”; and

4 (D) in subsection (m)—

5 (i) in paragraph (1)—

6 (I) in subparagraph (A), by strik-
7 ing “and the Director of the Office of
8 Thrift Supervision” and inserting “or
9 the Comptroller of the Currency, as
10 appropriate,”; and

11 (II) in subparagraph (B), by
12 striking “and orders of the Director
13 of the Office of Thrift Supervision”
14 and inserting “of the Comptroller of
15 the Currency and orders of the Cor-
16 poration and the Comptroller of the
17 Currency”;

18 (ii) in paragraph (2)—

19 (I) in subparagraph (A), by strik-
20 ing “Director of the Office of Thrift
21 Supervision” and inserting “Comp-
22 troller of the Currency, as appro-
23 priate,”; and

24 (II) in subparagraph (B)—

1 (aa) in the matter before
2 clause (i), by striking “Director
3 of the Office of Thrift Super-
4 vision” and inserting “Corpora-
5 tion or the Comptroller of the
6 Currency, as appropriate,”; and

7 (bb) in the matter following
8 clause (ii)—

9 (AA) in the first sen-
10 tence, by striking “Director
11 of the Office of Thrift Su-
12 pervision” and inserting
13 “Office of the Comptroller of
14 the Currency, as appro-
15 priate,”; and

16 (BB) by striking the
17 second sentence and insert-
18 ing the following: “The Cor-
19 poration or the Comptroller
20 of the Currency, as appro-
21 priate, may take any other
22 corrective measures with re-
23 spect to the subsidiary, in-
24 cluding the authority to re-
25 quire the subsidiary to ter-

1 minate the activities or oper-
2 ations posing such risks, as
3 the Corporation or the
4 Comptroller of the Currency,
5 respectively, may deem ap-
6 propriate.”; and

7 (iii) in paragraph (3)—

8 (I) in subparagraph (A), in the
9 second sentence—

10 (aa) by inserting “, in the
11 case of a Federal savings associa-
12 tion,” before “consult with”; and

13 (bb) by striking “Director of
14 the Office of Thrift Supervision”
15 and inserting “Comptroller of the
16 Currency”; and

17 (II) in subparagraph (B)—

18 (aa) in the subparagraph
19 heading, by striking “DIRECTOR”
20 and inserting “COMPTROLLER OF
21 THE CURRENCY”;

22 (bb) by striking “Office of
23 Thrift Supervision” and inserting
24 “Comptroller of the Currency”;
25 and

1 (cc) by inserting “as to Fed-
2 eral savings associations” after
3 “compliance”;

4 (8) in section 19(e) (12 U.S.C. 1829(e))—

5 (A) in paragraph (1), by striking “Director
6 of the Office of Thrift Supervision” and insert-
7 ing “Board of Governors of the Federal Reserve
8 System”; and

9 (B) in paragraph (2), by striking “Director
10 of the Office of Thrift Supervision” and insert-
11 ing “Board of Governors of the Federal Reserve
12 System”; and

13 (9) in section 28 (12 U.S.C. 1831e)—

14 (A) in subsection (e)—

15 (i) in paragraph (2)—

16 (I) in subparagraph (A)(ii), by
17 striking “Director of the Office of
18 Thrift Supervision” and inserting
19 “Comptroller of the Currency or the
20 Corporation, as appropriate”;

21 (II) in subparagraph (C), by
22 striking “Director of the Office of
23 Thrift Supervision” and inserting
24 “Comptroller of the Currency or the
25 Corporation, as appropriate,”; and

1 (III) in subparagraph (F), by
2 striking “Director of the Office of
3 Thrift Supervision” and inserting
4 “Comptroller of the Currency or the
5 Corporation, as appropriate”; and
6 (ii) in paragraph (3)—

7 (I) in subparagraph (A), by strik-
8 ing “Director of the Office of Thrift
9 Supervision” and inserting “Comp-
10 troller of the Currency or the Cor-
11 poration, as appropriate”; and

12 (II) in subparagraph (B), by
13 striking “Director of the Office of
14 Thrift Supervision” and inserting
15 “Comptroller of the Currency or the
16 Corporation, as appropriate,”; and

17 (B) in subsection (h)(2), by striking “Di-
18 rector of the Office of Thrift Supervision” and
19 inserting “Comptroller of the Currency, of the
20 Corporation,”.

21 **SEC. 365. FEDERAL HOME LOAN BANK ACT.**

22 (a) REPEAL OF SECTION 18(c).—Effective 90 days
23 after the transfer date, section 18(c) of the Federal Home
24 Loan Bank Act (12 U.S.C. 1438(c)) is repealed.

1 (b) REPEAL OF SECTION 21A.—Section 21A of the
2 Federal Home Loan Bank Act (12 U.S.C. 1441a) is re-
3 pealed.

4 **SEC. 366. FEDERAL HOUSING ENTERPRISES FINANCIAL**
5 **SAFETY AND SOUNDNESS ACT OF 1992.**

6 The Federal Housing Enterprises Financial Safety
7 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is
8 amended—

9 (1) in section 1315(b) (12 U.S.C. 4515(b)), by
10 striking “the Federal Deposit Insurance Corpora-
11 tion, and the Office of Thrift Supervision.” and in-
12 serting “and the Federal Deposit Insurance Cor-
13 poration.”; and

14 (2) in section 1317(e) (12 U.S.C. 4517(e)), by
15 striking “the Federal Deposit Insurance Corpora-
16 tion, or the Director of the Office of Thrift Super-
17 vision” and inserting “or the Federal Deposit Insur-
18 ance Corporation”.

19 **SEC. 367. FEDERAL RESERVE ACT.**

20 The Federal Reserve Act (12 U.S.C. 221 et seq.) is
21 amended—

22 (1) in section 11(a)(2) (12 U.S.C. 248(a)(2))—
23 (A) by inserting “State savings associa-
24 tions that are insured depository institutions

1 (as defined in section 3 of the Federal Deposit
2 Insurance Act),” after “case of insured”;

3 (B) by striking “Director of the Office of
4 Thrift Supervision” and inserting “Comptroller
5 of the Currency”;

6 (C) by inserting “Federal” before “savings
7 association which”; and

8 (D) by striking “savings and loan associa-
9 tion” and inserting “savings association”; and
10 (2) in section 19(b) (12 U.S.C. 461(b))—

11 (A) in paragraph (1)(F), by striking “Di-
12 rector of the Office of Thrift Supervision” and
13 inserting “Comptroller of the Currency”; and

14 (B) in paragraph (4)(B), by striking “Di-
15 rector of the Office of Thrift Supervision” and
16 inserting “Comptroller of the Currency”.

17 **SEC. 368. FINANCIAL INSTITUTIONS REFORM, RECOVERY,**
18 **AND ENFORCEMENT ACT OF 1989.**

19 The Financial Institutions Reform, Recovery, and
20 Enforcement Act of 1989 is amended—

21 (1) in section 203 (12 U.S.C. 1812 note), by
22 striking subsection (b);

23 (2) in section 302(1) (12 U.S.C. 1467a note),
24 by striking “Director of the Office of Thrift Super-
25 vision” and inserting “Comptroller of the Currency”;

1 (3) in section 305(12 U.S.C. 1464 note), by
2 striking subsection (b);

3 (4) in section 308(a) (12 U.S.C. 1463 note), by
4 striking “Director of the Office of Thrift Super-
5 vision” and inserting “Comptroller of the Currency”;

6 (5) in section 402 (12 U.S.C. 1437 note)—

7 (A) in subsection (a), by striking “Director
8 of the Office of Thrift Supervision” and insert-
9 ing “Comptroller of the Currency”;

10 (B) by striking subsection (b);

11 (C) in subsection (e)—

12 (i) in paragraph (1), by striking “Of-
13 fice of Thrift Supervision” and inserting
14 “Comptroller of the Currency”; and

15 (ii) in each of paragraphs (2), (3),
16 and (4), by striking “Director of the Office
17 of Thrift Supervision” each place that
18 term appears and inserting “Comptroller
19 of the Currency”; and

20 (D) by striking “Federal Housing Finance
21 Board” each place that term appears and in-
22 serting “Federal Housing Finance Agency”;

23 (6) in section 1103(a) (12 U.S.C. 3332(a)), by
24 striking “and the Resolution Trust Corporation”;

25 (7) in section 1205(b) (12 U.S.C. 1818 note)—

- 1 (A) in paragraph (1)—
- 2 (i) by striking subparagraph (B); and
- 3 (ii) by redesignating subparagraphs
- 4 (C) through (F) as subparagraphs (B)
- 5 through (E), respectively; and
- 6 (B) in paragraph (2), by striking “para-
- 7 graph (1)(F)” and inserting “paragraph
- 8 (1)(E)”;
- 9 (8) in section 1206 (12 U.S.C. 1833b)—
- 10 (A) by striking “Board, the Oversight
- 11 Board of the Resolution Trust Corporation”
- 12 and inserting “Agency, and”; and
- 13 (B) by striking “, and the Office of Thrift
- 14 Supervision”;
- 15 (9) in section 1216 (12 U.S.C. 1833e)—
- 16 (A) in subsection (a)—
- 17 (i) in paragraph (3), by adding “and”
- 18 at the end;
- 19 (ii) in paragraph (4), by striking the
- 20 semicolon at the end and inserting a pe-
- 21 riod;
- 22 (iii) by striking paragraphs (2), (5),
- 23 and (6); and

1 (iv) by redesignating paragraphs (3)
2 and (4), as paragraphs (2) and (3), respec-
3 tively;

4 (B) in subsection (c)—

5 (i) by striking “the Director of the
6 Office of Thrift Supervision,” and insert-
7 ing “and”; and

8 (ii) by striking “the Thrift Depositor
9 Protection Oversight Board of the Resolu-
10 tion Trust Corporation, and the Resolution
11 Trust Corporation”; and

12 (C) in subsection (d)—

13 (i) by striking paragraphs (3), (5),
14 and (6); and

15 (ii) by redesignating paragraphs (4),
16 (7), and (8) as paragraphs (3), (4), and
17 (5), respectively.

18 **SEC. 369. FLOOD DISASTER PROTECTION ACT OF 1973.**

19 Section 3(a)(5) of the Flood Disaster Protection Act
20 of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking
21 “, the Office of Thrift Supervision”.

22 **SEC. 370. HOME OWNERS’ LOAN ACT.**

23 The Home Owners’ Loan Act (12 U.S.C. 1461 et
24 seq.) is amended—

1 (1) in section 1 (12 U.S.C. 1461), by striking
2 the table of contents;

3 (2) in section 2 (12 U.S.C. 1462), as amended
4 by this Act—

5 (A) by striking paragraphs (1) and (3);

6 (B) by redesignating paragraph (2) as
7 paragraph (1);

8 (C) by redesignating paragraphs (4)
9 through (9) as paragraphs (2) through (7), re-
10 spectively; and

11 (D) by adding at the end the following:

12 “(8) BOARD.—The term ‘Board’, other than in
13 the context of the Board of Directors of the Cor-
14 poration, means the Board of Governors of the Fed-
15 eral Reserve System.

16 “(9) COMPTROLLER.—The term ‘Comptroller’
17 means the Comptroller of the Currency.”;

18 (3) in section 3 (12 U.S.C. 1462a)—

19 (A) by striking the section heading and in-
20 serting the following:

21 **“SEC. 3. ADMINISTRATIVE PROVISIONS.”;**

22 (B) by striking subsections (a), (b), (c),
23 (d), (h), (i), and (j);

1 (C) by redesignating subsections (e), (f),
2 and (g), as subsections (a) through (c), respec-
3 tively;

4 (D) in subsection (a), as so redesignated,
5 in the matter preceding paragraph (1), by strik-
6 ing “The Director” and inserting “In accord-
7 ance with subtitle A of title III of the Restoring
8 American Financial Stability Act of 2010, the
9 appropriate Federal banking agency”;

10 (E) in subsection (b), as so redesignated,
11 by striking “or any other provision of law ad-
12 ministered by the Director”; and

13 (F) in subsection (c), as so redesignated—

14 (i) by striking “Director” and insert-
15 ing “Comptroller and the Corporation”;

16 and

17 (ii) by striking “include—” and all
18 that follows through “(2) a description”
19 and inserting the following: “include a de-
20 scription”;

21 (4) in section 4 (12 U.S.C. 1463)—

22 (A) in subsection (a)—

23 (i) in the subsection heading, by strik-
24 ing “FEDERAL”;

1 (ii) by striking paragraphs (1) and (2)
2 and inserting the following:

3 “(1) EXAMINATION AND SAFE AND SOUND OP-
4 ERATION.—

5 “(A) FEDERAL SAVINGS ASSOCIATIONS.—
6 The Comptroller shall provide for the examina-
7 tion and safe and sound operation of Federal
8 savings associations.

9 “(B) STATE SAVINGS ASSOCIATIONS.—The
10 Corporation shall provide for the examination
11 and safe and sound operation of State savings
12 associations.

13 “(2) REGULATIONS FOR SAVINGS ASSOCIA-
14 TIONS.—The Comptroller may prescribe regulations
15 with respect to savings associations, as the Comp-
16 troller determines to be appropriate to carry out the
17 purposes of this Act.”; and

18 (iii) in paragraph (3), by striking “Di-
19 rector” each place that term appears and
20 inserting “Comptroller and the Corpora-
21 tion”;

22 (B) in subsection (b)—

23 (i) in paragraph (2)—

24 (I) in subparagraph (A), by add-
25 ing “and” at the end;

1 (II) in subparagraph (B), by
2 striking “; and” and inserting a pe-
3 riod; and

4 (III) by striking subparagraph
5 (C); and

6 (ii) by striking “Director” each place
7 that term appears and inserting “Comp-
8 troller”;

9 (C) in subsection (c)—

10 (i) by striking “All regulations and
11 policies of the Director” and inserting
12 “The regulations of the Comptroller and
13 the policies of the Comptroller and the
14 Corporation”; and

15 (ii) by striking “of the Currency”;

16 (D) in subsection (e)(5), by striking “Di-
17 rector” and inserting “Comptroller”;

18 (E) in subsection (f), by striking “Direc-
19 tor” each place that term appears and inserting
20 “appropriate Federal banking agency”; and

21 (F) in subsection (h), by striking “Direc-
22 tor” each place that term appears and inserting
23 “appropriate Federal banking agency”;

24 (5) in section 5 (12 U.S.C. 1464)—

25 (A) in subsection (c)—

1 (i) in paragraph (5)—

2 (I) in subparagraph (A), by strik-
3 ing “Director” and inserting “appro-
4 priate Federal banking agency”; and

5 (II) in subparagraph (B)—

6 (aa) by striking “The Direc-
7 tor” and inserting “The appro-
8 priate Federal banking agency”;
9 and

10 (bb) by striking “the Direc-
11 tor” and inserting “the appro-
12 priate Federal banking agency”;
13 and

14 (ii) except as provided in clause (i), by
15 striking “Director” each place that term
16 appears and inserting “Comptroller”;

17 (B) in subsection (d)—

18 (i) in paragraph (1)—

19 (I) in subparagraph (A), by strik-
20 ing “Director’s own name and
21 through the Director’s own attorneys”
22 and inserting “the name of the appro-
23 priate Federal banking agency and
24 through the attorneys of the appro-
25 priate Federal banking agency”; and

- 1 (II) in subparagraph (B)(v)—
2 (aa) by striking “subpenas”
3 and inserting “subpoenas”; and
4 (bb) by striking “subpena”
5 and inserting “subpoena”;
- 6 (ii) in paragraph (2)—
7 (I) in subparagraph (A)—
8 (aa) by striking “Director of
9 the Office of Thrift Supervision”
10 and inserting “appropriate Fed-
11 eral banking agency”; and
12 (bb) by striking “Director
13 determines, in the Director’s dis-
14 cretion” and inserting “appro-
15 priate Federal banking agency
16 determines, in the discretion of
17 the appropriate Federal banking
18 agency”;
- 19 (II) in subparagraph (E)(ii), in
20 the first sentence, by striking “Direc-
21 tor, at the Director’s discretion” and
22 inserting “Comptroller at the discre-
23 tion of the Comptroller”; and
24 (III) except as provided in sub-
25 clauses (I) and (II), in subparagraphs

1 (B), (C), (D), and (E), by striking
2 “Director” each place that term ap-
3 pears and inserting “Comptroller”;

4 (iii) in paragraph (3), in subpara-
5 graph (B)—

6 (I) in the subparagraph heading,
7 by striking “OR RTC”; and

8 (II) by striking “Corporation or
9 the Resolution Trust”;

10 (iv) in paragraph (6)—

11 (I) in subparagraph (A), by strik-
12 ing “Director” and inserting “Comp-
13 troller”; and

14 (II) in subparagraphs (B)(i) and
15 (C), by striking “Director” each place
16 that term appears and inserting “ap-
17 propriate Federal banking agency”;

18 (v) in paragraph (7)—

19 (I) in subparagraph (C), by strik-
20 ing “Director” and inserting “the
21 Comptroller or the Corporation, as ap-
22 propriate,”; and

23 (II) by striking subparagraph (E)
24 and inserting the following:

1 “(E) ADMINISTRATION BY THE COMP-
2 TROLLER AND THE CORPORATION.—The Comp-
3 troller may issue such regulations, and the ap-
4 propriate Federal banking agency may issue
5 such orders, including those issued pursuant to
6 section 8 of the Federal Deposit Insurance Act,
7 as may be necessary to administer and carry
8 out this paragraph and to prevent evasion of
9 this paragraph.”;

10 (vi) in each of paragraphs (1), (3),
11 and (7), by striking “Director” each place
12 that term appears and inserting “appro-
13 priate Federal banking agency”; and

14 (vii) except as provided in clauses (i)
15 through (vi), by striking “Director” each
16 place that term appears and inserting
17 “Comptroller”;

18 (C) in subsection (i)—

19 (i) in paragraph (2), in the heading,
20 by striking “DIRECTOR” and inserting
21 “COMPTROLLER”; and

22 (ii) in paragraph (5)(A), by striking
23 “of the Currency”;

1 (D) in subsection (o)(2)(B), by striking
2 “Director’s determination” and inserting “de-
3 termination of the Comptroller”;

4 (E) in subsection (q)—

5 (i) in paragraph (6), by striking “of
6 Governors of the Federal Reserve System”;

7 and

8 (ii) by striking “Director” each place
9 that term appears and inserting “Board”;

10 (F) in subsection (s)—

11 (i) in paragraph (3), by striking “Di-
12 rector’s discretion, the Director” and in-
13 serting “discretion of the appropriate Fed-
14 eral banking agency, the appropriate Fed-
15 eral banking agency,”;

16 (ii) in paragraph (4), by striking “Di-
17 rector” each place that term appears and
18 inserting “appropriate Federal banking
19 agency”; and

20 (iii) in paragraph (5), by striking “Di-
21 rector’s approval” and inserting “approval
22 of the appropriate Federal banking agen-
23 cy”;

24 (G) in subparagraph (t)—

1 (i) in paragraph (1), by striking sub-
2 paragraph (D);

3 (ii) by striking paragraph (3) and in-
4 serting the following:

5 “(3) [Repealed].”;

6 (iii) in paragraph (5)—

7 (I) in subparagraph (B), by
8 striking “Corporation, in its sole dis-
9 cretion” and inserting “appropriate
10 Federal banking agency, in the sole
11 discretion of the appropriate Federal
12 banking agency”; and

13 (II) by striking subparagraph
14 (D);

15 (iv) in paragraph (6)—

16 (I) by striking subparagraph (A)
17 and inserting the following:

18 “(A) [Reserved].”;

19 (II) in subparagraph (B), by
20 striking “Director” each place that
21 term appears and inserting “appro-
22 priate Federal banking agency”;

23 (III) in subparagraph (C)—

24 (aa) in clause (i), by striking
25 “Director’s prior approval” and

1 inserting “prior approval of the
2 appropriate Federal banking
3 agency”;

4 (bb) in clause (ii), by strik-
5 ing “Director’s discretion” and
6 inserting “discretion of the ap-
7 propriate Federal banking agen-
8 cy”; and

9 (cc) by striking “Director”
10 each place that term appears and
11 inserting “appropriate Federal
12 banking agency”;

13 (IV) in subparagraph (E), by
14 striking “Director shall” and inserting
15 “appropriate Federal banking agency
16 may”; and

17 (V) in subparagraph (F), by
18 striking “Director” and all that fol-
19 lows through the end of the subpara-
20 graph and inserting “appropriate Fed-
21 eral banking agency under this Act or
22 any other provision of law.”;

23 (v) in paragraph (7), by striking “Di-
24 rector” each place that term appears and

1 inserting “appropriate Federal banking
2 agency”;

3 (vi) by striking paragraph (8) and in-
4 sserting the following:

5 “(8) [Repealed].”;

6 (vii) in paragraph (9)—

7 (I) in subparagraph (A), by strik-
8 ing “Director” and inserting “Comp-
9 troller”;

10 (II) in subparagraph (C), by
11 striking “of the Currency”; and

12 (III) by striking subparagraph
13 (B) and redesignating subparagraphs
14 (C) and (D) as subparagraphs (B)
15 and (C), respectively; and

16 (viii) except as provided in clauses (i)
17 through (vii), by striking “Director” each
18 place that term appears and inserting “ap-
19 propriate Federal banking agency”;

20 (H) in subsection (u), by striking “Direc-
21 tor” each place that term appears and inserting
22 “appropriate Federal banking agency”;

23 (I) in subsection (v)—

24 (i) in paragraph (2), by striking “Di-
25 rector’s determinations” and inserting “de-

1 terminations of the appropriate Federal
2 banking agency”; and

3 (ii) by striking “Director” each place
4 that term appears and inserting “appro-
5 priate Federal banking agency”;

6 (J) in subsection (w)(1)—

7 (i) in subparagraph (A)(II), by strik-
8 ing “Director’s intention” and inserting
9 “intention of the Comptroller”; and

10 (ii) in subparagraph (B), by striking
11 “Director’s intention” and inserting “in-
12 tention of the Comptroller”; and

13 (K) except as provided in subparagraphs
14 (A) through (J), by striking “Director” each
15 place that term appears and inserting “Comp-
16 troller”;

17 (6) in section 8 (12 U.S.C. 1466a), by striking
18 “Director” each place that term appears and insert-
19 ing “Comptroller”;

20 (7) in section 9 (12 U.S.C. 1467)—

21 (A) in subsection (a), by striking “assessed
22 by the Director” and all that follows through
23 the end of the subsection and inserting the fol-
24 lowing: “assessed by—

1 “(1) the Comptroller, against each such Federal
2 savings association, as the Comptroller deems nec-
3 essary or appropriate; and

4 “(2) the Corporation, against each such State
5 savings association, as the Corporation deems nec-
6 essary or appropriate.”;

7 (B) in subsection (e)—

8 (i) by striking “Only the Director”
9 and inserting “The Comptroller”; and

10 (ii) by striking “Director’s designee”
11 and inserting “designee of the Comp-
12 troller”;

13 (C) by striking subsection (f) and inserting
14 the following:

15 “(f) [Reserved].”;

16 (D) in subsection (g)—

17 (i) in paragraph (1), by striking “Di-
18 rector” and inserting “appropriate Federal
19 banking agency”; and

20 (ii) in paragraph (2), by striking “Di-
21 rector, or the Corporation, as the case may
22 be,” and inserting “appropriate Federal
23 banking agency for the savings associa-
24 tion”;

1 (E) in subsection (i), by striking “Direc-
2 tor” each place that term appears and inserting
3 “appropriate Federal banking agency”;

4 (F) in subsection (j), by striking “Direc-
5 tor’s sole discretion” and inserting “sole discre-
6 tion of the appropriate Federal banking agen-
7 cy”;

8 (G) in subsection (k), by striking “Director
9 may assess against institutions for which the
10 Director is the appropriate Federal banking
11 agency, as defined in section 3 of the Federal
12 Deposit Insurance Act,” and inserting “appro-
13 priate Federal banking agency may assess
14 against an institution”; and

15 (H) except as provided in subparagraphs
16 (A) through (G), by striking “Director” each
17 place that term appears and inserting “appro-
18 priate Federal banking agency”;

19 (8) in section 10 (12 U.S.C. 1467a)—

20 (A) in subsection (a)(1), by striking “Di-
21 rector” each place that term appears and in-
22 serting “appropriate Federal banking agency”;

23 (B) in subsection (b)—

24 (i) in paragraph (2), by striking “and
25 the regional office of the Director of the

1 district in which its principal office is lo-
2 cated,”; and

3 (ii) in paragraph (6), by striking “Di-
4 rector’s own motion or application” and in-
5 serting “motion or application of the
6 Board”;

7 (C) in subsection (c)—

8 (i) in paragraph (2)(F), by striking
9 “of Governors of the Federal Reserve Sys-
10 tem”;

11 (ii) in paragraph (4)(B), in the sub-
12 paragraph heading, by striking “BY DIREC-
13 TOR”;

14 (iii) in paragraph (6)(D), in the sub-
15 paragraph heading, by striking “BY DIREC-
16 TOR”; and

17 (iv) in paragraph (9)(E), by inserting
18 “(in consultation with the appropriate Fed-
19 eral banking agency)” after “including a
20 determination”;

21 (D) in subsection (g)(5)(B), by striking
22 “the Director’s discretion” and inserting “the
23 discretion of the Board”;

1 (E) in subsection (l), by striking “Direc-
2 tor” each place that term appears and inserting
3 “appropriate Federal banking agency”;

4 (F) in subsection (m), by striking “Direc-
5 tor” and inserting “appropriate Federal bank-
6 ing agency”;

7 (G) in subsection (s)—

8 (i) in paragraph (2)—

9 (I) in subparagraph (B)(ii), by
10 striking “Director’s judgment” and
11 inserting “judgment of the appro-
12 priate Federal banking agency for the
13 savings association”; and

14 (II) by striking “Director” each
15 place that term appears and inserting
16 “appropriate Federal banking agency
17 for the savings association”; and

18 (ii) in paragraph (4), by striking “Di-
19 rector” and inserting “Comptroller”; and

20 (H) except as provided in subparagraphs
21 (A) through (G), by striking “Director” each
22 place that term appears and inserting “Board”;

23 (9) in section 11 (12 U.S.C. 1468), by striking
24 “Director” each place that term appears and insert-
25 ing “appropriate Federal banking agency”; and

1 (10) in section 12 (12 U.S.C. 1468a), by strik-
2 ing “the Director” and inserting “a Federal banking
3 agency”.

4 **SEC. 371. HOUSING ACT OF 1948.**

5 Section 502(c) of the Housing Act of 1948 (12
6 U.S.C. 1701c(c)) is amended—

7 (1) in the matter preceding paragraph (1), by
8 striking “and the Director of the Office of Thrift
9 Supervision” and inserting “, the Comptroller of the
10 Currency, and the Federal Deposit Insurance Cor-
11 poration”; and

12 (2) in paragraph (3), by striking “Board” and
13 inserting “Agency”.

14 **SEC. 372. HOUSING AND COMMUNITY DEVELOPMENT ACT**
15 **OF 1992.**

16 Section 543 of the Housing and Community Develop-
17 ment Act of 1992 (Public Law 102–550; 106 Stat. 3798)
18 is amended—

19 (1) in subsection (c)(1)—

20 (A) by striking subparagraphs (D) through
21 (F); and

22 (B) by redesignating subparagraphs (G)
23 and (H) as subparagraphs (D) and (E), respec-
24 tively; and

25 (2) in subsection (f)—

1 (A) in paragraph (2), by striking “the Of-
2 fice of Thrift Supervision,” each place that
3 term appears; and

4 (B) in paragraph (3)—

5 (i) in the matter preceding subpara-
6 graph (A), by striking “the Office of Thrift
7 Supervision,”; and

8 (ii) in subparagraph (D), by striking
9 “Office of Thrift Supervision,” and insert-
10 ing “Comptroller of the Currency,”.

11 **SEC. 373. HOUSING AND URBAN-RURAL RECOVERY ACT OF**
12 **1983.**

13 Section 469 of the Housing and Urban-Rural Recov-
14 ery Act of 1983 (12 U.S.C. 1701p–1) is amended in the
15 first sentence, by striking “Federal Home Loan Bank
16 Board” and inserting “Federal Housing Finance Agency”.

17 **SEC. 374. NATIONAL HOUSING ACT.**

18 Section 202(f) of the National Housing Act (12
19 U.S.C. 1708(f)) is amended—

20 (1) by striking paragraph (5) and inserting the
21 following:

22 “(5) if the mortgagee is a national bank, a sub-
23 sidiary or affiliate of such bank, a Federal savings
24 association or a subsidiary or affiliate of a savings
25 association, the Comptroller of the Currency;”;

1 (2) in paragraph (6), by adding “and” at the
2 end;

3 (3) in paragraph (7)—

4 (A) by inserting “or State savings associa-
5 tion” after “State bank”; and

6 (B) by striking “; and” and inserting a pe-
7 riod; and

8 (4) by striking paragraph (8).

9 **SEC. 375. NEIGHBORHOOD REINVESTMENT CORPORATION**

10 **ACT.**

11 Section 606(c)(3) of the Neighborhood Reinvestment
12 Corporation Act (42 U.S.C. 8105(c)(3)) is amended by
13 striking “Federal Home Loan Bank Board” and inserting
14 “Federal Housing Finance Agency”.

15 **SEC. 376. PUBLIC LAW 93-100.**

16 Section 5(d) of Public Law 93-100 (12 U.S.C.
17 1470(a)) is amended—

18 (1) in paragraph (1), by striking “Federal Sav-
19 ings and Loan Insurance Corporation with respect
20 to insured institutions, the Board of Governors of
21 the Federal Reserve System with respect to State
22 member insured banks, and the Federal Deposit In-
23 surance Corporation with respect to State non-
24 member insured banks” and inserting “appropriate
25 Federal banking agency, with respect to the institu-

1 tions subject to the jurisdiction of each such agen-
2 cy,”; and

3 (2) in paragraph (2), by striking “supervisory”
4 and inserting “banking”.

5 **SEC. 377. SECURITIES EXCHANGE ACT OF 1934.**

6 The Securities Exchange Act of 1934 (15 U.S.C. 78a
7 et seq.) is amended—

8 (1) in section 3(a)(34) (15 U.S.C.
9 78c(a)(34))—

10 (A) in subparagraph (A)—

11 (i) in clause (i), by striking “or a sub-
12 sidiary or a department or division of any
13 such bank” and inserting “a subsidiary or
14 a department or division of any such bank,
15 a Federal savings association (as defined
16 in section 3(b)(2) of the Federal Deposit
17 Insurance Act (12 U.S.C. 1813(b)(2))),
18 the deposits of which are insured by the
19 Federal Deposit Insurance Corporation, or
20 a subsidiary or department or division of
21 any such Federal savings association”;

22 (ii) in clause (ii), by striking “or a
23 subsidiary or a department or division of
24 such subsidiary” and inserting “a sub-
25 sidiary or a department or division of such

1 subsidiary, or a savings and loan holding
2 company”;

3 (iii) in clause (iii), by striking “or a
4 subsidiary or department or division there-
5 of;” and inserting “a subsidiary or depart-
6 ment or division of any such bank, a State
7 savings association (as defined in section
8 3(b)(3) of the Federal Deposit Insurance
9 Act (12 U.S.C. 1813(b)(3))), the deposits
10 of which are insured by the Federal De-
11 posit Insurance Corporation, or a sub-
12 sidiary or a department or division of any
13 such State savings association; and”;

14 (iv) by striking clause (iv); and

15 (v) by redesignating clause (v) as
16 clause (iv);

17 (B) in subparagraph (B)—

18 (i) in clause (i), by striking “or a sub-
19 sidiary of any such bank” and inserting “a
20 subsidiary of any such bank, a Federal
21 savings association (as defined in section
22 3(b)(2) of the Federal Deposit Insurance
23 Act (12 U.S.C. 1813(b)(2))), the deposits
24 of which are insured by the Federal De-
25 posit Insurance Corporation, or a sub-

1 subsidiary of any such Federal savings asso-
2 ciation”;

3 (ii) in clause (ii), by striking “or a
4 subsidiary of a bank holding company
5 which is a bank other than a bank speci-
6 fied in clause (i), (iii), or (iv) of this sub-
7 paragraph” and inserting “a subsidiary of
8 a bank holding company that is a bank
9 other than a bank specified in clause (i) or
10 (iii) of this subparagraph, or a savings and
11 loan holding company”;

12 (iii) in clause (iii), by striking “or a
13 subsidiary thereof;” and inserting “a sub-
14 subsidiary of any such bank, a State savings
15 association (as defined in section 3(b)(3) of
16 the Federal Deposit Insurance Act (12
17 U.S.C. 1813(b)(3))), the deposits of which
18 are insured by the Federal Deposit Insur-
19 ance Corporation, or a subsidiary of any
20 such State savings association; and”;

21 (iv) by striking clause (iv); and

22 (v) by redesignating clause (v) as
23 clause (iv);

24 (C) in subparagraph (C)—

1 (i) in clause (i), by striking “bank”
2 and inserting “bank or a Federal savings
3 association (as defined in section 3(b)(2) of
4 the Federal Deposit Insurance Act (12
5 U.S.C. 1813(b)(2))), the deposits of which
6 are insured by the Federal Deposit Insur-
7 ance Corporation”;

8 (ii) in clause (ii), by striking “or a
9 subsidiary of a bank holding company
10 which is a bank other than a bank speci-
11 fied in clause (i), (iii), or (iv) of this sub-
12 paragraph” and inserting “a subsidiary of
13 a bank holding company that is a bank
14 other than a bank specified in clause (i) or
15 (iii) of this subparagraph, or a savings and
16 loan holding company”;

17 (iii) in clause (iii), by striking “Sys-
18 tem)” and inserting, “System) or a State
19 savings association (as defined in section
20 3(b)(3) of the Federal Deposit Insurance
21 Act (12 U.S.C. 1813(b)(3))), the deposits
22 of which are insured by the Federal De-
23 posit Insurance Corporation; and”;

24 (iv) by striking clause (iv); and

1 (v) by redesignating clause (v) as
2 clause (iv);

3 (D) in subparagraph (D)—

4 (i) in clause (i), by inserting after
5 “bank” the following: “or a Federal sav-
6 ings association (as defined in section
7 3(b)(2) of the Federal Deposit Insurance
8 Act (12 U.S.C. 1813(b)(2))), the deposits
9 of which are insured by the Federal De-
10 posit Insurance Corporation”;

11 (ii) in clause (ii), by adding “and” at
12 the end;

13 (iii) by striking clause (iii);

14 (iv) by redesignating clause (iv) as
15 clause (iii); and

16 (v) in clause (iii), as so redesignated,
17 by inserting after “bank” the following:
18 “or a State savings association (as defined
19 in section 3(b)(3) of the Federal Deposit
20 Insurance Act (12 U.S.C. 1813(b)(3))),
21 the deposits of which are insured by the
22 Federal Deposit Insurance Corporation”;

23 (E) in subparagraph (F)—

24 (i) in clause (i), by inserting after
25 “bank” the following: “or a Federal sav-

1 ings association (as defined in section
2 3(b)(2) of the Federal Deposit Insurance
3 Act (12 U.S.C. 1813(b)(2))), the deposits
4 of which are insured by the Federal De-
5 posit Insurance Corporation”;

6 (ii) by striking clause (ii);

7 (iii) by redesignating clauses (iii), (iv),
8 and (v) as clauses (ii), (iii), and (iv), re-
9 spectively; and

10 (iv) in clause (iii), as so redesignated,
11 by inserting before the semicolon the fol-
12 lowing: “or a State savings association (as
13 defined in section 3(b)(3) of the Federal
14 Deposit Insurance Act (12 U.S.C.
15 1813(b)(3))), the deposits of which are in-
16 sured by the Federal Deposit Insurance
17 Corporation”;

18 (F) in subparagraph (G)—

19 (i) in clause (i), by inserting after
20 “national bank” the following: “, a Federal
21 savings association (as defined in section
22 3(b)(2) of the Federal Deposit Insurance
23 Act), the deposits of which are insured by
24 the Federal Deposit Insurance Corpora-
25 tion,”;

1 (ii) in clause (iii)—

2 (I) by inserting after “bank)” the
3 following: “, a State savings associa-
4 tion (as defined in section 3(b)(3) of
5 the Federal Deposit Insurance Act),
6 the deposits of which are insured by
7 the Federal Deposit Insurance Cor-
8 poration,”; and

9 (II) by adding “and” at the end;

10 (iii) by striking clause (iv); and

11 (iv) by redesignating clause (v) as
12 clause (iv); and

13 (G) in the undesignated matter following
14 subparagraph (H), by striking “, and the term
15 ‘District of Columbia savings and loan associa-
16 tion’ means any association subject to examina-
17 tion and supervision by the Office of Thrift Su-
18 pervision under section 8 of the Home Owners’
19 Loan Act of 1933”;

20 (2) in section 12(i) (15 U.S.C. 78l(i))—

21 (A) in paragraph (1), by inserting after
22 “national banks” the following: “and Federal
23 savings associations, the accounts of which are
24 insured by the Federal Deposit Insurance Cor-
25 poration”;

1 (B) by striking “(3)” and all that follows
2 through “vested in the Office of Thrift Super-
3 vision” and inserting “and (3) with respect to
4 all other insured banks and State savings asso-
5 ciations, the accounts of which are insured by
6 the Federal Deposit Insurance Corporation, are
7 vested in the Federal Deposit Insurance Cor-
8 poration”; and

9 (C) in the second sentence, by striking
10 “the Federal Deposit Insurance Corporation,
11 and the Office of Thrift Supervision” and in-
12 serting “and the Federal Deposit Insurance
13 Corporation”;

14 (3) in section 15C(g)(1) (15 U.S.C. 78o-
15 5(g)(1)), by striking “the Director of the Office of
16 Thrift Supervision, the Federal Savings and Loan
17 Insurance Corporation,”; and

18 (4) in section 23(b)(1) (15 U.S.C. 78w(b)(1)),
19 by striking “, other than the Office of Thrift Super-
20 vision,”.

21 **SEC. 378. TITLE 18, UNITED STATES CODE.**

22 Title 18, United States Code, is amended—

23 (1) in section 212(e)(2)—

24 (A) by striking subparagraph (C); and

1 (B) by redesignating subparagraphs (D)
2 through (H) as subparagraphs (C) through (G),
3 respectively;

4 (2) in section 657, by striking “Office of Thrift
5 Supervision, the Resolution Trust Corporation,”;

6 (3) in section 981(a)(1)(D)—

7 (A) by striking “Resolution Trust Corpora-
8 tion,”; and

9 (B) by striking “or the Office of Thrift Su-
10 pervision”;

11 (4) in section 982(a)(3)—

12 (A) by striking “Resolution Trust Corpora-
13 tion,”; and

14 (B) by striking “or the Office of Thrift Su-
15 pervision”;

16 (5) in section 1006—

17 (A) by striking “Office of Thrift Super-
18 vision,”; and

19 (B) by striking “the Resolution Trust Cor-
20 poration,”;

21 (6) in section 1014—

22 (A) by striking “the Office of Thrift Su-
23 pervision”; and

24 (B) by striking “the Resolution Trust Cor-
25 poration,”; and

1 (7) in section 1032(1)—

2 (A) by striking “the Resolution Trust Cor-
3 poration,”; and

4 (B) by striking “or the Director of the Of-
5 fice of Thrift Supervision”.

6 **SEC. 379. TITLE 31, UNITED STATES CODE.**

7 Title 31, United States Code, is amended—

8 (1) in section 321—

9 (A) in subsection (c)—

10 (i) in paragraph (1), by adding “and”
11 at the end;

12 (ii) in paragraph (2), by striking “;
13 and” and inserting a period; and

14 (iii) by striking paragraph (3); and

15 (B) by striking subsection (e); and

16 (2) in section 714(a), by striking “the Office of
17 the Comptroller of the Currency, and the Office of
18 Thrift Supervision.” and inserting “and the Office of
19 the Comptroller of the Currency.”.

20 **TITLE IV—REGULATION OF AD-**
21 **VISERS TO HEDGE FUNDS**
22 **AND OTHERS**

23 **SEC. 401. SHORT TITLE.**

24 This title may be cited as the “Private Fund Invest-
25 ment Advisers Registration Act of 2010”.

1 **SEC. 402. DEFINITIONS.**

2 (a) INVESTMENT ADVISERS ACT OF 1940 DEFINI-
3 TIONS.—Section 202(a) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
5 end the following:

6 “(29) The term ‘private fund’ means an issuer
7 that would be an investment company, as defined in
8 section 3 of the Investment Company Act of 1940
9 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7)
10 of that Act.

11 “(30) The term ‘foreign private adviser’ means
12 any investment adviser who—

13 “(A) has no place of business in the
14 United States;

15 “(B) has, in total, fewer than 15 clients
16 and investors in the United States in private
17 funds advised by the investment adviser;

18 “(C) has aggregate assets under manage-
19 ment attributable to clients in the United
20 States and investors in the United States in
21 private funds advised by the investment adviser
22 of less than \$25,000,000, or such higher
23 amount as the Commission may, by rule, deem
24 appropriate in accordance with the purposes of
25 this title; and

26 “(D) neither—

1 “(i) holds itself out generally to the
2 public in the United States as an invest-
3 ment adviser; nor

4 “(ii) acts as—

5 “(I) an investment adviser to any
6 investment company registered under
7 the Investment Company Act of 1940;
8 or

9 “(II) a company that has elected
10 to be a business development company
11 pursuant to section 54 of the Invest-
12 ment Company Act of 1940 (15
13 U.S.C. 80a–53), and has not with-
14 drawn its election.”.

15 (b) OTHER DEFINITIONS.—As used in this title, the
16 terms “investment adviser” and “private fund” have the
17 same meanings as in section 202 of the Investment Advis-
18 ers Act of 1940, as amended by this title.

19 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;
20 LIMITED EXEMPTION FOR FOREIGN PRIVATE
21 ADVISERS; LIMITED INTRASTATE EXEMP-
22 TION.**

23 Section 203(b) of the Investment Advisers Act of
24 1940 (15 U.S.C. 80b–3(b)) is amended—

1 (1) in paragraph (1), by inserting “, other than
2 an investment adviser who acts as an investment ad-
3 viser to any private fund,” before “all of whose”;

4 (2) by striking paragraph (3) and inserting the
5 following:

6 “(3) any investment adviser that is a foreign
7 private adviser;” and

8 (3) in paragraph (5), by striking “or” at the
9 end;

10 (4) in paragraph (6), by striking the period at
11 the end and inserting “; or”; and

12 (5) by adding at the end the following:

13 “(7) any investment adviser, other than any en-
14 tity that has elected to be regulated or is regulated
15 as a business development company pursuant to sec-
16 tion 54 of the Investment Company Act of 1940 (15
17 U.S.C. 80a-54), who solely advises—

18 “(A) small business investment companies
19 that are licensees under the Small Business In-
20 vestment Act of 1958;

21 “(B) entities that have received from the
22 Small Business Administration notice to pro-
23 ceed to qualify for a license as a small business
24 investment company under the Small Business

1 Investment Act of 1958, which notice or license
2 has not been revoked; or

3 “(C) applicants that are affiliated with 1
4 or more licensed small business investment
5 companies described in subparagraph (A) and
6 that have applied for another license under the
7 Small Business Investment Act of 1958, which
8 application remains pending.”.

9 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS;**
10 **EXAMINATIONS; DISCLOSURES.**

11 Section 204 of the Investment Advisers Act of 1940
12 (15 U.S.C. 80b–4) is amended—

13 (1) by redesignating subsections (b) and (c) as
14 subsections (c) and (d), respectively; and

15 (2) by inserting after subsection (a) the fol-
16 lowing:

17 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

18 “(1) IN GENERAL.—The Commission may re-
19 quire any investment adviser registered under this
20 title—

21 “(A) to maintain such records of, and file
22 with the Commission such reports regarding,
23 private funds advised by the investment adviser,
24 as necessary and appropriate in the public in-
25 terest and for the protection of investors, or for

1 the assessment of systemic risk by the Finan-
2 cial Stability Oversight Council (in this sub-
3 section referred to as the ‘Council’); and

4 “(B) to provide or make available to the
5 Council those reports or records or the informa-
6 tion contained therein.

7 “(2) TREATMENT OF RECORDS.—The records
8 and reports of any private fund to which an invest-
9 ment adviser registered under this title provides in-
10 vestment advice shall be deemed to be the records
11 and reports of the investment adviser.

12 “(3) REQUIRED INFORMATION.—The records
13 and reports required to be maintained by a private
14 fund and subject to inspection by the Commission
15 under this subsection shall include, for each private
16 fund advised by the investment adviser, a description
17 of—

18 “(A) the amount of assets under manage-
19 ment and use of leverage, including off-balance-
20 sheet leverage;

21 “(B) counterparty credit risk exposure;

22 “(C) trading and investment positions;

23 “(D) valuation policies and practices of the
24 fund;

25 “(E) types of assets held;

1 “(F) side arrangements or side letters,
2 whereby certain investors in a fund obtain more
3 favorable rights or entitlements than other in-
4 vestors;

5 “(G) trading practices; and

6 “(H) such other information as the Com-
7 mission, in consultation with the Council, deter-
8 mines is necessary and appropriate in the pub-
9 lic interest and for the protection of investors
10 or for the assessment of systemic risk, which
11 may include the establishment of different re-
12 porting requirements for different classes of
13 fund advisers, based on the type or size of pri-
14 vate fund being advised.

15 “(4) MAINTENANCE OF RECORDS.—An invest-
16 ment adviser registered under this title shall main-
17 tain such records of private funds advised by the in-
18 vestment adviser for such period or periods as the
19 Commission, by rule, may prescribe as necessary and
20 appropriate in the public interest and for the protec-
21 tion of investors, or for the assessment of systemic
22 risk.

23 “(5) FILING OF RECORDS.—The Commission
24 shall issue rules requiring each investment adviser to
25 a private fund to file reports containing such infor-

1 mation as the Commission deems necessary and ap-
2 propriate in the public interest and for the protec-
3 tion of investors or for the assessment of systemic
4 risk.

5 “(6) EXAMINATION OF RECORDS.—

6 “(A) PERIODIC AND SPECIAL EXAMINA-
7 TIONS.—The Commission—

8 “(i) shall conduct periodic inspections
9 of the records of private funds maintained
10 by an investment adviser registered under
11 this title in accordance with a schedule es-
12 tablished by the Commission; and

13 “(ii) may conduct at any time and
14 from time to time such additional, special,
15 and other examinations as the Commission
16 may prescribe as necessary and appro-
17 priate in the public interest and for the
18 protection of investors, or for the assess-
19 ment of systemic risk.

20 “(B) AVAILABILITY OF RECORDS.—An in-
21 vestment adviser registered under this title shall
22 make available to the Commission any copies or
23 extracts from such records as may be prepared
24 without undue effort, expense, or delay, as the

1 Commission or its representatives may reason-
2 ably request.

3 “(7) INFORMATION SHARING.—

4 “(A) IN GENERAL.—The Commission shall
5 make available to the Council copies of all re-
6 ports, documents, records, and information filed
7 with or provided to the Commission by an in-
8 vestment adviser under this subsection as the
9 Council may consider necessary for the purpose
10 of assessing the systemic risk posed by a pri-
11 vate fund.

12 “(B) CONFIDENTIALITY.—The Council
13 shall maintain the confidentiality of information
14 received under this paragraph in all such re-
15 ports, documents, records, and information, in
16 a manner consistent with the level of confiden-
17 tiality established for the Commission pursuant
18 to paragraph (8). The Council shall be exempt
19 from section 552 of title 5, United States Code,
20 with respect to any information in any report,
21 document, record, or information made avail-
22 able, to the Council under this subsection.”.

23 “(8) COMMISSION CONFIDENTIALITY OF RE-
24 PORTS.—Notwithstanding any other provision of
25 law, the Commission may not be compelled to dis-

1 close any 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 “(9) OTHER RECIPIENTS CONFIDENTIALITY.—
18 Any department, agency, or self-regulatory organiza-
19 tion that receives reports or information from the
20 Commission under this subsection shall maintain the
21 confidentiality of such reports, documents, records,
22 and information in a manner consistent with the
23 level of confidentiality established for the Commis-
24 sion under paragraph (8).

25 “(10) PUBLIC INFORMATION EXCEPTION.—

1 “(A) IN GENERAL.—The Commission, the
2 Council, and any other department, agency, or
3 self-regulatory organization that receives infor-
4 mation, reports, documents, records, or infor-
5 mation from the Commission under this sub-
6 section, shall be exempt from the provisions of
7 section 552 of title 5, United States Code, with
8 respect to any such report, document, record, or
9 information. Any proprietary information of an
10 investment adviser ascertained by the Commis-
11 sion from any report required to be filed with
12 the Commission pursuant to this subsection
13 shall be subject to the same limitations on pub-
14 lic disclosure as any facts ascertained during an
15 examination, as provided by section 210(b) of
16 this title.

17 “(B) PROPRIETARY INFORMATION.—For
18 purposes of this paragraph, proprietary infor-
19 mation includes—

20 “(i) sensitive, non-public information
21 regarding the investment or trading strate-
22 gies of the investment adviser;

23 “(ii) analytical or research methodolo-
24 gies;

25 “(iii) trading data;

1 “(iv) computer hardware or software
2 containing intellectual property; and

3 “(v) any additional information that
4 the Commission determines to be propri-
5 etary.

6 “(11) ANNUAL REPORT TO CONGRESS.—The
7 Commission shall report annually to Congress on
8 how the Commission has used the data collected
9 pursuant to this subsection to monitor the markets
10 for the protection of investors and the integrity of
11 the markets.”.

12 **SEC. 405. DISCLOSURE PROVISION AMENDMENT.**

13 Section 210(c) of the Investment Advisers Act of
14 1940 (15 U.S.C. 80b–10(c)) is amended by inserting be-
15 fore the period at the end the following: “or for purposes
16 of assessment of potential systemic risk”.

17 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

18 Section 211 of the Investment Advisers Act of 1940
19 (15 U.S.C. 80b–11) is amended—

20 (1) in subsection (a), by inserting before the pe-
21 riod at the end of the first sentence the following:
22 “, including rules and regulations defining technical,
23 trade, and other terms used in this title, except that
24 the Commission may not define the term ‘client’ for
25 purposes of paragraphs (1) and (2) of section 206

1 to include an investor in a private fund managed by
2 an investment adviser, if such private fund has en-
3 tered into an advisory contract with such adviser”;
4 and

5 (2) by adding at the end the following:

6 “(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The
7 Commission and the Commodity Futures Trading Com-
8 mission shall, after consultation with the Council but not
9 later than 12 months after the date of enactment of the
10 Private Fund Investment Advisers Registration Act of
11 2010, jointly promulgate rules to establish the form and
12 content of the reports required to be filed with the Com-
13 mission under subsection 204(b) and with the Commodity
14 Futures Trading Commission by investment advisers that
15 are registered both under this title and the Commodity
16 Exchange Act (7 U.S.C. 1a et seq.).”.

17 **SEC. 407. EXEMPTION OF VENTURE CAPITAL FUND ADVIS-**
18 **ERS.**

19 Section 203 of the Investment Advisers Act of 1940
20 (15 U.S.C. 80b–3) is amended by adding at the end the
21 following:

22 “(l) EXEMPTION OF VENTURE CAPITAL FUND AD-
23 VISERS.—No investment adviser shall be subject to the
24 registration requirements of this title with respect to the
25 provision of investment advice relating to a venture capital

1 fund. Not later than 1 year after the date of enactment
2 of this subsection, the Commission shall issue final rules
3 to define the term ‘venture capital fund’ for purposes of
4 this subsection.”.

5 **SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRI-**
6 **VATE EQUITY FUND ADVISERS.**

7 Section 203 of the Investment Advisers Act of 1940
8 (15 U.S.C. 80b–3) is amended by adding at the end the
9 following:

10 “(m) EXEMPTION OF AND REPORTING BY PRIVATE
11 EQUITY FUND ADVISERS.—

12 “(1) IN GENERAL.—Except as provided in this
13 subsection, no investment adviser shall be subject to
14 the registration or reporting requirements of this
15 title with respect to the provision of investment ad-
16 vice relating to a private equity fund or funds.

17 “(2) MAINTENANCE OF RECORDS AND ACCESS
18 BY COMMISSION.—Not later than 1 year after the
19 date of enactment of this subsection, the Commis-
20 sion shall issue final rules—

21 “(A) to require investment advisers de-
22 scribed in paragraph (1) to maintain such
23 records and provide to the Commission such an-
24 nual or other reports as the Commission taking
25 into account fund size, governance, investment

1 strategy, risk, and other factors, as the Com-
2 mission determines necessary and appropriate
3 in the public interest and for the protection of
4 investors; and

5 “(B) to define the term ‘private equity
6 fund’ for purposes of this subsection.”.

7 **SEC. 409. FAMILY OFFICES.**

8 (a) IN GENERAL.—Section 202(a)(11) of the Invest-
9 ment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is
10 amended by striking “or (G)” and inserting the following:
11 “; (G) any family office, as defined by rule, regulation,
12 or order of the Commission, in accordance with the pur-
13 poses of this title; or (H)”.

14 (b) RULEMAKING.—The rules, regulations, or orders
15 issued by the Commission pursuant to section
16 202(a)(11)(G) of the Investment Advisers Act of 1940, as
17 added by this section, regarding the definition of the term
18 “family office” shall provide for an exemption that—

19 (1) is consistent with the previous exemptive
20 policy of the Commission, as reflected in exemptive
21 orders for family offices in effect on the date of en-
22 actment of this Act; and

23 (2) recognizes the range of organizational, man-
24 agement, and employment structures and arrange-
25 ments employed by family offices.

1 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
2 **THRESHOLD FOR FEDERAL REGISTRATION**
3 **OF INVESTMENT ADVISERS.**

4 Section 203A(a)(1) of the Investment Advisers Act
5 of 1940 (15 U.S.C. 80b-3a(a)(1)) is amended—

6 (1) in subparagraph (A)—

7 (A) by striking “\$25,000,000” and insert-
8 ing “\$100,000,000”; and

9 (B) by striking “or” at the end;

10 (2) in subparagraph (B), by striking the period
11 at the end and inserting “; or”; and

12 (3) by adding at the end the following:

13 “(C) is an adviser to a company that has
14 elected to be a business development company
15 pursuant to section 54 of the Investment Com-
16 pany Act of 1940, and has not withdrawn its
17 election.”.

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. CUSTODY OF CLIENT ACCOUNTS.**

23 “An investment adviser registered under this title
24 shall take such steps to safeguard client assets over which
25 such adviser has custody, including, without limitation,

1 verification of such assets by an independent public ac-
2 countant, as the Commission may, by rule, prescribe.”.

3 **SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STAND-**
4 **ARD.**

5 (a) IN GENERAL.—The Commission shall adjust any
6 net worth standard for an accredited investor, as set forth
7 in the rules of the Commission under the Securities Act
8 of 1933, so that the individual net worth of any natural
9 person, or joint net worth with the spouse of that person,
10 at the time of purchase, is more than \$1,000,000 (as such
11 amount is adjusted periodically by rule of the Commis-
12 sion), excluding the value of the primary residence of such
13 natural person, except that during the 4-year period that
14 begins on the date of enactment of this Act, any net worth
15 standard shall be \$1,000,000, excluding the value of the
16 primary residence of such natural person.

17 (b) REVIEW AND ADJUSTMENT.—

18 (1) INITIAL REVIEW AND ADJUSTMENT.—

19 (A) INITIAL REVIEW.—The Commission
20 may undertake a review of the definition of the
21 term “accredited investor”, as such term ap-
22 plies to natural persons, to determine whether
23 the requirements of the definition, excluding the
24 requirement relating to the net worth standard
25 described in subsection (a), should be adjusted

1 or modified for the protection of investors, in
2 the public interest, and in light of the economy.

3 (B) ADJUSTMENT OR MODIFICATION.—

4 Upon completion of a review under subpara-
5 graph (A), the Commission may, by notice and
6 comment rulemaking, make such adjustments
7 to the definition of the term “accredited inves-
8 tor”, excluding adjusting or modifying the re-
9 quirement relating to the net worth standard
10 described in subsection (a), as such term ap-
11 plies to natural persons, as the Commission
12 may deem appropriate for the protection of in-
13 vestors, in the public interest, and in light of
14 the economy.

15 (2) SUBSEQUENT REVIEWS AND ADJUST-
16 MENT.—

17 (A) SUBSEQUENT REVIEWS.—Not earlier
18 than 4 years after the date of enactment of this
19 Act, and not less frequently than once every 4
20 years thereafter, the Commission shall under-
21 take a review of the definition, in its entirety,
22 of the term “accredited investor”, as defined in
23 section 230.215 of title 17, Code of Federal
24 Regulations, or any successor thereto, as such
25 term applies to natural persons, to determine

1 whether the requirements of the definition
2 should be adjusted or modified for the protec-
3 tion of investors, in the public interest, and in
4 light of the economy.

5 (B) ADJUSTMENT OR MODIFICATION.—

6 Upon completion of a review under subpara-
7 graph (A), the Commission may, by notice and
8 comment rulemaking, make such adjustments
9 to the definition of the term “accredited inves-
10 tor”, as defined in section 230.215 of title 17,
11 Code of Federal Regulations, or any successor
12 thereto, as such term applies to natural per-
13 sons, as the Commission may deem appropriate
14 for the protection of investors, in the public in-
15 terest, and in light of the economy.

16 **SEC. 413. GAO STUDY AND REPORT ON ACCREDITED INVES-**
17 **TORS.**

18 The Comptroller General of the United States shall
19 conduct a study on the appropriate criteria for deter-
20 mining the financial thresholds or other criteria needed
21 to qualify for accredited investor status and eligibility to
22 invest in private funds, and shall submit a report to the
23 Committee on Banking, Housing, and Urban Affairs of
24 the Senate and the Committee on Financial Services of
25 the House of Representatives on the results of such study

1 not later than 3 years after the date of enactment of this
2 Act.

3 **SEC. 414. GAO STUDY ON SELF-REGULATORY ORGANIZA-**
4 **TION FOR PRIVATE FUNDS.**

5 The Comptroller General of the United States shall—

6 (1) conduct a study of the feasibility of forming
7 a self-regulatory organization to oversee private
8 funds; and

9 (2) submit a report to the Committee on Bank-
10 ing, Housing, and Urban Affairs of the Senate and
11 the Committee on Financial Services of the House of
12 Representatives on the results of such study, not
13 later than 1 year after the date of enactment of this
14 Act.

15 **SEC. 415. COMMISSION STUDY AND REPORT ON SHORT**
16 **SELLING.**

17 (a) STUDIES.—The Division of Risk, Strategy, and
18 Financial Innovation of the Commission shall conduct—

19 (1) a study, taking into account current schol-
20 arship, on the state of short selling on national secu-
21 rities exchanges and in the over-the-counter markets,
22 with particular attention to the impact of recent rule
23 changes and the incidence of—

24 (A) the failure to deliver shares sold short;

25 or

1 (B) delivery of shares on the fourth day
2 following the short sale transaction; and

3 (2) a study of—

4 (A) the feasibility, benefits, and costs of
5 requiring reporting publicly, in real time short
6 sale positions of publicly listed securities, or, in
7 the alternative, reporting such short positions
8 in real time only to the Commission and the Fi-
9 nancial Industry Regulatory Authority; and

10 (B) the feasibility, benefits, and costs of
11 conducting a voluntary pilot program in which
12 public companies will agree to have all trades of
13 their shares marked “short”, “market maker
14 short”, “buy”, “buy-to-cover”, or “long”, and
15 reported in real time through the Consolidated
16 Tape.

17 (b) REPORTS.—The Commission shall submit a re-
18 port to the Committee on Banking, Housing, and Urban
19 Affairs of the Senate and the Committee on Financial
20 Services of the House of Representatives—

21 (1) on the results of the study required under
22 subsection (a)(1), including recommendations for
23 market improvements, not later than 2 years after
24 the date of enactment of this Act; and

1 (2) on the results of the study required under
2 subsection (a)(2), not later than 1 year after the
3 date of enactment of this Act.

4 **SEC. 416. TRANSITION PERIOD.**

5 Except as otherwise provided in this title, this title
6 and the amendments made by this title shall become effec-
7 tive 1 year after the date of enactment of this Act, except
8 that any investment adviser may, at the discretion of the
9 investment adviser, register with the Commission under
10 the Investment Advisers Act of 1940 during that 1-year
11 period, subject to the rules of the Commission.

12 **TITLE V—INSURANCE**

13 **Subtitle A—Office of National**
14 **Insurance**

15 **SEC. 501. SHORT TITLE.**

16 This subtitle may be cited as the “Office of National
17 Insurance Act of 2010”.

18 **SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL IN-**
19 **SURANCE.**

20 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
21 chapter 3 of subtitle I of title 31, United States Code,
22 is amended—

23 (1) by redesignating section 312 as section 315;

24 (2) by redesignating section 313 as section 312;

25 and

1 (3) by inserting after section 312 (as so redес-
2 ignated) the following new sections:

3 **“SEC. 313. OFFICE OF NATIONAL INSURANCE.**

4 “(a) ESTABLISHMENT.—There is established within
5 the Department of the Treasury the Office of National
6 Insurance.

7 “(b) LEADERSHIP.—The Office shall be headed by a
8 Director, who shall be appointed by the Secretary of the
9 Treasury. The position of Director shall be a career re-
10 served position in the Senior Executive Service, as that
11 position is defined under section 3132 of title 5, United
12 States Code.

13 “(c) FUNCTIONS.—

14 “(1) AUTHORITY PURSUANT TO DIRECTION OF
15 SECRETARY.—The Office, pursuant to the direction
16 of the Secretary, shall have the authority—

17 “(A) to monitor all aspects of the insur-
18 ance industry, including identifying issues or
19 gaps in the regulation of insurers that could
20 contribute to a systemic crisis in the insurance
21 industry or the United States financial system;

22 “(B) to monitor the extent to which tradi-
23 tionally underserved communities and con-
24 sumers, minorities (as such term is defined in
25 section 1204(c) of the Financial Institutions

1 Reform, Recovery, and Enforcement Act of
2 1989 (12 U.S.C. 1811 note)), and low- and
3 moderate-income persons have access to afford-
4 able insurance products regarding all lines of
5 insurance, except health insurance;

6 “(C) to recommend to the Financial Sta-
7 bility Oversight Council that it designate an in-
8 surer, including the affiliates of such insurer, as
9 an entity subject to regulation as a nonbank fi-
10 nancial company supervised by the Board of
11 Governors pursuant to title I of the Restoring
12 American Financial Stability Act of 2010;

13 “(D) to assist the Secretary in admin-
14 istering the Terrorism Insurance Program es-
15 tablished in the Department of the Treasury
16 under the Terrorism Risk Insurance Act of
17 2002 (15 U.S.C. 6701 note);

18 “(E) to coordinate Federal efforts and de-
19 velop Federal policy on prudential aspects of
20 international insurance matters, including rep-
21 resenting the United States, as appropriate, in
22 the International Association of Insurance Su-
23 pervisors (or a successor entity) and assisting
24 the Secretary in negotiating International In-
25 surance Agreements on Prudential Measures;

1 “(F) to determine, in accordance with sub-
2 section (f), whether State insurance measures
3 are preempted by International Insurance
4 Agreements on Prudential Measures;

5 “(G) to consult with the States (including
6 State insurance regulators) regarding insurance
7 matters of national importance and prudential
8 insurance matters of international importance;
9 and

10 “(H) to perform such other related duties
11 and authorities as may be assigned to the Of-
12 fice by the Secretary.

13 “(2) ADVISORY FUNCTIONS.—The Office shall
14 advise the Secretary on major domestic and pruden-
15 tial international insurance policy issues.

16 “(d) SCOPE.—The authority of the Office shall ex-
17 tend to all lines of insurance except health insurance, as
18 such insurance is determined by the Secretary based on
19 section 2791 of the Public Health Service Act (42 U.S.C.
20 300gg–91), and crop insurance, as established by the Fed-
21 eral Crop Insurance Act (7 U.S.C. 1501 et seq.).

22 “(e) GATHERING OF INFORMATION.—

23 “(1) IN GENERAL.—In carrying out the func-
24 tions required under subsection (c), the Office
25 may—

1 “(A) receive and collect data and informa-
2 tion on and from the insurance industry and in-
3 surers;

4 “(B) enter into information-sharing agree-
5 ments;

6 “(C) analyze and disseminate data and in-
7 formation; and

8 “(D) issue reports regarding all lines of in-
9 surance except health insurance.

10 “(2) COLLECTION OF INFORMATION FROM IN-
11 SURERS AND AFFILIATES.—

12 “(A) IN GENERAL.—Except as provided in
13 paragraph (3), the Office may require an in-
14 surer, or any affiliate of an insurer, to submit
15 such data or information as the Office may rea-
16 sonably require in carrying out the functions
17 described under subsection (c).

18 “(B) RULE OF CONSTRUCTION.—Notwith-
19 standing any other provision of this section, for
20 purposes of subparagraph (A), the term ‘in-
21 surer’ means any entity that writes insurance
22 or reinsures risks and issues contracts or poli-
23 cies in 1 or more States.

24 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
25 graph (2) shall not apply with respect to any insurer

1 or affiliate thereof that meets a minimum size
2 threshold that the Office may establish, whether by
3 order or rule.

4 “(4) ADVANCE COORDINATION.—Before col-
5 lecting any data or information under paragraph (2)
6 from an insurer, or any affiliate of an insurer, the
7 Office shall coordinate with each relevant State in-
8 surance regulator (or other relevant Federal or State
9 regulatory agency, if any, in the case of an affiliate
10 of an insurer) to determine if the information to be
11 collected is available from, or may be obtained in a
12 timely manner by, such State insurance regulator,
13 individually or collectively, another regulatory agen-
14 cy, or publicly available sources. Notwithstanding
15 any other provision of law, each such relevant State
16 insurance regulator or other Federal or State regu-
17 latory agency is authorized to provide to the Office
18 such data or information.

19 “(5) CONFIDENTIALITY.—

20 “(A) RETENTION OF PRIVILEGE.—The
21 submission of any nonpublicly available data
22 and information to the Office under this sub-
23 section shall not constitute a waiver of, or oth-
24 erwise affect, any privilege arising under Fed-
25 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 2010; 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) The potential consequences of sub-
22 jecting insurance companies to a Federal reso-
23 lution authority, including the effects of any
24 Federal resolution authority—

1 “(i) on the operation of State insur-
2 ance guaranty fund systems, including the
3 loss of guaranty fund coverage if an insur-
4 ance company is subject to a Federal reso-
5 lution authority;

6 “(ii) on policyholder protection, in-
7 cluding the loss of the priority status of
8 policyholder claims over other unsecured
9 general creditor claims;

10 “(iii) in the case of life insurance
11 companies, the loss of the special status of
12 separate account assets and separate ac-
13 count liabilities; and

14 “(iv) on the international competitive-
15 ness of insurance companies.

16 “(G) Such other factors as the Director
17 determines necessary or appropriate, consistent
18 with the principles set forth in paragraph (2).

19 “(4) REQUIRED RECOMMENDATIONS.—The
20 study and report required under paragraph (1) shall
21 also contain any legislative, administrative, or regu-
22 latory recommendations, as the Director determines
23 appropriate, to carry out or effectuate the findings
24 set forth in such report.

1 “(5) CONSULTATION.—With respect to the
2 study and report required under paragraph (1), the
3 Director shall consult with the National Association
4 of Insurance Commissioners, consumer organiza-
5 tions, representatives of the insurance industry and
6 policyholders, and other organizations and experts,
7 as appropriate.

8 “(n) USE OF EXISTING RESOURCES.—To carry out
9 this section, the Office may employ personnel, facilities,
10 and any other resource of the Department of the Treasury
11 available to the Secretary.

12 “(o) DEFINITIONS.—In this section and section 314,
13 the following definitions shall apply:

14 “(1) AFFILIATE.—The term ‘affiliate’ means,
15 with respect to an insurer, any person who controls,
16 is controlled by, or is under common control with the
17 insurer.

18 “(2) INSURER.—The term ‘insurer’ means any
19 person engaged in the business of insurance, includ-
20 ing reinsurance.

21 “(3) INTERNATIONAL INSURANCE AGREEMENT
22 ON PRUDENTIAL MEASURES.—The term ‘Inter-
23 national Insurance Agreement on Prudential Meas-
24 ures’ means a written bilateral or multilateral agree-
25 ment entered into between the United States and a

1 foreign government, authority, or regulatory entity
2 regarding prudential measures applicable to the
3 business of insurance or reinsurance.

4 “(4) NON-UNITED STATES INSURER.—The term
5 ‘non-United States insurer’ means an insurer that is
6 organized under the laws of a jurisdiction other than
7 a State, but does not include any United States
8 branch of such an insurer.

9 “(5) OFFICE.—The term ‘Office’ means the Of-
10 fice of National Insurance established by this sec-
11 tion.

12 “(6) STATE INSURANCE MEASURE.—The term
13 ‘State insurance measure’ means any State law, reg-
14 ulation, administrative ruling, bulletin, guideline, or
15 practice relating to or affecting prudential measures
16 applicable to insurance or reinsurance.

17 “(7) STATE INSURANCE REGULATOR.—The
18 term ‘State insurance regulator’ means any State
19 regulatory authority responsible for the supervision
20 of insurers.

21 “(8) UNITED STATES INSURER.—The term
22 ‘United States insurer’ means—

23 “(A) an insurer that is organized under
24 the laws of a State; or

1 “(B) a United States branch of a non-
2 United States insurer.

3 “(p) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated for the Office for each
5 fiscal year such sums as may be necessary.

6 **“SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**
7 **PRUDENTIAL MEASURES.**

8 “(a) IN GENERAL.—The Secretary of the Treasury
9 is authorized to negotiate and enter into International In-
10 surance Agreements on Prudential Measures on behalf of
11 the United States.

12 “(b) SAVINGS PROVISION.—Nothing in this section or
13 section 313 shall be construed to affect the development
14 and coordination of United States international trade pol-
15 icy or the administration of the United States trade agree-
16 ments program. It is to be understood that the negotiation
17 of International Insurance Agreements on Prudential
18 Measures under such sections is consistent with the re-
19 quirement of this subsection.

20 “(c) CONSULTATION.—The Secretary shall consult
21 with the United States Trade Representative on the nego-
22 tiation of International Insurance Agreements on Pruden-
23 tial Measures, including prior to initiating and concluding
24 any such agreements.”.

1 (b) DUTIES OF SECRETARY.—Section 321(a) of title
2 31, United States Code, is amended—

3 (1) in paragraph (7), by striking “; and” and
4 inserting a semicolon;

5 (2) in paragraph (8)(C), by striking the period
6 at the end and inserting “; and”; and

7 (3) by adding at the end the following new
8 paragraph:

9 “(9) advise the President on major domestic
10 and international prudential policy issues in connec-
11 tion with all lines of insurance except health insur-
12 ance.”.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for subchapter I of chapter 3 of title 31, United States
15 Code, is amended by striking the item relating to section
16 312 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.”.

17 **Subtitle B—State-based Insurance**
18 **Reform**

19 **SEC. 511. SHORT TITLE.**

20 This subtitle may be cited as the “Nonadmitted and
21 Reinsurance Reform Act of 2010”.

1 **SEC. 512. EFFECTIVE DATE.**

2 Except as otherwise specifically provided in this sub-
3 title, this subtitle shall take effect upon the expiration of
4 the 12-month period beginning on the date of the enact-
5 ment of this subtitle.

6 **PART I—NONADMITTED INSURANCE**

7 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF**
8 **PREMIUM TAXES.**

9 (a) HOME STATE'S EXCLUSIVE AUTHORITY.—No
10 State other than the home State of an insured may require
11 any premium tax payment for nonadmitted insurance.

12 (b) ALLOCATION OF NONADMITTED PREMIUM
13 TAXES.—

14 (1) IN GENERAL.—The States may enter into a
15 compact or otherwise establish procedures to allocate
16 among the States the premium taxes paid to an in-
17 sured's home State described in subsection (a).

18 (2) EFFECTIVE DATE.—Except as expressly
19 otherwise provided in such compact or other proce-
20 dures, any such compact or other procedures—

21 (A) if adopted on or before the expiration
22 of the 330-day period that begins on the date
23 of the enactment of this subtitle, shall apply to
24 any premium taxes that, on or after such date
25 of enactment, are required to be paid to any

1 State that is subject to such compact or proce-
2 dures; and

3 (B) if adopted after the expiration of such
4 330-day period, shall apply to any premium
5 taxes that, on or after January 1 of the first
6 calendar year that begins after the expiration of
7 such 330-day period, are required to be paid to
8 any State that is subject to such compact or
9 procedures.

10 (3) REPORT.—Upon the expiration of the 330-
11 day period referred to in paragraph (2), the NAIC
12 may submit a report to the Committee on Financial
13 Services and Committee on the Judiciary of the
14 House of Representatives and the Committee on
15 Banking, Housing, and Urban Affairs of the Senate
16 identifying and describing any compact or other pro-
17 cedures for allocation among the States of premium
18 taxes that have been adopted during such period by
19 any States.

20 (4) NATIONWIDE SYSTEM.—The Congress in-
21 tends that each State adopt nationwide uniform re-
22 quirements, forms, and procedures, such as an inter-
23 state compact, that provides for the reporting, pay-
24 ment, collection, and allocation of premium taxes for
25 nonadmitted insurance consistent with this section.

1 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
2 PORT.—To facilitate the payment of premium taxes
3 among the States, an insured’s home State may require
4 surplus lines brokers and insureds who have independently
5 procured insurance to annually file tax allocation reports
6 with the insured’s home State detailing the portion of the
7 nonadmitted insurance policy premium or premiums at-
8 tributable to properties, risks, or exposures located in each
9 State. The filing of a nonadmitted insurance tax allocation
10 report and the payment of tax may be made by a person
11 authorized by the insured to act as its agent.

12 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**
13 **INSURED’S HOME STATE.**

14 (a) HOME STATE AUTHORITY.—Except as otherwise
15 provided in this section, the placement of nonadmitted in-
16 surance shall be subject to the statutory and regulatory
17 requirements solely of the insured’s home State.

18 (b) BROKER LICENSING.—No State other than an in-
19 sured’s home State may require a surplus lines broker to
20 be licensed in order to sell, solicit, or negotiate non-
21 admitted insurance with respect to such insured.

22 (c) ENFORCEMENT PROVISION.—With respect to sec-
23 tion 521 and subsections (a) and (b) of this section, any
24 law, regulation, provision, or action of any State that ap-
25 plies or purports to apply to nonadmitted insurance sold

1 to, solicited by, or negotiated with an insured whose home
2 State is another State shall be preempted with respect to
3 such application.

4 (d) WORKERS' COMPENSATION EXCEPTION.—This
5 section may not be construed to preempt any State law,
6 rule, or regulation that restricts the placement of workers'
7 compensation insurance or excess insurance for self-fund-
8 ed workers' compensation plans with a nonadmitted in-
9 surer.

10 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**
11 **BASE.**

12 After the expiration of the 2-year period beginning
13 on the date of the enactment of this subtitle, a State may
14 not collect any fees relating to licensing of an individual
15 or entity as a surplus lines broker in the State unless the
16 State has in effect at such time laws or regulations that
17 provide for participation by the State in the national in-
18 surance producer database of the NAIC, or any other
19 equivalent uniform national database, for the licensure of
20 surplus lines brokers and the renewal of such licenses.

21 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
22 **GIBILITY.**

23 A State may not—

24 (1) impose eligibility requirements on, or other-
25 wise establish eligibility criteria for, nonadmitted in-

1 surers domiciled in a United States jurisdiction, ex-
2 cept in conformance with such requirements and cri-
3 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
4 mitted Insurance Model Act, unless the State has
5 adopted nationwide uniform requirements, forms,
6 and procedures developed in accordance with section
7 521(b) of this subtitle that include alternative na-
8 tionwide uniform eligibility requirements; or

9 (2) prohibit a surplus lines broker from placing
10 nonadmitted insurance with, or procuring non-
11 admitted insurance from, a nonadmitted insurer
12 domiciled outside the United States that is listed on
13 the Quarterly Listing of Alien Insurers maintained
14 by the International Insurers Department of the
15 NAIC.

16 **SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL**
17 **PURCHASERS.**

18 A surplus lines broker seeking to procure or place
19 nonadmitted insurance in a State for an exempt commer-
20 cial purchaser shall not be required to satisfy any State
21 requirement to make a due diligence search to determine
22 whether the full amount or type of insurance sought by
23 such exempt commercial purchaser can be obtained from
24 admitted insurers if—

1 (1) the broker procuring or placing the surplus
2 lines insurance has disclosed to the exempt commer-
3 cial purchaser that such insurance may or may not
4 be available from the admitted market that may pro-
5 vide greater protection with more regulatory over-
6 sight; and

7 (2) the exempt commercial purchaser has sub-
8 sequently requested in writing the broker to procure
9 or place such insurance from a nonadmitted insurer.

10 **SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MAR-**
11 **KET.**

12 (a) IN GENERAL.—The Comptroller General of the
13 United States shall conduct a study of the nonadmitted
14 insurance market to determine the effect of the enactment
15 of this part on the size and market share of the non-
16 admitted insurance market for providing coverage typi-
17 cally provided by the admitted insurance market.

18 (b) CONTENTS.—The study shall determine and ana-
19 lyze—

20 (1) the change in the size and market share of
21 the nonadmitted insurance market and in the num-
22 ber of insurance companies and insurance holding
23 companies providing such business in the 18-month
24 period that begins upon the effective date of this
25 subtitle;

1 (2) the extent to which insurance coverage typi-
2 cally provided by the admitted insurance market has
3 shifted to the nonadmitted insurance market;

4 (3) the consequences of any change in the size
5 and market share of the nonadmitted insurance
6 market, including differences in the price and avail-
7 ability of coverage available in both the admitted
8 and nonadmitted insurance markets;

9 (4) the extent to which insurance companies
10 and insurance holding companies that provide both
11 admitted and nonadmitted insurance have experi-
12 enced shifts in the volume of business between ad-
13 mitted and nonadmitted insurance; and

14 (5) the extent to which there has been a change
15 in the number of individuals who have nonadmitted
16 insurance policies, the type of coverage provided
17 under such policies, and whether such coverage is
18 available in the admitted insurance market.

19 (c) CONSULTATION WITH NAIC.—In conducting the
20 study under this section, the Comptroller General shall
21 consult with the NAIC.

22 (d) REPORT.—The Comptroller General shall com-
23 plete the study under this section and submit a report 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 regarding the findings of
2 the study not later than 30 months after the effective date
3 of this subtitle.

4 **SEC. 527. DEFINITIONS.**

5 For purposes of this part, the following definitions
6 shall apply:

7 (1) ADMITTED INSURER.—The term “admitted
8 insurer” means, with respect to a State, an insurer
9 licensed to engage in the business of insurance in
10 such State.

11 (2) AFFILIATE.—The term “affiliate” means,
12 with respect to an insured, any entity that controls,
13 is controlled by, or is under common control with the
14 insured.

15 (3) AFFILIATED GROUP.—The term “affiliated
16 group” means any group of entities that are all af-
17 filiated.

18 (4) CONTROL.—An entity has “control” over
19 another entity if—

20 (A) the entity directly or indirectly or act-
21 ing through 1 or more other persons owns, con-
22 trols, or has the power to vote 25 percent or
23 more of any class of voting securities of the
24 other entity; or

1 (B) the entity controls in any manner the
2 election of a majority of the directors or trust-
3 ees of the other entity.

4 (5) EXEMPT COMMERCIAL PURCHASER.—The
5 term “exempt commercial purchaser” means any
6 person purchasing commercial insurance that, at the
7 time of placement, meets the following requirements:

8 (A) The person employs or retains a quali-
9 fied risk manager to negotiate insurance cov-
10 erage.

11 (B) The person has paid aggregate nation-
12 wide commercial property and casualty insur-
13 ance premiums in excess of \$100,000 in the im-
14 mediately preceding 12 months.

15 (C)(i) The person meets at least 1 of the
16 following criteria:

17 (I) The person possesses a net worth
18 in excess of \$20,000,000, as such amount
19 is adjusted pursuant to clause (ii).

20 (II) The person generates annual rev-
21 enues in excess of \$50,000,000, as such
22 amount is adjusted pursuant to clause (ii).

23 (III) The person employs more than
24 500 full-time or full-time equivalent em-
25 ployees per individual insured or is a mem-

1 ber of an affiliated group employing more
2 than 1,000 employees in the aggregate.

3 (IV) The person is a not-for-profit or-
4 ganization or public entity generating an-
5 nual budgeted expenditures of at least
6 \$30,000,000, as such amount is adjusted
7 pursuant to clause (ii).

8 (V) The person is a municipality with
9 a population in excess of 50,000 persons.

10 (ii) Effective on the fifth January 1 occur-
11 ring after the date of the enactment of this sub-
12 title and each fifth January 1 occurring there-
13 after, the amounts in subclauses (I), (II), and
14 (IV) of clause (i) shall be adjusted to reflect the
15 percentage change for such 5-year period in the
16 Consumer Price Index for All Urban Con-
17 sumers published by the Bureau of Labor Sta-
18 tistics of the Department of Labor.

19 (6) HOME STATE.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), the term “home State”
22 means, with respect to an insured—

23 (i) the State in which an insured
24 maintains its principal place of business or,

1 in the case of an individual, the individ-
2 ual's principal residence; or

3 (ii) if 100 percent of the insured risk
4 is located out of the State referred to in
5 subparagraph (A), the State to which the
6 greatest percentage of the insured's tax-
7 able premium for that insurance contract
8 is allocated.

9 (B) AFFILIATED GROUPS.—If more than 1
10 insured from an affiliated group are named in-
11 sureds on a single nonadmitted insurance con-
12 tract, the term “home State” means the home
13 State, as determined pursuant to subparagraph
14 (A), of the member of the affiliated group that
15 has the largest percentage of premium attrib-
16 uted to it under such insurance contract.

17 (7) INDEPENDENTLY PROCURED INSURANCE.—
18 The term “independently procured insurance”
19 means insurance procured directly by an insured
20 from a nonadmitted insurer.

21 (8) NAIC.—The term “NAIC” means the Na-
22 tional Association of Insurance Commissioners or
23 any successor entity.

24 (9) NONADMITTED INSURANCE.—The term
25 “nonadmitted insurance” means any property and

1 casualty insurance permitted to be placed directly or
2 through a surplus lines broker with a nonadmitted
3 insurer eligible to accept such insurance.

4 (10) NON-ADMITTED INSURANCE MODEL
5 ACT.—The term “Non-Admitted Insurance Model
6 Act” means the provisions of the Non-Admitted In-
7 surance Model Act, as adopted by the NAIC on Au-
8 gust 3, 1994, and amended on September 30, 1996,
9 December 6, 1997, October 2, 1999, and June 8,
10 2002.

11 (11) NONADMITTED INSURER.—The term
12 “nonadmitted insurer”—

13 (A) means, with respect to a State, an in-
14 surer not licensed to engage in the business of
15 insurance in such State; but

16 (B) does not include a risk retention
17 group, as that term is defined in section 2(a)(4)
18 of the Liability Risk Retention Act of 1986 (15
19 U.S.C. 3901(a)(4)).

20 (12) QUALIFIED RISK MANAGER.—The term
21 “qualified risk manager” means, with respect to a
22 policyholder of commercial insurance, a person who
23 meets all of the following requirements:

1 (A) The person is an employee of, or third
2 party consultant retained by, the commercial
3 policyholder.

4 (B) The person provides skilled services in
5 loss prevention, loss reduction, or risk and in-
6 surance coverage analysis, and purchase of in-
7 surance.

8 (C) The person—

9 (i)(I) has a bachelor's degree or high-
10 er from an accredited college or university
11 in risk management, business administra-
12 tion, finance, economics, or any other field
13 determined by a State insurance commis-
14 sioner or other State regulatory official or
15 entity to demonstrate minimum com-
16 petence in risk management; and

17 (II)(aa) has 3 years of experience in
18 risk financing, claims administration, loss
19 prevention, risk and insurance analysis, or
20 purchasing commercial lines of insurance;
21 or

22 (bb) has 1 of the following designa-
23 tions:

24 (AA) a designation as a Char-
25 tered Property and Casualty Under-

1 writer (in this subparagraph referred
2 to as “CPCU”) issued by the Amer-
3 ican Institute for CPCU/Insurance In-
4 stitute of America;

5 (BB) a designation as an Asso-
6 ciate in Risk Management (ARM)
7 issued by the American Institute for
8 CPCU/Insurance Institute of America;

9 (CC) a designation as Certified
10 Risk Manager (CRM) issued by the
11 National Alliance for Insurance Edu-
12 cation & Research;

13 (DD) a designation as a RIMS
14 Fellow (RF) issued by the Global Risk
15 Management Institute; or

16 (EE) any other designation, cer-
17 tification, or license determined by a
18 State insurance commissioner or other
19 State insurance regulatory official or
20 entity to demonstrate minimum com-
21 petency in risk management;

22 (ii)(I) has at least 7 years of experi-
23 ence in risk financing, claims administra-
24 tion, loss prevention, risk and insurance

1 coverage analysis, or purchasing commer-
2 cial lines of insurance; and

3 (II) has any 1 of the designations
4 specified in subitems (AA) through (EE)
5 of clause (i)(II)(bb);

6 (iii) has at least 10 years of experi-
7 ence in risk financing, claims administra-
8 tion, loss prevention, risk and insurance
9 coverage analysis, or purchasing commer-
10 cial lines of insurance; or

11 (iv) has a graduate degree from an
12 accredited college or university in risk
13 management, business administration, fi-
14 nance, economics, or any other field deter-
15 mined by a State insurance commissioner
16 or other State regulatory official or entity
17 to demonstrate minimum competence in
18 risk management.

19 (13) PREMIUM TAX.—The term “premium tax”
20 means, with respect to surplus lines or independently
21 procured insurance coverage, any tax, fee, assess-
22 ment, or other charge imposed by a government en-
23 tity directly or indirectly based on any payment
24 made as consideration for an insurance contract for
25 such insurance, including premium deposits, assess-

1 ments, registration fees, and any other compensation
2 given in consideration for a contract of insurance.

3 (14) SURPLUS LINES BROKER.—The term “sur-
4 plus lines broker” means an individual, firm, or cor-
5 poration which is licensed in a State to sell, solicit,
6 or negotiate insurance on properties, risks, or expo-
7 sures located or to be performed in a State with
8 nonadmitted insurers.

9 **PART II—REINSURANCE**

10 **SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND** 11 **REINSURANCE AGREEMENTS.**

12 (a) CREDIT FOR REINSURANCE.—If the State of
13 domicile of a ceding insurer is an NAIC-accredited State,
14 or has financial solvency requirements substantially simi-
15 lar to the requirements necessary for NAIC accreditation,
16 and recognizes credit for reinsurance for the insurer’s
17 ceded risk, then no other State may deny such credit for
18 reinsurance.

19 (b) ADDITIONAL PREEMPTION OF
20 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
21 addition to the application of subsection (a), all laws, regu-
22 lations, provisions, or other actions of a State that is not
23 the domiciliary State of the ceding insurer, except those
24 with respect to taxes and assessments on insurance com-

1 panies or insurance income, are preempted to the extent
2 that they—

3 (1) restrict or eliminate the rights of the ceding
4 insurer or the assuming insurer to resolve disputes
5 pursuant to contractual arbitration to the extent
6 such contractual provision is not inconsistent with
7 the provisions of title 9, United States Code;

8 (2) require that a certain State’s law shall gov-
9 ern the reinsurance contract, disputes arising from
10 the reinsurance contract, or requirements of the re-
11 insurance contract;

12 (3) attempt to enforce a reinsurance contract
13 on terms different than those set forth in the rein-
14 surance contract, to the extent that the terms are
15 not inconsistent with this part; or

16 (4) otherwise apply the laws of the State to re-
17 insurance agreements of ceding insurers not domi-
18 ciled in that State.

19 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

20 (a) DOMICILIARY STATE REGULATION.—If the State
21 of domicile of a reinsurer is an NAIC-accredited State or
22 has financial solvency requirements substantially similar
23 to the requirements necessary for NAIC accreditation,
24 such State shall be solely responsible for regulating the
25 financial solvency of the reinsurer.

1 (b) NONDOMICILIARY STATES.—

2 (1) LIMITATION ON FINANCIAL INFORMATION
3 REQUIREMENTS.—If the State of domicile of a rein-
4 surer is an NAIC-accredited State or has financial
5 solvency requirements substantially similar to the re-
6 quirements necessary for NAIC accreditation, no
7 other State may require the reinsurer to provide any
8 additional financial information other than the infor-
9 mation the reinsurer is required to file with its
10 domiciliary State.

11 (2) RECEIPT OF INFORMATION.—No provision
12 of this section shall be construed as preventing or
13 prohibiting a State that is not the State of domicile
14 of a reinsurer from receiving a copy of any financial
15 statement filed with its domiciliary State.

16 **SEC. 533. DEFINITIONS.**

17 For purposes of this part, the following definitions
18 shall apply:

19 (1) CEDING INSURER.—The term “ceding in-
20 surer” means an insurer that purchases reinsurance.

21 (2) DOMICILIARY STATE.—The terms “State of
22 domicile” and “domiciliary State” mean, with re-
23 spect to an insurer or reinsurer, the State in which
24 the insurer or reinsurer is incorporated or entered
25 through, and licensed.

1 (3) REINSURANCE.—The term “reinsurance”
2 means the assumption by an insurer of all or part
3 of a risk undertaken originally by another insurer.

4 (4) REINSURER.—

5 (A) IN GENERAL.—The term “reinsurer”
6 means an insurer to the extent that the in-
7 surer—

8 (i) is principally engaged in the busi-
9 ness of reinsurance;

10 (ii) does not conduct significant
11 amounts of direct insurance as a percent-
12 age of its net premiums; and

13 (iii) is not engaged in an ongoing
14 basis in the business of soliciting direct in-
15 surance.

16 (B) DETERMINATION.—A determination of
17 whether an insurer is a reinsurer shall be made
18 under the laws of the State of domicile in ac-
19 cordance with this paragraph.

20 **PART III—RULE OF CONSTRUCTION**

21 **SEC. 541. RULE OF CONSTRUCTION.**

22 Nothing in this subtitle or the amendments made by
23 this subtitle shall be construed to modify, impair, or super-
24 sede the application of the antitrust laws. Any implied or
25 actual conflict between this subtitle and any amendments

1 to this subtitle and the antitrust laws shall be resolved
2 in favor of the operation of the antitrust laws.

3 **SEC. 542. SEVERABILITY.**

4 If any section or subsection of this subtitle, or any
5 application of such provision to any person or cir-
6 cumstance, is held to be unconstitutional, the remainder
7 of this subtitle, and the application of the provision to any
8 other person or circumstance, shall not be affected.

9 **TITLE VI—IMPROVEMENTS TO**
10 **REGULATION OF BANK AND**
11 **SAVINGS ASSOCIATION HOLD-**
12 **ING COMPANIES AND DEPOSI-**
13 **TORY INSTITUTIONS**

14 **SEC. 601. SHORT TITLE.**

15 This title may be cited as the “Bank and Savings
16 Association Holding Company and Depository Institution
17 Regulatory Improvements Act of 2010”.

18 **SEC. 602. DEFINITION.**

19 For purposes of this title, a company is a “commer-
20 cial firm” if the annual gross revenues derived by the com-
21 pany and all of its affiliates from activities that are finan-
22 cial in nature (as defined in section 4(k) of the Bank
23 Holding Company Act of 1956 (12 U.S.C. 1843(k))) and,
24 if applicable, from the ownership or control of one or more
25 insured depository institutions, represent less than 15 per-

1 cent of the consolidated annual gross revenues of the com-
2 pany.

3 **SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF**
4 **CREDIT CARD BANKS, INDUSTRIAL LOAN**
5 **COMPANIES, AND CERTAIN OTHER COMPA-**
6 **NIES UNDER THE BANK HOLDING COMPANY**
7 **ACT OF 1956.**

8 (a) MORATORIUM.—

9 (1) DEFINITIONS.—In this subsection—

10 (A) the term “credit card bank” means an
11 institution described in section 2(c)(2)(F) of the
12 Bank Holding Company Act of 1956 (12
13 U.S.C. 1841(c)(2)(F));

14 (B) the term “industrial bank” means an
15 institution described in section 2(c)(2)(H) of
16 the Bank Holding Company Act of 1956 (12
17 U.S.C. 1841(c)(2)(H)); and

18 (C) the term “trust bank” means an insti-
19 tution described in section 2(c)(2)(D) of the
20 Bank Holding Company Act of 1956 (12
21 U.S.C. 1841(c)(2)(D)).

22 (2) MORATORIUM ON PROVISION OF DEPOSIT
23 INSURANCE.—The Corporation may not approve an
24 application for deposit insurance under section 5 of
25 the Federal Deposit Insurance Act (12 U.S.C. 1815)

1 that is received after November 23, 2009, for an in-
2 dustrial bank, a credit card bank, or a trust bank
3 that is directly or indirectly owned or controlled by
4 a commercial firm.

5 (3) CHANGE IN CONTROL.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), the appropriate Federal
8 banking agency shall disapprove a change in
9 control, as provided in section 7(j) of the Fed-
10 eral Deposit Insurance Act (12 U.S.C. 1817(j)),
11 of an industrial bank, a credit card bank, or a
12 trust bank if the change in control would result
13 in direct or indirect control of the industrial
14 bank, credit card bank, or trust bank by a com-
15 mercial firm.

16 (B) EXCEPTIONS.—Subparagraph (A)
17 shall not apply to a change in control of an in-
18 dustrial bank, credit card bank, or trust bank
19 that—

20 (i) is in danger of default, as deter-
21 mined by the appropriate Federal banking
22 agency; or

23 (ii) results from the merger or whole
24 acquisition of a commercial firm that di-
25 rectly or indirectly controls the industrial

1 bank, credit card bank, or trust bank in a
2 bona fide merger with or acquisition by an-
3 other commercial firm, as determined by
4 the appropriate Federal banking agency.

5 (4) SUNSET.—This subsection shall cease to
6 have effect 3 years after the date of enactment of
7 this Act.

8 (b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
9 OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY
10 ACT OF 1956.—

11 (1) STUDY REQUIRED.—The Comptroller Gen-
12 eral of the United States shall carry out a study to
13 determine whether it is necessary, in order to
14 strengthen the safety and soundness of institutions
15 or the stability of the financial system, to eliminate
16 the exceptions under section 2 of the Bank Holding
17 Company Act of 1956 (12 U.S.C. 1841) for institu-
18 tions described in—

19 (A) section 2(a)(5)(E) of the Bank Hold-
20 ing Company Act of 1956 (12 U.S.C.
21 1841(a)(5)(E));

22 (B) section 2(a)(5)(F) of the Bank Hold-
23 ing Company Act of 1956 (12 U.S.C.
24 1841(a)(5)(F));

1 (C) section 2(c)(2)(D) of the Bank Hold-
2 ing Company Act of 1956 (12 U.S.C.
3 1841(c)(2)(D));

4 (D) section 2(c)(2)(F) of the Bank Hold-
5 ing Company Act of 1956 (12 U.S.C.
6 1841(c)(2)(F));

7 (E) section 2(c)(2)(H) of the Bank Hold-
8 ing Company Act of 1956 (12 U.S.C.
9 1841(c)(2)(H)); and

10 (F) section 2(c)(2)(B) of the Bank Hold-
11 ing Company Act of 1956 (12 U.S.C.
12 1841(c)(2)(B)).

13 (2) CONTENT OF STUDY.—

14 (A) IN GENERAL.—The study required
15 under paragraph (1), with respect to the insti-
16 tutions referenced in each of subparagraphs (A)
17 through (E) of paragraph (1), shall, to the ex-
18 tent feasible be based on information provided
19 to the Comptroller General by the appropriate
20 Federal or State regulator, and shall—

21 (i) identify the types and number of
22 institutions excepted from section 2 of the
23 Bank Holding Company Act of 1956 (12
24 U.S.C. 1841) under each of the subpara-

1 graphs described in subparagraphs (A)
2 through (E) of paragraph (1);

3 (ii) generally describe the size and ge-
4 ographic locations of the institutions de-
5 scribed in clause (i);

6 (iii) determine the extent to which the
7 institutions described in clause (i) are held
8 by holding companies that are commercial
9 firms;

10 (iv) determine whether the institutions
11 described in clause (i) have any affiliates
12 that are commercial firms;

13 (v) identify the Federal banking agen-
14 cy responsible for the supervision of the in-
15 stitutions 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
6 and allocation of credit, the stability of the
7 financial system and the economy, the safe
8 and sound operation of each category of
9 institution, and the impact on the types of
10 activities in which such institutions, and
11 the holding companies of such institutions,
12 may engage.

13 (B) SAVINGS ASSOCIATIONS.—With respect
14 to institutions described in paragraph (1)(F),
15 the study required under paragraph (1) shall—

16 (i) determine the adequacy of the
17 Federal bank regulatory framework appli-
18 cable to such institutions, including any re-
19 strictions (including limitations on affiliate
20 transactions or cross-marketing) that apply
21 to transactions between an institution, the
22 holding company of the institution, and
23 any other affiliate of the institution; and

24 (ii) evaluate the potential con-
25 sequences of subjecting the institutions de-

1 scribed in paragraph (1)(F) to the require-
2 ments of the Bank Holding Company Act
3 of 1956, including with respect to the
4 availability and allocation of credit, the
5 stability of the financial system and the
6 economy, the safe and sound operation of
7 such institutions, and the impact on the
8 types of activities in which such institu-
9 tions, and the holding companies of such
10 institutions, may engage.

11 (3) REPORT.—Not later than 18 months after
12 the date of enactment of this Act, the Comptroller
13 General shall submit to the Committee on Banking,
14 Housing, and Urban Affairs of the Senate and the
15 Committee on Financial Services of the House of
16 Representatives a report on the study required
17 under paragraph (1).

18 **SEC. 604. REPORTS AND EXAMINATIONS OF HOLDING COM-**
19 **PANIES; REGULATION OF FUNCTIONALLY**
20 **REGULATED SUBSIDIARIES.**

21 (a) REPORTS BY BANK HOLDING COMPANIES.—Sec-
22 tions 5(c)(1) of the Bank Holding Company Act of 1956
23 (12 U.S.C. 1844(c)(1)) is amended—

24 (1) by striking subparagraph (B) and inserting
25 the following:

1 “(B) USE OF EXISTING REPORTS AND
2 OTHER SUPERVISORY INFORMATION.—The
3 Board shall, to the fullest extent possible, use—

4 “(i) reports and other supervisory in-
5 formation that the bank holding company
6 or any subsidiary thereof has been required
7 to provide to other Federal or State regu-
8 latory agencies;

9 “(ii) externally audited financial state-
10 ments of the bank holding company or
11 subsidiary;

12 “(iii) information otherwise available
13 from Federal or State regulatory agencies;
14 and

15 “(iv) information that is otherwise re-
16 quired to be reported publicly.”; and

17 (2) by adding at the end the following:

18 “(C) AVAILABILITY.—Upon the request of
19 the Board, the bank holding company or a sub-
20 sidiary of the bank holding company shall
21 promptly provide to the Board any information
22 described in clauses (i) through (iii) of subpara-
23 graph (B).”.

24 (b) EXAMINATIONS OF BANK HOLDING COMPA-
25 NIES.—Section 5(c)(2) of the Bank Holding Company Act

1 of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as
2 follows:

3 “(2) EXAMINATIONS.—

4 “(A) IN GENERAL.—The Board may make
5 examinations of a bank holding company and
6 each subsidiary of a bank holding company in
7 order to—

8 “(i) inform the Board of—

9 “(I) the nature of the operations
10 and financial condition of the bank
11 holding company and the subsidiary;

12 “(II) the financial, operational,
13 and other risks within the bank hold-
14 ing company system that may pose a
15 threat to—

16 “(aa) the safety and sound-
17 ness of the bank holding com-
18 pany or of any depository institu-
19 tion subsidiary of the bank hold-
20 ing company; or

21 “(bb) the stability of the fi-
22 nancial system of the United
23 States; and

24 “(III) the systems of the bank
25 holding company for monitoring and

1 controlling the risks described in sub-
2 clause (II); and

3 “(ii) monitor the compliance of the
4 bank holding company and the subsidiary
5 with this Act and any other applicable pro-
6 visions of Federal law.

7 “(B) USE OF REPORTS TO REDUCE EXAMI-
8 NATIONS.—For purposes of this paragraph, the
9 Board shall, to the fullest extent possible, rely
10 on—

11 “(i) examination reports made by
12 other Federal or State regulatory agencies
13 relating to a bank holding company and
14 any subsidiary of a bank holding company;
15 and

16 “(ii) the reports and other informa-
17 tion required under paragraph (1).

18 “(C) COORDINATION WITH OTHER REGU-
19 LATORS.—The Board shall—

20 “(i) provide reasonable notice to, and
21 consult with, the appropriate Federal
22 banking agency or State regulatory agency
23 of a subsidiary that is a depository institu-
24 tion or a functionally regulated subsidiary
25 of a bank holding company before com-

1 mencing an examination of the subsidiary
2 under this section; and

3 “(ii) to the fullest extent possible,
4 avoid duplication of examination activities,
5 reporting requirements, and requests for
6 information.”.

7 (c) **AUTHORITY TO REGULATE FUNCTIONALLY REG-**
8 **ULATED SUBSIDIARIES OF BANK HOLDING COMPA-**
9 **NIES.**—The Bank Holding Company Act of 1956 (12
10 U.S.C. 1841 et seq.) is amended—

11 (1) in section 5(c) (12 U.S.C. 1844(c)), by
12 striking paragraph (3) and inserting the following:

13 “(3) [Reserved]”; and

14 (2) by striking section 10A (12 U.S.C. 1848a).

15 (d) **ACQUISITIONS OF BANKS.**—Section 3(c) of the
16 Bank Holding Company Act of 1956 (12 U.S.C. 1842(c))
17 is amended by adding at the end the following:

18 “(7) **FINANCIAL STABILITY.**—In every case, the
19 Board shall take into consideration the extent to
20 which a proposed acquisition, merger, or consolida-
21 tion would result in greater or more concentrated
22 risks to the stability of the United States banking or
23 financial system.”.

24 (e) **ACQUISITIONS OF NONBANKS.**—

1 (1) NOTICE PROCEDURES.—Section 4(j)(2)(A)
2 of the Bank Holding Company Act of 1956 (12
3 U.S.C. 1843(j)(2)(A)) is amended by striking “or
4 unsound banking practices” and inserting “unsound
5 banking practices, or risk to the stability of the
6 United States banking or financial system”.

7 (2) ACTIVITIES THAT ARE FINANCIAL IN NA-
8 TURE.—Section 4(k)(6)(B) of the Bank Holding
9 Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)) is
10 amended to read as follows:

11 “(B) APPROVAL NOT REQUIRED FOR CER-
12 TAIN FINANCIAL ACTIVITIES.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in subsection (j) with regard to the
15 acquisition of a savings association and
16 clause (ii), a financial holding company
17 may commence any activity, or acquire any
18 company, pursuant to paragraph (4) or
19 any regulation prescribed or order issued
20 under paragraph (5), without prior ap-
21 proval of the Board.

22 “(ii) EXCEPTION.—A financial hold-
23 ing company may not acquire a company,
24 without the prior approval of the Board, in
25 a transaction in which the total consoli-

1 “(B) USE OF EXISTING REPORTS AND
2 OTHER SUPERVISORY INFORMATION.—The
3 Board shall, to the fullest extent possible, use—

4 “(i) reports and other supervisory in-
5 formation that the savings and loan hold-
6 ing company or any subsidiary thereof has
7 been required to provide to other Federal
8 or State regulatory agencies;

9 “(ii) externally audited financial state-
10 ments of the savings and loan holding com-
11 pany or subsidiary;

12 “(iii) information that is otherwise
13 available from Federal or State regulatory
14 agencies; and

15 “(iv) information that is otherwise re-
16 quired to be reported publicly.

17 “(C) AVAILABILITY.—Upon the request of
18 the Board, a savings and loan holding company
19 or a subsidiary of a savings and loan holding
20 company shall promptly provide to the Board
21 any information described in clauses (i) through
22 (iii) of subparagraph (B).”.

23 (h) EXAMINATION OF SAVINGS AND LOAN HOLDING
24 COMPANIES.—

1 (1) DEFINITIONS.—Section 2 of the Home
2 Owners’ Loan Act (12 U.S.C. 1462) is amended by
3 adding at the end the following:

4 “(10) APPROPRIATE FEDERAL BANKING AGEN-
5 CY.—The term ‘appropriate Federal banking agency’
6 has the same meaning as in section 3(q) of the Fed-
7 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

8 “(11) 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 (2) EXAMINATION.—Section 10(b) of the Home
14 Owners’ Loan Act (12 U.S.C. 1467a(b)) is amended
15 by striking paragraph (4) and inserting the fol-
16 lowing:

17 “(4) EXAMINATIONS.—

18 “(A) IN GENERAL.—The Board may make
19 examinations of a savings and loan holding
20 company and each subsidiary of a savings and
21 loan holding company system, in order to—

22 “(i) inform the Board of—

23 “(I) the nature of the operations
24 and financial condition of the savings

1 and loan holding company and the
2 subsidiary;

3 “(II) the financial, operational,
4 and other risks within the savings and
5 loan holding company system that
6 may pose a threat to—

7 “(aa) the safety and sound-
8 ness of the savings and loan
9 holding company or of any depos-
10 itory institution subsidiary of the
11 savings and loan holding com-
12 pany; or

13 “(bb) the stability of the fi-
14 nancial system of the United
15 States; and

16 “(III) the systems of the savings
17 and loan holding company for moni-
18 toring and controlling the risks de-
19 scribed in subclause (II); and

20 “(ii) monitor the compliance of the
21 savings and loan holding company and the
22 subsidiary with this Act and any other ap-
23 plicable provisions of Federal law.

24 “(B) USE OF REPORTS TO REDUCE EXAMI-
25 NATIONS.—For purposes of this subsection, the

1 Board shall, to the fullest extent possible, rely
2 on—

3 “(i) the examination reports made by
4 other Federal or State regulatory agencies
5 relating to a savings and loan holding com-
6 pany and any subsidiary; and

7 “(ii) the reports and other informa-
8 tion required under paragraph (2).

9 “(C) COORDINATION WITH OTHER REGU-
10 LATORS.—The Board shall—

11 “(i) provide reasonable notice to, and
12 consult with, the appropriate Federal
13 banking agency or State regulatory agency
14 of a subsidiary that is a depository institu-
15 tion or a functionally regulated subsidiary
16 of a savings and loan holding company be-
17 fore commencing an examination of the
18 subsidiary under this section; and

19 “(ii) to the fullest extent possible,
20 avoid duplication of examination activities,
21 reporting requirements, and requests for
22 information.”.

23 (i) DEFINITION OF THE TERM “SAVINGS AND LOAN
24 HOLDING COMPANY”.—Section 10(a)(1)(D)(ii) of the

1 Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)(ii))

2 is amended to read as follows:

3 “(ii) EXCLUSION.—The term ‘savings
4 and loan holding company’ does not in-
5 clude—

6 “(I) a bank holding company
7 that is registered under, and subject
8 to, the Bank Holding Company Act of
9 1956 (12 U.S.C. 1841 et seq.), or to
10 any company directly or indirectly
11 controlled by such company (other
12 than a savings association); or

13 “(II) a company that controls a
14 savings association that functions
15 solely in a trust or fiduciary capacity
16 as described in section 2(c)(2)(D) of
17 the Bank Holding Company Act of
18 1956 (12 U.S.C. 1841(c)(2)(D)).”.

19 (j) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect on the transfer date.

1 **SEC. 605. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**
2 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**
3 **TION SUBSIDIARIES OF HOLDING COMPA-**
4 **NIES.**

5 Section 6 of the Bank Holding Company Act of 1956
6 (12 U.S.C. 1845) is amended to read as follows:

7 **“SEC. 6. ASSURING CONSISTENT OVERSIGHT OF PERMIS-**
8 **SIBLE ACTIVITIES OF DEPOSITORY INSTITU-**
9 **TION SUBSIDIARIES OF HOLDING COMPA-**
10 **NIES.**

11 “(a) DEFINITIONS.—

12 “(1) DEFINITIONS.—In this section—

13 “(A) the terms ‘depository institution hold-
14 ing company’, ‘Federal depository institution’,
15 ‘State member bank’, ‘State nonmember bank’,
16 and ‘State savings association’ have the same
17 meanings as in section 3(w) of the Federal De-
18 posit Insurance Act (12 U.S.C. 1813(w));

19 “(B) the term ‘functionally regulated sub-
20 sidiary’ has the same meaning as in section
21 5(e)(5); and

22 “(C) the term ‘lead Federal banking agen-
23 cy’ means—

24 “(i) the Board, in the case of any de-
25 pository institution holding company hav-
26 ing—

1 consolidated assets of all subsidiaries that
2 are Federal depository institutions ex-
3 ceed the total consolidated assets of
4 all subsidiaries that are State banks
5 or State depository institutions; and

6 “(iii) the Federal Deposit Insurance
7 Corporation, in the case of any depository
8 institution holding company having—

9 “(I) a subsidiary that is an in-
10 sured depository institution, if all
11 such insured depository institutions
12 are State nonmember banks or State
13 savings associations; or

14 “(II) a subsidiary that is a Fed-
15 eral depository institution or a State
16 member bank and a subsidiary that is
17 a State nonmember bank or a State
18 savings association, if the total con-
19 solidated assets of all subsidiaries that
20 are State nonmember banks or State
21 savings associations exceed the total
22 consolidated assets of all subsidiaries
23 that are Federal depository institu-
24 tions or State member banks.

25 “(2) DETERMINATION OF TOTAL ASSETS.—

1 “(A) IN GENERAL.—Not later than 180
2 days after the date of enactment of the Restor-
3 ing American Financial Stability Act of 2010,
4 the Board of Governors, the Office of the
5 Comptroller of the Currency, and the Federal
6 Deposit Insurance Corporation, in order to
7 avoid disruptive transfers of regulatory respon-
8 sibility, shall issue joint regulations that speci-
9 fy—

10 “(i) the source of data for deter-
11 mining the total assets of a depository in-
12 stitution for purposes of this section; and

13 “(ii) the interval and frequency at
14 which the total assets of a depository insti-
15 tution will be determined, as provided in
16 subparagraph (B)(ii).

17 “(B) CONTENT.—The regulations issued
18 under subparagraph (A)—

19 “(i) shall use information contained in
20 the reports described in paragraph (3),
21 other regulatory reports, audited financial
22 statements, or other comparable sources;

23 “(ii) shall establish the frequency with
24 which the total assets of depository institu-
25 tions are determined, at an interval that—

1 “(I) avoids undue disruption in
2 regulatory oversight;

3 “(II) facilitates nondisruptive
4 transfers of regulatory responsibility;
5 and

6 “(III) is not shorter than 2
7 years; and

8 “(iii) may provide for more frequent
9 determinations of the total assets of a de-
10 pository institution than are established
11 under clause (ii), to take into account a
12 transaction outside the ordinary course of
13 business, including a merger, acquisition,
14 or other circumstance, as determined joint-
15 ly by the Board of Governors, the Office of
16 the Comptroller of the Currency, and the
17 Federal Deposit Insurance Corporation.

18 “(3) INTERIM PROVISIONS.—Until the date on
19 which final regulations issued under paragraph (2)
20 are effective, for purposes this section, the total as-
21 sets of a depository institution shall be determined
22 by reference to the total assets reported in the most
23 recent Consolidated Report of Income and Condition
24 or Thrift Financial Report (or any successor there-
25 to) filed by the depository institution with the Fed-

1 eral Deposit Insurance Corporation or the Office of
2 Thrift Supervision, as applicable, before the transfer
3 date established under section 311 of the Restoring
4 American Financial Stability Act of 2010.

5 “(b) LEAD AGENCY SUPERVISION.—

6 “(1) IN GENERAL.—The lead Federal banking
7 agency for each depository institution holding com-
8 pany shall make examinations of the activities of
9 each nondepository institution subsidiary (other than
10 a functionally regulated subsidiary) of the depository
11 institution holding company that are permissible for
12 depository institution subsidiaries of the depository
13 institution holding company, to determine whether
14 the activities—

15 “(A) present safety and soundness risks to
16 any depository institution subsidiary of the de-
17 pository institution holding company;

18 “(B) are conducted in accordance with ap-
19 plicable law; and

20 “(C) are subject to appropriate systems for
21 monitoring and controlling the financial, oper-
22 ating, and other risks of the activity and pro-
23 tecting the depository institution subsidiaries of
24 the holding company.

1 “(2) PROCESS FOR EXAMINATION.—An exam-
2 ination under paragraph (1) shall be carried out
3 under the authority of the lead Federal banking
4 agency, as if the nondepository institution subsidiary
5 were an insured depository institution for which the
6 lead Federal banking agency is the appropriate Fed-
7 eral banking agency.

8 “(c) COORDINATION.—The Office of the Comptroller
9 of the Currency and the Federal Deposit Insurance Cor-
10 poration shall each coordinate the supervision of subsidi-
11 aries described in subsection (b) with the supervision by
12 the Board of Governors of the holding companies of the
13 subsidiaries described in subsection (b), in a manner
14 that—

15 “(1) avoids duplication;

16 “(2) shares information relevant to the super-
17 vision of the depository institution holding company
18 by each agency;

19 “(3) achieves the objectives of subsection (b);
20 and

21 “(4) ensures that the depository institution
22 holding company and the subsidiaries of the depository
23 institution holding company are not subject to
24 conflicting supervisory demands by the 2 agencies.

25 “(d) REFERRALS FOR ENFORCEMENT.—

1 “(1) RECOMMENDATION OF ACTION BY BOARD
2 OF GOVERNORS.—The Office of the Comptroller of
3 the Currency or the Federal Deposit Insurance Cor-
4 poration, as lead Federal banking agency for a de-
5 pository institution holding company, based on infor-
6 mation obtained pursuant to the responsibilities of
7 the Office of the Comptroller of the Currency or the
8 Federal Deposit Insurance Corporation, respectively,
9 under subsection (b), may submit to the Board of
10 Governors, in writing, a recommendation that the
11 Board of Governors take enforcement action against
12 a nondepository institution subsidiary (other than a
13 functionally regulated subsidiary) of the depository
14 institution holding company, together with an expla-
15 nation of the concerns giving rise to the rec-
16 ommendation.

17 “(2) BACK-UP AUTHORITY OF THE LEAD FED-
18 ERAL BANKING AGENCY.—If, within the 60-day pe-
19 riod beginning on the date on which the Board of
20 Governors receives a recommendation under para-
21 graph (1), the Board of Governors does not take en-
22 forcement action against a nondepository institution
23 subsidiary or provide a plan for enforcement action
24 that is acceptable to the lead Federal banking agen-
25 cy, the lead Federal banking agency (upon the au-

1 thorization of the Comptroller, or the Federal De-
2 posit Insurance Corporation, upon a vote of its
3 members, as applicable) may take the recommended
4 enforcement action, in the same manner as if the
5 subsidiary were an insured depository institution for
6 which the lead Federal banking agency is the appro-
7 priate Federal banking agency.”.

8 **SEC. 606. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
9 **PANIES TO REMAIN WELL CAPITALIZED AND**
10 **WELL MANAGED.**

11 (a) AMENDMENT.—Section 4(l)(1) of the Bank Hold-
12 ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is
13 amended—

14 (1) in subparagraph (B), by striking “and” at
15 the end;

16 (2) by redesignating subparagraph (C) as sub-
17 paragraph (D);

18 (3) by inserting after subparagraph (B) the fol-
19 lowing:

20 “(C) the bank holding company is well
21 capitalized and well managed; and”;

22 (4) in subparagraph (D)(ii), as so redesignated,
23 by striking “subparagraphs (A) and (B)” and insert-
24 ing “subparagraphs (A), (B), and (C)”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the transfer date.

3 **SEC. 607. STANDARDS FOR INTERSTATE ACQUISITIONS.**

4 (a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of
5 the Bank Holding Company Act of 1956 (12 U.S.C.
6 1842(d)(1)(A)) is amended by striking “adequately cap-
7 italized and adequately managed” and inserting “well cap-
8 italized and well managed”.

9 (b) INTERSTATE BANK MERGERS.—Section
10 44(b)(4)(B) of the Federal Deposit Insurance Act (12
11 U.S.C. 1831u(b)(4)(B)) is amended by striking “will con-
12 tinue to be adequately capitalized and adequately man-
13 aged” and inserting “will be well capitalized and well man-
14 aged”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the transfer date.

17 **SEC. 608. ENHANCING EXISTING RESTRICTIONS ON BANK**
18 **TRANSACTIONS WITH AFFILIATES.**

19 (a) AFFILIATE TRANSACTIONS.—Section 23A of the
20 Federal Reserve Act (12 U.S.C. 371e) is amended—

21 (1) in subsection (b)—

22 (A) in paragraph (1), by striking subpara-
23 graph (D) and inserting the following:

1 “(D) any investment fund with respect to
2 which a member bank or affiliate thereof is an
3 investment adviser; and”;

4 (B) in paragraph (7)—

5 (i) in subparagraph (A), by inserting
6 before the semicolon at the end the fol-
7 lowing: “, including a purchase of assets
8 subject to an agreement to repurchase”;

9 (ii) in subparagraph (C), by striking
10 “, including assets subject to an agreement
11 to repurchase,”;

12 (iii) in subparagraph (D)—

13 (I) by inserting “or other debt
14 obligations” after “acceptance of secu-
15 rities”; and

16 (II) by striking “or” at the end;
17 and

18 (iv) by adding at the end the fol-
19 lowing:

20 “(F) a transaction with an affiliate that
21 involves the borrowing or lending of securities,
22 to the extent that the transaction causes a
23 member bank or a subsidiary to have credit ex-
24 posure to the affiliate; or

1 “(G) a derivative transaction, as defined in
2 paragraph (3) of section 5200(b) of the Revised
3 Statutes of the United States (12 U.S.C.
4 84(b)), with an affiliate, to the extent that the
5 transaction causes a member bank or a sub-
6 sidiary to have credit exposure to the affiliate;”;
7 (2) in subsection (c)—

8 (A) in paragraph (1)—

9 (i) in the matter preceding subpara-
10 graph (A), by striking “subsidiary” and all
11 that follows through “time of the trans-
12 action” and inserting “subsidiary, and any
13 credit exposure of a member bank or a
14 subsidiary to an affiliate resulting from a
15 securities borrowing or lending transaction,
16 or a derivative transaction, shall be se-
17 cured at all times”; and

18 (ii) in each of subparagraphs (A)
19 through (D), by striking “or letter of cred-
20 it” and inserting “letter of credit, or credit
21 exposure”;

22 (B) by striking paragraph (2);

23 (C) by redesignating paragraphs (3)
24 through (5) as paragraphs (2) through (4), re-
25 spectively;

1 (D) in paragraph (2), as so redesignated,
2 by inserting before the period at the end “, or
3 credit exposure to an affiliate resulting from a
4 securities borrowing or lending transaction, or
5 derivative transaction”; and

6 (E) in paragraph (3), as so redesignated—

7 (i) by inserting “or other debt obliga-
8 tions” after “securities”; and

9 (ii) by striking “or guarantee” and all
10 that follows through “behalf of,” and in-
11 sserting “guarantee, acceptance, or letter of
12 credit issued on behalf of, or credit expo-
13 sure from a securities borrowing or lending
14 transaction, or derivative transaction to,”;

15 (3) in subsection (d)(4), in the matter pre-
16 ceding subparagraph (A), by striking “or issuing”
17 and all that follows through “behalf of,” and insert-
18 ing “issuing a guarantee, acceptance, or letter of
19 credit on behalf of, or having credit exposure result-
20 ing from a securities borrowing or lending trans-
21 action, or derivative transaction to,”; and

22 (4) in subsection (f)—

23 (A) in paragraph (2)—

24 (i) by striking “or order”;

1 (ii) by striking “if it finds” and all
2 that follows through the end of the para-
3 graph and inserting the following: “if—

4 “(i) the Board finds the exemption to
5 be in the public interest and consistent
6 with the purposes of this section, and noti-
7 fies the Federal Deposit Insurance Cor-
8 poration of such finding; and

9 “(ii) before the end of the 60-day pe-
10 riod beginning on the date on which the
11 Federal Deposit Insurance Corporation re-
12 ceives notice of the finding under clause
13 (i), the Federal Deposit Insurance Cor-
14 poration does not object, in writing, to the
15 finding, based on a determination that the
16 exemption presents an unacceptable risk to
17 the Deposit Insurance Fund.”;

18 (iii) by striking the Board and insert-
19 ing the following:

20 “(A) IN GENERAL.—The Board”; and

21 (iv) by adding at the end the fol-
22 lowing:

23 “(B) ADDITIONAL EXEMPTIONS.—

24 “(i) NATIONAL BANKS.—The Comp-
25 troller of the Currency may, by order, ex-

1 empt a transaction of a national bank from
2 the requirements of this section if—

3 “(I) the Board and the Office of
4 the Comptroller of the Currency joint-
5 ly find the exemption to be in the
6 public interest and consistent with the
7 purposes of this section and notify the
8 Federal Deposit Insurance Corpora-
9 tion of such finding; and

10 “(II) before the end of the 60-
11 day period beginning on the date on
12 which the Federal Deposit Insurance
13 Corporation receives notice of the
14 finding under subclause (I), the Fed-
15 eral Deposit Insurance Corporation
16 does not object, in writing, to the
17 finding, based on a determination that
18 the exemption presents an unaccept-
19 able risk to the Deposit Insurance
20 Fund.

21 “(ii) STATE BANKS.—The Federal
22 Deposit Insurance Corporation may, by
23 order, exempt a transaction of a State non-
24 member bank, and the Board may, by
25 order, exempt a transaction of a State

1 member bank, from the requirements of
2 this section if—

3 “(I) the Board and the Federal
4 Deposit Insurance Corporation jointly
5 find that the exemption is in the pub-
6 lic interest and consistent with the
7 purposes of this section; and

8 “(II) the Federal Deposit Insur-
9 ance Corporation finds that the ex-
10 emption does not present an unaccept-
11 able risk to the Deposit Insurance
12 Fund.”; and

13 (B) by adding at the end the following:

14 “(4) AMOUNTS OF COVERED TRANSACTIONS.—
15 The Board may issue such regulations or interpreta-
16 tions as the Board determines are necessary or ap-
17 propriate with respect to the manner in which a net-
18 ting agreement may be taken into account in deter-
19 mining the amount of a covered transaction between
20 a member bank or a subsidiary and an affiliate, in-
21 cluding the extent to which netting agreements be-
22 tween a member bank or a subsidiary and an affil-
23 iate may be taken into account in determining
24 whether a covered transaction is fully secured for
25 purposes of subsection (d)(4). An interpretation

1 under this paragraph with respect to a specific mem-
2 ber bank, subsidiary, or affiliate shall be issued
3 jointly with the appropriate Federal banking agency
4 for such member bank, subsidiary, or affiliate.”.

5 (b) TRANSACTIONS WITH AFFILIATES.—Section
6 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e))
7 is amended—

8 (1) by striking the undesignated matter fol-
9 lowing subparagraph (B);

10 (2) by redesignating subparagraphs (A) and
11 (B) as clauses (i) and (ii), respectively, and adjust-
12 ing the clause margins accordingly;

13 (3) by redesignating paragraphs (1) and (2) as
14 subparagraphs (A) and (B), respectively, and adjust-
15 ing the subparagraph margins accordingly;

16 (4) by striking “The Board” and inserting the
17 following:

18 “(1) IN GENERAL.—The Board”;

19 (5) in paragraph (1)(B), as so redesignated—

20 (A) in the matter preceding clause (i), by
21 inserting before “regulations” the following:
22 “subject to paragraph (2), if the Board finds
23 that an exemption or exclusion is in the public
24 interest and is consistent with the purposes of

1 this section, and notifies the Federal Deposit
2 Insurance Corporation of such finding,”; and

3 (B) in clause (ii), by striking the comma at
4 the end and inserting a period; and

5 (6) by adding at the end the following:

6 “(2) EXCEPTION.—The Board may grant an
7 exemption or exclusion under this subsection only if,
8 during the 60-day period beginning on the date of
9 receipt of notice of the finding from the Board
10 under paragraph (1)(B), the Federal Deposit Insur-
11 ance Corporation does not object, in writing, to such
12 exemption or exclusion, based on a determination
13 that the exemption presents an unacceptable risk to
14 the Deposit Insurance Fund.”.

15 (c) HOME OWNERS’ LOAN ACT.—Section 11 of the
16 Home Owners’ Loan Act (12 U.S.C. 1468) is amended
17 by adding at the end the following:

18 “(d) EXEMPTIONS.—

19 “(1) FEDERAL SAVINGS ASSOCIATIONS.—The
20 Comptroller of the Currency may, by order, exempt
21 a transaction of a Federal savings association from
22 the requirements of this section if—

23 “(A) the Board and the Office of the
24 Comptroller of the Currency jointly find the ex-
25 emption to be in the public interest and con-

1 sistent with the purposes of this section and no-
2 tify the Federal Deposit Insurance Corporation
3 of such finding; and

4 “(B) before the end of the 60-day period
5 beginning on the date on which the Federal De-
6 posit Insurance Corporation receives notice of
7 the finding under subparagraph (A), the Fed-
8 eral Deposit Insurance Corporation does not ob-
9 ject, in writing, to the finding, based on a de-
10 termination that the exemption presents an un-
11 acceptable risk to the Deposit Insurance Fund.

12 “(2) STATE SAVINGS ASSOCIATION.—The Fed-
13 eral Deposit Insurance Corporation may, by order,
14 exempt a transaction of a State savings association
15 from the requirements of this section if the Board
16 and the Federal Deposit Insurance Corporation
17 jointly find that—

18 “(A) the exemption is in the public interest
19 and consistent with the purposes of this section;
20 and

21 “(B) the exemption does not present an
22 unacceptable risk to the Deposit Insurance
23 Fund.”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall take effect 1 year after the transfer date.

1 **SEC. 609. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
2 **WITH FINANCIAL SUBSIDIARIES.**

3 (a) AMENDMENT.—Section 23A(e) of the Federal Re-
4 serve Act (12 U.S.C. 371c(e)) is amended—

5 (1) by striking paragraph (3); and

6 (2) by redesignating paragraph (4) as para-
7 graph (3).

8 (b) PROSPECTIVE APPLICATION OF AMENDMENT.—

9 The amendments made by this section shall apply with
10 respect to any covered transaction between a bank and
11 a subsidiary of the bank, as those terms are defined in
12 section 23A of the Federal Reserve Act (12 U.S.C. 371c),
13 that is entered into on or after the date of enactment of
14 this Act.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect 1 year after the transfer date.

17 **SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
18 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
19 **PURCHASE AGREEMENTS, REVERSE REPUR-**
20 **CHASE AGREEMENTS, AND SECURITIES**
21 **LENDING AND BORROWING TRANSACTIONS.**

22 (a) NATIONAL BANKS.—Section 5200(b) of the Re-
23 vised Statutes of the United States (12 U.S.C. 84(b)) is
24 amended—

25 (1) in paragraph (1), by striking “shall in-
26 clude” and all that follows through the end of the

1 paragraph and inserting the following: “shall in-
2 clude—

3 “(A) all direct or indirect advances of
4 funds to a person made on the basis of any ob-
5 ligation of that person to repay the funds or re-
6 payable from specific property pledged by or on
7 behalf of the person;

8 “(B) to the extent specified by the Comp-
9 troller of the Currency, any liability of a na-
10 tional banking association to advance funds to
11 or on behalf of a person pursuant to a contrac-
12 tual commitment; and

13 “(C) any credit exposure to a person aris-
14 ing from a derivative transaction, repurchase
15 agreement, reverse repurchase agreement, secu-
16 rities lending transaction, or securities bor-
17 rowing transaction between the national bank-
18 ing association and the person;”;

19 (2) in paragraph (2), by striking the period at
20 the end and inserting “; and”; and

21 (3) by adding at the end the following:

22 “(3) the term ‘derivative transaction’ includes
23 any transaction that is a contract, agreement, swap,
24 warrant, note, or option that is based, in whole or
25 in part, on the value of, any interest in, or any

1 quantitative measure or the occurrence of any event
2 relating to, one or more commodities, securities, cur-
3 rencies, interest or other rates, indices, or other as-
4 sets.”.

5 (b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the
6 Home Owners’ Loan Act (12 U.S.C. 1464(u)(3)) is
7 amended by striking “Director” each place that term ap-
8 pears and inserting “Comptroller of the Currency”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect 1 year after the transfer date.

11 **SEC. 611. APPLICATION OF NATIONAL BANK LENDING LIM-**
12 **ITS TO INSURED STATE BANKS.**

13 (a) AMENDMENT.—Section 18 of the Federal Deposit
14 Insurance Act (12 U.S.C. 1828) is amended by adding at
15 the end the following:

16 “(y) APPLICATION OF LENDING LIMITS TO INSURED
17 STATE BANKS.—Section 5200 of the Revised Statutes of
18 the United States (12 U.S.C. 84) shall apply to each in-
19 sured State bank, in the same manner and to the same
20 extent as if the insured State bank were a national bank-
21 ing association.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect 1 year after the transfer date.

1 **SEC. 612. RESTRICTION ON CONVERSIONS OF TROUBLED**
2 **BANKS.**

3 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-
4 TION TO A STATE BANK.—The Act entitled “An Act to
5 provide for the conversion of national banking associations
6 into and their merger or consolidation with State banks,
7 and for other purposes.” (12 U.S.C. 214 et seq.) is amend-
8 ed by adding at the end the following:

9 **“SEC. 10. PROHIBITION ON CONVERSION.**

10 “A national banking association may not convert to
11 a State bank or State savings association during any pe-
12 riod in which the national banking association is subject
13 to a cease and desist order (or other formal enforcement
14 order) issued by, or a memorandum of understanding en-
15 tered into with, the Comptroller of the Currency with re-
16 spect to a significant supervisory matter.”.

17 (b) CONVERSION OF A STATE BANK TO A NATIONAL
18 BANK.—Section 5154 of the Revised Statutes of the
19 United States (12 U.S.C. 35) is amended by adding at
20 the end the following: “The Comptroller of the Currency
21 may not approve the conversion of a State bank or State
22 savings association to a national banking association dur-
23 ing any period in which the State bank or State savings
24 association is subject to a cease and desist order (or other
25 formal enforcement order) issued by, or a memorandum
26 of understanding entered into with, a State bank super-

1 visor or the appropriate Federal banking agency with re-
2 spect to a significant supervisory matter.”.

3 (c) CONVERSION OF A FEDERAL SAVINGS ASSOCIA-
4 TION TO A NATIONAL OR STATE BANK OR STATE SAVINGS
5 ASSOCIATION.—Section 5(i) of the Home Owners’ Loan
6 Act (12 U.S.C. 1464(i)) is amended by adding at the end
7 the following:

8 “(6) LIMITATION ON CERTAIN CONVERSIONS BY
9 FEDERAL SAVINGS ASSOCIATIONS.—A Federal sav-
10 ings association may not convert to a national bank
11 or State bank or State savings association during
12 any period in which the Federal savings association
13 is subject to a cease and desist order (or other for-
14 mal enforcement order) issued by, or a memorandum
15 of understanding entered into with, the Office of
16 Thrift Supervision or the Comptroller of the Cur-
17 rency with respect to a significant supervisory mat-
18 ter.”.

19 **SEC. 613. DE NOVO BRANCHING INTO STATES.**

20 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the
21 Revised Statutes of the United States (12 U.S.C.
22 36(g)(1)(A)) is amended to read as follows:

23 “(A) the law of the State in which the
24 branch is located, or is to be located, would per-
25 mit establishment of the branch, if the national

1 bank were a State bank chartered by such
2 State; and”.

3 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)
4 of the Federal Deposit Insurance Act (12 U.S.C.
5 1828(d)(4)(A)(i)) is amended to read as follows:

6 “(i) the law of the State in which the
7 branch is located, or is to be located, would
8 permit establishment of the branch, if the
9 bank were a State bank chartered by such
10 State; and”.

11 **SEC. 614. LENDING LIMITS TO INSIDERS.**

12 (a) EXTENSIONS OF CREDIT.—Section
13 22(h)(9)(D)(i) of the Federal Reserve Act (12 U.S.C.
14 375b(9)(D)(i)) is amended—

15 (1) by striking the period at the end and insert-
16 ing “; or”;

17 (2) by striking “a person” and inserting “the
18 person”;

19 (3) by striking “extends credit by making” and
20 inserting the following: “extends credit to a person
21 by—

22 “(I) making”; and

23 (4) by adding at the end the following:

24 “(II) having credit exposure to
25 the person arising from a derivative

1 transaction (as defined in section
2 5200(b) of the Revised Statutes of the
3 United States (12 U.S.C. 84(b))), re-
4 purchase agreement, reverse repur-
5 chase agreement, securities lending
6 transaction, or securities borrowing
7 transaction between the member bank
8 and the person.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect 1 year after the transfer date.

11 **SEC. 615. LIMITATIONS ON PURCHASES OF ASSETS FROM**
12 **INSIDERS.**

13 (a) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-
14 ANCE ACT.—Section 18 of the Federal Deposit Insurance
15 Act (12 U.S.C. 1828) is amended by adding at the end
16 the following:

17 “(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

18 “(1) IN GENERAL.—An insured depository in-
19 stitution may not purchase an asset from, or sell an
20 asset to, an executive officer, director, or principal
21 shareholder of the insured depository institution, or
22 any related interest of such person (as such terms
23 are defined in section 22(h) of Federal Reserve Act),
24 unless—

1 “(A) the transaction is on market terms;
2 and

3 “(B) if the transaction represents more
4 than 10 percent of the capital stock and surplus
5 of the insured depository institution, the trans-
6 action has been approved in advance by a ma-
7 jority of the members of the board of directors
8 of the insured depository institution who do not
9 have an interest in the transaction.

10 “(2) RULEMAKING.—The Board of Governors
11 of the Federal Reserve System may issue such rules
12 as may be necessary to define terms and to carry
13 out the purposes this subsection. Before proposing
14 or adopting a rule under this paragraph, the Board
15 of Governors of the Federal Reserve System shall
16 consult with the Comptroller of the Currency and
17 the Corporation as to the terms of the rule.”.

18 (b) AMENDMENTS TO THE FEDERAL RESERVE
19 ACT.—Section 22(d) of the Federal Reserve Act (12
20 U.S.C. 375) is amended to read as follows:

21 “(d) [Reserved]”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the transfer date.

1 **SEC. 616. REGULATIONS REGARDING CAPITAL LEVELS OF**
2 **HOLDING COMPANIES.**

3 (a) CAPITAL LEVELS OF BANK HOLDING COMPA-
4 NIES.—Section 5(b) of the Bank Holding Company Act
5 of 1956 (12 U.S.C. 1844(b)) is amended by inserting after
6 “regulations” the following: “(including regulations relat-
7 ing to the capital requirements of bank holding compa-
8 nies)”.

9 (b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLD-
10 ING COMPANIES.—Section 10(g)(1) of the Home Owners’
11 Loan Act (12 U.S.C. 1467a(g)(1)) is amended by insert-
12 ing after “orders” the following: “(including regulations
13 relating to capital requirements for savings and loan hold-
14 ing companies)”.

15 (c) SOURCE OF STRENGTH.—The Federal Deposit
16 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
17 inserting after section 38 (12 U.S.C. 1831o) the following:
18 **“SEC. 38A. SOURCE OF STRENGTH.**

19 “(a) HOLDING COMPANIES.—The appropriate Fed-
20 eral banking agency for a bank holding company or sav-
21 ings and loan holding company shall require the bank
22 holding company or savings and loan holding company to
23 serve as a source of financial strength for any subsidiary
24 of the bank holding company or savings and loan holding
25 company that is a depository institution.

1 “(b) OTHER COMPANIES.—If an insured depository
2 institution is not the subsidiary of a bank holding com-
3 pany or savings and loan holding company, the appro-
4 priate Federal banking agency for the insured depository
5 institution shall require any company that directly or indi-
6 rectly controls the insured depository institution to serve
7 as a source of financial strength for such institution.

8 “(c) REPORTS.—The appropriate Federal banking
9 agency for an insured depository institution described in
10 subsection (b) may, from time to time, require the com-
11 pany, or a company that directly or indirectly controls the
12 insured depository institution to submit a report, under
13 oath, for the purposes of—

14 “(1) assessing the ability of such company to
15 comply with the requirement under subsection (b);
16 and

17 “(2) enforcing the compliance of such company
18 with the requirement under subsection (b).

19 “(d) RULES.—Not later than 1 year after the trans-
20 fer date, as defined in section 311 of the Enhancing Fi-
21 nancial Institution Safety and Soundness Act of 2010, the
22 appropriate Federal banking agencies shall jointly issue
23 final rules to carry out this section.

24 “(e) DEFINITION.—In this section, the term ‘source
25 of financial strength’ means the ability of a company that

1 directly or indirectly owns or controls an insured deposi-
2 tory institution to provide financial assistance to such in-
3 sured depository institution in the event of the financial
4 distress of the insured depository institution.”.

5 (d) **EFFECTIVE DATE.**—The amendments made by
6 this section shall take effect on the transfer date.

7 **SEC. 617. ELIMINATION OF ELECTIVE INVESTMENT BANK**
8 **HOLDING COMPANY FRAMEWORK.**

9 (a) **AMENDMENT.**—Section 17 of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78q) is amended—

11 (1) by striking subsection (i); and

12 (2) by redesignating subsections (j) and (k) as
13 subsections (i) and (j), respectively.

14 (b) **EFFECTIVE DATE.**—The amendments made by
15 this section shall take effect on the transfer date.

16 **SEC. 618. SECURITIES HOLDING COMPANIES.**

17 (a) **DEFINITIONS.**—In this section—

18 (1) the term “associated person of a securities
19 holding company” means a person directly or indi-
20 rectly controlling, controlled by, or under common
21 control with, a securities holding company;

22 (2) the term “foreign bank” has the same
23 meaning as in section 1(b)(7) of the International
24 Banking Act of 1978 (12 U.S.C. 3101(b)(7));

1 (3) the term “insured bank” has the same
2 meaning as in section 3 of the Federal Deposit In-
3 surance Act (12 U.S.C. 1813);

4 (4) the term “securities holding company”—

5 (A) means—

6 (i) a person (other than a natural per-
7 son) that owns or controls 1 or more bro-
8 kers or dealers registered with the Com-
9 mission; and

10 (ii) the associated persons of a person
11 described in clause (i); and

12 (B) does not include a person that is—

13 (i) a nonbank financial company su-
14 pervised by the Board under title I;

15 (ii) an insured bank (other than an
16 institution described in subparagraphs (D),
17 (F), or (H) of section 2(c)(2) of the Bank
18 Holding Company Act of 1956 (12 U.S.C.
19 1841(c)(2))) or a savings association;

20 (iii) an affiliate of an insured bank
21 (other than an institution described in sub-
22 paragraphs (D), (F), or (H) of section
23 2(c)(2) of the Bank Holding Company Act
24 of 1956 (12 U.S.C. 1841(c)(2)) or an affil-
25 iate of a savings association;

1 (iv) a foreign bank, foreign company,
2 or company that is described in section
3 8(a) of the International Banking Act of
4 1978 (12 U.S.C. 3106(a));

5 (v) a foreign bank that controls, di-
6 rectly or indirectly, a corporation chartered
7 under section 25A of the Federal Reserve
8 Act (12 U.S.C. 611 et seq.); or

9 (vi) subject to comprehensive consoli-
10 dated supervision by a foreign regulator;

11 (5) the term “supervised securities holding com-
12 pany” means a securities holding company that is
13 supervised by the Board of Governors under this
14 section; and

15 (6) the terms “affiliate”, “bank”, “bank hold-
16 ing company”, “company”, “control”, “savings asso-
17 ciation”, and “subsidiary” have the same meanings
18 as in section 2 of the Bank Holding Company Act
19 of 1956.

20 (b) SUPERVISION OF A SECURITIES HOLDING COM-
21 PANY NOT HAVING A BANK OR SAVINGS ASSOCIATION
22 AFFILIATE.—

23 (1) IN GENERAL.—A securities holding com-
24 pany that is required by a foreign regulator or provi-
25 sion of foreign law to be subject to comprehensive

1 consolidated supervision may register with the Board
2 of Governors under paragraph (2) to become a su-
3 pervised securities holding company. Any securities
4 holding company filing such a registration shall be
5 supervised in accordance with this section, and shall
6 comply with the rules and orders prescribed by the
7 Board of Governors applicable to supervised securi-
8 ties holding companies.

9 (2) REGISTRATION AS A SUPERVISED SECURI-
10 TIES HOLDING COMPANY.—

11 (A) REGISTRATION.—A securities holding
12 company that elects to be subject to comprehen-
13 sive consolidated supervision shall register by
14 filing with the Board of Governors such infor-
15 mation and documents as the Board of Gov-
16 ernors, by regulation, may prescribe as nec-
17 essary or appropriate in furtherance of the pur-
18 poses of this section.

19 (B) EFFECTIVE DATE.—A securities hold-
20 ing company that registers under subparagraph
21 (A) shall be deemed to be a supervised securi-
22 ties holding company, effective on the date that
23 is 45 days after the date of receipt of the reg-
24 istration information and documents under sub-
25 paragraph (A) by the Board of Governors, or

1 public accounting firm), as the Board
2 of Governors may require; and

3 (II) be provided promptly to the
4 Board of Governors at any time, upon
5 request by the Board of Governors.

6 (ii) CONTENTS.—Records and reports
7 required to be made, furnished, or kept
8 under this paragraph may include—

9 (I) a balance sheet or income
10 statement of the supervised securities
11 holding company or an affiliate of a
12 supervised securities holding company;

13 (II) an assessment of the consoli-
14 dated capital and liquidity of the su-
15 pervised securities holding company;

16 (III) a report by an independent
17 auditor attesting to the compliance of
18 the supervised securities holding com-
19 pany with the internal risk manage-
20 ment and internal control objectives of
21 the supervised securities holding com-
22 pany; and

23 (IV) a report concerning the ex-
24 tent to which the supervised securities
25 holding company or affiliate has com-

1 plied with the provisions of this sec-
2 tion and any regulations prescribed
3 and orders issued under this section.

4 (2) USE OF EXISTING REPORTS.—

5 (A) IN GENERAL.—The Board of Gov-
6 ernors shall, to the fullest extent possible, ac-
7 cept reports in fulfillment of the requirements
8 of this paragraph that a supervised securities
9 holding company or an affiliate of a supervised
10 securities holding company has been required to
11 provide to another regulatory agency or a self-
12 regulatory organization.

13 (B) AVAILABILITY.—A supervised securi-
14 ties holding company or an affiliate of a super-
15 vised securities holding company shall promptly
16 provide to the Board of Governors, at the re-
17 quest of the Board of Governors, any report de-
18 scribed in subparagraph (A), as permitted by
19 law.

20 (3) EXAMINATION AUTHORITY.—

21 (A) FOCUS OF EXAMINATION AUTHOR-
22 ITY.—The Board of Governors may make ex-
23 aminations of any supervised securities holding
24 company and any affiliate of a supervised secu-
25 rities holding company to carry out this sub-

1 section, to prevent evasions thereof, and to
2 monitor compliance by the supervised securities
3 holding company or affiliate with applicable
4 provisions of law.

5 (B) DEFERENCE TO OTHER EXAMINA-
6 TIONS.—For purposes of this subparagraph, the
7 Board of Governors shall, to the fullest extent
8 possible, use the reports of examination made
9 by other appropriate Federal or State regu-
10 latory authorities with respect to any function-
11 ally regulated subsidiary or any institution de-
12 scribed in subparagraph (D), (F), or (H) of
13 section 2(c)(2) of the Bank Holding Company
14 Act of 1956 (12 U.S.C. 1841(c)(2)).

15 (d) CAPITAL AND RISK MANAGEMENT.—

16 (1) IN GENERAL.—The Board of Governors
17 shall, by regulation or order, prescribe capital ade-
18 quacy and other risk management standards for su-
19 pervised securities holding companies that are ap-
20 propriate to protect the safety and soundness of the
21 supervised securities holding companies and address
22 the risks posed to financial stability by supervised
23 securities holding companies.

24 (2) DIFFERENTIATION.—In imposing standards
25 under this subsection, the Board of Governors may

1 differentiate among supervised securities holding
2 companies on an individual basis, or by category,
3 taking into consideration the requirements under
4 paragraph (3).

5 (3) CONTENT.—Any standards imposed on a
6 supervised securities holding company under this
7 subsection shall take into account—

8 (A) the differences among types of busi-
9 ness activities carried out by the supervised se-
10 curities holding company;

11 (B) the amount and nature of the financial
12 assets of the supervised securities holding com-
13 pany;

14 (C) the amount and nature of the liabilities
15 of the supervised securities holding company,
16 including the degree of reliance on short-term
17 funding;

18 (D) the extent and nature of the off-bal-
19 ance sheet exposures of the supervised securi-
20 ties holding company;

21 (E) the extent and nature of the trans-
22 actions and relationships of the supervised secu-
23 rities holding company with other financial
24 companies;

1 (F) the importance of the supervised secu-
2 rities holding company as a source of credit for
3 households, businesses, and State and local gov-
4 ernments, and as a source of liquidity for the
5 financial system; and

6 (G) the nature, scope, and mix of the ac-
7 tivities of the supervised securities holding com-
8 pany.

9 (4) NOTICE.—A capital requirement imposed
10 under this subsection may not take effect earlier
11 than 180 days after the date on which a supervised
12 securities holding company is provided notice of the
13 capital requirement.

14 (e) EXCEPTION FOR INSURED DEPOSITORY INSTITU-
15 TIONS.—No insured depository institution shall be subject
16 to any of the requirements set forth in subsections (c) and
17 (d).

18 (f) OTHER PROVISIONS OF LAW APPLICABLE TO SU-
19 PERVISED SECURITIES HOLDING COMPANIES.—

20 (1) FEDERAL DEPOSIT INSURANCE ACT.—Sub-
21 sections (b), (c) through (s), and (u) of section 8 of
22 the Federal Deposit Insurance Act (12 U.S.C. 1818)
23 shall apply to any supervised securities holding com-
24 pany, and to any subsidiary (other than a bank or
25 an institution described in subparagraph (D), (F),

1 or (H) of section 2(c)(2) of the Bank Holding Com-
2 pany Act of 1956 (12 U.S.C. 1841(c)(2))) of a su-
3 pervised securities holding company, in the same
4 manner as such subsections apply to a bank holding
5 company for which the Board of Governors is the
6 appropriate Federal banking agency. For purposes
7 of applying such subsections to a supervised securi-
8 ties holding company or a subsidiary (other than a
9 bank or an institution described in subparagraph
10 (D), (F), or (H) of section 2(c)(2) of the Bank
11 Holding Company Act of 1956 (12 U.S.C.
12 1841(c)(2))) of a supervised securities holding com-
13 pany, the Board of Governors shall be deemed the
14 appropriate Federal banking agency for the super-
15 vised securities holding company or subsidiary.

16 (2) BANK HOLDING COMPANY ACT OF 1956.—
17 Except as the Board of Governors may otherwise
18 provide by regulation or order, a supervised securi-
19 ties holding company shall be subject to the provi-
20 sions of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1841 et seq.) in the same manner and
22 to the same extent a bank holding company is sub-
23 ject to such provisions, except that a supervised se-
24 curities holding company may not, by reason of this
25 paragraph, be deemed to be a bank holding company

1 for purposes of section 4 of the Bank Holding Com-
2 pany Act of 1956 (12 U.S.C. 1843).

3 **SEC. 619. RESTRICTIONS ON CAPITAL MARKET ACTIVITY BY**
4 **BANKS AND BANK HOLDING COMPANIES.**

5 (a) DEFINITIONS.—In this section—

6 (1) the terms “hedge fund” and “private equity
7 fund” mean a company or other entity that is ex-
8 empt from registration as an investment company
9 pursuant to section 3(c)(1) or 3(c)(7) of the Invest-
10 ment Company Act of 1940 (15 U.S.C. 80a–3(c)(1)
11 or 80a–3(c)(7)), or a similar fund, as jointly deter-
12 mined by the appropriate Federal banking agencies;

13 (2) the term “proprietary trading”—

14 (A) means purchasing or selling, or other-
15 wise acquiring or disposing of, stocks, bonds,
16 options, commodities, derivatives, or other fi-
17 nancial instruments by an insured depository
18 institution, a company that controls, directly or
19 indirectly, an insured depository institution or
20 is treated as a bank holding company for pur-
21 poses of the Bank Holding Company Act of
22 1956 (12 U.S.C. 1841 et seq.), and any sub-
23 sidiary of such institution or company, for the
24 trading book (or such other portfolio as the

1 Federal banking agencies may determine) of
2 such institution, company, or subsidiary; and

3 (B) subject to such restrictions as the Fed-
4 eral banking agencies may determine, does not
5 include purchasing or selling, or otherwise ac-
6 quiring or disposing of, stocks, bonds, options,
7 commodities, derivatives, or other financial in-
8 struments on behalf of a customer, as part of
9 market making activities, or otherwise in con-
10 nection with or in facilitation of customer rela-
11 tionships, including risk-mitigating hedging ac-
12 tivities related to such a purchase, sale, acquisi-
13 tion, or disposal; and

14 (3) the term “sponsoring”, when used with re-
15 spect to a hedge fund or private equity fund,
16 means—

17 (A) serving as a general partner, managing
18 member, or trustee of the fund;

19 (B) in any manner selecting or controlling
20 (or having employees, officers, directors, or
21 agents who constitute) a majority of the direc-
22 tors, trustees, or management of the fund; or

23 (C) sharing with the fund, for corporate,
24 marketing, promotional, or other purposes, the
25 same name or a variation of the same name.

1 (b) PROHIBITION ON PROPRIETARY TRADING.—

2 (1) IN GENERAL.—Subject to the recommenda-
3 tions and modifications of the Council under sub-
4 section (g), and except as provided in paragraph (2)
5 or (3), the appropriate Federal banking agencies
6 shall, through a rulemaking under subsection (g),
7 jointly prohibit proprietary trading by an insured de-
8 pository institution, a company that controls, di-
9 rectly or indirectly, an insured depository institution
10 or is treated as a bank holding company for pur-
11 poses of the Bank Holding Company Act of 1956
12 (12 U.S.C. 1841 et seq.), and any subsidiary of such
13 institution or company.

14 (2) EXCEPTED OBLIGATIONS.—

15 (A) IN GENERAL.—The prohibition under
16 this subsection shall not apply with respect to
17 an investment that is otherwise authorized by
18 Federal law in—

19 (i) obligations of the United States or
20 any agency of the United States, including
21 obligations fully guaranteed as to principal
22 and interest by the United States or an
23 agency of the United States;

24 (ii) obligations, participations, or
25 other instruments of, or issued by, the

1 Government National Mortgage Associa-
2 tion, the Federal National Mortgage Asso-
3 ciation, or the Federal Home Loan Mort-
4 gage Corporation, including obligations
5 fully guaranteed as to principal and inter-
6 est by such entities; and

7 (iii) obligations of any State or any
8 political subdivision of a State.

9 (B) CONDITIONS.—The appropriate Fed-
10 eral banking agencies may impose conditions on
11 the conduct of investments described in sub-
12 paragraph (A).

13 (C) RULE OF CONSTRUCTION.—Nothing in
14 subparagraph (A) may be construed to grant
15 any authority to any person that is not other-
16 wise provided in Federal law.

17 (3) FOREIGN ACTIVITIES.—An investment or
18 activity conducted by a company pursuant to para-
19 graph (9) or (13) of section 4(c) of the Bank Hold-
20 ing Company Act of 1956 (12 U.S.C. 1843(e)) solely
21 outside of the United States shall not be subject to
22 the prohibition under paragraph (1), provided that
23 the company is not directly or indirectly controlled
24 by a company that is organized under the laws of
25 the United States or of a State.

1 (c) PROHIBITION ON SPONSORING AND INVESTING IN
2 HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

3 (1) IN GENERAL.—Except as provided in para-
4 graph (2), and subject to the recommendations and
5 modifications of the Council under subsection (g),
6 the appropriate Federal banking agencies shall,
7 through a rulemaking under subsection (g), jointly
8 prohibit an insured depository institution, a com-
9 pany that controls, directly or indirectly, an insured
10 depository institution or is treated as a bank holding
11 company for purposes of the Bank Holding Com-
12 pany Act of 1956 (12 U.S.C. 1841 et seq.), or any
13 subsidiary of such institution or company, from
14 sponsoring or investing in a hedge fund or a private
15 equity fund.

16 (2) APPLICATION TO FOREIGN ACTIVITIES OF
17 FOREIGN FIRMS.—An investment or activity con-
18 ducted by a company pursuant to paragraph (9) or
19 (13) of section 4(e) of the Bank Holding Company
20 Act of 1956 (12 U.S.C. 1843(c)) solely outside of
21 the United States shall not be subject to the prohibi-
22 tions and restrictions under paragraph (1), provided
23 that the company is not directly or indirectly con-
24 trolled by a company that is organized under the
25 laws of the United States or of a State.

1 (d) INVESTMENTS IN SMALL BUSINESS INVESTMENT
2 COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE
3 THE PUBLIC WELFARE.—

4 (1) IN GENERAL.—A prohibition imposed by
5 the appropriate Federal banking agencies under sub-
6 section (c) shall not apply with respect an invest-
7 ment otherwise authorized under Federal law that
8 is—

9 (A) an investment in a small business in-
10 vestment company, as that term is defined in
11 section 103 of the Small Business Investment
12 Act of 1958 (15 U.S.C. 662); or

13 (B) designed primarily to promote the pub-
14 lic welfare, as provided in the 11th paragraph
15 of section 5136 of the Revised Statutes (12
16 U.S.C. 24).

17 (2) RULE OF CONSTRUCTION.—Nothing in
18 paragraph (1) may be construed to grant any au-
19 thority to any person that is not otherwise provided
20 in Federal law.

21 (e) LIMITATIONS ON RELATIONSHIPS WITH HEDGE
22 FUNDS AND PRIVATE EQUITY FUNDS.—

23 (1) COVERED TRANSACTIONS.—An insured de-
24 pository institution, a company that controls, di-
25 rectly or indirectly, an insured depository institution

1 or is treated as a bank holding company for pur-
2 poses of the Bank Holding Company Act of 1956
3 (12 U.S.C. 1841 et seq.), and any subsidiary of such
4 institution or company that serves, directly or indi-
5 rectly, as the investment manager or investment ad-
6 viser to a hedge fund or private equity fund may not
7 enter into a covered transaction, as defined in sec-
8 tion 23A of the Federal Reserve Act (12 U.S.C.
9 371c) with such hedge fund or private equity fund.

10 (2) AFFILIATION.—An insured depository insti-
11 tution, a company that controls, directly or indi-
12 rectly, an insured depository institution or is treated
13 as a bank holding company for purposes of the Bank
14 Holding Company Act of 1956 (12 U.S.C. 1841 et
15 seq.), and any subsidiary of such institution or com-
16 pany that serves, directly or indirectly, as the invest-
17 ment manager or investment adviser to a hedge fund
18 or private equity fund shall be subject to section
19 23B of the Federal Reserve Act (12 U.S.C. 371c–
20 1) as if such institution, company, or subsidiary
21 were a member bank and such hedge fund or private
22 equity fund were an affiliate.

23 (f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR
24 CERTAIN NONBANK FINANCIAL COMPANIES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), and subject to the recommendations and
3 modifications of the Council under subsection (g),
4 the Board of Governors shall adopt rules imposing
5 additional capital requirements and specifying addi-
6 tional quantitative limits for nonbank financial com-
7 panies supervised by the Board of Governors under
8 section 113 that engage in proprietary trading or
9 sponsoring and investing in hedge funds and private
10 equity funds.

11 (2) EXCEPTIONS.—The rules under this sub-
12 section shall not apply with respect to the trading of
13 an investment that is otherwise authorized by Fed-
14 eral law—

15 (A) in obligations of the United States or
16 any agency of the United States, including obli-
17 gations fully guaranteed as to principal and in-
18 terest by the United States or an agency of the
19 United States;

20 (B) in obligations, participations, or other
21 instruments of, or issued by, the Government
22 National Mortgage Association, the Federal Na-
23 tional Mortgage Association, or the Federal
24 Home Loan Mortgage Corporation, including

1 obligations fully guaranteed as to principal and
2 interest by such entities;

3 (C) in obligations of any State or any po-
4 litical subdivision of a State;

5 (D) in a small business investment com-
6 pany, as that term is defined in section 103 of
7 the Small Business Investment Act of 1958 (15
8 U.S.C. 662); or

9 (E) that is designed primarily to promote
10 the public welfare, as provided in the 11th
11 paragraph of section 5136 of the Revised Stat-
12 utes (12 U.S.C. 24).

13 (g) COUNCIL STUDY AND RULEMAKING.—

14 (1) STUDY AND RECOMMENDATIONS.—Not
15 later than 6 months after the date of enactment of
16 this Act, the Council—

17 (A) shall complete a study of the defini-
18 tions under subsection (a) and the other provi-
19 sions under subsections (b) through (f), to as-
20 sess the extent to which the definitions under
21 subsection (a) and the implementation of sub-
22 sections (a) through (f) would—

23 (i) promote and enhance the safety
24 and soundness of depository institutions
25 and the affiliates of depository institutions;

1 (ii) protect taxpayers and enhance fi-
2 nancial stability by minimizing the risk
3 that depository institutions and the affili-
4 ates of depository institutions will engage
5 in unsafe and unsound activities;

6 (iii) limit the inappropriate transfer of
7 Federal subsidies from institutions that
8 benefit from deposit insurance and liquid-
9 ity facilities of the Federal Government to
10 unregulated entities;

11 (iv) reduce inappropriate conflicts of
12 interest between the self-interest of deposi-
13 tory institutions, affiliates of depository in-
14 stitutions, and financial companies super-
15 vised by the Board, and the interests of
16 the customers of such institutions and
17 companies;

18 (v) raise the cost of credit or other fi-
19 nancial services, reduce the availability of
20 credit or other financial services, or impose
21 other costs on households and businesses
22 in the United States;

23 (vi) limit activities that have caused
24 undue risk or loss in depository institu-
25 tions, affiliates of depository institutions,

1 and financial companies supervised by the
2 Board of Governors, or that might reason-
3 ably be expected to create undue risk or
4 loss in such institutions, affiliates, and
5 companies; and

6 (vii) appropriately accommodates the
7 business of insurance within an insurance
8 company subject to regulation in accord-
9 ance with State insurance company invest-
10 ment laws;

11 (B) shall make recommendations regarding
12 the definitions under subsection (a) and the im-
13 plementation of other provisions under sub-
14 sections (b) through (f), including any modifica-
15 tions to the definitions, prohibitions, require-
16 ments, and limitations contained therein that
17 the Council determines would more effectively
18 implement the purposes of this section; and

19 (C) may make recommendations for pro-
20 hibiting the conduct of the activities described
21 in subsections (b) and (c) above a specific
22 threshold amount and imposing additional cap-
23 ital requirements on activities conducted below
24 such threshold amount.

1 (2) RULEMAKING.—Not earlier than the date of
2 completion of the study required under paragraph
3 (1), and not later than 9 months after the date of
4 completion of such study—

5 (A) the appropriate Federal banking agen-
6 cies shall jointly issue final regulations imple-
7 menting subsections (b) through (e), which
8 shall reflect any recommendations or modifica-
9 tions made by the Council pursuant to para-
10 graph (1)(B); and

11 (B) the Board of Governors shall issue
12 final regulations implementing subsection (f),
13 which shall reflect any recommendations or
14 modifications made by the Council pursuant to
15 paragraph (1)(B).

16 (h) TRANSITION.—

17 (1) IN GENERAL.—The final regulations issued
18 by the appropriate Federal banking agencies and the
19 Board of Governors under subsection (g)(2) shall
20 provide that, effective 2 years after the date on
21 which such final regulations are issued, no insured
22 depository institution, company that controls, di-
23 rectly or indirectly, an insured depository institution,
24 company that is treated as a bank holding company
25 for purposes of the Bank Holding Company Act of

1 1956 (12 U.S.C. 1841 et seq.), or subsidiary of such
2 institution or company, may retain any investment
3 or relationship prohibited under such regulations.

4 (2) EXTENSION.—

5 (A) IN GENERAL.—The appropriate Fed-
6 eral banking agency for an insured depository
7 institution or a company described in paragraph
8 (1) may, upon the application of any such com-
9 pany, extend the 2-year period under paragraph
10 (1) with respect to such company, if the appro-
11 priate Federal banking agency determines that
12 an extension would not be detrimental to the
13 public interest.

14 (B) TIME PERIOD FOR EXTENSION.—An
15 extension granted under subparagraph (A) may
16 not exceed—

17 (i) 1 year for each determination
18 made by the appropriate Federal banking
19 agency under subparagraph (A); and

20 (ii) a total of 3 years with respect to
21 any 1 company.

1 **SEC. 620. CONCENTRATION LIMITS ON LARGE FINANCIAL**
2 **FIRMS.**

3 The Bank Holding Company Act of 1956 (12 U.S.C.
4 1841 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 13. CONCENTRATION LIMITS ON LARGE FINANCIAL**
7 **FIRMS.**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘Council’ means the Financial
10 Stability Oversight Council;

11 “(2) the term ‘financial company’ means—

12 “(A) an insured depository institution;

13 “(B) a bank holding company;

14 “(C) a savings and loan holding company;

15 “(D) a company that controls an insured
16 depository institution;

17 “(E) a nonbank financial company super-
18 vised by the Board under title I of the Restor-
19 ing American Financial Stability Act of 2010;
20 and

21 “(F) a foreign bank or company that is
22 treated as a bank holding company for purposes
23 of this Act; and

24 “(3) the term ‘liabilities’ means—

25 “(A) with respect to a United States finan-
26 cial company—

1 “(i) the total risk-weighted assets of
2 the financial company, as determined
3 under the risk-based capital rules applica-
4 ble to bank holding companies, as adjusted
5 to reflect exposures that are deducted from
6 regulatory capital; less

7 “(ii) the total regulatory capital of the
8 financial company under the risk-based
9 capital rules applicable to bank holding
10 companies;

11 “(B) with respect to a foreign-based finan-
12 cial company—

13 “(i) the total risk-weighted assets of
14 the United States operations of the finan-
15 cial company, as determined under the ap-
16 plicable risk-based capital rules, as ad-
17 justed to reflect exposures that are de-
18 ducted from regulatory capital; less

19 “(ii) the total regulatory capital of the
20 United States operations of the financial
21 company, as determined under the applica-
22 ble risk-based capital rules; and

23 “(C) with respect to an insurance company
24 or other nonbank financial company supervised
25 by the Board, such assets of the company as

1 the Board shall specify by rule, in order to pro-
2 vide for consistent and equitable treatment of
3 such companies.

4 “(b) CONCENTRATION LIMIT.—Subject to the rec-
5 ommendations by the Council under subsection (e), a fi-
6 nancial company may not merge or consolidate with, ac-
7 quire all or substantially all of the assets of, or otherwise
8 acquire control of, another company, if the total consoli-
9 dated liabilities of the acquiring financial company upon
10 consummation of the transaction would exceed 10 percent
11 of the aggregate consolidated liabilities of all financial
12 companies at the end of the calendar year preceding the
13 transaction.

14 “(c) EXCEPTION TO CONCENTRATION LIMIT.—With
15 the prior written consent of the Board, the concentration
16 limit under subsection (b) shall not apply to an acquisi-
17 tion—

18 “(1) of a bank in default or in danger of de-
19 fault;

20 “(2) with respect to which assistance is pro-
21 vided by the Federal Deposit Insurance Corporation
22 under section 13(c) of the Federal Deposit Insur-
23 ance Act (12 U.S.C. 1823(c)); or

24 “(3) that would result only in a de minimis in-
25 crease in the liabilities of the financial company.

1 “(d) RULEMAKING AND GUIDANCE.—The Board
2 shall issue regulations implementing this section in accord-
3 ance with the recommendations of the Council under sub-
4 section (e), including the definition of terms, as necessary.
5 The Board may issue interpretations or guidance regard-
6 ing the application of this section to an individual financial
7 company or to financial companies in general.

8 “(e) COUNCIL STUDY AND RULEMAKING.—

9 “(1) STUDY AND RECOMMENDATIONS.—Not
10 later than 6 months after the date of enactment of
11 this section, the Council shall—

12 “(A) complete a study of the extent to
13 which the concentration limit under this section
14 would affect financial stability, moral hazard in
15 the financial system, the efficiency and competi-
16 tiveness of United States financial firms and fi-
17 nancial markets, and the cost and availability of
18 credit and other financial services to households
19 and businesses in the United States; and

20 “(B) make recommendations regarding any
21 modifications to the concentration limit that the
22 Council determines would more effectively im-
23 plement this section.

24 “(2) RULEMAKING.—Not later than 9 months
25 after the date of completion of the study under para-

1 graph (1), and notwithstanding subsections (b) and
2 (d), the Board shall issue final regulations imple-
3 menting this section, which shall reflect any rec-
4 ommendations by the Council under paragraph
5 (1)(B).”.

6 **SEC. 621. INTERSTATE MERGER TRANSACTIONS.**

7 (a) INTERSTATE MERGER TRANSACTIONS.—Section
8 18(c) of the Federal Deposit Insurance Act (12 U.S.C.
9 1828(c)) is amended by adding at the end the following:

10 “(13)(A) Except as provided in subparagraph (B),
11 the responsible agency may not approve an application for
12 an interstate merger transaction if the resulting insured
13 depository institution (including all insured depository in-
14 stitutions which are affiliates of the resulting insured de-
15 pository institution), upon consummation of the trans-
16 action, would control more than 10 percent of the total
17 amount of deposits of insured depository institutions in
18 the United States.

19 “(B) Subparagraph (A) shall not apply to an inter-
20 state merger transaction that involves 1 or more insured
21 depository institutions in default or in danger of default,
22 or with respect to which the Corporation provides assist-
23 ance under section 13.

24 “(C) In this paragraph—

1 “(i) the term ‘interstate merger transaction’
2 means a merger transaction involving 2 or more in-
3 sured depository institutions that have different
4 home States and that are not affiliates; and

5 “(ii) the term ‘home State’ means—

6 “(I) with respect to a national bank, the
7 State in which the main office of the bank is lo-
8 cated;

9 “(II) with respect to a State bank or State
10 savings association, the State by which the
11 State bank or State savings association is char-
12 tered; and

13 “(III) with respect to a Federal savings as-
14 sociation, the State in which the home office (as
15 defined by the regulations of the Director of the
16 Office of Thrift Supervision, or, on and after
17 the transfer date, the Comptroller of the Cur-
18 rency) of the Federal savings association is lo-
19 cated.”.

20 (b) ACQUISITIONS BY BANK HOLDING COMPANIES.—

21 (1) IN GENERAL.—Section 4 of the Bank Hold-
22 ing Company Act of 1956 (12 U.S.C. 1843) is
23 amended—

24 (A) in subsection (i), by adding at the end
25 the following:

1 “(8) INTERSTATE ACQUISITIONS.—

2 “(A) IN GENERAL.—The Board may not
3 approve an application by a bank holding com-
4 pany to acquire an insured depository institu-
5 tion under subsection (c)(8) or any other provi-
6 sion of this Act if—

7 “(i) the home State of such insured
8 depository institution is a State other than
9 the home State of the bank holding com-
10 pany; and

11 “(ii) the applicant (including all in-
12 sured depository institutions which are af-
13 filiates of the applicant) controls, or upon
14 consummation of the transaction would
15 control, more than 10 percent of the total
16 amount of deposits of insured depository
17 institutions in the United States.

18 “(B) EXCEPTION.—Subparagraph (A)
19 shall not apply to an acquisition that involves
20 an insured depository institution in default or
21 in danger of default, or with respect to which
22 the Federal Deposit Insurance Corporation pro-
23 vides assistance under section 13 of the Federal
24 Deposit Insurance Act (12 U.S.C. 1823).”; and

1 (B) in subsection (k)(6)(B), by striking
2 “savings association” and inserting “insured
3 depository institution”.

4 (2) DEFINITIONS.—Section 2(o)(4) of the Bank
5 Holding Company Act of 1956 (12 U.S.C.
6 1841(o)(4)) is amended—

7 (A) in subparagraph (B), by striking
8 “and” at the end;

9 (B) in subparagraph (C)(ii), by striking
10 the period at the end and inserting a semicolon;
11 and

12 (C) by adding at the end the following:

13 “(D) with respect to a State savings asso-
14 ciation, the State by which the savings associa-
15 tion is chartered; and

16 “(E) with respect to a Federal savings as-
17 sociation, the State in which the home office (as
18 defined by the regulations of the Director of the
19 Office of Thrift Supervision, or, on and after
20 the transfer date, the Comptroller of the Cur-
21 rency) of the Federal savings association is lo-
22 cated.”.

23 (c) ACQUISITIONS BY SAVINGS AND LOAN HOLDING
24 COMPANIES.—Section 10(e)(2) of the Home Owners’
25 Loan Act (12 U.S.C. 1467a(e)(2)) is amended—

1 (1) in paragraph (2)—

2 (A) in subparagraph (C), by striking “or”
3 at the end;

4 (B) in subparagraph (D), by striking the
5 period at the end and inserting “, or”; and

6 (C) by adding at the end the following:

7 “(E) in the case of an application by a sav-
8 ings and loan holding company to acquire an
9 insured depository institution, if—

10 “(i) the home State of the insured de-
11 pository institution is a State other than
12 the home State of the savings and loan
13 holding company;

14 “(ii) the applicant (including all in-
15 sured depository institutions which are af-
16 filiates of the applicant) controls, or upon
17 consummation of the transaction would
18 control, more than 10 percent of the total
19 amount of deposits of insured depository
20 institutions in the United States; and

21 “(iii) the acquisition does not involve
22 an insured depository institution in default
23 or in danger of default, or with respect to
24 which the Federal Deposit Insurance Cor-
25 poration provides assistance under section

1 13 of the Federal Deposit Insurance Act
2 (12 U.S.C. 1823).”; and

3 (2) by adding at the end the following:

4 “(7) DEFINITIONS.—For purposes of paragraph
5 (2)(E)—

6 “(A) the terms ‘default’, ‘in danger of de-
7 fault’, and ‘insured depository institution’ have
8 the same meanings as in section 3 of the Fed-
9 eral Deposit Insurance Act (12 U.S.C. 1813);
10 and

11 “(B) the term ‘home State’ means—

12 “(i) with respect to a national bank,
13 the State in which the main office of the
14 bank is located;

15 “(ii) with respect to a State bank or
16 State savings association, the State by
17 which the savings association is chartered;

18 “(iii) with respect to a Federal sav-
19 ings association, the State in which the
20 home office (as defined by the regulations
21 of the Director of the Office of Thrift Su-
22 pervision, or, on and after the transfer
23 date, the Comptroller of the Currency) of
24 the Federal savings association is located;
25 and

1 “(iv) with respect to a savings and
2 loan holding company, the State in which
3 the amount of total deposits of all insured
4 depository institution subsidiaries of such
5 company was the greatest on the date on
6 which the company became a savings and
7 loan holding company.”.

8 **SEC. 622. QUALIFIED THRIFT LENDERS.**

9 Section 10(m)(3) of the Home Owners’ Loan Act (12
10 U.S.C. 1467a(m)(3)) is amended—

11 (1) by striking subparagraph (A) and inserting
12 the following:

13 “(A) IN GENERAL.—A savings association
14 that fails to become or remain a qualified thrift
15 lender shall immediately be subject to the re-
16 strictions under subparagraph (B).”; and

17 (2) in subparagraph (B)(i), by striking sub-
18 clause (III) and inserting the following:

19 “(III) DIVIDENDS.—The savings
20 association may not pay dividends, ex-
21 cept for dividends that—

22 “(aa) would be permissible
23 for a national bank;

24 “(bb) are necessary to meet
25 obligations of a company that

1 controls such savings association;
2 and

3 “(cc) are specifically ap-
4 proved by the Comptroller of the
5 Currency and the Board after a
6 written request submitted to the
7 Comptroller of the Currency and
8 the Board by the savings associa-
9 tion not later than 30 days be-
10 fore the date of the proposed
11 payment.

12 “(IV) REGULATORY AUTHOR-
13 ITY.—A savings association that fails
14 to become or remain a qualified thrift
15 lender shall be deemed to have vio-
16 lated section 5 of the Home Owners’
17 Loan Act (12 U.S.C. 1464) and sub-
18 ject to actions authorized by section
19 5(d) of the Home Owners’ Loan Act
20 (12 U.S.C. 1464(d)).”.

21 **SEC. 623. TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL**
22 **HOLDING COMPANIES.**

23 Section 10(o) of the Home Owners’ Loan Act (12
24 U.S.C. 1467a(o) is amended by adding at the end the fol-
25 lowing:

1 “(11) DIVIDENDS.—

2 “(A) DECLARATION OF DIVIDENDS.—

3 “(i) ADVANCE NOTICE REQUIRED.—

4 Each subsidiary of a mutual holding com-
5 pany that is a savings association shall
6 give the appropriate Federal banking agen-
7 cy notice not later than 30 days before the
8 date of a proposed declaration by the
9 board of directors of the savings associa-
10 tion of any dividend on the guaranty, per-
11 manent, or other nonwithdrawable stock of
12 the savings association.

13 “(ii) INVALID DIVIDENDS.—Any divi-
14 dend described in clause (i) that is de-
15 clared without giving notice to the appro-
16 priate Federal banking agency under
17 clause (i), or that is declared during the
18 30-day period preceding the date of a pro-
19 posed declaration for which notice is given
20 to the appropriate Federal banking agency
21 under clause (i), shall be invalid and shall
22 confer no rights or benefits upon the hold-
23 er of any such stock.

24 “(B) WAIVER OF DIVIDENDS.—A mutual
25 holding company may waive the right to receive

1 any dividend declared by a subsidiary of the
2 mutual holding company, if—

3 “(i) no insider of the mutual holding
4 company, associate of an insider, or tax-
5 qualified or non-tax-qualified employee
6 stock benefit plan of the mutual holding
7 company holds any share of the stock in
8 the class of stock to which the waiver
9 would apply; or

10 “(ii) the mutual holding company
11 gives written notice to the Board of the in-
12 tent of the mutual holding company to
13 waive the right to receive dividends, not
14 later than 30 days before the date of the
15 proposed date of payment of the dividend,
16 and the Board does not object to the waiv-
17 er.

18 “(C) RESOLUTION INCLUDED IN WAIVER
19 NOTICE.—A notice of a waiver under subpara-
20 graph (B) shall include a copy of the resolution
21 of the board of directors of the mutual holding
22 company, in such form and substance as the
23 Board may determine, together with any sup-
24 porting materials relied upon by the board of
25 directors of the mutual holding company, con-

1 cluding that the proposed dividend waiver is
2 consistent with the fiduciary duties of the board
3 of directors to the mutual members of the mu-
4 tual holding company.

5 “(D) STANDARDS FOR WAIVER OF DIVI-
6 DEND.—The Board may not object to a waiver
7 of dividends under subparagraph (B) if—

8 “(i) the waiver would not be detri-
9 mental to the safe and sound operation of
10 the savings association; and

11 “(ii) the board of directors of the mu-
12 tual holding company expressly determines
13 that a waiver of the dividend by the mu-
14 tual holding company is consistent with the
15 fiduciary duties of the board of directors to
16 the mutual members of the mutual holding
17 company.

18 “(E) VALUATION.—

19 “(i) IN GENERAL.—The Board shall
20 consider waived dividends in determining
21 an appropriate exchange ratio in the event
22 of a full conversion to stock form.

23 “(ii) EXCEPTION.—In the case of a
24 savings association that has reorganized
25 into a mutual holding company and has

1 issued minority stock from a mid-tier stock
2 holding company or a subsidiary stock sav-
3 ings association of the mutual holding
4 company before December 1, 2009, the ap-
5 propriate Federal banking agency shall not
6 consider waived dividends in determining
7 an appropriate exchange ratio in the event
8 of a full conversion to stock form.”.

9 **TITLE VII—WALL STREET**
10 **TRANSPARENCY AND AC-**
11 **COUNTABILITY**

12 **SEC. 701. SHORT TITLE.**

13 This title may be cited as the “Wall Street Trans-
14 parency and Accountability Act of 2010”.

15 **Subtitle A—Regulation of Over-the-**
16 **Counter Swaps Markets**

17 **PART I—REGULATORY AUTHORITY**

18 **SEC. 711. DEFINITIONS.**

19 In this subtitle, the terms “prudential regulator”,
20 “swap”, “swap dealer”, “major swap participant”, “swap
21 data repository”, “associated person of a swap dealer or
22 major swap participant”, “eligible contract participant”,
23 “swap execution facility”, “security-based swap”, “secu-
24 rity-based swap dealer”, “major security-based swap par-
25 ticipant”, and “associated person of a security-based swap

1 dealer or major security-based swap participant” have the
2 meanings given the terms in section 1a of the Commodity
3 Exchange Act (7 U.S.C. 1a).

4 **SEC. 712. REVIEW OF REGULATORY AUTHORITY.**

5 (a) REGULATORY AUTHORITY.—

6 (1) IN GENERAL.—Except as provided in para-
7 graphs (4) and (8), the Commodity Futures Trading
8 Commission and the Securities and Exchange Com-
9 mission shall each prescribe such regulations as may
10 be necessary to carry out the purposes of this title.

11 (2) COORDINATION, CONSISTENCY, AND COM-
12 PARABILITY.—Both Commissions required under
13 paragraph (1) to prescribe regulations shall consult
14 and coordinate with each other for the purposes of
15 assuring, to the extent possible, that the regulations
16 prescribed by each such Commission are consistent
17 and comparable with the regulations prescribed by
18 the other.

19 (3) PROCEDURES AND DEADLINE.—Such regu-
20 lations shall be prescribed in accordance with appli-
21 cable requirements of title 5, United States Code,
22 and, shall be issued in final form not later than 180
23 days after the date of enactment of this Act.

24 (4) APPLICABILITY.—The requirements of
25 paragraph (1) shall not apply to an order issued—

1 (A) in connection with or arising from a
2 violation or potential violation of any provision
3 of the Commodity Exchange Act (7 U.S.C. 1 et
4 seq.);

5 (B) in connection with or arising from a
6 violation or potential violation of any provision
7 of the securities laws; or

8 (C) in any proceeding that is conducted on
9 the record in accordance with sections 556 and
10 557 of title 5, United States Code.

11 (5) EFFECT.—Nothing in this subsection au-
12 thorizes any consultation or procedure for consulta-
13 tion that is not consistent with the requirements of
14 subchapter II of chapter 5, and chapter 7, of title
15 5, United States Code (commonly known as the
16 “Administrative Procedure Act”).

17 (6) RULES; ORDERS.—In developing and pro-
18 mulgating rules or orders pursuant to this sub-
19 section, each Commission shall consider the views of
20 the prudential regulators.

21 (7) TREATMENT OF SIMILAR PRODUCTS AND
22 ENTITIES.—

23 (A) IN GENERAL.—In adopting rules and
24 orders under this subsection, the Commodity
25 Futures Trading Commission and the Securities

1 and Exchange Commission shall treat function-
2 ally or economically similar products or entities
3 described in paragraphs (1) and (2) in a similar
4 manner.

5 (B) EFFECT.—Nothing in this subtitle re-
6 quires the Commodity Futures Trading Com-
7 mission or the Securities and Exchange Com-
8 mission to adopt joint rules or orders that treat
9 functionally or economically similar products or
10 entities described in paragraphs (1) and (2) in
11 an identical manner.

12 (8) MIXED SWAPS.—The Commodity Futures
13 Trading Commission and the Securities and Ex-
14 change Commission shall jointly prescribe such regu-
15 lations regarding mixed swaps, as described in sec-
16 tion 1a(47)(D) of the Commodity Exchange Act (7
17 U.S.C. 1a(47)(D)) and in section 3(a)(68)(D) of the
18 Securities Exchange Act of 1934 (15 U.S.C.
19 78c(a)(68)(D)), as may be necessary to carry out
20 the purposes of this title.

21 (b) LIMITATION.—

22 (1) COMMODITY FUTURES TRADING COMMIS-
23 SION.—Nothing in this title, unless specifically pro-
24 vided, confers jurisdiction on the Commodity Fu-
25 tures Trading Commission to issue a rule, regula-

1 tion, or order providing for oversight or regulation
2 of—

3 (A) security-based swaps; or

4 (B) with regard to its activities or func-
5 tions concerning security-based swaps—

6 (i) security-based swap dealers;

7 (ii) major security-based swap partici-
8 pants;

9 (iii) security-based swap data reposi-
10 tories;

11 (iv) associated persons of a security-
12 based swap dealer or major security-based
13 swap participant;

14 (v) eligible contract participants with
15 respect to security-based swaps; or

16 (vi) swap execution facilities with re-
17 spect to security-based swaps.

18 (2) SECURITIES AND EXCHANGE COMMIS-
19 SION.—Nothing in this title, unless specifically pro-
20 vided, confers jurisdiction on the Securities and Ex-
21 change Commission or State securities regulators to
22 issue a rule, regulation, or order providing for over-
23 sight or regulation of—

24 (A) swaps; or

1 (B) with regard to its activities or func-
2 tions concerning swaps—

3 (i) swap dealers;

4 (ii) major swap participants;

5 (iii) swap data repositories;

6 (iv) persons associated with a swap
7 dealer or major swap participant;

8 (v) eligible contract participants with
9 respect to swaps; or

10 (vi) swap execution facilities with re-
11 spect to swaps.

12 (3) PROHIBITION ON CERTAIN FUTURES ASSO-
13 CIATIONS AND NATIONAL SECURITIES ASSOCIA-
14 TIONS.—

15 (A) FUTURES ASSOCIATIONS.—Notwith-
16 standing any other provision of law (including
17 regulations), unless otherwise authorized by this
18 title, no futures association registered under
19 section 17 of the Commodity Exchange Act (7
20 U.S.C. 21) may issue a rule, regulation, or
21 order for the oversight or regulation of, or oth-
22 erwise assert jurisdiction over, for any purpose,
23 any security-based swap, except that this shall
24 not limit the authority of a registered futures
25 association to examine for compliance with and

1 enforce its rules on advertising and capital ade-
2 quacy.

3 (B) NATIONAL SECURITIES ASSOCIA-
4 TIONS.—Notwithstanding any other provision of
5 law (including regulations), unless otherwise au-
6 thorized by this title, no national securities as-
7 sociation registered under section 15A of the
8 Securities Exchange Act of 1934 (15 U.S.C.
9 78o–3) may issue a rule, regulation, or order
10 for the oversight or regulation of, or otherwise
11 assert jurisdiction over, for any purpose, any
12 swap, except that this shall not limit the au-
13 thority of a national securities association to ex-
14 amine for compliance with and enforce its rules
15 on advertising and capital adequacy.

16 (c) OBJECTION TO COMMISSION REGULATION.—

17 (1) FILING OF PETITION FOR REVIEW.—

18 (A) IN GENERAL.—If either Commission
19 referred to in this section determines that a
20 final rule, regulation, or order of the other
21 Commission conflicts with subsection (a)(7) or
22 (b), then the complaining Commission may ob-
23 tain review of the final rule, regulation, or order
24 in the United States Court of Appeals for the
25 District of Columbia Circuit by filing in the

1 court, not later than 60 days after the date of
2 publication of the final rule, regulation, or
3 order, a written petition requesting that the
4 rule, regulation, or order be set aside.

5 (B) EXPEDITED PROCEEDING.—A pro-
6 ceeding described in subparagraph (A) shall be
7 expedited by the United States Court of Ap-
8 peals for the District of Columbia Circuit.

9 (2) TRANSMITTAL OF PETITION AND
10 RECORD.—

11 (A) IN GENERAL.—A copy of a petition de-
12 scribed in paragraph (1) shall be transmitted
13 not later than 1 business day after the date of
14 filing by the complaining Commission to the
15 Secretary of the responding Commission.

16 (B) DUTY OF RESPONDING COMMISSION.—
17 On receipt of the copy of a petition described
18 in paragraph (1), the responding Commission
19 shall file with the United States Court of Ap-
20 peals for the District of Columbia Circuit—

21 (i) a copy of the rule, regulation, or
22 order under review (including any docu-
23 ments referred to therein); and

1 (ii) any other materials prescribed by
2 the United States Court of Appeals for the
3 District of Columbia Circuit.

4 (3) STANDARD OF REVIEW.—The United States
5 Court of Appeals for the District of Columbia Cir-
6 cuit shall—

7 (A) give deference to the views of neither
8 Commission; and

9 (B) determine to affirm or set aside a rule,
10 regulation, or order of the responding Commis-
11 sion under this subsection, based on the deter-
12 mination of the court as to whether the rule,
13 regulation, or order is in conflict with sub-
14 section (a)(7) or (b), as applicable.

15 (4) JUDICIAL STAY.—The filing of a petition by
16 the complaining Commission pursuant to paragraph
17 (1) shall operate as a stay of the rule, regulation, or
18 order until the date on which the determination of
19 the United States Court of Appeals for the District
20 of Columbia Circuit is final (including any appeal of
21 the determination).

22 (d) ADOPTION OF RULES ON UNCLEARED SWAPS.—
23 Notwithstanding subsections (b) and (c), the Commodity
24 Futures Trading Commission and the Securities and Ex-

1 change Commission shall, after consulting with each other
2 Commission, adopt rules—

3 (1) to require the maintenance of records of all
4 activities relating to transactions in swaps and secu-
5 rity-based swaps under the respective jurisdictions of
6 the Commodity Futures Trading Commission and
7 the Securities and Exchange Commission that are
8 uncleared;

9 (2) to make available, consistent with section 8
10 of the Commodity Exchange Act (7 U.S.C. 12), to
11 the Securities and Exchange Commission informa-
12 tion relating to swaps transactions that are
13 uncleared; and

14 (3) to make available to the Commodity Fu-
15 tures Trading Commission information relating to
16 security-based swaps transactions that are
17 uncleared.

18 (e) DEFINITIONS.—Notwithstanding subsections (b)
19 and (c), the Commodity Futures Trading Commission and
20 the Securities and Exchange Commission shall jointly
21 adopt rules to define the term “security-based swap agree-
22 ment” in section 1a(47)(A)(v) of the Commodity Ex-
23 change Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78)
24 of the Securities Exchange Act of 1934 (15 U.S.C.
25 78c(a)(78)).

1 (f) GLOBAL RULEMAKING TIMEFRAME.—Unless oth-
2 erwise provided in a particular provision of this title, or
3 an amendment made by this title, the Commodity Futures
4 Trading Commission or the Securities and Exchange Com-
5 mission, or both, shall individually, and not jointly, pro-
6 mulgate rules and regulations required of each Commis-
7 sion under this title or an amendment made by this title
8 not later than 180 days after the date of enactment of
9 this Act.

10 (g) EXPEDITED RULEMAKING PROCESS.—The Com-
11 modity Futures Trading Commission or the Securities and
12 Exchange Commission, or both, may use emergency and
13 expedited procedures (including any administrative or
14 other procedure as appropriate) to carry out this title and
15 the amendments made by this title if, in either of the Com-
16 missions' discretion, it considers it necessary to do so.

17 **SEC. 713. RECOMMENDATIONS FOR CHANGES TO PORT-**
18 **FOLIO MARGINING LAWS.**

19 Not later than 180 days after the date of enactment
20 of this Act, the Securities and Exchange Commission, the
21 Commodity Futures Trading Commission, and the pru-
22 dential regulators shall submit to the appropriate commit-
23 tees of Congress recommendations for legislative changes
24 to the Federal laws to facilitate the portfolio margining
25 of securities and contracts of sale of commodities for fu-

1 ture delivery and options on such contracts , commodity
2 options, swaps, and other financial instrument positions.

3 **SEC. 714. ABUSIVE SWAPS.**

4 The Commodity Futures Trading Commission or the
5 Securities and Exchange Commission, or both, individually
6 may, by rule or order—

7 (1) collect information as may be necessary con-
8 cerning the markets for any types of—

9 (A) swap (as defined in section 1a of the
10 Commodity Exchange Act (7 U.S.C. 1a)); or

11 (B) security-based swap (as defined in sec-
12 tion 1a of the Commodity Exchange Act (7
13 U.S.C. 1a)); and

14 (2) issue a report with respect to any types of
15 swaps or security-based swaps that the Commodity
16 Futures Trading Commission or the Securities and
17 Exchange Commission determines to be detrimental
18 to—

19 (A) the stability of a financial market; or

20 (B) participants in a financial market.

21 **SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN**
22 **SWAP ACTIVITIES.**

23 Except as provided in section 4 of the Commodity Ex-
24 change Act (7 U.S.C. 6) (as amended by section 738), if
25 the Commodity Futures Trading Commission or the Secu-

1 rities and Exchange Commission determines that the regu-
2 lation of swaps or security-based swaps markets in a for-
3 eign country undermines the stability of the United States
4 financial system, either Commission, in consultation with
5 the Secretary of the Treasury, may prohibit an entity
6 domiciled in the foreign country from participating in the
7 United States in any swap or security-based swap activi-
8 ties.

9 **SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT**

10 **BAILOUTS OF SWAPS ENTITIES.**

11 (a) PROHIBITION ON FEDERAL ASSISTANCE.—Not-
12 withstanding any other provision of law (including regula-
13 tions), no Federal assistance may be provided to any
14 swaps entity with respect to any swap, security-based
15 swap, or other activity of the swaps entity.

16 (b) DEFINITIONS.—In this section:

17 (1) FEDERAL ASSISTANCE.—The term “Federal
18 assistance” means the use of any funds, including
19 advances from any Federal Reserve credit facility,
20 discount window, or pursuant to the third undesignated
21 paragraph of section 13 of the Federal Re-
22 serve Act (12 U.S.C. 343) (relating to emergency
23 lending authority), Federal Deposit Insurance Cor-
24 poration insurance, or guarantees for the purpose
25 of—

1 (A) making any loan to, or purchasing any
2 stock, equity interest, or debt obligation of, any
3 swaps entity;

4 (B) purchasing the assets of any swaps en-
5 tity;

6 (C) guaranteeing any loan or debt issuance
7 of any swaps entity; or

8 (D) entering into any assistance arrange-
9 ment (including tax breaks), loss sharing, or
10 profit sharing with any swaps entity.

11 (2) SWAPS ENTITY.—The term “swaps entity”
12 means any swap dealer, security-based swap dealer,
13 major swap participant, major security-based swap
14 participant, swap execution facility, designated con-
15 tract market, national securities exchange, central
16 counterparty, clearing house, clearing agency, or de-
17 rivatives clearing organization that is registered
18 under—

19 (A) the Commodity Exchange Act (7
20 U.S.C. 1 et seq.);

21 (B) the Securities Exchange Act of 1934
22 (15 U.S.C. 78a et seq.); or

23 (C) any other Federal or State law (includ-
24 ing regulations).

1 **SEC. 717. NEW PRODUCT APPROVAL CFTC—SEC PROCESS.**

2 (a) AMENDMENTS TO THE COMMODITY EXCHANGE
3 ACT.—Section 2(a)(1)(C) of the Commodity Exchange
4 Act (7 U.S.C. 2(a)(1)(C)) is amended—

5 (1) in clause (i) by striking “This” and insert-
6 ing “(I) Except as provided in subclause (II), this”;
7 and

8 (2) by adding at the end of clause (i) the fol-
9 lowing:

10 “(II) This Act shall apply to and
11 the Commission shall have jurisdiction
12 with respect to accounts, agreements,
13 and transactions involving, and may
14 permit the listing for trading pursu-
15 ant to section 5c(c) of, a put, call, or
16 other option on 1 or more securities
17 (as defined in section 2(a)(1) of the
18 Securities Act of 1933 or section
19 3(a)(10) of the Securities Exchange
20 Act of 1934 on the date of enactment
21 of the Futures Trading Act of 1982),
22 including any group or index of such
23 securities, or any interest therein or
24 based on the value thereof, that is ex-
25 empted by the Securities and Ex-
26 change Commission pursuant to sec-

1 tion 36(a)(1) of the Securities Ex-
2 change Act of 1934 with the condition
3 that the Commission exercise concu-
4 rent jurisdiction over such put, call, or
5 other option; provided, however, that
6 nothing in this paragraph shall be
7 construed to affect the jurisdiction
8 and authority of the Securities and
9 Exchange Commission over such put,
10 call, or other option.”.

11 (b) AMENDMENT TO THE SECURITIES EXCHANGE
12 ACT OF 1934.—The Securities Exchange Act of 1934 is
13 amended by adding the following section after section 3A
14 (15 U.S.C. 78c-1):

15 **“SEC. 3B. SECURITIES-RELATED DERIVATIVES.**

16 “(a) Any agreement, contract, or transaction (or
17 class thereof) that is exempted by the Commodity Futures
18 Trading Commission pursuant to section 4(c)(1) of the
19 Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the con-
20 dition that the Commission exercise concurrent jurisdie-
21 tion over such agreement, contract, or transaction (or
22 class thereof) shall be deemed a security for purposes of
23 the securities laws.

24 “(b) With respect to any agreement, contract, or
25 transaction (or class thereof) that is exempted by the

1 Commodity Futures Trading Commission pursuant to sec-
2 tion 4(c)(1) of the Commodity Exchange Act (7 U.S.C.
3 6(c)(1)) with the condition that the Commission exercise
4 concurrent jurisdiction over such agreement, contract, or
5 transaction (or class thereof), references in the securities
6 laws to the ‘purchase’ or ‘sale’ of a security shall be
7 deemed to include the execution, termination (prior to its
8 scheduled maturity date), assignment, exchange, or simi-
9 lar transfer or conveyance of, or extinguishing of rights
10 or obligations under such agreement, contract, or trans-
11 action, as the context may require.”.

12 (c) AMENDMENT TO SECURITIES EXCHANGE ACT OF
13 1934.—Section 19(b) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78s(b)) is amended by adding at the end
15 the following:

16 “(10) Notwithstanding the provisions of para-
17 graph (2), the time period within which the Commis-
18 sion is required by order to approve a proposed rule
19 change or institute proceedings to determine whether
20 the proposed rule change should be disapproved is
21 stayed pending a determination by the Commission
22 upon the request of the Commodity Futures Trading
23 Commission or its Chairman that the Commission
24 issue a determination as to whether a product that
25 is the subject of such proposed rule change is a se-

1 curity pursuant to section 718 of the Wall Street
2 Transparency and Accountability Act of 2010.”.

3 (d) AMENDMENT TO COMMODITY EXCHANGE ACT.—

4 Section 5c(c)(1) of the Commodity Exchange Act (7
5 U.S.C. 7a–2(c)(1)) is amended—

6 (1) by striking “Subject to paragraph (2)” and
7 inserting the following:

8 “(A) ELECTION.—Subject to paragraph
9 (2)”;

10 (2) by adding at the end the following:

11 “(B) CERTIFICATION.—The certification of
12 a product pursuant to this paragraph shall be
13 stayed pending a determination by the Commis-
14 sion upon the request of the Securities and Ex-
15 change Commission or its Chairman that the
16 Commission issue a determination as to wheth-
17 er the product that is the subject of such cer-
18 tification is a contract of sale of a commodity
19 for future delivery, an option on such a con-
20 tract, or an option on a commodity pursuant to
21 section 718 of the Wall Street Transparency
22 and Accountability Act of 2010.”.

1 **SEC. 718. DETERMINING STATUS OF NOVEL DERIVATIVE**
2 **PRODUCTS.**

3 (a) PROCESS FOR DETERMINING THE STATUS OF A
4 NOVEL DERIVATIVE PRODUCT.—

5 (1) NOTICE.—

6 (A) IN GENERAL.—Any person filing a
7 proposal to list or trade a novel derivative prod-
8 uct that may have elements of both securities
9 and contracts of sale of a commodity for future
10 delivery (or options on such contracts or options
11 on commodities) may concurrently provide no-
12 tice and furnish a copy of such filing with both
13 the Securities and Exchange Commission and
14 the Commodity Futures Trading Commission.
15 Any such notice shall state that notice has been
16 made with both Commissions.

17 (B) NOTIFICATION.—If no concurrent no-
18 tice is made pursuant to subparagraph (A),
19 within 5 business days after determining that a
20 proposal that seeks to list or trade a novel de-
21 rivative product may have elements of both se-
22 curities and contracts of sale of a commodity
23 for future delivery (or options on such contracts
24 or options on commodities), the Securities and
25 Exchange Commission or the Commodity Fu-
26 tures Trading Commission, as applicable, shall

1 notify the other Commission and provide a copy
2 of such filing to the other Commission.

3 (2) REQUEST FOR DETERMINATION.—

4 (A) IN GENERAL.—No later than 21 days
5 after receipt of a notice under paragraph (1), or
6 upon its own initiative if no such notice is re-
7 ceived, the Commodity Futures Trading Com-
8 mission may request that the Securities and
9 Exchange Commission issue a determination as
10 to whether a product is a security, as defined
11 in section 3(a)(10) of the Securities Exchange
12 Act of 1934 (15 U.S.C. 78c(a)(10)).

13 (B) REQUEST.—No later than 21 days
14 after receipt of a notice under paragraph (1), or
15 upon its own initiative if no such notice is re-
16 ceived, the Securities and Exchange Commis-
17 sion may request that the Commodity Futures
18 Trading Commission issue a determination as
19 to whether a product is a contract of sale of a
20 commodity for future delivery, an option on
21 such a contract, or an option on a commodity
22 subject to the Commodity Futures Trading
23 Commission's exclusive jurisdiction under sec-
24 tion 2(a)(1)(A) of the Commodity Exchange
25 Act (7 U.S.C. 2(a)(1)(A)).

1 (C) REQUIREMENT RELATING TO RE-
2 QUEST.—A request under subparagraph (A) or
3 (B) shall be made by submitting such request,
4 in writing, to the Securities and Exchange
5 Commission or the Commodity Futures Trading
6 Commission, as applicable.

7 (D) EFFECT.—Nothing in this paragraph
8 shall be construed to prevent—

9 (i) the Commodity Futures Trading
10 Commission from requesting that the Se-
11 curities and Exchange Commission grant
12 an exemption pursuant to section 36(a)(1)
13 of the Securities Exchange Act of 1934
14 (15 U.S.C. 78mm(a)(1)) with respect to a
15 product that is the subject of a filing
16 under paragraph (1); or

17 (ii) the Securities and Exchange Com-
18 mission from requesting that the Com-
19 modity Futures Trading Commission grant
20 an exemption pursuant to section 4(c)(1)
21 of the Commodity Exchange Act (7 U.S.C.
22 6(c)(1)) with respect to a product that is
23 the subject of a filing under paragraph (1),
24 *Provided*, however, that nothing in this sub-
25 paragraph shall be construed to require the

1 Commodity Futures Trading Commission or the
2 Securities and Exchange Commission to issue
3 an exemption requested pursuant to this sub-
4 paragraph; *provided further*, That an order
5 granting or denying an exemption described in
6 this subparagraph and issued under paragraph
7 (3)(B) shall not be subject to judicial review
8 pursuant to subsection (b).

9 (E) WITHDRAWAL OF REQUEST.—A re-
10 quest under subparagraph (A) or (B) may be
11 withdrawn by the Commission making the re-
12 quest at any time prior to a determination
13 being made pursuant to paragraph (3) for any
14 reason by providing written notice to the head
15 of the other Commission.

16 (3) DETERMINATION.—Notwithstanding any
17 other provision of law, no later than 120 days after
18 the date of receipt of a request—

19 (A) under subparagraph (A) or (B) of
20 paragraph (2), unless such request has been
21 withdrawn pursuant to paragraph (2)(E), the
22 Securities and Exchange Commission or the
23 Commodity Futures Trading Commission, as
24 applicable, shall, by order, issue the determina-
25 tion requested in subparagraph (A) or (B) of

1 paragraph (2), as applicable, and the reasons
2 therefore; or

3 (B) under paragraph (2)(D), unless such
4 request has been withdrawn, the Securities and
5 Exchange Commission or the Commodity Fu-
6 tures Trading Commission, as applicable, shall
7 grant an exemption or provide reasons for not
8 granting such exemption, provided that any de-
9 cision by the Securities and Exchange Commis-
10 sion not to grant such exemption shall not be
11 reviewable under section 25 of the Securities
12 Exchange Act of 1934 (15 U.S.C. 78y).

13 (b) JUDICIAL RESOLUTION.—

14 (1) IN GENERAL.—The Commodity Futures
15 Trading Commission or the Securities and Exchange
16 Commission may petition the United States Court of
17 Appeals for the District of Columbia Circuit for re-
18 view of a final order of the other Commission, with
19 respect to a novel derivative product that may have
20 elements of both securities and contracts of sale of
21 a commodity for future delivery (or options on such
22 contracts or options on commodities) that it believes
23 affects its statutory jurisdiction, including an order
24 or orders issued under subsection (a)(3)(A), by filing
25 in such court, within 60 days after the date of entry

1 of such order, a written petition requesting a review
2 of the order. Any such proceeding shall be expedited
3 by the Court of Appeals.

4 (2) TRANSMITTAL OF PETITION AND
5 RECORD.—A copy of a petition described in para-
6 graph (1) shall be transmitted not later than 1 busi-
7 ness day after filing by the complaining Commission
8 to the responding Commission. On receipt of the pe-
9 tition, the responding Commission shall file with the
10 court a copy of the order under review and any doc-
11 uments referred to therein, and any other materials
12 prescribed by the court.

13 (3) STANDARD OF REVIEW.—The court, in con-
14 sidering a petition filed pursuant to paragraph (1),
15 shall give no deference to, or presumption in favor
16 of, the views of either Commission.

17 (4) JUDICIAL STAY.—The filing of a petition by
18 the complaining Commission pursuant to paragraph
19 (1) shall operate as a stay of the order, until the
20 date on which the determination of the court is final
21 (including any appeal of the determination).

22 **PART II—REGULATION OF SWAP MARKETS**

23 **SEC. 721. DEFINITIONS.**

24 (a) IN GENERAL.—Section 1a of the Commodity Ex-
25 change Act (7 U.S.C. 1a) is amended—

1 (1) by redesignating paragraphs (2), (3) and
2 (4), (5) through (17), (18) through (23), (24)
3 through (28), (29), (30), (31) through (33), and
4 (34) as paragraphs (6), (8) and (9), (11) through
5 (23), (26) through (31), (34) through (38), (40),
6 (41), (44) through (46), and (51), respectively;

7 (2) by inserting after paragraph (1) the fol-
8 lowing:

9 “(2) APPROPRIATE FEDERAL BANKING AGEN-
10 CY.—The term ‘appropriate Federal banking agency’
11 has the meaning given the term in section 3 of the
12 Federal Deposit Insurance Act (12 U.S.C. 1813).

13 “(3) ASSOCIATED PERSON OF A SECURITY-
14 BASED SWAP DEALER OR MAJOR SECURITY-BASED
15 SWAP PARTICIPANT.—The term ‘associated person of
16 a security-based swap dealer or major security-based
17 swap participant’ has the meaning given the term in
18 section 3(a) of the Securities Exchange Act of 1934
19 (15 U.S.C. 78c(a)).

20 “(4) ASSOCIATED PERSON OF A SWAP DEALER
21 OR MAJOR SWAP PARTICIPANT.—

22 “(A) IN GENERAL.—The term ‘associated
23 person of a swap dealer or major swap partici-
24 pant’ means—

1 “(i) any partner, officer, director, or
2 branch manager of a swap dealer or major
3 swap participant (including any individual
4 who holds a similar status or performs a
5 similar function with respect to any part-
6 ner, officer, director, or branch manager of
7 a swap dealer or major swap participant);

8 “(ii) any person that directly or indi-
9 rectly controls, is controlled by, or is under
10 common control with, a swap dealer or
11 major swap participant; and

12 “(iii) any employee of a swap dealer
13 or major swap participant.

14 “(B) EXCLUSION.—Other than for pur-
15 poses of section 4s(b)(6), the term ‘associated
16 person of a swap dealer or major swap partici-
17 pant’ does not include any person associated
18 with a swap dealer or major swap participant
19 the functions of which are solely clerical or min-
20 isterial.

21 “(5) BOARD.—The term ‘Board’ means the
22 Board of Governors of the Federal Reserve Sys-
23 tem.”;

24 (3) by inserting after paragraph (6) (as redesign-
25 nated by paragraph (1)) the following:

1 “(7) CLEARED SWAP.—The term ‘cleared swap’
2 means any swap that is, directly or indirectly, sub-
3 mitted to and cleared by a derivatives clearing orga-
4 nization registered with the Commission.”;

5 (4) in paragraph (9) (as redesignated by para-
6 graph (1)), by striking “except onions” and all that
7 follows through the period at the end and inserting
8 the following: “except onions (as provided in section
9 13–1) and motion picture box office receipts (or any
10 index, measure, value, or data related to such re-
11 cepts), and all services, rights, and interests (except
12 motion picture box office receipts, or any index,
13 measure, value or data related to such receipts) in
14 which contracts for future delivery are presently or
15 in the future dealt in.”;

16 (5) by inserting after paragraph (9) (as redesi-
17 gnated by paragraph (1)) the following:

18 “(10) COMMODITY POOL.—

19 “(A) IN GENERAL.—The term ‘commodity
20 pool’ means any investment trust, syndicate, or
21 similar form of enterprise operated for the pur-
22 pose of trading in commodity interests, includ-
23 ing any—

24 “(i) commodity for future delivery, se-
25 curity futures product, or swap;

1 “(ii) agreement, contract, or trans-
2 action described in section 2(c)(2)(C)(i) or
3 section 2(c)(2)(D)(i);

4 “(iii) commodity option authorized
5 under section 4c; or

6 “(iv) leverage transaction authorized
7 under section 19.

8 “(B) FURTHER DEFINITION.—The Com-
9 mission, by rule or regulation, may include
10 within, or exclude from, the term ‘commodity
11 pool’ any investment trust, syndicate, or similar
12 form of enterprise if the Commission deter-
13 mines that the rule or regulation will effectuate
14 the purposes of this Act.”;

15 (6) by striking paragraph (11) (as redesignated
16 by paragraph (1)) and inserting the following:

17 “(11) COMMODITY POOL OPERATOR.—

18 “(A) IN GENERAL.—The term ‘commodity
19 pool operator’ means any person—

20 “(i) engaged in a business that is of
21 the nature of a commodity pool, invest-
22 ment trust, syndicate, or similar form of
23 enterprise, and who, in connection there-
24 with, solicits, accepts, or receives from oth-
25 ers, funds, securities, or property, either

1 directly or through capital contributions,
2 the sale of stock or other forms of securi-
3 ties, or otherwise, for the purpose of trad-
4 ing in commodity interest, including any—
5 “(I) commodity for future deliv-
6 ery, security futures product, or swap;
7 “(II) agreement, contract, or
8 transaction described in section
9 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
10 “(III) commodity option author-
11 ized under section 4c; or
12 “(IV) leverage transaction au-
13 thorized under section 19; or
14 “(ii) who is registered with the Com-
15 mission as a commodity pool operator.
16 “(B) FURTHER DEFINITION.—The Com-
17 mission, by rule or regulation, may include
18 within, or exclude from, the term ‘commodity
19 pool operator’ any person engaged in a business
20 that is of the nature of a commodity pool, in-
21 vestment trust, syndicate, or similar form of en-
22 terprise if the Commission determines that the
23 rule or regulation will effectuate the purposes of
24 this Act.”;

1 (7) in paragraph (12) (as redesignated by para-
2 graph (1)), in subparagraph (A)—

3 (A) in clause (i)—

4 (i) in subclause (I), by striking “made
5 or to be made on or subject to the rules of
6 a contract market or derivatives trans-
7 action execution facility” and inserting “,
8 security futures product, or swap”;

9 (ii) by redesignating subclauses (II)
10 and (III) as subclauses (III) and (IV);

11 (iii) by inserting after subclause (I)
12 the following:

13 “(II) any agreement, contract, or
14 transaction described in section
15 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;

16 and

17 (iv) in subclause (IV) (as so redesign-
18 nated), by striking “or”;

19 (B) in clause (ii), by striking the period at
20 the end and inserting a semicolon; and

21 (C) by adding at the end the following:

22 “(iii) is registered with the Commis-
23 sion as a commodity trading advisor; or

24 “(iv) the Commission, by rule or regu-
25 lation, may include if the Commission de-

1 termines that the rule or regulation will ef-
2 fectuate the purposes of this Act.”;

3 (8) in paragraph (17) (as redesignated by para-
4 graph (1)), in subparagraph (A), in the matter pre-
5 ceding clause (i), by striking “paragraph (12)(A)”
6 and inserting “paragraph (18)(A)”;

7 (9) in paragraph (18) (as redesignated by para-
8 graph (1))—

9 (A) in subparagraph (A)—

10 (i) in the matter following clause

11 (vii)(III)—

12 (I) by striking “section 1a
13 (11)(A)” and inserting “paragraph
14 (17)(A)”;

15 (II) by striking “\$25,000,000”
16 and inserting “\$50,000,000”; and

17 (ii) in clause (xi), in the matter pre-
18 ceding subclause (I), by striking “total as-
19 sets in an amount” and inserting
20 “amounts invested on a discretionary
21 basis, the aggregate of which is”;

22 (10) by striking paragraph (22) (as redesi-
23 gnated by paragraph (1)) and inserting the following:

24 “(22) FLOOR BROKER.—

1 “(A) IN GENERAL.—The term ‘floor
2 broker’ means any person—

3 “(i) who, in or surrounding any pit,
4 ring, post, or other place provided by a
5 contract market for the meeting of persons
6 similarly engaged, shall purchase or sell for
7 any other person—

8 “(I) any commodity for future
9 delivery, security futures product, or
10 swap; or

11 “(II) any commodity option au-
12 thorized under section 4c; or

13 “(ii) who is registered with the Com-
14 mission as a floor broker.

15 “(B) FURTHER DEFINITION.—The Com-
16 mission, by rule or regulation, may include
17 within, or exclude from, the term ‘floor broker’
18 any person in or surrounding any pit, ring,
19 post, or other place provided by a contract mar-
20 ket for the meeting of persons similarly engaged
21 who trades for any other person if the Commis-
22 sion determines that the rule or regulation will
23 effectuate the purposes of this Act.”;

24 (11) by striking paragraph (23) (as redesign-
25 nated by paragraph (1)) and inserting the following:

1 “(23) FLOOR TRADER.—

2 “(A) IN GENERAL.—The term ‘floor trad-
3 er’ means any person—

4 “(i) who, in or surrounding any pit,
5 ring, post, or other place provided by a
6 contract market for the meeting of persons
7 similarly engaged, purchases, or sells solely
8 for such person’s own account—

9 “(I) any commodity for future
10 delivery, security futures product, or
11 swap; or

12 “(II) any commodity option au-
13 thorized under section 4c; or

14 “(ii) who is registered with the Com-
15 mission as a floor trader.

16 “(B) FURTHER DEFINITION.—The Com-
17 mission, by rule or regulation, may include
18 within, or exclude from, the term ‘floor trader’
19 any person in or surrounding any pit, ring,
20 post, or other place provided by a contract mar-
21 ket for the meeting of persons similarly engaged
22 who trades solely for such person’s own account
23 if the Commission determines that the rule or
24 regulation will effectuate the purposes of this
25 Act.”;

1 (12) by inserting after paragraph (23) (as re-
2 designated by paragraph (1)) the following:

3 “(24) FOREIGN EXCHANGE FORWARD.—The
4 term ‘foreign exchange forward’ means a transaction
5 that solely involves the exchange of 2 different cur-
6 rencies on a specific future date at a fixed rate
7 agreed upon on the inception of the contract cov-
8 ering the exchange.

9 “(25) FOREIGN EXCHANGE SWAP.—The term
10 ‘foreign exchange swap’ means a transaction that
11 solely involves—

12 “(A) an exchange of 2 different currencies
13 on a specific date at a fixed rate that is agreed
14 upon on the inception of the contract covering
15 the exchange; and

16 “(B) a reverse exchange of the 2 cur-
17 rencies described in subparagraph (A) at a later
18 date and at a fixed rate that is agreed upon on
19 the inception of the contract covering the ex-
20 change.”;

21 (13) by striking paragraph (28) (as redesign-
22 nated by paragraph (1)) and inserting the following:

23 “(28) FUTURES COMMISSION MERCHANT.—

1 “(A) IN GENERAL.—The term ‘futures
2 commission merchant’ means an individual, as-
3 sociation, partnership, corporation, or trust—

4 “(i) that—

5 “(I) is engaged in soliciting or in
6 accepting orders for—

7 “(aa) the purchase or sale of
8 a commodity for future delivery;

9 “(bb) a security futures
10 product;

11 “(cc) a swap;

12 “(dd) any agreement, con-
13 tract, or transaction described in
14 section 2(c)(2)(C)(i) or section
15 2(c)(2)(D)(i);

16 “(ee) any commodity option
17 authorized under section 4e; or

18 “(ff) any leverage trans-
19 action authorized under section
20 19; or

21 “(II) is acting as a counterparty
22 in any agreement, contract, or trans-
23 action described in section
24 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
25 and

1 “(III) in or in connection with
2 the activities described in subclause
3 (I) or (II), accepts any money, securi-
4 ties, or property (or extends credit in
5 lieu thereof) to margin, guarantee, or
6 secure any trades or contracts that re-
7 sult or may result therefrom; or

8 “(ii) that is registered with the Com-
9 mission as a futures commission merchant.

10 “(B) FURTHER DEFINITION.—The Com-
11 mission, by rule or regulation, may include
12 within, or exclude from, the term ‘futures com-
13 mission merchant’ any person who engages in
14 soliciting or accepting orders for, or acting as
15 a counterparty in, any agreement, contract, or
16 transaction subject to this Act, and who accepts
17 any money, securities, or property (or extends
18 credit in lieu thereof) to margin, guarantee, or
19 secure any trades or contracts that result or
20 may result therefrom, if the Commission deter-
21 mines that the rule or regulation will effectuate
22 the purposes of this Act.”;

23 (14) in paragraph (30) (as redesignated by
24 paragraph (1)), in subparagraph (B), by striking
25 “state” and inserting “State”;

1 (15) by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:

2 “(31) INTRODUCING BROKER.—

3 “(A) IN GENERAL.—The term ‘introducing broker’ means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

4 “(i) who—

5 “(I) is engaged in soliciting or in accepting orders for—

6 “(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

7 “(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

8 “(cc) any commodity option authorized under section 4c; or

9 “(dd) any leverage transaction authorized under section 19; and

1 “(II) does not accept any money,
2 securities, or property (or extend cred-
3 it in lieu thereof) to margin, guar-
4 antee, or secure any trades or con-
5 tracts that result or may result there-
6 from; or

7 “(ii) who is registered with the Com-
8 mission as an introducing broker.

9 “(B) FURTHER DEFINITION.—The Com-
10 mission, by rule or regulation, may include
11 within, or exclude from, the term ‘introducing
12 broker’ any person who engages in soliciting or
13 accepting orders for any agreement, contract,
14 or transaction subject to this Act, and who does
15 not accept any money, securities, or property
16 (or extend credit in lieu thereof) to margin,
17 guarantee, or secure any trades or contracts
18 that result or may result therefrom, if the Com-
19 mission determines that the rule or regulation
20 will effectuate the purposes of this Act.”;

21 (16) by inserting after paragraph (31) (as re-
22 designated by paragraph (1)) the following:

23 “(32) MAJOR SECURITY-BASED SWAP PARTICI-
24 PANT.—The term ‘major security-based swap partic-
25 ipant’ has the meaning given the term in section

1 3(a) of the Securities Exchange Act of 1934 (15
2 U.S.C. 78c(a)).

3 “(33) MAJOR SWAP PARTICIPANT.—

4 “(A) IN GENERAL.—The term ‘major swap
5 participant’ means any person who is not a
6 swap dealer, and—

7 “(i) maintains a substantial position
8 in swaps for any of the major swap cat-
9 egories as determined by the Commission,
10 excluding—

11 “(I) positions held for hedging or
12 mitigating commercial risk; and

13 “(II) positions maintained by any
14 employee benefit plan (or any contract
15 held by such a plan) as defined in
16 paragraphs (3) and (32) of section 3
17 of the Employee Retirement Income
18 Security Act of 1974 (29 U.S.C.
19 1002) for the primary purpose of
20 hedging or mitigating any risk directly
21 associated with the operation of the
22 plan; or

23 “(ii) whose outstanding swaps create
24 substantial counterparty exposure that
25 could have serious adverse effects on the

1 financial stability of the United States
2 banking system or financial markets; or

3 “(iii)(I) is a financial entity, other
4 than an entity predominantly engaged in
5 providing financing for the purchase of an
6 affiliate’s merchandise or manufactured
7 goods, that is highly leveraged relative to
8 the amount of capital it holds; and

9 “(II) maintains a substantial position
10 in outstanding swaps in any major swap
11 category as determined by the Commission.

12 “(B) DEFINITION OF SUBSTANTIAL POSI-
13 TION.—For purposes of subparagraph (A), the
14 Commission shall define by rule or regulation
15 the term ‘substantial position’ at the threshold
16 that the Commission determines to be prudent
17 for the effective monitoring, management, and
18 oversight of entities that are systemically im-
19 portant or can significantly impact the financial
20 system of the United States.

21 “(C) SCOPE OF DESIGNATION.—For pur-
22 poses of subparagraph (A), a person may be
23 designated as a major swap participant for 1 or
24 more categories of swaps without being classi-

1 fied as a major swap participant for all classes
2 of swaps.”;

3 (17) by inserting after paragraph (38) (as re-
4 designated by paragraph (1)) the following:

5 “(39) PRUDENTIAL REGULATOR.—The term
6 ‘prudential regulator’ means—

7 “(A) the Office of the Comptroller of the
8 Currency, in the case of—

9 “(i) any national banking association;

10 “(ii) any Federal branch or agency of
11 a foreign bank; or

12 “(iii) any Federal savings association;

13 “(B) the Federal Deposit Insurance Cor-
14 poration, in the case of—

15 “(i) any insured State bank;

16 “(ii) any foreign bank having an in-
17 sured branch; or

18 “(iii) any State savings association;

19 “(C) the Board, in the case of—

20 “(i) any noninsured State member
21 bank;

22 “(ii) any branch or agency of a for-
23 eign bank with respect to any provision of
24 the Federal Reserve Act (12 U.S.C. 221 et
25 seq.) which is made applicable under the

1 International Banking Act of 1978 (12
2 U.S.C. 3101 et seq.);

3 “(iii) any foreign bank which does not
4 operate an insured branch;

5 “(iv) any agency or commercial lend-
6 ing company other than a Federal agency;
7 or

8 “(v) supervisory or regulatory pro-
9 ceedings arising from the authority given
10 to the Board of Governors under section
11 7(c)(1) of the International Banking Act of
12 1978 (12 U.S.C. 3105(c)(1)), including
13 such proceedings under the Financial In-
14 stitutions Supervisory Act of 1966 (12
15 U.S.C. 1464 et seq.); and

16 “(D) the Farm Credit Administration, in
17 the case of a swap dealer, major swap partici-
18 pant, security-based swap dealer, or major secu-
19 rity-based swap participant that is an institu-
20 tion chartered under the Farm Credit Act of
21 1971 (12 U.S.C. 2001 et seq.).”;

22 (18) in paragraph (40) (as redesignated by
23 paragraph (1))—

24 (A) by striking subparagraph (B);

1 (B) by redesignating subparagraphs (C),
2 (D), and (E) as subparagraphs (B), (C), and
3 (F), respectively;

4 (C) in subparagraph (C) (as so redesign-
5 ated), by striking “and”;

6 (D) by inserting after subparagraph (C)
7 (as so redesignated) the following:

8 “(D) a swap execution facility registered
9 under section 5h;

10 “(E) a swap data repository registered
11 under section 21; and”;

12 (19) by inserting after paragraph (41) (as re-
13 designated by paragraph (1)) the following:

14 “(42) SECURITY-BASED SWAP.—The term ‘se-
15 curity-based swap’ has the meaning given the term
16 in section 3(a) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78c(a)).

18 “(43) SECURITY-BASED SWAP DEALER.—The
19 term ‘security-based swap dealer’ has the meaning
20 given the term in section 3(a) of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78c(a)).”;

22 (20) in paragraph (46) (as redesignated by
23 paragraph (1)), by striking “subject to section
24 2(h)(7)” and inserting “subject to section 2(h)(5)”;

1 (21) by inserting after paragraph (46) (as re-
2 designated by paragraph (1)) the following:

3 “(47) SWAP.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term ‘swap’ means any
6 agreement, contract, or transaction—

7 “(i) that is a put, call, cap, floor, col-
8 lar, or similar option of any kind that is
9 for the purchase or sale, or based on the
10 value, of 1 or more interest or other rates,
11 currencies, commodities, securities, instru-
12 ments of indebtedness, indices, quantitative
13 measures, or other financial or economic
14 interests or property of any kind;

15 “(ii) that provides for any purchase,
16 sale, payment, or delivery (other than a
17 dividend on an equity security) that is de-
18 pendent on the occurrence, nonoccurrence,
19 or the extent of the occurrence of an event
20 or contingency associated with a potential
21 financial, economic, or commercial con-
22 sequence;

23 “(iii) that provides on an executory
24 basis for the exchange, on a fixed or con-
25 tingent basis, of 1 or more payments based

1 on the value or level of 1 or more interest
2 or other rates, currencies, commodities, se-
3 curities, instruments of indebtedness, indi-
4 ces, quantitative measures, or other finan-
5 cial or economic interests or property of
6 any kind, or any interest therein or based
7 on the value thereof, and that transfers, as
8 between the parties to the transaction, in
9 whole or in part, the financial risk associ-
10 ated with a future change in any such
11 value or level without also conveying a cur-
12 rent or future direct or indirect ownership
13 interest in an asset (including any enter-
14 prise or investment pool) or liability that
15 incorporates the financial risk so trans-
16 ferred, including any agreement, contract,
17 or transaction commonly known as—

18 “(I) an interest rate swap;

19 “(II) a rate floor;

20 “(III) a rate cap;

21 “(IV) a rate collar;

22 “(V) a cross-currency rate swap;

23 “(VI) a basis swap;

24 “(VII) a currency swap;

25 “(VIII) a foreign exchange swap;

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- 1 “(IX) a total return swap;
2 “(X) an equity index swap;
3 “(XI) an equity swap;
4 “(XII) a debt index swap;
5 “(XIII) a debt swap;
6 “(XIV) a credit spread;
7 “(XV) a credit default swap;
8 “(XVI) a credit swap;
9 “(XVII) a weather swap;
10 “(XVIII) an energy swap;
11 “(XIX) a metal swap;
12 “(XX) an agricultural swap;
13 “(XXI) an emissions swap; and
14 “(XXII) a commodity swap;
15 “(iv) that is an agreement, contract,
16 or transaction that is, or in the future be-
17 comes commonly known to the trade as a
18 swap;
19 “(v) including any security-based
20 swap agreement which meets the definition
21 of ‘swap agreement’ as defined in section
22 206A of the Gramm-Leach-Bliley Act (15
23 U.S.C. 78c note) of which a material term
24 is based on the price, yield, value, or vola-

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1 “(I) the Securities Act of 1933
2 (15 U.S.C. 77a et seq.); and

3 “(II) the Securities Exchange
4 Act of 1934 (15 U.S.C. 78a et seq.);

5 “(iv) any put, call, straddle, option, or
6 privilege relating to a foreign currency en-
7 tered into on a national securities exchange
8 registered pursuant to section 6(a) of the
9 Securities Exchange Act of 1934 (15
10 U.S.C. 78f(a));

11 “(v) any agreement, contract, or
12 transaction providing for the purchase or
13 sale of 1 or more securities on a fixed basis
14 that is subject to—

15 “(I) the Securities Act of 1933
16 (15 U.S.C. 77a et seq.); and

17 “(II) the Securities Exchange
18 Act of 1934 (15 U.S.C. 78a et seq.);

19 “(vi) any agreement, contract, or
20 transaction providing for the purchase or
21 sale of 1 or more securities on a contingent
22 basis that is subject to the Securities Act
23 of 1933 (15 U.S.C. 77a et seq.) and the
24 Securities Exchange Act of 1934 (15
25 U.S.C. 78a et seq.), unless the agreement,

1 contract, or transaction predicates the pur-
2 chase or sale on the occurrence of a bona
3 fide contingency that might reasonably be
4 expected to affect or be affected by the
5 creditworthiness of a party other than a
6 party to the agreement, contract, or trans-
7 action;

8 “(vii) any note, bond, or evidence of
9 indebtedness that is a security, as defined
10 in section 2(a) of the Securities Act of
11 1933 (15 U.S.C. 77b(a));

12 “(viii) any agreement, contract, or
13 transaction that is—

14 “(I) based on a security; and

15 “(II) entered into directly or
16 through an underwriter (as defined in
17 section 2(a) of the Securities Act of
18 1933 (15 U.S.C. 77b(a))) by the
19 issuer of such security for the pur-
20 poses of raising capital, unless the
21 agreement, contract, or transaction is
22 entered into to manage a risk associ-
23 ated with capital raising;

24 “(ix) any agreement, contract, or
25 transaction a counterparty of which is a

1 Federal Reserve bank, the Federal Govern-
2 ment, or a Federal agency that is expressly
3 backed by the full faith and credit of the
4 United States; and

5 “(x) any security-based swap, other
6 than a security-based swap as described in
7 subparagraph (D).

8 “(C) RULE OF CONSTRUCTION REGARDING
9 MASTER AGREEMENTS.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii), the term ‘swap’ in-
12 cludes a master agreement that provides
13 for an agreement, contract, or transaction
14 that is a swap under subparagraph (A), to-
15 gether with each supplement to any master
16 agreement, without regard to whether the
17 master agreement contains an agreement,
18 contract, or transaction that is not a swap
19 pursuant to subparagraph (A).

20 “(ii) EXCEPTION.—For purposes of
21 clause (i), the master agreement shall be
22 considered to be a swap only with respect
23 to each agreement, contract, or transaction
24 covered by the master agreement that is a
25 swap pursuant to subparagraph (A).

1 “(D) MIXED SWAP.—The term ‘security-
2 based swap’ includes any agreement, contract,
3 or transaction that is as described in section
4 3(a)(68)(A) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78c(a)(68)(A)) and also is
6 based on the value of 1 or more interest or
7 other rates, currencies, commodities, instru-
8 ments of indebtedness, indices, quantitative
9 measures, other financial or economic interest
10 or property of any kind (other than a single se-
11 curity or a narrow-based security index), or the
12 occurrence, non-occurrence, or the extent of the
13 occurrence of an event or contingency associ-
14 ated with a potential financial, economic, or
15 commercial consequence (other than an event
16 described in subparagraph (A)(iii)).

17 “(E) TREATMENT OF FOREIGN EXCHANGE
18 SWAPS AND FORWARDS.—

19 “(i) IN GENERAL.—Foreign exchange
20 swaps and foreign exchange forwards shall
21 be considered swaps under this paragraph
22 unless the Secretary makes a written de-
23 termination that either foreign exchange
24 swaps or foreign exchange forwards or
25 both—

1 “(I) should be not be regulated
2 as swaps under this Act; and

3 “(II) are not structured to evade
4 the Wall Street Transparency and Ac-
5 countability Act of 2010 in violation
6 of any rule promulgated by the Com-
7 mission pursuant to section 111(e) of
8 that Act.

9 “(ii) CONGRESSIONAL NOTICE; EFFEC-
10 TIVENESS.—The Secretary shall submit
11 any written determination under clause (i)
12 to the appropriate committees of Congress,
13 including the Committee on Agriculture,
14 Nutrition, and Forestry of the Senate and
15 the Committee on Agriculture of the House
16 of Representatives. Any such written deter-
17 mination by the Secretary shall not be ef-
18 fective until it is submitted to the appro-
19 priate committees of Congress.

20 “(iii) REPORTING.—Notwithstanding
21 a written determination by the Secretary
22 under clause (i), all foreign exchange
23 swaps and foreign exchange forwards shall
24 be reported to either a swap data reposi-
25 tory, or, if there is no swap data repository

1 that would accept such swaps or forwards,
2 to the Commission pursuant to section 4r
3 within such time period as the Commission
4 may by rule or regulation prescribe.

5 “(iv) BUSINESS STANDARDS.—Not-
6 withstanding a written determination by
7 the Secretary pursuant to clause (i), any
8 party to a foreign exchange swap or for-
9 ward that is a swap dealer or major swap
10 participant shall conform to the business
11 conduct standards contained in section
12 4s(h).

13 “(v) SECRETARY.—For purposes of
14 this subparagraph only, the term ‘Sec-
15 retary’ means the Secretary of the Treas-
16 ury.

17 “(F) EXCEPTION FOR CERTAIN FOREIGN
18 EXCHANGE SWAPS AND FORWARDS.—

19 “(i) REGISTERED ENTITIES.—Any
20 foreign exchange swap and any foreign ex-
21 change forward that is listed and traded on
22 or subject to the rules of a designated con-
23 tract market or a swap execution facility,
24 or that is cleared by a derivatives clearing
25 organization shall not be exempt from any

1 provision of this Act or amendments made
2 by the Wall Street Transparency and Ac-
3 countability Act of 2010 prohibiting fraud
4 or manipulation.

5 “(ii) RETAIL TRANSACTIONS.—Noth-
6 ing in subparagraph (E) shall affect, or be
7 construed to affect, the applicability of this
8 Act or the jurisdiction of the Commission
9 with respect to agreements, contracts, or
10 transactions in foreign currency pursuant
11 to section 2(c)(2).

12 “(48) SWAP DATA REPOSITORY.—The term
13 ‘swap data repository’ means any person that col-
14 lects, calculates, prepares, or maintains information
15 or records with respect to transactions or positions
16 in, or the terms and conditions of, swaps entered
17 into by third parties.

18 “(49) SWAP DEALER.—

19 “(A) IN GENERAL.—The term ‘swap deal-
20 er’ means any person who—

21 “(i) holds itself out as a dealer in
22 swaps;

23 “(ii) makes a market in swaps;

1 “(iii) regularly engages in the pur-
2 chase and sale of swaps in the ordinary
3 course of business; or

4 “(iv) engages in any activity causing
5 the person to be commonly known in the
6 trade as a dealer or market maker in
7 swaps.

8 “(B) INCLUSION.—A person may be des-
9 ignated as a swap dealer for a single type or
10 single class or category of swap or activities and
11 considered not to be a swap dealer for other
12 types, classes, or categories of swaps or activi-
13 ties.

14 “(C) EXCEPTION.—The term ‘swap dealer’
15 does not include a person that buys or sells
16 swaps for such person’s own account, either in-
17 dividually or in a fiduciary capacity, but not as
18 a part of a regular business.

19 “(50) SWAP EXECUTION FACILITY.—The term
20 ‘swap execution facility’ means a facility in which
21 multiple participants have the ability to execute or
22 trade swaps by accepting bids and offers made by
23 other participants that are open to multiple partici-
24 pants in the facility or system, through any means

1 of interstate commerce, including any trading facil-
2 ity, that—

3 “(A) facilitates the execution of swaps be-
4 tween persons; and

5 “(B) is not a designated contract mar-
6 ket.”; and

7 (22) in paragraph (51) (as redesignated by
8 paragraph (1)), in subparagraph (A)(i), by striking
9 “partipants” and inserting “participants”.

10 (b) **AUTHORITY TO DEFINE TERMS.**—The Com-
11 modity Futures Trading Commission may adopt a rule to
12 define—

13 (1) the term “commercial risk”; and

14 (2) any other term included in an amendment
15 to the Commodity Exchange Act (7 U.S.C. 1 et seq.)
16 made by this subtitle.

17 (c) **MODIFICATION OF DEFINITIONS.**—To include
18 transactions and entities that have been structured to
19 evade this subtitle (or an amendment made by this sub-
20 title), the Commodity Futures Trading Commission shall
21 adopt a rule to further define the terms “swap”, “swap
22 dealer”, “major swap participant”, and “eligible contract
23 participant”.

24 (d) **EXEMPTIONS.**—Section 4(c)(1) of the Commodity
25 Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking

1 “except that” and all that follows through the period at
2 the end and inserting the following: “except that—

3 “(A) unless the Commission is expressly
4 authorized by any provision described in this
5 subparagraph to grant exemptions, with respect
6 to amendments made by subtitle A of the Wall
7 Street Transparency and Accountability Act of
8 2010—

9 “(i) with respect to—

10 “(I) paragraphs (2), (3), (4), (5),
11 and (7), clause (vii)(III) of paragraph
12 (17), paragraphs (23), (24), (31),
13 (32), (38), (39), (41), (42), (46),
14 (47), (48), and (49) of section 1a, and
15 sections 2(a)(13), 2(c)(D), 4a(a),
16 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a),
17 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i),
18 8e, and 21; and

19 “(II) section 206(e) of the
20 Gramm-Leach-Bliley Act (Public Law
21 106–102; 15 U.S.C. 78c note); and

22 “(ii) in subsection (c) of section 111
23 and section 132 of the Wall Street Trans-
24 parency and Accountability Act of 2010;
25 and

1 “(B) the Commission and the Securities
2 and Exchange Commission may by rule, regula-
3 tion, or order jointly exclude any agreement,
4 contract, or transaction from section
5 2(a)(1)(D)) if the Commissions determine that
6 the exemption would be consistent with the
7 public interest.”.

8 (e) CONFORMING AMENDMENTS.—

9 (1) Section 2(c)(2)(B)(i)(II) of the Commodity
10 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-
11 ed—

12 (A) in item (cc)—

13 (i) in subitem (AA), by striking “sec-
14 tion 1a(20)” and inserting “section 1a”;
15 and

16 (ii) in subitem (BB), by striking “sec-
17 tion 1a(20)” and inserting “section 1a”;
18 and

19 (B) in item (dd), by striking “section
20 1a(12)(A)(ii)” and inserting “section
21 1a(18)(A)(ii)”.

22 (2) Section 4m(3) of the Commodity Exchange
23 Act (7 U.S.C. 6m(3)) is amended by striking “sec-
24 tion 1a(6)” and inserting “section 1a”.

1 (3) Section 4q(a)(1) of the Commodity Ex-
2 change Act (7 U.S.C. 6o-1(a)(1)) is amended by
3 striking “section 1a(4)” and inserting “section
4 1a(9)”.

5 (4) Section 5(e)(1) of the Commodity Exchange
6 Act (7 U.S.C. 7(e)(1)) is amended by striking “sec-
7 tion 1a(4)” and inserting “section 1a(9)”.

8 (5) Section 5a(b)(2)(F) of the Commodity Ex-
9 change Act (7 U.S.C. 7a(b)(2)(F)) is amended by
10 striking “section 1a(4)” and inserting “section
11 1a(9)”.

12 (6) Section 5b(a) of the Commodity Exchange
13 Act (7 U.S.C. 7a-1(a)) is amended, in the matter
14 preceding paragraph (1), by striking “section 1a(9)”
15 and inserting “section 1a”.

16 (7) Section 5c(c)(2)(B) of the Commodity Ex-
17 change Act (7 U.S.C. 7a-2(c)(2)(B)) is amended by
18 striking “section 1a(4)” and inserting “section
19 1a(9)”.

20 (8) Section 6(g)(5)(B)(i) of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is
22 amended—

23 (A) in subclause (I), by striking “section
24 1a(12)(B)(ii)” and inserting “section
25 1a(18)(B)(ii)”; and

1 (B) in subclause (II), by striking “section
2 1a(12)” and inserting “section 1a(18)”.

3 (9) Section 402 of the Legal Certainty for
4 Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is
5 amended—

6 (A) in subsection (a)(7), by striking “sec-
7 tion 1a(20)” and inserting “section 1a”;

8 (B) in subsection (b)(2), by striking “sec-
9 tion 1a(12)” and inserting “section 1a”; and

10 (C) in subsection (c), by striking “section
11 1a(4)” and inserting “section 1a”.

12 **SEC. 722. JURISDICTION.**

13 (a) **EXCLUSIVE JURISDICTION.**—Section 2(a)(1)(A)
14 of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is
15 amended in the first sentence—

16 (1) by inserting “the Wall Street Transparency
17 and Accountability Act of 2010 (including an
18 amendment made by that Act) and” after “other-
19 wise provided in”;

20 (2) by striking “(c) through (i) of this section”
21 and inserting “(c) and (f)”;

22 (3) by striking “contracts of sale” and inserting
23 “swaps or contracts of sale”; and

1 (4) by striking “or derivatives transaction exe-
2 cution facility registered pursuant to section 5 or
3 5a” and inserting “pursuant to section 5”.

4 (b) REGULATION OF SWAPS UNDER FEDERAL AND
5 STATE LAW.—Section 12 of the Commodity Exchange Act
6 (7 U.S.C. 16) is amended by adding at the end the fol-
7 lowing:

8 “(h) REGULATION OF SWAPS AS INSURANCE UNDER
9 STATE LAW.—A swap—

10 “(1) shall not be considered to be insurance;
11 and

12 “(2) may not be regulated as an insurance con-
13 tract under the law of any State.”.

14 (c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS
15 TRADED ON AN ORGANIZED EXCHANGE.—Section
16 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.
17 2(c)(2)(A)) is amended—

18 (1) in clause (i), by striking “or” at the end;

19 (2) by redesignating clause (ii) as clause (iii);

20 and

21 (3) by inserting after clause (i) the following:

22 “(ii) a swap; or”.

23 (d) APPLICABILITY.—Section 2 of the Commodity
24 Exchange Act (7 U.S.C. 2) (as amended by section
25 723(a)(3)) is amended by adding at the end the following:

1 “(i) APPLICABILITY.—The provisions of this Act re-
2 lating to swaps that were enacted by the Wall Street
3 Transparency and Accountability Act of 2010 (including
4 any rule prescribed or regulation promulgated under that
5 Act), shall not apply to activities outside the United States
6 unless those activities—

7 “(1) have a direct and significant connection
8 with activities in, or effect on, commerce of the
9 United States; or

10 “(2) contravene such rules or regulations as the
11 Commission may prescribe or promulgate as are nec-
12 essary or appropriate to prevent the evasion of any
13 provision of this Act that was enacted by the Wall
14 Street Transparency and Accountability Act of
15 2010.”.

16 (e) JUST AND REASONABLE RATES.—Section
17 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C.
18 2(a)(1)(C)) (as amended by section 717(a)) is amended
19 by adding at the end the following:

20 “(vi) Notwithstanding the exclusive
21 jurisdiction of the Commission with respect
22 to accounts, agreements, and transactions
23 involving swaps or contracts of sale of a
24 commodity for future delivery under this

1 Act, no provision of this Act shall be con-
2 strued—

3 “(I) to supersede or limit the au-
4 thority of the Federal Energy Regu-
5 latory Commission under the Federal
6 Power Act (16 U.S.C. 791a et seq.) or
7 the Natural Gas Act (15 U.S.C. 717
8 et seq.);

9 “(II) to restrict the Federal En-
10 ergy Regulatory Commission from
11 carrying out the duties and respon-
12 sibilities of the Federal Energy Regu-
13 latory Commission to ensure just and
14 reasonable rates and protect the pub-
15 lic interest under the Acts described
16 in subclause (I); or

17 “(III) to supersede or limit the
18 authority of a State regulatory au-
19 thority (as defined in section 3(21) of
20 the Federal Power Act (16 U.S.C.
21 796(21)) that has jurisdiction to regu-
22 late rates and charges for the sale of
23 electric energy within the State, or re-
24 strict that State regulatory authority
25 from carrying out the duties and re-

1 responsibilities of the State regulatory
2 authority pursuant to the jurisdiction
3 of the State regulatory authority to
4 regulate rates and charges for the
5 transmission or sale of electric energy.

6 “(vii) Nothing in clause (vi) shall af-
7 fect the Commission’s authority with re-
8 spect to the trading, execution, or clearing
9 of any agreement, contract, or transaction
10 on or subject to the rules of a registered
11 entity, including a designated contract
12 market, derivatives clearing organization,
13 or swaps execution facility.”.

14 (f) PUBLIC INTEREST WAIVER.—Section 4(c) of the
15 Commodity Exchange Act (7 U.S.C. 6(c)) (as amended
16 by section 721(d)) is amended by adding at the end the
17 following:

18 “(6) If the Commission determines that the ex-
19 emption would be consistent with the public interest
20 and the purposes of this Act, the Commission shall,
21 in accordance with paragraphs (1) and (2), exempt
22 from the requirements of this Act an agreement,
23 contract, or transaction that is entered into—

1 “(A) pursuant to a tariff or rate schedule
2 approved or permitted to take effect by the
3 Federal Energy Regulatory Commission;

4 “(B) pursuant to a tariff or rate schedule
5 establishing rates or charges for, or protocols
6 governing, the sale of electric energy approved
7 or permitted to take effect by the regulatory au-
8 thority of the State or municipality having ju-
9 risdiction to regulate rates and charges for the
10 sale of electric energy within the State or mu-
11 nicipality; or

12 “(C) between entities described in section
13 201(f) of the Federal Power Act (16 U.S.C.
14 824(f)).”.

15 **SEC. 723. CLEARING.**

16 (a) CLEARING REQUIREMENT.—

17 (1) IN GENERAL.—Section 2 of the Commodity
18 Exchange Act (7 U.S.C. 2) is amended—

19 (A) by striking subsections (d), (e), (g),
20 and (h); and

21 (B) by redesignating subsection (i) as sub-
22 section (g).

23 (2) SWAPS; LIMITATION ON PARTICIPATION.—

24 Section 2 of the Commodity Exchange Act (7 U.S.C.

1 2) (as amended by paragraph (1)) is amended by in-
2 serting after subsection (c) the following:

3 “(d) SWAPS.—Nothing in this Act (other than sub-
4 paragraphs (A), (B), (C), and (D) of subsection (a)(1),
5 subsections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e),
6 2(h), 4(c), 4a, 4b, and 4b–1, subsections (a), (b), and (g)
7 of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l,
8 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, sub-
9 sections (c) and (d) of section 6, sections 6c, 6d, 8, 8a,
10 and 9, subsections (e)(2), (f), and (h) of section 12, sub-
11 sections (a) and (b) of section 13, sections 17, 20, 21,
12 and 22(a)(4), and any other provision of this Act that is
13 applicable to registered entities or Commission reg-
14 istrants) governs or applies to a swap.

15 “(e) LIMITATION ON PARTICIPATION.—It shall be
16 unlawful for any person, other than an eligible contract
17 participant, to enter into a swap unless the swap is en-
18 tered into on, or subject to the rules of, a board of trade
19 designated as a contract market under section 5.”.

20 (3) MANDATORY CLEARING OF SWAPS.—Section
21 2 of the Commodity Exchange Act (7 U.S.C. 2) is
22 amended by inserting after subsection (g) (as reded-
23 signated by paragraph (1)(B)) the following:

24 “(h) CLEARING REQUIREMENT.—

25 “(1) SUBMISSION.—

1 “(A) IN GENERAL.—Except as provided in
2 paragraphs (9) and (10), any person who is a
3 party to a swap shall submit such swap for
4 clearing to a derivatives clearing organization
5 that is registered under this Act or a derivatives
6 clearing organization that is exempt from reg-
7 istration under section 5b(i) of this Act.

8 “(B) OPEN ACCESS.—The rules of a reg-
9 istered derivatives clearing organization shall—

10 “(i) prescribe that all swaps with the
11 same terms and conditions are economi-
12 cally equivalent and may be offset with
13 each other within the derivatives clearing
14 organization; and

15 “(ii) provide for nondiscriminatory
16 clearing of a swap executed bilaterally or
17 on or through the rules of an unaffiliated
18 designated contract market or swap execu-
19 tion facility, subject to the requirements of
20 section 5(b).

21 “(2) COMMISSION APPROVAL.—

22 “(A) IN GENERAL.—A derivatives clearing
23 organization shall submit to the Commission for
24 prior approval any group, category, type, or
25 class of swaps that the derivatives clearing or-

1 ganization seeks to accept for clearing, which
2 submission the Commission shall make available
3 to the public.

4 “(B) DEADLINE.—The Commission shall
5 take final action on a request submitted pursu-
6 ant to subparagraph (A) not later than 90 days
7 after submission of the request, unless the de-
8 rivatives clearing organization submitting the
9 request agrees to an extension of the time limi-
10 tation established under this subparagraph.

11 “(C) APPROVAL.—The Commission shall
12 approve, unconditionally or subject to such
13 terms and conditions as the Commission deter-
14 mines to be appropriate, any request submitted
15 pursuant to subparagraph (A) if the Commis-
16 sion finds that the request is consistent with
17 section 5b(c)(2). The Commission shall not ap-
18 prove any such request if the Commission does
19 not make such finding.

20 “(D) RULES.—The Commission shall
21 adopt rules for a derivatives clearing organiza-
22 tion’s submission for approval, pursuant to this
23 paragraph, of any group, category, type, or
24 class of swaps that the derivative clearing orga-
25 nization seeks to accept for clearing.

1 “(3) STAY OF CLEARING REQUIREMENT.—At
2 any time after issuance of an approval pursuant to
3 paragraph (2):

4 “(A) REVIEW PROCESS.—The Commission,
5 on application of a counterparty to a swap or
6 on its own initiative, may stay the clearing re-
7 quirement of paragraph (1) until the Commis-
8 sion completes a review of the terms of the
9 swap, or the group, category, type, or class of
10 swaps, and the clearing arrangement.

11 “(B) DEADLINE.—The Commission shall
12 complete a review undertaken pursuant to sub-
13 paragraph (A) not later than 90 days after
14 issuance of the stay, unless the derivatives
15 clearing organization that clears the swap, or
16 the group, category, type, or class of swaps,
17 agrees to an extension of the time limitation es-
18 tablished under this subparagraph.

19 “(C) DETERMINATION.—Upon completion
20 of the review undertaken pursuant to subpara-
21 graph (A)—

22 “(i) the Commission may determine,
23 unconditionally or subject to such terms
24 and conditions as the Commission deter-
25 mines to be appropriate, that the swap, or

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1 the group, category, type, or class of
2 swaps, must be cleared pursuant to this
3 subsection if the Commission finds that
4 such clearing—

5 “(I) is consistent with section
6 5b(c)(2); and

7 “(II) is otherwise in the public
8 interest, for the protection of inves-
9 tors, and consistent with the purposes
10 of this Act;

11 “(ii) the Commission may determine
12 that the clearing requirement of paragraph
13 (1) shall not apply to the swap, or the
14 group, category, type, or class of swaps; or

15 “(iii) if a determination is made that
16 the clearing requirement of paragraph (1)
17 shall no longer apply, then it shall still be
18 permissible to clear such swap, or the
19 group, category, type, or class of swaps.

20 “(D) RULES.—The Commission shall
21 adopt rules for reviewing, pursuant to this
22 paragraph, a derivatives clearing organization’s
23 clearing of a swap, or a group, category, type,
24 or class of swaps that the Commission has ac-
25 cepted for clearing.

1 “(4) SWAPS REQUIRED TO BE ACCEPTED FOR
2 CLEARING.—

3 “(A) RULEMAKING.—The Commission
4 shall adopt rules to further identify any group,
5 category, type, or class of swaps not submitted
6 for approval under paragraph (2) that the Com-
7 mission deems should be accepted for clearing.
8 In adopting such rules, the Commission shall
9 take into account the following factors:

10 “(i) The extent to which any of the
11 terms of the group, category, type, or class
12 of swaps, including price, are disseminated
13 to third parties or are referenced in other
14 agreements, contracts, or transactions.

15 “(ii) The volume of transactions in
16 the group, category, type, or class of
17 swaps.

18 “(iii) The extent to which the terms of
19 the group, category, type, or class of swaps
20 are similar to the terms of other agree-
21 ments, contracts, or transactions that are
22 cleared.

23 “(iv) Whether any differences in the
24 terms of the group, category, type, or class
25 of swaps, compared to other agreements,

1 contracts, or transactions that are cleared,
2 are of economic significance.

3 “(v) Whether a derivatives clearing
4 organization is prepared to clear the
5 group, category, type, or class of swaps
6 and such derivatives clearing organization
7 has in place effective risk management sys-
8 tems.

9 “(vi) Any other factors the Commis-
10 sion determine to be appropriate.

11 “(B) OTHER DESIGNATIONS.—At any time
12 after the adoption of the rules required under
13 subparagraph (A), the Commission may sepa-
14 rately designate a particular swap or class of
15 swaps as subject to the clearing requirement in
16 paragraph (1), taking into account the factors
17 described in clauses (i) through (vi) of subpara-
18 graph (A) and the rules adopted under such
19 subparagraph.

20 “(C) IN GENERAL.—In accordance with
21 subparagraph (A), the Commission shall, con-
22 sistent with the public interest, adopt rules
23 under the expedited process described in sub-
24 paragraph (D) to establish criteria for deter-

1 mining that a swap, or any group, category,
2 type, or class of swap is required to be cleared.

3 “(D) EXPEDITED RULEMAKING AUTHOR-
4 ITY.—

5 “(i) PROCEDURE.—The promulgation
6 of regulations under subparagraph (A)
7 may be made without regard to—

8 “(I) the notice and comment pro-
9 visions of section 553 of title 5,
10 United States Code; and

11 “(II) chapter 35 of title 44,
12 United States Code (commonly known
13 as the ‘Paperwork Reduction Act’).

14 “(ii) AGENCY RULEMAKING.—In car-
15 rying out subparagraph (A), the Commis-
16 sion shall use the authority provided under
17 section 808 of title 5, United States Code.

18 “(5) PREVENTION OF EVASION.—

19 “(A) IN GENERAL.—The Commission may
20 prescribe rules under this subsection (and issue
21 interpretations of rules prescribed under this
22 subsection) as determined by the Commission to
23 be necessary to prevent evasions of the manda-
24 tory clearing requirements under this Act.

1 “(B) DUTY OF COMMISSION TO INVES-
2 TIGATE AND TAKE CERTAIN ACTIONS.—To the
3 extent the Commission finds that a particular
4 swap, group, category, type, or class of swaps
5 would otherwise be subject to mandatory clear-
6 ing but no derivatives clearing organization has
7 listed the swap, group, category, type, or class
8 of swaps for clearing, the Commission shall—

9 “(i) investigate the relevant facts and
10 circumstances;

11 “(ii) within 30 days issue a public re-
12 port containing the results of the investiga-
13 tion; and

14 “(iii) take such actions as the Com-
15 mission determines to be necessary and in
16 the public interest, which may include re-
17 quiring the retaining of adequate margin
18 or capital by parties to the swap, group,
19 category, type, or class of swaps.

20 “(C) EFFECT ON AUTHORITY.—Nothing in
21 this paragraph shall—

22 “(i) authorize the Commission to re-
23 quire a derivatives clearing organization to
24 list for clearing a swap, group, category,
25 type, or class of swaps if the clearing of

1 the swap, group, category, type, or class of
2 swaps would adversely affect the business
3 operations of the derivatives clearing orga-
4 nization, threaten the financial integrity of
5 the derivatives clearing organization, or
6 pose a systemic risk to the derivatives
7 clearing organization; and

8 “(ii) affect the authority of the Com-
9 mission to enforce the open access provi-
10 sions of paragraph (1) with respect to a
11 swap, group, category, type, or class of
12 swaps that is listed for clearing by a de-
13 rivatives clearing organization.

14 “(6) REQUIRED REPORTING.—

15 “(A) BOTH COUNTERPARTIES.—Both
16 counterparties to a swap that is not cleared by
17 any derivatives clearing organization shall re-
18 port such a swap either to a registered swap
19 data repository described in section 21 or, if
20 there is no repository that would accept the
21 swap, to the Commission pursuant to section
22 4r.

23 “(B) TIMING.—Counterparties to a swap
24 shall submit the reports required under sub-
25 paragraph (A) not later than such time period

1 as the Commission may by rule or regulation
2 prescribe.

3 “(7) TRANSITION RULES.—

4 “(A) REPORTING TRANSITION RULES.—
5 Rules adopted by the Commission under this
6 section shall provide for the reporting of data,
7 as follows:

8 “(i) SWAPS ENTERED INTO BEFORE
9 DATE OF ENACTMENT OF THIS SUB-
10 SECTION.—Swaps entered into before the
11 date of the enactment of this subsection
12 shall be reported to a registered swap data
13 repository or the Commission not later
14 than 180 days after the effective date of
15 this subsection.

16 “(ii) SWAPS ENTERED INTO ON OR
17 AFTER DATE OF ENACTMENT OF THIS
18 SUBSECTION.—Swaps entered into on or
19 after such date of enactment shall be re-
20 ported to a registered swap data repository
21 or the Commission not later than the later
22 of—

23 “(I) 90 days after such effective
24 date; or

1 “(II) such other time after enter-
2 ing into the swap as the Commission
3 may prescribe by rule or regulation.

4 “(B) CLEARING TRANSITION RULES.—

5 “(i) SWAPS ENTERED INTO BEFORE
6 THE DATE OF THE ENACTMENT OF THIS
7 SUBSECTION.—Swaps entered into before
8 the date of the enactment of this sub-
9 section are exempt from the clearing re-
10 quirements of this subsection if reported
11 pursuant to subparagraph (A)(i).

12 “(ii) SWAPS ENTERED INTO BEFORE
13 APPLICATION OF CLEARING REQUIRE-
14 MENT.—Swaps entered into before applica-
15 tion of the clearing requirement pursuant
16 to this subsection are exempt from the
17 clearing requirements of this subsection if
18 reported pursuant to subparagraph (A)(ii).

19 “(8) TRADE EXECUTION.—

20 “(A) IN GENERAL.—With respect to trans-
21 actions involving swaps subject to the clearing
22 requirement of paragraph (1), counterparties
23 shall—

1 “(i) execute the transaction on a
2 board of trade designated as a contract
3 market under section 5; or

4 “(ii) execute the transaction on a
5 swap execution facility registered under
6 section 5h or a swap execution facility that
7 is exempt from registration under section
8 5h(e) of this Act.

9 “(B) EXCEPTION.—The requirements of
10 clauses (i) and (ii) of subparagraph (A) shall
11 not apply if no board of trade or swap execution
12 facility makes the swap available to trade or to
13 swap transactions where a commercial end user
14 opts to use the clearing exemption under para-
15 graph (10).

16 “(9) REQUIRED EXEMPTION.—Subject to para-
17 graph (4), the Commission shall exempt a swap from
18 the requirements of paragraphs (1) and (8) and any
19 rules issued under this subsection, if no derivatives
20 clearing organization registered under this Act or no
21 derivatives clearing organization that is exempt from
22 registration under section 5b(i) of this Act will ac-
23 cept the swap for clearing.

24 “(10) END USER CLEARING EXEMPTION.—

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1 “(III) a person predominantly
2 engaged in activities that are financial
3 in nature;

4 “(IV) a commodity pool or a pri-
5 vate fund as defined in section 202(a)
6 of the Investment Advisers Act of
7 1940 (15 U.S.C. 80b-2(a)); or

8 “(V) a person that is registered
9 or required to be registered with the
10 Commission.

11 “(B) END USER CLEARING EXEMPTION.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), in the event that a swap is subject to
14 the mandatory clearing requirement under
15 paragraph (1), and 1 of the counterparties
16 to the swap is a commercial end user, that
17 counterparty—

18 “(I)(aa) may elect not to clear
19 the swap, as required under para-
20 graph (1); or

21 “(bb) may elect to require clear-
22 ing of the swap; and

23 “(II) if the end user makes an
24 election under subclause (I)(bb), shall
25 have the sole right to select the de-

1 derivatives clearing organization at
2 which the swap will be cleared.

3 “(ii) LIMITATION.—A commercial end
4 user may only make an election under
5 clause (i) if the end user is using the swap
6 to hedge its own commercial risk.

7 “(C) TREATMENT OF AFFILIATES.—

8 “(i) IN GENERAL.—An affiliate of a
9 commercial end user (including affiliate en-
10 tities predominantly engaged in providing
11 financing for the purchase of the merchan-
12 dise or manufactured goods of the com-
13 mercial end user) may make an election
14 under subparagraph (B)(i) only if the affil-
15 iate, acting on behalf of the commercial
16 end user and as an agent, uses the swap
17 to hedge or mitigate the commercial risk of
18 the commercial end user parent or other
19 affiliate of the commercial end user that is
20 not a financial entity.

21 “(ii) PROHIBITION RELATING TO CER-
22 TAIN AFFILIATES.—An affiliate of a com-
23 mercial end user shall not use the exemp-
24 tion under subparagraph (B) if the affil-
25 iate is—

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1 “(I) a swap dealer;

2 “(II) a security-based swap deal-

3 er;

4 “(III) a major swap participant;

5 “(IV) a major security-based
6 swap participant;

7 “(V) an issuer that would be an
8 investment company, as defined in
9 section 3 of the Investment Company
10 Act of 1940 (15 U.S.C. 80a–3), but
11 for paragraph (1) or (7) of subsection
12 (c) of that Act (15 U.S.C. 80a–3(c));

13 “(VI) a commodity pool;

14 “(VII) a bank holding company
15 with over \$50,000,000,000 in consoli-
16 dated assets; or

17 “(VIII) an affiliate of any entity
18 described in subclauses (I) through
19 (VII).

20 “(D) ABUSE OF EXEMPTION.—The Com-
21 mission may prescribe such rules or issue inter-
22 pretations of the rules as the Commission deter-
23 mines to be necessary to prevent abuse of the
24 exemption described in subparagraph (B). The
25 Commission may also request information from

1 those entities claiming the clearing exemption
2 as necessary to prevent abuse of the exemption
3 described in subparagraph (B).

4 “(E) OPTION TO CLEAR.—

5 “(i) SWAPS REQUIRED TO BE
6 CLEARED ENTERED INTO WITH A FINAN-
7 CIAL ENTITY.—With respect to any swap
8 that is subject to the mandatory clearing
9 requirement under this subsection and en-
10 tered into by a swap dealer or a major
11 swap participant with a financial entity
12 that is not a swap dealer, major swap par-
13 ticipant, security-based swap dealer, or
14 major security-based swap participant, the
15 financial entity shall have the sole right to
16 select the derivatives clearing organization
17 at which the swap will be cleared.

18 “(ii) SWAPS NOT REQUIRED TO BE
19 CLEARED ENTERED INTO WITH A FINAN-
20 CIAL ENTITY OR COMMERCIAL END
21 USER.—With respect to any swap that is
22 not subject to the mandatory clearing re-
23 quirement under this subsection and en-
24 tered into by a swap dealer or a major
25 swap participant with a financial entity or

1 commercial end user, the financial entity
2 or commercial end user—

3 “(I) may elect to require clearing
4 of the swap; and

5 “(II) shall have the sole right to
6 select the derivatives clearing organi-
7 zation at which the swap will be
8 cleared.”.

9 (b) COMMODITY EXCHANGE ACT.—Section 2 of the
10 Commodity Exchange Act (7 U.S.C. 2) is amended by
11 adding at the end the following:

12 “(j) AUDIT COMMITTEE APPROVAL.—Exemptions
13 from the requirements of subsection (h)(1) to clear a swap
14 and subsection (h)(8) to trade a swap through a board
15 of trade or swap execution facility shall be available to
16 a counterparty that is an issuer of securities that are reg-
17 istered under section 12 of the Securities Exchange Act
18 of 1934 (15 U.S.C. 78l) or that is required to file reports
19 pursuant to section 15(d) of the Securities Exchange Act
20 of 1934 (15 U.S.C. 78o) only if the issuer’s audit com-
21 mittee has reviewed and approved its decision to enter into
22 swaps that are subject to such exemptions.”.

23 (c) GRANDFATHER PROVISIONS.—

24 (1) LEGAL CERTAINTY FOR CERTAIN TRANS-
25 ACTIONS IN EXEMPT COMMODITIES.—Not later than

1 60 days after the date of enactment of this Act, a
2 person may submit to the Commodity Futures Trad-
3 ing Commission a petition to remain subject to sec-
4 tion 2(h) of the Commodity Exchange Act (7 U.S.C.
5 2(h)) (as in effect on the day before the date of en-
6 actment of this Act).

7 (2) CONSIDERATION; AUTHORITY OF COM-
8 MODITY FUTURES TRADING COMMISSION.—The
9 Commodity Futures Trading Commission—

10 (A) shall consider any petition submitted
11 under subparagraph (A) in a prompt manner;
12 and

13 (B) may allow a person to continue oper-
14 ating subject to section 2(h) of the Commodity
15 Exchange Act (7 U.S.C. 2(h)) (as in effect on
16 the day before the date of enactment of this
17 Act) for not longer than a 1-year period.

18 (3) AGRICULTURAL SWAPS.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (B), no person shall offer to
21 enter into, enter into, or confirm the execution
22 of, any swap in an agricultural commodity (as
23 defined by the Commodity Futures Trading
24 Commission).

1 (B) EXCEPTION.—Notwithstanding sub-
2 paragraph (A), a person may offer to enter
3 into, enter into, or confirm the execution of,
4 any swap in an agricultural commodity pursu-
5 ant to section 4(c) of the Commodity Exchange
6 Act (7 U.S.C. 6(c)) or any rule, regulation, or
7 order issued thereunder (including any rule,
8 regulation, or order in effect as of the date of
9 enactment of this Act) by the Commodity Fu-
10 tures Trading Commission to allow swaps under
11 such terms and conditions as the Commission
12 shall prescribe.

13 (4) REQUIRED REPORTING.—If the exception
14 described in section 2(h)(8)(B) of the Commodity
15 Exchange Act applies, the counterparties shall com-
16 ply with any recordkeeping and transaction report-
17 ing requirements that may be prescribed by the
18 Commission with respect to swaps subject to section
19 2(h)(8)(B) of the Commodity Exchange Act.

20 **SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREAT-**
21 **MENT.**

22 (a) SEGREGATION REQUIREMENTS FOR CLEARED
23 SWAPS.—Section 4d of the Commodity Exchange Act (7
24 U.S.C. 6d) (as amended by section 732) is amended by
25 adding at the end the following:

1 “(f) SWAPS.—

2 “(1) REGISTRATION REQUIREMENT.—It shall
3 be unlawful for any person to accept any money, se-
4 curities, or property (or to extend any credit in lieu
5 of money, securities, or property) from, for, or on
6 behalf of a swaps customer to margin, guarantee, or
7 secure a swap cleared by or through a derivatives
8 clearing organization (including money, securities, or
9 property accruing to the customer as the result of
10 such a swap), unless the person shall have registered
11 under this Act with the Commission as a futures
12 commission merchant, and the registration shall not
13 have expired nor been suspended nor revoked.

14 “(2) CLEARED SWAPS.—

15 “(A) SEGREGATION REQUIRED.—A futures
16 commission merchant shall treat and deal with
17 all money, securities, and property of any swaps
18 customer received to margin, guarantee, or se-
19 cure a swap cleared by or through a derivatives
20 clearing organization (including money, securi-
21 ties, or property accruing to the swaps cus-
22 tomer as the result of such a swap) as belong-
23 ing to the swaps customer.

24 “(B) COMMINGLING PROHIBITED.—Money,
25 securities, and property of a swaps customer

1 described in subparagraph (A) shall be sepa-
2 rately accounted for and shall not be commin-
3 gled with the funds of the futures commission
4 merchant or be used to margin, secure, or guar-
5 antee any trades or contracts of any swaps cus-
6 tomer or person other than the person for
7 whom the same are held.

8 “(3) EXCEPTIONS.—

9 “(A) USE OF FUNDS.—

10 “(i) IN GENERAL.—Notwithstanding
11 paragraph (2), money, securities, and
12 property of a swaps customer of a futures
13 commission merchant described in para-
14 graph (2) may, for convenience, be com-
15 mingled and deposited in the same 1 or
16 more accounts with any bank or trust com-
17 pany or with a derivatives clearing organi-
18 zation.

19 “(ii) WITHDRAWAL.—Notwithstanding
20 paragraph (2), such share of the money,
21 securities, and property described in clause
22 (i) as in the normal course of business
23 shall be necessary to margin, guarantee,
24 secure, transfer, adjust, or settle a cleared
25 swap with a derivatives clearing organiza-

1 tion, or with any member of the derivatives
2 clearing organization, may be withdrawn
3 and applied to such purposes, including the
4 payment of commissions, brokerage, inter-
5 est, taxes, storage, and other charges, law-
6 fully accruing in connection with the
7 cleared swap.

8 “(B) COMMISSION ACTION.—Notwith-
9 standing paragraph (2), in accordance with
10 such terms and conditions as the Commission
11 may prescribe by rule, regulation, or order, any
12 money, securities, or property of the swaps cus-
13 tomer of a futures commission merchant de-
14 scribed in paragraph (2) may be commingled
15 and deposited as provided in this section with
16 any other money, securities, or property re-
17 ceived by the futures commission merchant and
18 required by the Commission to be separately ac-
19 counted for and treated and dealt with as be-
20 longing to the swaps customer of the futures
21 commission merchant.

22 “(4) PERMITTED INVESTMENTS.—Money de-
23 scribed in paragraph (2) may be invested in obliga-
24 tions of the United States, in general obligations of
25 any State or of any political subdivision of a State,

1 and in obligations fully guaranteed as to principal
2 and interest by the United States, or in any other
3 investment that the Commission may by rule or reg-
4 ulation prescribe, and such investments shall be
5 made in accordance with such rules and regulations
6 and subject to such conditions as the Commission
7 may prescribe.

8 “(5) COMMODITY CONTRACT.—A swap cleared
9 by or through a derivatives clearing organization
10 shall be considered to be a commodity contract as
11 such term is defined in section 761 of title 11,
12 United States Code, with regard to all money, secu-
13 rities, and property of any swaps customer received
14 by a futures commission merchant or a derivatives
15 clearing organization to margin, guarantee, or se-
16 cure the swap (including money, securities, or prop-
17 erty accruing to the customer as the result of the
18 swap).

19 “(6) PROHIBITION.—It shall be unlawful for
20 any person, including any derivatives clearing orga-
21 nization and any depository institution, that has re-
22 ceived any money, securities, or property for deposit
23 in a separate account or accounts as provided in
24 paragraph (2) to hold, dispose of, or use any such
25 money, securities, or property as belonging to the

1 depositing futures commission merchant or any per-
2 son other than the swaps customer of the futures
3 commission merchant.”.

4 (b) BANKRUPTCY TREATMENT OF CLEARED
5 SWAPS.—Section 761 of title 11, United States Code, is
6 amended—

7 (1) in paragraph (4), by striking subparagraph
8 (F) and inserting the following:

9 “(F)(i) any other contract, option, agree-
10 ment, or transaction that is similar to a con-
11 tract, option, agreement, or transaction referred
12 to in this paragraph; and

13 “(ii) with respect to a futures commission
14 merchant or a clearing organization, any other
15 contract, option, agreement, or transaction, in
16 each case, that is cleared by a clearing organi-
17 zation;”; and

18 (2) in paragraph (9)(A)(i), by striking “the
19 commodity futures account” and inserting “a com-
20 modity contract account”.

21 (c) SEGREGATION REQUIREMENTS FOR UNCLEARED
22 SWAPS.—Section 4s of the Commodity Exchange Act (as
23 added by section 731) is amended by adding at the end
24 the following:

25 “(l) SEGREGATION REQUIREMENTS.—

1 “(1) SEGREGATION OF ASSETS HELD AS COL-
2 LATERAL IN UNCLEARED SWAP TRANSACTIONS.—

3 “(A) NOTIFICATION.—A swap dealer or
4 major swap participant shall be required to no-
5 tify the counterparty of the swap dealer or
6 major swap participant at the beginning of a
7 swap transaction that the counterparty has the
8 right to require segregation of the funds or
9 other property supplied to margin, guarantee,
10 or secure the obligations of the counterparty.

11 “(B) SEGREGATION AND MAINTENANCE OF
12 FUNDS.—At the request of a counterparty to a
13 swap that provides funds or other property to
14 a swap dealer or major swap participant to
15 margin, guarantee, or secure the obligations of
16 the counterparty, the swap dealer or major
17 swap participant shall—

18 “(i) segregate the funds or other
19 property for the benefit of the
20 counterparty; and

21 “(ii) in accordance with such rules
22 and regulations as the Commission may
23 promulgate, maintain the funds or other
24 property in a segregated account separate

1 from the assets and other interests of the
2 swap dealer or major swap participant.

3 “(2) APPLICABILITY.—The requirements de-
4 scribed in paragraph (1) shall—

5 “(A) apply only to a swap between a
6 counterparty and a swap dealer or major swap
7 participant that is not submitted for clearing to
8 a derivatives clearing organization; and

9 “(B)(i) not apply to variation margin pay-
10 ments; or

11 “(ii) not preclude any commercial arrange-
12 ment regarding—

13 “(I) the investment of segregated
14 funds or other property that may only be
15 invested in such investments as the Com-
16 mission may permit by rule or regulation;
17 and

18 “(II) the related allocation of gains
19 and losses resulting from any investment
20 of the segregated funds or other property.

21 “(3) USE OF INDEPENDENT THIRD-PARTY
22 CUSTODIANS.—The segregated account described in
23 paragraph (1) shall be—

24 “(A) carried by an independent third-party
25 custodian; and

1 “(B) designated as a segregated account
2 for and on behalf of the counterparty.

3 “(4) REPORTING REQUIREMENT.—If the
4 counterparty does not choose to require segregation
5 of the funds or other property supplied to margin,
6 guarantee, or secure the obligations of the
7 counterparty, the swap dealer or major swap partici-
8 pant shall report to the counterparty of the swap
9 dealer or major swap participant on a quarterly
10 basis that the back office procedures of the swap
11 dealer or major swap participant relating to margin
12 and collateral requirements are in compliance with
13 the agreement of the counterparties.”.

14 **SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.**

15 (a) REGISTRATION REQUIREMENT.—Section 5b of
16 the Commodity Exchange Act (7 U.S.C. 7a–1) is amended
17 by striking subsections (a) and (b) and inserting the fol-
18 lowing:

19 “(a) REGISTRATION REQUIREMENT.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), it shall be unlawful for a derivatives
22 clearing organization, directly or indirectly, to make
23 use of the mails or any means or instrumentality of
24 interstate commerce to perform the functions of a
25 derivatives clearing organization with respect to—

1 “(A) a contract of sale of a commodity for
2 future delivery (or an option on the contract of
3 sale) or option on a commodity, in each case,
4 unless the contract or option is—

5 “(i) excluded from this Act by sub-
6 section (a)(1)(C)(i), (c), or (f) of section 2;
7 or

8 “(ii) a security futures product
9 cleared by a clearing agency registered
10 with the Securities and Exchange Commis-
11 sion under the Securities Exchange Act of
12 1934 (15 U.S.C. 78a et seq.); or

13 “(B) a swap.

14 “(2) EXCEPTION.—Paragraph (1) shall not
15 apply to a derivatives clearing organization that is
16 registered with the Commission.

17 “(b) VOLUNTARY REGISTRATION.—A person that
18 clears 1 or more agreements, contracts, or transactions
19 that are not required to be cleared under this Act may
20 register with the Commission as a derivatives clearing or-
21 ganization.”.

22 (b) REGISTRATION FOR DEPOSITORY INSTITUTIONS
23 AND CLEARING AGENCIES; EXEMPTIONS; COMPLIANCE
24 OFFICER; ANNUAL REPORTS.—Section 5b of the Com-

1 modify Exchange Act (7 U.S.C. 7a–1) is amended by add-
2 ing at the end the following:

3 “(g) REQUIRED REGISTRATION FOR DEPOSITORY IN-
4 STITUTIONS AND CLEARING AGENCIES.—A person that is
5 required to be registered as a derivatives clearing organi-
6 zation under this section shall register with the Commis-
7 sion regardless of whether the person is a depository insti-
8 tution (as that term is defined in section 3 of the Federal
9 Deposit Insurance Act (12 U.S.C. 1813)) or a clearing
10 agency registered with the Securities and Exchange Com-
11 mission under the Securities Exchange Act of 1934 (15
12 U.S.C. 78a et seq.).

13 “(h) EXISTING DEPOSITORY INSTITUTIONS AND
14 CLEARING AGENCIES.—

15 “(1) IN GENERAL.—A depository institution or
16 clearing agency registered with the Securities and
17 Exchange Commission under the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78a et seq.) that is
19 required to be registered as a derivatives clearing or-
20 ganization under this section is deemed to be reg-
21 istered under this section to the extent that, before
22 the date of enactment of this subsection—

23 “(A) the depository institution cleared
24 swaps as a multilateral clearing organization; or

25 “(B) the clearing agency cleared swaps.

1 “(2) CONVERSION OF DEPOSITORY INSTITU-
2 TIONS.—A depository institution to which this sub-
3 section applies may, by the vote of the shareholders
4 owning not less than 51 percent of the voting inter-
5 ests of the depository institution, be converted into
6 a State corporation, partnership, limited liability
7 company, or similar legal form pursuant to a plan
8 of conversion, if the conversion is not in contraven-
9 tion of applicable State law.

10 “(i) EXEMPTIONS.—The Commission may exempt,
11 conditionally or unconditionally, a derivatives clearing or-
12 ganization from registration under this section for the
13 clearing of swaps if the Commission determines that the
14 derivatives clearing organization is subject to comparable,
15 comprehensive supervision and regulation by the Securi-
16 ties and Exchange Commission or the appropriate govern-
17 ment authorities in the home country of the organization.
18 Such conditions may include, but are not limited to, re-
19 quiring that the derivatives clearing organization be avail-
20 able for inspection by the Commission and make available
21 all information requested by the Commission.

22 “(j) DESIGNATION OF CHIEF COMPLIANCE OFFI-
23 CER.—

1 “(1) IN GENERAL.—Each derivatives clearing
2 organization shall designate an individual to serve as
3 a chief compliance officer.

4 “(2) DUTIES.—The chief compliance officer
5 shall—

6 “(A) report directly to the board or to the
7 senior officer of the derivatives clearing organi-
8 zation;

9 “(B) review the compliance of the deriva-
10 tives clearing organization with respect to the
11 core principles described in subsection (c)(2);

12 “(C) in consultation with the board of the
13 derivatives clearing organization, a body per-
14 forming a function similar to the board of the
15 derivatives clearing organization, or the senior
16 officer of the derivatives clearing organization,
17 resolve any conflicts of interest that may arise;

18 “(D) be responsible for administering each
19 policy and procedure that is required to be es-
20 tablished pursuant to this section;

21 “(E) ensure compliance with this Act (in-
22 cluding regulations) relating to agreements,
23 contracts, or transactions, including each rule
24 prescribed by the Commission under this sec-
25 tion;

1 “(F) establish procedures for the remedi-
2 ation of noncompliance issues identified by the
3 compliance officer through any—

4 “(i) compliance office review;

5 “(ii) look-back;

6 “(iii) internal or external audit find-
7 ing;

8 “(iv) self-reported error; or

9 “(v) validated complaint; and

10 “(G) establish and follow appropriate pro-
11 cedures for the handling, management response,
12 remediation, retesting, and closing of non-
13 compliance issues.

14 “(3) ANNUAL REPORTS.—

15 “(A) IN GENERAL.—In accordance with
16 rules prescribed by the Commission, the chief
17 compliance officer shall annually prepare and
18 sign a report that contains a description of—

19 “(i) the compliance of the derivatives
20 clearing organization of the compliance of-
21 ficer with respect to this Act (including
22 regulations); and

23 “(ii) each policy and procedure of the
24 derivatives clearing organization of the
25 compliance officer (including the code of

1 ethics and conflict of interest policies of
2 the derivatives clearing organization).

3 “(B) REQUIREMENTS.—A compliance re-
4 port under subparagraph (A) shall—

5 “(i) accompany each appropriate fi-
6 nancial report of the derivatives clearing
7 organization that is required to be fur-
8 nished to the Commission pursuant to this
9 section; and

10 “(ii) include a certification that, under
11 penalty of law, the compliance report is ac-
12 curate and complete.”.

13 (c) CORE PRINCIPLES FOR DERIVATIVES CLEARING
14 ORGANIZATIONS.—Section 5b(c) of the Commodity Ex-
15 change Act (7 U.S.C. 7a-1(c)) is amended by striking
16 paragraph (2) and inserting the following:

17 “(2) CORE PRINCIPLES FOR DERIVATIVES
18 CLEARING ORGANIZATIONS.—

19 “(A) COMPLIANCE.—

20 “(i) IN GENERAL.—To be registered
21 and to maintain registration as a deriva-
22 tives clearing organization, a derivatives
23 clearing organization shall comply with
24 each core principle described in this para-
25 graph and any requirement that the Com-

1 mission may impose by rule or regulation
2 pursuant to section 8a(5).

3 “(ii) DISCRETION OF DERIVATIVES
4 CLEARING ORGANIZATION.—Subject to any
5 rule or regulation prescribed by the Com-
6 mission, a derivatives clearing organization
7 shall have reasonable discretion in estab-
8 lishing the manner by which the derivatives
9 clearing organization complies with each
10 core principle described in this paragraph.

11 “(B) FINANCIAL RESOURCES.—

12 “(i) IN GENERAL.—Each derivatives
13 clearing organization shall have adequate
14 financial, operational, and managerial re-
15 sources, as determined by the Commission,
16 to discharge each responsibility of the de-
17 rivatives clearing organization.

18 “(ii) MINIMUM AMOUNT OF FINAN-
19 CIAL RESOURCES.—Each derivatives clear-
20 ing organization shall possess financial re-
21 sources that, at a minimum, exceed the
22 total amount that would—

23 “(I) enable the organization to
24 meet its financial obligations to its
25 members and participants notwith-

1 standing a default by the member or
2 participant creating the largest finan-
3 cial exposure for that organization in
4 extreme but plausible market condi-
5 tions; and

6 “(II) enable the derivatives clear-
7 ing organization to cover the oper-
8 ating costs of the derivatives clearing
9 organization for a period of 1 year (as
10 calculated on a rolling basis).

11 “(C) PARTICIPANT AND PRODUCT ELIGI-
12 BILITY.—

13 “(i) IN GENERAL.—Each derivatives
14 clearing organization shall establish—

15 “(I) appropriate admission and
16 continuing eligibility standards (in-
17 cluding sufficient financial resources
18 and operational capacity to meet obli-
19 gations arising from participation in
20 the derivatives clearing organization)
21 for members of, and participants in,
22 the derivatives clearing organization;
23 and

24 “(II) appropriate standards for
25 determining the eligibility of agree-

1 ments, contracts, and transactions
2 submitted to the derivatives clearing
3 organization for clearing.

4 “(ii) REQUIRED PROCEDURES.—Each
5 derivatives clearing organization shall es-
6 tablish and implement procedures to verify,
7 on an ongoing basis, the compliance of
8 each participation and membership re-
9 quirement of the derivatives clearing orga-
10 nization.

11 “(iii) REQUIREMENTS.—The partici-
12 pation and membership requirements of
13 each derivatives clearing organization
14 shall—

15 “(I) be objective;

16 “(II) be publicly disclosed; and

17 “(III) permit fair and open ac-
18 cess.

19 “(D) RISK MANAGEMENT.—

20 “(i) IN GENERAL.—Each derivatives
21 clearing organization shall ensure that the
22 derivatives clearing organization possesses
23 the ability to manage the risks associated
24 with discharging the responsibilities of the
25 derivatives clearing organization through

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1 the use of appropriate tools and proce-
2 dures.

3 “(ii) MEASUREMENT OF CREDIT EX-
4 POSURE.—Each derivatives clearing orga-
5 nization shall—

6 “(I) not less than once during
7 each business day of the derivatives
8 clearing organization, measure the
9 credit exposures of the derivatives
10 clearing organization to each member
11 and participant of the derivatives
12 clearing organization; and

13 “(II) monitor each exposure de-
14 scribed in subclause (I) periodically
15 during the business day of the deriva-
16 tives clearing organization.

17 “(iii) LIMITATION OF EXPOSURE TO
18 POTENTIAL LOSSES FROM DEFAULTS.—
19 Each derivatives clearing organization,
20 through margin requirements and other
21 risk control mechanisms, shall limit the ex-
22 posure of the derivatives clearing organiza-
23 tion to potential losses from defaults by
24 members and participants of the deriva-
25 tives clearing organization to ensure that—

1 “(ii) employ money settlement ar-
2 rangements to eliminate or strictly limit
3 the exposure of the derivatives clearing or-
4 ganization to settlement bank risks (in-
5 cluding credit and liquidity risks from the
6 use of banks to effect money settlements);

7 “(iii) ensure that money settlements
8 are final when effected;

9 “(iv) maintain an accurate record of
10 the flow of funds associated with each
11 money settlement;

12 “(v) possess the ability to comply with
13 each term and condition of any permitted
14 netting or offset arrangement with any
15 other clearing organization;

16 “(vi) regarding physical settlements,
17 establish rules that clearly state each obli-
18 gation of the derivatives clearing organiza-
19 tion with respect to physical deliveries; and

20 “(vii) ensure that each risk arising
21 from an obligation described in clause (vi)
22 is identified and managed.

23 “(F) TREATMENT OF FUNDS.—

24 “(i) REQUIRED STANDARDS AND PRO-
25 CEDURES.—Each derivatives clearing orga-

1 nization shall establish standards and pro-
 2 cedures that are designed to protect and
 3 ensure the safety of member and partici-
 4 pant funds and assets.

5 “(ii) HOLDING OF FUNDS AND AS-
 6 SETS.—Each derivatives clearing organiza-
 7 tion shall hold member and participant
 8 funds and assets in a manner by which to
 9 minimize the risk of loss or of delay in the
 10 access by the derivatives clearing organiza-
 11 tion to the assets and funds.

12 “(iii) PERMISSIBLE INVESTMENTS.—
 13 Funds and assets invested by a derivatives
 14 clearing organization shall be held in in-
 15 struments with minimal credit, market,
 16 and liquidity risks.

17 “(G) DEFAULT RULES AND PROCE-
 18 DURES.—

19 “(i) IN GENERAL.—Each derivatives
 20 clearing organization shall have rules and
 21 procedures designed to allow for the effi-
 22 cient, fair, and safe management of events
 23 during which members or participants—

24 “(I) become insolvent; or

1 “(II) otherwise default on the ob-
2 ligations of the members or partici-
3 pants to the derivatives clearing orga-
4 nization.

5 “(ii) DEFAULT PROCEDURES.—Each
6 derivatives clearing organization shall—

7 “(I) clearly state the default pro-
8 cedures of the derivatives clearing or-
9 ganization;

10 “(II) make publicly available the
11 default rules of the derivatives clear-
12 ing organization; and

13 “(III) ensure that the derivatives
14 clearing organization may take timely
15 action—

16 “(aa) to contain losses and
17 liquidity pressures; and

18 “(bb) to continue meeting
19 each obligation of the derivatives
20 clearing organization.

21 “(H) RULE ENFORCEMENT.—Each deriva-
22 tives clearing organization shall—

23 “(i) maintain adequate arrangements
24 and resources for—

1 “(I) the effective monitoring and
2 enforcement of compliance with the
3 rules of the derivatives clearing orga-
4 nization; and

5 “(II) the resolution of disputes;

6 “(ii) have the authority and ability to
7 discipline, limit, suspend, or terminate the
8 activities of a member or participant due
9 to a violation by the member or participant
10 of any rule of the derivatives clearing orga-
11 nization; and

12 “(iii) report to the Commission re-
13 garding rule enforcement activities and
14 sanctions imposed against members and
15 participants as provided in clause (ii).

16 “(I) SYSTEM SAFEGUARDS.—Each deriva-
17 tives clearing organization shall—

18 “(i) establish and maintain a program
19 of risk analysis and oversight to identify
20 and minimize sources of operational risk
21 through the development of appropriate
22 controls and procedures, and automated
23 systems, that are reliable, secure, and have
24 adequate scalable capacity;

1 “(ii) establish and maintain emer-
2 gency procedures, backup facilities, and a
3 plan for disaster recovery that allows for—

4 “(I) the timely recovery and re-
5 sumption of operations of the deriva-
6 tives clearing organization; and

7 “(II) the fulfillment of each obli-
8 gation and responsibility of the de-
9 rivatives clearing organization; and

10 “(iii) periodically conduct tests to
11 verify that the backup resources of the de-
12 rivatives clearing organization are suffi-
13 cient to ensure daily processing, clearing,
14 and settlement.

15 “(J) REPORTING.—Each derivatives clear-
16 ing organization shall provide to the Commis-
17 sion all information that the Commission deter-
18 mines to be necessary to conduct oversight of
19 the derivatives clearing organization.

20 “(K) RECORDKEEPING.—Each derivatives
21 clearing organization shall maintain records of
22 all activities related to the business of the de-
23 rivatives clearing organization as a derivatives
24 clearing organization—

1 action cleared and settled by the de-
2 rivatives clearing organization;

3 “(II) each clearing and other fee
4 that the derivatives clearing organiza-
5 tion charges the members and partici-
6 pants of the derivatives clearing orga-
7 nization;

8 “(III) the margin-setting method-
9 ology, and the size and composition,
10 of the financial resource package of
11 the derivatives clearing organization;

12 “(IV) daily settlement prices, vol-
13 ume, and open interest for each con-
14 tract settled or cleared by the deriva-
15 tives clearing organization; and

16 “(V) any other matter relevant to
17 participation in the settlement and
18 clearing activities of the derivatives
19 clearing organization.

20 “(M) INFORMATION-SHARING.—Each de-
21 rivatives clearing organization shall—

22 “(i) enter into, and abide by the terms
23 of, each appropriate and applicable domes-
24 tic and international information-sharing
25 agreement; and

1 “(ii) use relevant information obtained
2 from each agreement described in clause
3 (i) in carrying out the risk management
4 program of the derivatives clearing organi-
5 zation.

6 “(N) ANTITRUST CONSIDERATIONS.—Un-
7 less necessary or appropriate to achieve the
8 purposes of this Act, a derivatives clearing or-
9 ganization shall not—

10 “(i) adopt any rule or take any action
11 that results in any unreasonable restraint
12 of trade; or

13 “(ii) impose any material anticompeti-
14 tive burden.

15 “(O) GOVERNANCE FITNESS STAND-
16 ARDS.—

17 “(i) GOVERNANCE ARRANGEMENTS.—
18 Each derivatives clearing organization shall
19 establish governance arrangements that
20 are transparent—

21 “(I) to fulfill public interest re-
22 quirements; and

23 “(II) to support the objectives of
24 owners and participants.

1 “(ii) FITNESS STANDARDS.—Each de-
2 rivatives clearing organization shall estab-
3 lish and enforce appropriate fitness stand-
4 ards for—

5 “(I) directors;

6 “(II) members of any disciplinary
7 committee;

8 “(III) members of the derivatives
9 clearing organization;

10 “(IV) any other individual or en-
11 tity with direct access to the settle-
12 ment or clearing activities of the de-
13 rivatives clearing organization; and

14 “(V) any party affiliated with
15 any individual or entity described in
16 this clause.

17 “(P) CONFLICTS OF INTEREST.—Each de-
18 rivatives clearing organization shall—

19 “(i) establish and enforce rules to
20 minimize conflicts of interest in the deci-
21 sion-making process of the derivatives
22 clearing organization; and

23 “(ii) establish a process for resolving
24 conflicts of interest described in clause (i).

1 “(Q) COMPOSITION OF GOVERNING
2 BOARDS.—Each derivatives clearing organiza-
3 tion shall ensure that the composition of the
4 governing board or committee of the derivatives
5 clearing organization includes market partici-
6 pants.

7 “(R) LEGAL RISK.—Each derivatives clear-
8 ing organization shall have a well-founded,
9 transparent, and enforceable legal framework
10 for each aspect of the activities of the deriva-
11 tives clearing organization.

12 “(S) MODIFICATION OF CORE PRIN-
13 CIPLES.—The Commission may conform the
14 core principles established in this paragraph to
15 reflect evolving United States and international
16 standards.”.

17 (d) CONFLICTS OF INTEREST.—The Commodity Fu-
18 tures Trading Commission shall adopt rules mitigating
19 conflicts of interest in connection with the conduct of busi-
20 ness by a swap dealer or a major swap participant with
21 a derivatives clearing organization, board of trade, or a
22 swap execution facility that clears or trades swaps in
23 which the swap dealer or major swap participant has a
24 material debt or material equity investment.

1 (e) REPORTING REQUIREMENTS.—Section 5b of the
2 Commodity Exchange Act (7 U.S.C. 7a–1) (as amended
3 by subsection (b)) is amended by adding at the end the
4 following:

5 “(k) REPORTING REQUIREMENTS.—

6 “(1) DUTY OF DERIVATIVES CLEARING ORGANI-
7 ZATIONS.—Each derivatives clearing organization
8 that clears swaps shall provide to the Commission all
9 information that is determined by the Commission to
10 be necessary to perform each responsibility of the
11 Commission under this Act.

12 “(2) DATA COLLECTION AND MAINTENANCE
13 REQUIREMENTS.—The Commission shall adopt data
14 collection and maintenance requirements for swaps
15 cleared by derivatives clearing organizations that are
16 comparable to the corresponding requirements for—

17 “(A) swaps data reported to swap data re-
18 positories; and

19 “(B) swaps traded on swap execution fa-
20 cilities.

21 “(3) REPORTS ON SECURITY-BASED SWAP
22 AGREEMENTS TO BE SHARED WITH THE SECURITIES
23 AND EXCHANGE COMMISSION.—

24 “(A) IN GENERAL.—A derivatives clearing
25 organization that clears security-based swap

1 agreements (as defined in section 3(a)(78) of
2 the Securities Exchange Act) shall, upon re-
3 quest, make available to the Securities and Ex-
4 change Commission all books and records relat-
5 ing to such security-based swap agreements,
6 consistent with the confidentiality and dislo-
7 sure requirements of section 8.

8 “(B) JURISDICTION.—Nothing in this
9 paragraph shall affect the exclusive jurisdiction
10 of the Commission to prescribe recordkeeping
11 and reporting requirements for a derivatives
12 clearing organization that is registered with the
13 Commission.”

14 “(4) INFORMATION SHARING.—Subject to sec-
15 tion 8, and upon request, the Commission shall
16 share information collected under paragraph (2)
17 with—

18 “(A) the Board;

19 “(B) the Securities and Exchange Commis-
20 sion;

21 “(C) each appropriate prudential regulator;

22 “(D) the Financial Stability Oversight
23 Council;

24 “(E) the Department of Justice; and

1 “(F) any other person that the Commis-
2 sion determines to be appropriate, including—

3 “(i) foreign financial supervisors (in-
4 cluding foreign futures authorities);

5 “(ii) foreign central banks; and

6 “(iii) foreign ministries.

7 “(5) CONFIDENTIALITY AND INDEMNIFICATION
8 AGREEMENT.—Before the Commission may share in-
9 formation with any entity described in paragraph
10 (4)—

11 “(A) the Commission shall receive a writ-
12 ten agreement from each entity stating that the
13 entity shall abide by the confidentiality require-
14 ments described in section 8 relating to the in-
15 formation on swap transactions that is pro-
16 vided; and

17 “(B) each entity shall agree to indemnify
18 the Commission for any expenses arising from
19 litigation relating to the information provided
20 under section 8.

21 “(6) PUBLIC INFORMATION.—Each derivatives
22 clearing organization that clears swaps shall provide
23 to the Commission (including any designee of the
24 Commission) information under paragraph (2) in
25 such form and at such frequency as is required by

1 the Commission to comply with the public reporting
2 requirements contained in section 2(a)(13).”.

3 (f) PUBLIC DISCLOSURE.—Section 8(e) of the Com-
4 modity Exchange Act (7 U.S.C. 12(e)) is amended in the
5 last sentence—

6 (1) by inserting “, central bank and min-
7 istries,” after “department” each place it appears;
8 and

9 (2) by striking “. is a party.” and inserting “,
10 is a party.”.

11 (g) LEGAL CERTAINTY FOR IDENTIFIED BANKING
12 PRODUCTS.—

13 (1) REPEALS.—The Legal Certainty for Bank
14 Products Act of 2000 (7 U.S.C. 27 et seq.) is
15 amended—

16 (A) by striking sections 404 and 407 (7
17 U.S.C. 27b, 27e);

18 (B) in section 402 (7 U.S.C. 27), by strik-
19 ing subsection (d); and

20 (C) in section 408 (7 U.S.C. 27f)—

21 (i) in subsection (c)—

22 (I) by striking “in the case” and
23 all that follows through “a hybrid”
24 and inserting “in the case of a hy-
25 brid”;

1 (II) by striking “; or” and insert-
2 ing a period; and
3 (III) by striking paragraph (2);
4 (ii) by striking subsection (b); and
5 (iii) by redesignating subsection (c) as
6 subsection (b).

7 (2) **LEGAL CERTAINTY FOR BANK PRODUCTS**
8 **ACT OF 2000.**—Section 403 of the Legal Certainty
9 for Bank Products Act of 2000 (7 U.S.C. 27a) is
10 amended to read as follows:

11 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

12 “(a) **EXCLUSION.**—Except as provided in subsection
13 (b) or (c)—

14 “(1) the Commodity Exchange Act (7 U.S.C. 1
15 et seq.) shall not apply to, and the Commodity Fu-
16 tures Trading Commission shall not exercise regu-
17 latory authority under the Commodity Exchange Act
18 (7 U.S.C. 1 et seq.) with respect to, an identified
19 banking product; and

20 “(2) the definitions of ‘security-based swap’ in
21 section 3(a)(68) of the Securities Exchange Act of
22 1934 and ‘security-based swap agreement’ in section
23 3(a)(78) of the Securities Exchange Act of 1934 do
24 not include any identified bank product.

1 “(b) EXCEPTION.—An appropriate Federal banking
2 agency may except an identified banking product of a
3 bank under its regulatory jurisdiction from the exclusion
4 in subsection (a) if the agency determines, in consultation
5 with the Commodity Futures Trading Commission and the
6 Securities and Exchange Commission, that the product—

7 “(1) would meet the definition of a ‘swap’
8 under section 1a(47) of the Commodity Exchange
9 Act (7 U.S.C. 1a) or a ‘security-based swap’ under
10 that section 3(a)(68) of the Securities Exchange Act
11 of 1934; and

12 “(2) has become known to the trade as a swap
13 or security-based swap, or otherwise has been struc-
14 tured as an identified banking product for the pur-
15 pose of evading the provisions of the Commodity Ex-
16 change Act (7 U.S.C. 1 et seq.), the Securities Act
17 of 1933 (15 U.S.C. 77a et seq.), or the Securities
18 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

19 “(c) EXCEPTION.—The exclusions in subsection (a)
20 shall not apply to an identified bank product that—

21 “(1) is a product of a bank that is not under
22 the regulatory jurisdiction of an appropriate Federal
23 banking agency;

24 “(2) meets the definition of swap in section
25 1a(47) of the Commodity Exchange Act or security-

1 based swap in section 3(a)(68) of the Securities Ex-
2 change Act of 1934; and

3 “(3) has become known to the trade as a swap
4 or security-based swap, or otherwise has been struc-
5 tured as an identified banking product for the pur-
6 pose of evading the provisions of the Commodity Ex-
7 change Act (7 U.S.C. 1 et seq.), the Securities Act
8 of 1933 (15 U.S.C. 77a et seq.), or the Securities
9 Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

10 **SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.**

11 (a) IN GENERAL.—Not later than 180 days after the
12 date of enactment of the Wall Street Transparency and
13 Accountability Act of 2010, the Commodity Futures Trad-
14 ing Commission shall determine whether to adopt rules to
15 establish limits on the control of any derivatives clearing
16 organization that clears swaps, or swap execution facility
17 or board of trade designated as a contract market that
18 posts swaps or makes swaps available for trading, by a
19 bank holding company (as defined in section 2 of the Bank
20 Holding Company Act of 1956 (12 U.S.C. 1841)) with
21 total consolidated assets of \$50,000,000,000 or more, a
22 nonbank financial company (as defined in section 102) su-
23 pervised by the Board, an affiliate of such a bank holding
24 company or nonbank financial company, a swap dealer,

1 major swap participant, or associated person of a swap
2 dealer or major swap participant.

3 (b) PURPOSES.—The Commission shall adopt rules if
4 it determines, after the review described in subsection (a),
5 that such rules are necessary or appropriate to improve
6 the governance of, or to mitigate systemic risk, promote
7 competition, or mitigate conflicts of interest in connection
8 with a swap dealer or major swap participant’s conduct
9 of business with, a derivatives clearing organization, con-
10 tract market, or swap execution facility that clears or
11 posts swaps or makes swaps available for trading and in
12 which such swap dealer or major swap participant has a
13 material debt or equity investment.

14 **SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION**
15 **DATA.**

16 Section 2(a) of the Commodity Exchange Act (7
17 U.S.C. 2(a)) is amended by adding at the end the fol-
18 lowing:

19 “(13) PUBLIC AVAILABILITY OF SWAP TRANS-
20 ACTION DATA.—

21 “(A) DEFINITION OF REAL-TIME PUBLIC
22 REPORTING.—In this paragraph, the term ‘real-
23 time public reporting’ means to report data re-
24 lating to a swap transaction as soon as techno-

1 logically practicable after the time at which the
2 swap transaction has been executed.

3 “(B) PURPOSE.—The purpose of this sec-
4 tion is to authorize the Commission to make
5 swap transaction and pricing data available to
6 the public in such form and at such times as
7 the Commission determines appropriate to en-
8 hance price discovery.

9 “(C) GENERAL RULE.—The Commission is
10 authorized and required to provide by rule for
11 the public availability of swap transaction and
12 pricing data as follows:

13 “(i) With respect to those swaps that
14 are subject to the mandatory clearing re-
15 quirement described in subsection (h)(1)
16 (including those swaps that are exempted
17 from the requirement pursuant to sub-
18 section (h)(10)), the Commission shall re-
19 quire real-time public reporting for such
20 transactions.

21 “(ii) With respect to those swaps that
22 are not subject to the mandatory clearing
23 requirement described in subsection (h)(1),
24 but are cleared at a registered derivatives
25 clearing organization, the Commission

1 shall require real-time public reporting for
2 such transactions.

3 “(iii) With respect to swaps that are
4 not cleared at a registered derivatives
5 clearing organization and which are re-
6 ported to a swap data repository or the
7 Commission under subsection (h)(6), the
8 Commission shall make available to the
9 public, in a manner that does not disclose
10 the business transactions and market posi-
11 tions of any person, aggregate data on
12 such swap trading volumes and positions.

13 “(iv) With respect to swaps that are
14 exempt from the requirements of sub-
15 section (h)(1), the Commission shall re-
16 quire real-time public reporting for such
17 transactions.

18 “(D) REGISTERED ENTITIES AND PUBLIC
19 REPORTING.—The Commission may require
20 registered entities to publicly disseminate the
21 swap transaction and pricing data required to
22 be reported under this paragraph.

23 “(E) RULEMAKING REQUIRED.—With re-
24 spect to the rule providing for the public avail-
25 ability of transaction and pricing data for

1 swaps described in clauses (i) and (ii) of sub-
2 paragraph (C), the rule promulgated by the
3 Commission shall contain provisions—

4 “(i) to ensure such information does
5 not identify the participants;

6 “(ii) to specify the criteria for deter-
7 mining what constitutes a large notional
8 swap transaction (block trade) for par-
9 ticular markets and contracts;

10 “(iii) to specify the appropriate time
11 delay for reporting large notional swap
12 transactions (block trades) to the public;
13 and

14 “(iv) that take into account whether
15 the public disclosure will materially reduce
16 market liquidity.

17 “(F) TIMELINESS OF REPORTING.—Par-
18 ties to a swap (including agents of the parties
19 to a swap) shall be responsible for reporting
20 swap transaction information to the appropriate
21 registered entity in a timely manner as may be
22 prescribed by the Commission.

23 “(14) SEMIANNUAL AND ANNUAL PUBLIC RE-
24 PORTING OF AGGREGATE SWAP DATA.—

1 “(A) IN GENERAL.—In accordance with
2 subparagraph (B), the Commission shall issue a
3 written report on a semiannual and annual
4 basis to make available to the public informa-
5 tion relating to—

6 “(i) the trading and clearing in the
7 major swap categories; and

8 “(ii) the market participants and de-
9 velopments in new products.

10 “(B) USE; CONSULTATION.—In preparing
11 a report under subparagraph (A), the Commis-
12 sion shall—

13 “(i) use information from swap data
14 repositories and derivatives clearing orga-
15 nizations; and

16 “(ii) consult with the Office of the
17 Comptroller of the Currency, the Bank for
18 International Settlements, and such other
19 regulatory bodies as may be necessary.”.

20 **SEC. 728. SWAP DATA REPOSITORIES.**

21 The Commodity Exchange Act is amended by insert-
22 ing after section 20 (7 U.S.C. 24) the following:

23 **“SEC. 21. SWAP DATA REPOSITORIES.**

24 “(a) REGISTRATION REQUIREMENT.—

1 “(1) IN GENERAL.—It shall be unlawful for any
2 person, unless registered with the Commission, di-
3 rectly or indirectly to make use of the mails or any
4 means or instrumentality of interstate commerce to
5 perform the functions of a swap data repository.

6 “(2) INSPECTION AND EXAMINATION.—Each
7 registered swap data repository shall be subject to
8 inspection and examination by any representative of
9 the Commission.

10 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

11 “(A) IN GENERAL.—To be registered, and
12 maintain registration, as a swap data reposi-
13 tory, the swap data repository shall comply
14 with—

15 “(i) the core principles described in
16 this subsection; and

17 “(ii) any requirement that the Com-
18 mission may impose by rule or regulation
19 pursuant to section 8a(5).

20 “(B) REASONABLE DISCRETION OF SWAP
21 DATA REPOSITORY.—Unless otherwise deter-
22 mined by the Commission by rule or regulation,
23 a swap data repository described in subpara-
24 graph (A) shall have reasonable discretion in
25 establishing the manner in which the swap data

1 repository complies with the core principles de-
2 scribed in this subsection.

3 “(b) STANDARD SETTING.—

4 “(1) DATA IDENTIFICATION.—The Commission
5 shall prescribe standards that specify the data ele-
6 ments for each swap that shall be collected and
7 maintained by each registered swap data repository.

8 “(2) DATA COLLECTION AND MAINTENANCE.—
9 The Commission shall prescribe data collection and
10 data maintenance standards for swap data reposi-
11 tories.

12 “(3) COMPARABILITY.—The standards pre-
13 scribed by the Commission under this subsection
14 shall be comparable to the data standards imposed
15 by the Commission on derivatives clearing organiza-
16 tions in connection with their clearing of swaps.

17 “(4) SHARING OF INFORMATION WITH SECURI-
18 TIES AND EXCHANGE COMMISSION.—Registered
19 swap data repositories shall make available to the
20 Securities and Exchange Commission, upon request,
21 all books and records relating to security-based swap
22 agreements that are maintained by such swap data
23 repository, consistent with the confidentiality and
24 disclosure requirements of section 8. Nothing in this
25 paragraph shall affect the exclusive jurisdiction of

1 the Commission to prescribe recordkeeping and re-
2 porting requirements for a swap data repository that
3 is registered with the Commission.

4 “(c) DUTIES.—A swap data repository shall—

5 “(1) accept data prescribed by the Commission
6 for each swap under subsection (b);

7 “(2) confirm with both counterparties to the
8 swap the accuracy of the data that was submitted;

9 “(3) maintain the data described in paragraph
10 (1) in such form, in such manner, and for such pe-
11 riod as may be required by the Commission;

12 “(4)(A) provide direct electronic access to the
13 Commission (or any designee of the Commission, in-
14 cluding another registered entity); and

15 “(B) provide the information described in para-
16 graph (1) in such form and at such frequency as the
17 Commission may require to comply with the public
18 reporting requirements contained in section
19 2(a)(13);

20 “(5) at the direction of the Commission, estab-
21 lish automated systems for monitoring, screening,
22 and analyzing swap data, including compliance and
23 frequency of end user clearing exemption claims by
24 individual and affiliated entities;

1 “(6) maintain the privacy of any and all swap
2 transaction information that the swap data reposi-
3 tory receives from a swap dealer, counterparty, or
4 any other registered entity; and

5 “(7) on a confidential basis pursuant to section
6 8, upon request, and after notifying the Commission
7 of the request, make available all data obtained by
8 the swap data repository, including individual
9 counterparty trade and position data, to—

10 “(A) each appropriate prudential regulator;

11 “(B) the Financial Stability Oversight
12 Council;

13 “(C) the Securities and Exchange Commis-
14 sion;

15 “(D) the Department of Justice; and

16 “(E) any other person that the Commis-
17 sion determines to be appropriate, including—

18 “(i) foreign financial supervisors (in-
19 cluding foreign futures authorities);

20 “(ii) foreign central banks;

21 “(iii) foreign ministries; and

22 “(8) establish and maintain emergency proce-
23 dures, backup facilities, and a plan for disaster re-
24 covery that allows for the timely recovery and re-

1 sumption of operations and the fulfillment of the re-
2 sponsibilities and obligations of the organization.

3 “(d) CONFIDENTIALITY AND INDEMNIFICATION
4 AGREEMENT.—Before the swap data repository may share
5 information with any entity described in subsection
6 (c)(7)—

7 “(1) the swap data repository shall receive a
8 written agreement from each entity stating that the
9 entity shall abide by the confidentiality requirements
10 described in section 8 relating to the information on
11 swap transactions that is provided; and

12 “(2) each entity shall agree to indemnify the
13 swap data repository and the Commission for any
14 expenses arising from litigation relating to the infor-
15 mation provided under section 8.

16 “(e) DESIGNATION OF CHIEF COMPLIANCE OFFI-
17 CER.—

18 “(1) IN GENERAL.—Each swap data repository
19 shall designate an individual to serve as a chief com-
20 pliance officer.

21 “(2) DUTIES.—The chief compliance officer
22 shall—

23 “(A) report directly to the board or to the
24 senior officer of the swap data repository;

1 “(B) review the compliance of the swap
2 data repository with respect to the core prin-
3 ciples described in subsection (f);

4 “(C) in consultation with the board of the
5 swap data repository, a body performing a func-
6 tion similar to the board of the swap data re-
7 pository, or the senior officer of the swap data
8 repository, resolve any conflicts of interest that
9 may arise;

10 “(D) be responsible for administering each
11 policy and procedure that is required to be es-
12 tablished pursuant to this section;

13 “(E) ensure compliance with this Act (in-
14 cluding regulations) relating to agreements,
15 contracts, or transactions, including each rule
16 prescribed by the Commission under this sec-
17 tion;

18 “(F) establish procedures for the remedi-
19 ation of noncompliance issues identified by the
20 chief compliance officer through any—

21 “(i) compliance office review;

22 “(ii) look-back;

23 “(iii) internal or external audit find-
24 ing;

25 “(iv) self-reported error; or

1 “(v) validated complaint; and

2 “(G) establish and follow appropriate pro-
3 cedures for the handling, management response,
4 remediation, retesting, and closing of non-
5 compliance issues.

6 “(3) ANNUAL REPORTS.—

7 “(A) IN GENERAL.—In accordance with
8 rules prescribed by the Commission, the chief
9 compliance officer shall annually prepare and
10 sign a report that contains a description of—

11 “(i) the compliance of the swap data
12 repository of the chief compliance officer
13 with respect to this Act (including regula-
14 tions); and

15 “(ii) each policy and procedure of the
16 swap data repository of the chief compli-
17 ance officer (including the code of ethics
18 and conflict of interest policies of the swap
19 data repository).

20 “(B) REQUIREMENTS.—A compliance re-
21 port under subparagraph (A) shall—

22 “(i) accompany each appropriate fi-
23 nancial report of the swap data repository
24 that is required to be furnished to the
25 Commission pursuant to this section; and

1 “(ii) include a certification that, under
2 penalty of law, the compliance report is ac-
3 curate and complete.

4 “(f) CORE PRINCIPLES APPLICABLE TO SWAP DATA
5 REPOSITORIES.—

6 “(1) ANTITRUST CONSIDERATIONS.—Unless
7 necessary or appropriate to achieve the purposes of
8 this Act, a swap data repository shall not

9 “(A) adopt any rule or take any action
10 that results in any unreasonable restraint of
11 trade; or

12 “(B) impose any material anticompetitive
13 burden on the trading, clearing, or reporting of
14 transactions.

15 “(2) GOVERNANCE ARRANGEMENTS.—Each
16 swap data repository shall establish governance ar-
17 rangements that are transparent—

18 “(A) to fulfill public interest requirements;
19 and

20 “(B) to support the objectives of the Fed-
21 eral Government, owners, and participants.

22 “(3) CONFLICTS OF INTEREST.—Each swap
23 data repository shall—

1 “(A) establish and enforce rules to mini-
2 mize conflicts of interest in the decision-making
3 process of the swap data repository; and

4 “(B) establish a process for resolving con-
5 flicts of interest described in subparagraph (A).

6 “(g) **REQUIRED REGISTRATION FOR SWAP DATA RE-**
7 **POSITORIES.**—Any person that is required to be registered
8 as a swap data repository under this section shall register
9 with the Commission regardless of whether that person is
10 also licensed as a bank or registered with the Securities
11 and Exchange Commission as a swap data repository.

12 “(h) **RULES.**—The Commission shall adopt rules gov-
13 erning persons that are registered under this section.”.

14 **SEC. 729. REPORTING AND RECORDKEEPING.**

15 The Commodity Exchange Act is amended by insert-
16 ing after section 4q (7 U.S.C. 6o–1) the following:

17 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR**
18 **UNCLEARED SWAPS.**

19 “(a) **REQUIRED REPORTING OF SWAPS NOT ACCEPT-**
20 **ED BY ANY DERIVATIVES CLEARING ORGANIZATION.**—

21 “(1) **IN GENERAL.**—Each swap that is not ac-
22 cepted for clearing by any derivatives clearing orga-
23 nization shall be reported to—

24 “(A) a swap data repository described in
25 section 21; or

1 “(B) in the case in which there is no swap
2 data repository that would accept the swap, to
3 the Commission pursuant to this section within
4 such time period as the Commission may by
5 rule or regulation prescribe.

6 “(2) TRANSITION RULE FOR PREENACTMENT
7 SWAPS.—

8 “(A) SWAPS ENTERED INTO BEFORE THE
9 DATE OF ENACTMENT OF THE WALL STREET
10 TRANSPARENCY AND ACCOUNTABILITY ACT OF
11 2010.—Each swap entered into before the date
12 of enactment of the Wall Street Transparency
13 and Accountability Act of 2010, the terms of
14 which have not expired as of the date of enact-
15 ment of that Act, shall be reported to a reg-
16 istered swap data repository or the Commission
17 by a date that is not later than—

18 “(i) 30 days after issuance of the in-
19 terim final rule; or

20 “(ii) such other period as the Com-
21 mission determines to be appropriate.

22 “(B) COMMISSION RULEMAKING.—The
23 Commission shall promulgate an interim final
24 rule within 90 days of the date of enactment of
25 this section providing for the reporting of each

1 swap entered into before the date of enactment
2 as referenced in subparagraph (A).

3 “(C) EFFECTIVE DATE.—The reporting
4 provisions described in this section shall be ef-
5 fective upon the enactment of this section.

6 “(3) REPORTING OBLIGATIONS.—

7 “(A) SWAPS IN WHICH ONLY 1
8 COUNTERPARTY IS A SWAP DEALER OR MAJOR
9 SWAP PARTICIPANT.—With respect to a swap in
10 which only 1 counterparty is a swap dealer or
11 major swap participant, the swap dealer or
12 major swap participant shall report the swap as
13 required under paragraphs (1) and (2).

14 “(B) SWAPS IN WHICH 1 COUNTERPARTY
15 IS A SWAP DEALER AND THE OTHER A MAJOR
16 SWAP PARTICIPANT.—With respect to a swap in
17 which 1 counterparty is a swap dealer and the
18 other a major swap participant, the swap dealer
19 shall report the swap as required under para-
20 graphs (1) and (2).

21 “(C) OTHER SWAPS.—With respect to any
22 other swap not described in subparagraph (A)
23 or (B), the counterparties to the swap shall se-
24 lect a counterparty to report the swap as re-
25 quired under paragraphs (1) and (2).

1 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
2 vidual or entity that enters into a swap shall meet each
3 requirement described in subsection (c) if the individual
4 or entity did not—

5 “(1) clear the swap in accordance with section
6 2(h)(1); or

7 “(2) have the data regarding the swap accepted
8 by a swap data repository in accordance with rules
9 (including timeframes) adopted by the Commission
10 under section 21.

11 “(c) REQUIREMENTS.—An individual or entity de-
12 scribed in subsection (b) shall—

13 “(1) upon written request from the Commis-
14 sion, provide reports regarding the swaps held by the
15 individual or entity to the Commission in such form
16 and in such manner as the Commission may request;
17 and

18 “(2) maintain books and records pertaining to
19 the swaps held by the individual or entity in such
20 form, in such manner, and for such period as the
21 Commission may require, which shall be open to in-
22 spection by—

23 “(A) any representative of the Commis-
24 sion;

25 “(B) an appropriate prudential regulator;

1 “(C) the Securities and Exchange Commis-
2 sion;

3 “(D) the Financial Stability Oversight
4 Council; and

5 “(E) the Department of Justice.

6 “(d) IDENTICAL DATA.—In prescribing rules under
7 this section, the Commission shall require individuals and
8 entities described in subsection (b) to submit to the Com-
9 mission a report that contains data that is not less com-
10 prehensive than the data required to be collected by swap
11 data repositories under section 21.”.

12 **SEC. 730. LARGE SWAP TRADER REPORTING.**

13 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
14 is amended by adding after section 4s (as added by section
15 731) the following:

16 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

17 “(a) PROHIBITION.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), it shall be unlawful for any person to
20 enter into any swap that the Commission determines
21 to perform a significant price discovery function with
22 respect to registered entities if—

23 “(A) the person directly or indirectly en-
24 ters into the swap during any 1 day in an
25 amount equal to or in excess of such amount as

1 shall be established periodically by the Commis-
2 sion; and

3 “(B) the person directly or indirectly has
4 or obtains a position in the swap equal to or in
5 excess of such amount as shall be established
6 periodically by the Commission.

7 “(2) EXCEPTION.—Paragraph (1) shall not
8 apply if—

9 “(A) the person files or causes to be filed
10 with the properly designated officer of the Com-
11 mission such reports regarding any transactions
12 or positions described in subparagraphs (A) and
13 (B) of paragraph (1) as the Commission may
14 require by rule or regulation; and

15 “(B) in accordance with the rules and reg-
16 ulations of the Commission, the person keeps
17 books and records of all such swaps and any
18 transactions and positions in any related com-
19 modity traded on or subject to the rules of any
20 designated contract market or swap execution
21 facility, and of cash or spot transactions in, in-
22 ventories of, and purchase and sale commit-
23 ments of, such a commodity.

24 “(b) REQUIREMENTS.—

1 “(1) IN GENERAL.—Books and records de-
2 scribed in subsection (a)(2)(B) shall—

3 “(A) show such complete details con-
4 cerning all transactions and positions as the
5 Commission may prescribe by rule or regula-
6 tion;

7 “(B) be open at all times to inspection and
8 examination by any representative of the Com-
9 mission; and

10 “(C) be open at all times to inspection and
11 examination by the Securities and Exchange
12 Commission, to the extent such books and
13 records relate to transactions in security-based
14 swap agreements (as that term is defined in
15 section 3(a)(78) of the Securities Exchange Act
16 of 1934), and consistent with the confidentiality
17 and disclosure requirements of section 8.

18 “(2) JURISDICTION.—Nothing in paragraph (1)
19 shall affect the exclusive jurisdiction of the Commis-
20 sion to prescribe recordkeeping and reporting re-
21 quirements for large swap traders under this section.

22 “(c) APPLICABILITY.—For purposes of this section,
23 the swaps, futures, and cash or spot transactions and posi-
24 tions of any person shall include the swaps, futures, and

1 cash or spot transactions and positions of any persons di-
2 rectly or indirectly controlled by the person.

3 “(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—
4 In making a determination as to whether a swap performs
5 or affects a significant price discovery function with re-
6 spect to registered entities, the Commission shall consider
7 the factors described in section 4a(a)(3).”.

8 **SEC. 731. REGISTRATION AND REGULATION OF SWAP DEAL-**
9 **ERS AND MAJOR SWAP PARTICIPANTS.**

10 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
11 is amended by inserting after section 4r (as added by sec-
12 tion 729) the following:

13 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
14 **ERS AND MAJOR SWAP PARTICIPANTS.**

15 “(a) REGISTRATION.—

16 “(1) SWAP DEALERS.—It shall be unlawful for
17 any person to act as a swap dealer unless the person
18 is registered as a swap dealer with the Commission.

19 “(2) MAJOR SWAP PARTICIPANTS.—It shall be
20 unlawful for any person to act as a major swap par-
21 ticipant unless the person is registered as a major
22 swap participant with the Commission.

23 “(b) REQUIREMENTS.—

1 “(1) IN GENERAL.—A person shall register as
2 a swap dealer or major swap participant by filing a
3 registration application with the Commission.

4 “(2) CONTENTS.—

5 “(A) IN GENERAL.—The application shall
6 be made in such form and manner as prescribed
7 by the Commission, and shall contain such in-
8 formation, as the Commission considers nec-
9 essary concerning the business in which the ap-
10 plicant is or will be engaged.

11 “(B) CONTINUAL REPORTING.—A person
12 that is registered as a swap dealer or major
13 swap participant shall continue to submit to the
14 Commission reports that contain such informa-
15 tion pertaining to the business of the person as
16 the Commission may require.

17 “(3) EXPIRATION.—Each registration under
18 this section shall expire at such time as the Commis-
19 sion may prescribe by rule or regulation.

20 “(4) RULES.—Except as provided in sub-
21 sections (c), (e), and (f), the Commission may pre-
22 scribe rules applicable to non-bank swap dealers and
23 non-bank major swap participants, including rules
24 that limit the activities of swap dealers and major
25 swap participants.

1 “(5) TRANSITION.—Rules under this section
2 shall provide for the registration of swap dealers and
3 major swap participants not later than 1 year after
4 the date of enactment of the Wall Street Trans-
5 parency and Accountability Act of 2010.

6 “(6) STATUTORY DISQUALIFICATION.—Except
7 to the extent otherwise specifically provided by rule,
8 regulation, or order, it shall be unlawful for a swap
9 dealer or a major swap participant to permit any
10 person associated with a swap dealer or a major
11 swap participant who is subject to a statutory dis-
12 qualification to effect or be involved in effecting
13 swaps on behalf of the swap dealer or major swap
14 participant, if the swap dealer or major swap partici-
15 pant knew, or in the exercise of reasonable care
16 should have known, of the statutory disqualification.

17 “(c) DUAL REGISTRATION.—

18 “(1) SWAP DEALER.—Any person that is re-
19 quired to be registered as a swap dealer under this
20 section shall register with the Commission regardless
21 of whether the person also is a depository institution
22 or is registered with the Securities and Exchange
23 Commission as a security-based swap dealer.

24 “(2) MAJOR SWAP PARTICIPANT.—Any person
25 that is required to be registered as a major swap

1 participant under this section shall register with the
2 Commission regardless of whether the person also is
3 a depository institution or is registered with the Se-
4 curities and Exchange Commission as a major secu-
5 rity-based swap participant.

6 “(d) RULEMAKINGS.—

7 “(1) IN GENERAL.—The Commission shall
8 adopt rules for persons that are registered as swap
9 dealers or major swap participants under this sec-
10 tion.

11 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
12 MENTS.—

13 “(A) IN GENERAL.—The Commission may
14 not prescribe rules imposing prudential require-
15 ments on swap dealers or major swap partici-
16 pants for which there is a prudential regulator.

17 “(B) APPLICABILITY.—Subparagraph (A)
18 does not limit the authority of the Commission
19 to prescribe appropriate business conduct, re-
20 porting, and recordkeeping requirements to pro-
21 tect investors.

22 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

23 “(1) IN GENERAL.—

24 “(A) SWAP DEALERS AND MAJOR SWAP
25 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-

1 TIONS.—Each registered swap dealer and major
2 swap participant that is a depository institu-
3 tion, as that term is defined in section 3 of the
4 Federal Deposit Insurance Act (12 U.S.C.
5 1813), shall meet such minimum capital re-
6 quirements and minimum initial and variation
7 margin requirements as the appropriate Federal
8 banking agency shall by rule or regulation pre-
9 scribe under paragraph (2)(A) to help ensure
10 the safety and soundness of the swap dealer or
11 major swap participant.

12 “(B) SWAP DEALERS AND MAJOR SWAP
13 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-
14 STITUTIONS.—Each registered swap dealer and
15 major swap participant that is not a depository
16 institution, as that term is defined in section 3
17 of the Federal Deposit Insurance Act (12
18 U.S.C. 1813), shall meet such minimum capital
19 requirements and minimum initial and variation
20 margin requirements as the Commission and
21 the Securities and Exchange Commission shall
22 by rule or regulation prescribe under paragraph
23 (2)(B) to help ensure the safety and soundness
24 of the swap dealer or major swap participant.

25 “(2) RULES.—

1 “(A) SWAP DEALERS AND MAJOR SWAP
2 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-
3 TIONS.—The appropriate Federal banking
4 agencies, in consultation with the Commission
5 and the Securities and Exchange Commission,
6 shall adopt rules imposing capital and margin
7 requirements under this subsection for swap
8 dealers and major swap participants that are
9 depository institutions, as that term is defined
10 in section 3 of the Federal Deposit Insurance
11 Act (12 U.S.C. 1813).

12 “(B) SWAP DEALERS AND MAJOR SWAP
13 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-
14 STITUTIONS.—The Commission shall adopt
15 rules imposing capital and margin requirements
16 under this subsection for swap dealers and
17 major swap participants that are not depository
18 institutions, as that term is defined in section
19 3 of the Federal Deposit Insurance Act (12
20 U.S.C. 1813).

21 “(3) CAPITAL.—

22 “(A) SWAP DEALERS AND MAJOR SWAP
23 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-
24 TIONS.—The capital requirements prescribed
25 under paragraph (2)(A) for swap dealers and

1 major swap participants that are depository in-
2 stitutions shall contain—

3 “(i) a capital requirement that is
4 greater than zero for swaps that are
5 cleared by a registered derivatives clearing
6 organization or a derivatives clearing orga-
7 nization that is exempt from registration
8 under section 5b(i); and

9 “(ii) to offset the greater risk to the
10 swap dealer or major swap participant and
11 to the financial system arising from the
12 use of swaps that are not cleared, substan-
13 tially higher capital requirements for swaps
14 that are not cleared by a registered deriva-
15 tives clearing organization or a derivatives
16 clearing organization that is exempt from
17 registration under section 5b(i) than for
18 swaps that are cleared.

19 “(B) SWAP DEALERS AND MAJOR SWAP
20 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-
21 STITUTIONS.—The capital requirements pre-
22 scribed under paragraph (2)(B) for swap deal-
23 ers and major swap participants that are not
24 depository institutions shall be as strict as or
25 stricter than the capital requirements pre-

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1 4f(a)(3)) in accordance with section
2 4f(b); or

3 “(II) of the Securities and Ex-
4 change Commission to set financial
5 responsibility rules for a broker or
6 dealer registered pursuant to section
7 15(b) of the Securities Exchange Act
8 of 1934 (15 U.S.C. 78o(b)) (except
9 for section 15(b)(11) of that Act (15
10 U.S.C. 78o(b)(11)) in accordance with
11 section 15(c)(3) of the Securities Ex-
12 change Act of 1934 (15 U.S.C.
13 78o(c)(3)).

14 “(ii) FUTURES COMMISSION MER-
15 CHANTS AND OTHER DEALERS.—A futures
16 commission merchant, introducing broker,
17 broker, or dealer shall maintain sufficient
18 capital to comply with the stricter of any
19 applicable capital requirements to which
20 such futures commission merchant, intro-
21 ducing broker, broker, or dealer is subject
22 to under this Act or the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78a et
24 seq.).

25 “(4) MARGIN.—

1 “(A) SWAP DEALERS AND MAJOR SWAP
2 PARTICIPANTS THAT ARE DEPOSITORY INSTITU-
3 TIONS.—The appropriate Federal banking
4 agency for swap dealers and major swap par-
5 ticipants that are depository institutions shall
6 impose both initial and variation margin re-
7 quirements in accordance with paragraph
8 (2)(A) on all swaps that are not cleared by a
9 registered derivatives clearing organization or a
10 derivatives clearing organization that is exempt
11 from registration under section 5b(i).

12 “(B) SWAP DEALERS AND MAJOR SWAP
13 PARTICIPANTS THAT ARE NOT DEPOSITORY IN-
14 STITUTIONS.—The Commission and the Securi-
15 ties and Exchange Commission shall impose
16 both initial and variation margin requirements
17 in accordance with paragraph (2)(B) for swap
18 dealers and major swap participants that are
19 not depository institutions on all swaps that are
20 not cleared by a registered derivatives clearing
21 organization or a derivatives clearing organiza-
22 tion that is exempt from registration under sec-
23 tion 5b(i). Any such initial and variation mar-
24 gin requirements shall be as strict as or stricter

1 than the margin requirements prescribed under
2 paragraph (4)(A).

3 “(5) MARGIN REQUIREMENTS.—In prescribing
4 margin requirements under this subsection, the ap-
5 propriate Federal banking agency with respect to
6 swap dealers and major swap participants that are
7 depository institutions and the Commission with re-
8 spect to swap dealers and major swap participants
9 that are not depository institutions may permit the
10 use of noncash collateral, as the agency or the Com-
11 mission determines to be consistent with—

12 “(A) preserving the financial integrity of
13 markets trading swaps; and

14 “(B) preserving the stability of the United
15 States financial system.

16 “(6) COMPARABILITY OF CAPITAL AND MARGIN
17 REQUIREMENTS.—

18 “(A) IN GENERAL.—The appropriate Fed-
19 eral banking agencies, the Commission, and the
20 Securities and Exchange Commission shall peri-
21 odically (but not less frequently than annually)
22 consult on minimum capital requirements and
23 minimum initial and variation margin require-
24 ments.

1 “(B) COMPARABILITY.—The entities de-
2 scribed in subparagraph (A) shall, to the max-
3 imum extent practicable, establish and maintain
4 comparable minimum capital requirements and
5 minimum initial and variation margin require-
6 ments, including the use of non cash collateral,
7 for—

8 “(i) swap dealers; and

9 “(ii) major swap participants.

10 “(7) REQUESTED MARGIN.—If any party to a
11 swap that is exempt from the margin requirements
12 of paragraph (4)(A)(i) pursuant to the provisions of
13 paragraph (4)(A)(ii), or from the margin require-
14 ments of paragraph (4)(B)(i) pursuant to the provi-
15 sions of paragraph (4)(B)(ii), requests that such
16 swap be margined, then—

17 “(A) the exemption shall not apply; and

18 “(B) the counterparty to such swap shall
19 provide the requested margin.

20 “(8) APPLICABILITY WITH RESPECT TO
21 COUNTERPARTIES.—Paragraph (4) shall not apply
22 to initial and variation margin for swaps in which 1
23 of the counterparties is not—

24 “(A) a swap dealer;

25 “(B) a major swap participant; or

1 “(C) a financial entity as described in sec-
2 tion 2(h)(9)(A)(ii), and such counterparty is eli-
3 gible for and utilizing the commercial end user
4 clearing exemption under section 2(h)(9).

5 “(f) REPORTING AND RECORDKEEPING.—

6 “(1) IN GENERAL.—Each registered swap deal-
7 er and major swap participant—

8 “(A) shall make such reports as are re-
9 quired by the Commission by rule or regulation
10 regarding the transactions and positions and fi-
11 nancial condition of the registered swap dealer
12 or major swap participant;

13 “(B)(i) for which there is a prudential reg-
14 ulator, shall keep books and records of all ac-
15 tivities related to the business as a swap dealer
16 or major swap participant in such form and
17 manner and for such period as may be pre-
18 scribed by the Commission by rule or regula-
19 tion; and

20 “(ii) for which there is no prudential regu-
21 lator, shall keep books and records in such form
22 and manner and for such period as may be pre-
23 scribed by the Commission by rule or regula-
24 tion; and

1 “(C) shall keep books and records de-
2 scribed in subparagraph (B) open to inspection
3 and examination by any representative of the
4 Commission.

5 “(2) RULES.—The Commission shall adopt
6 rules governing reporting and recordkeeping for
7 swap dealers and major swap participants.

8 “(g) DAILY TRADING RECORDS.—

9 “(1) IN GENERAL.—Each registered swap deal-
10 er and major swap participant shall maintain daily
11 trading records of the swaps of the registered swap
12 dealer and major swap participant and all related
13 records (including related cash or forward trans-
14 actions) and recorded communications, including
15 electronic mail, instant messages, and recordings of
16 telephone calls, for such period as may be required
17 by the Commission by rule or regulation.

18 “(2) INFORMATION REQUIREMENTS.—The daily
19 trading records shall include such information as the
20 Commission shall require by rule or regulation.

21 “(3) COUNTERPARTY RECORDS.—Each reg-
22 istered swap dealer and major swap participant shall
23 maintain daily trading records for each counterparty
24 in a manner and form that is identifiable with each
25 swap transaction.

1 “(4) AUDIT TRAIL.—Each registered swap deal-
2 er and major swap participant shall maintain a com-
3 plete audit trail for conducting comprehensive and
4 accurate trade reconstructions.

5 “(5) RULES.—The Commission shall adopt
6 rules governing daily trading records for swap deal-
7 ers and major swap participants.

8 “(h) BUSINESS CONDUCT STANDARDS.—

9 “(1) IN GENERAL.—Each registered swap deal-
10 er and major swap participant shall conform with
11 such business conduct standards as may be pre-
12 scribed by the Commission by rule or regulation that
13 relate to—

14 “(A) fraud, manipulation, and other abu-
15 sive practices involving swaps (including swaps
16 that are offered but not entered into);

17 “(B) diligent supervision of the business of
18 the registered swap dealer and major swap par-
19 ticipant;

20 “(C) adherence to all applicable position
21 limits; and

22 “(D) such other matters as the Commis-
23 sion determines to be appropriate.

24 “(2) SPECIAL RULE; FIDUCIARY DUTIES TO
25 CERTAIN ENTITIES.—

1 “(A) GOVERNMENTAL ENTITIES.—A swap
2 dealer that provides advice regarding, or offers
3 to enter into, or enters into a swap with a
4 State, State agency, city, county, municipality,
5 or other political subdivision of a State or a
6 Federal agency shall have a fiduciary duty to
7 the State, State agency, city, county, munic-
8 ipality, or other political subdivision of a State,
9 or the Federal agency, as appropriate.

10 “(B) PENSION PLANS; ENDOWMENTS; RE-
11 TIREMENT PLANS.—A swap dealer that pro-
12 vides advice regarding, or offers to enter into,
13 or enters into a swap with a pension plan, en-
14 dowment, or retirement plan shall have a fidu-
15 ciary duty to the pension plan, endowment, or
16 retirement plan, as appropriate.

17 “(3) BUSINESS CONDUCT REQUIREMENTS.—
18 Business conduct requirements adopted by the Com-
19 mission shall—

20 “(A) establish the standard of care for a
21 swap dealer or major swap participant to verify
22 that any counterparty meets the eligibility
23 standards for an eligible contract participant;

24 “(B) require disclosure by the swap dealer
25 or major swap participant to any counterparty

1 to the transaction (other than a swap dealer,
2 major swap participant, security-based swap
3 dealer, or major security-based swap partici-
4 pant) of—

5 “(i) information about the material
6 risks and characteristics of the swap;

7 “(ii) the source and amount of any
8 fees or other material remuneration that
9 the swap dealer or major swap participant
10 would directly or indirectly expect to re-
11 ceive in connection with the swap;

12 “(iii) any other material incentives or
13 conflicts of interest that the swap dealer or
14 major swap participant may have in con-
15 nection with the swap; and

16 “(iv)(I) for cleared swaps, upon the
17 request of the counterparty, the daily mark
18 from the appropriate derivatives clearing
19 organization; and

20 “(II) for uncleared swaps, the daily
21 mark of the swap dealer or the major swap
22 participant;

23 “(C) establish a standard of conduct for a
24 swap dealer or major swap participant to com-

1 municate in a fair and balanced manner based
2 on principles of fair dealing and good faith;

3 “(D) establish a standard of conduct for a
4 swap dealer or major swap participant, with re-
5 spect to a counterparty that is an eligible con-
6 tract participant within the meaning of sub-
7 clause (I) or (II) of clause (vii) of section
8 1a(18) of this Act, to have a reasonable basis
9 to believe that the counterparty has an inde-
10 pendent representative that—

11 “(i) has sufficient knowledge to evalu-
12 ate the transaction and risks;

13 “(ii) is not subject to a statutory dis-
14 qualification;

15 “(iii) is independent of the swap deal-
16 er or major swap participant;

17 “(iv) undertakes a duty to act in the
18 best interests of the counterparty it rep-
19 resents;

20 “(v) makes appropriate disclosures;
21 and

22 “(vi) will provide written representa-
23 tions to the eligible contract participant re-
24 garding fair pricing and the appropriate-
25 ness of the transaction; and

1 “(E) establish such other standards and
2 requirements as the Commission may determine
3 are appropriate in the public interest, for the
4 protection of investors, or otherwise in further-
5 ance of the purposes of this Act.

6 “(4) RULES.—The Commission shall prescribe
7 rules under this subsection governing business con-
8 duct standards for swap dealers and major swap
9 participants.

10 “(i) DOCUMENTATION AND BACK OFFICE STAND-
11 ARDS.—

12 “(1) IN GENERAL.—Each registered swap deal-
13 er and major swap participant shall conform with
14 such standards as may be prescribed by the Com-
15 mission by rule or regulation that relate to timely
16 and accurate confirmation, processing, netting, docu-
17 mentation, and valuation of all swaps.

18 “(2) RULES.—The Commission shall adopt
19 rules governing documentation and back office
20 standards for swap dealers and major swap partici-
21 pants.

22 “(j) DUTIES.—Each registered swap dealer and
23 major swap participant at all times shall comply with the
24 following requirements:

1 “(1) MONITORING OF TRADING.—The swap
2 dealer or major swap participant shall monitor its
3 trading in swaps to prevent violations of applicable
4 position limits.

5 “(2) RISK MANAGEMENT PROCEDURES.—The
6 swap dealer or major swap participant shall estab-
7 lish robust and professional risk management sys-
8 tems adequate for managing the day-to-day business
9 of the swap dealer or major swap participant.

10 “(3) DISCLOSURE OF GENERAL INFORMA-
11 TION.—The swap dealer or major swap participant
12 shall disclose to the Commission and to the pruden-
13 tial regulator for the swap dealer or major swap par-
14 ticipant, as applicable, information concerning—

15 “(A) terms and conditions of its swaps;

16 “(B) swap trading operations, mechanisms,
17 and practices;

18 “(C) financial integrity protections relating
19 to swaps; and

20 “(D) other information relevant to its trad-
21 ing in swaps.

22 “(4) ABILITY TO OBTAIN INFORMATION.—The
23 swap dealer or major swap 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 prudential regulator for the
5 swap dealer or major swap participant, as ap-
6 plicable, on request.

7 “(5) CONFLICTS OF INTEREST.—The swap
8 dealer and major swap participant shall implement
9 conflict-of-interest systems and procedures that—

10 “(A) establish structural and institutional
11 safeguards to ensure that the activities of any
12 person within the firm relating to research or
13 analysis of the price or market for any com-
14 modity or swap or acting in a role of providing
15 clearing activities or making determinations as
16 to accepting clearing customers are separated
17 by appropriate informational partitions within
18 the firm from the review, pressure, or oversight
19 of persons whose involvement in pricing, trad-
20 ing, or clearing activities might potentially bias
21 their judgment or supervision and contravene
22 the core principles of open access and the busi-
23 ness conduct standards described in this Act;
24 and

1 “(B) address such other issues as the
2 Commission determines to be appropriate.

3 “(6) ANTITRUST CONSIDERATIONS.—Unless
4 necessary or appropriate to achieve the purposes of
5 this Act, a swap dealer or major swap participant
6 shall not—

7 “(A) adopt any process or take any action
8 that results in any unreasonable restraint of
9 trade; or

10 “(B) impose any material anticompetitive
11 burden on trading or clearing.

12 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
13 CER.—

14 “(1) IN GENERAL.—Each swap dealer and
15 major swap participant shall designate an individual
16 to serve as a chief compliance officer.

17 “(2) DUTIES.—The chief compliance officer
18 shall—

19 “(A) report directly to the board or to the
20 senior officer of the swap dealer or major swap
21 participant;

22 “(B) review the compliance of the swap
23 dealer or major swap participant with respect to
24 the swap dealer and major swap participant re-
25 quirements described in this section;

1 “(C) in consultation with the board of di-
2 rectors, a body performing a function similar to
3 the board, or the senior officer of the organiza-
4 tion, resolve any conflicts of interest that may
5 arise;

6 “(D) be responsible for administering each
7 policy and procedure that is required to be es-
8 tablished pursuant to this section;

9 “(E) ensure compliance with this Act (in-
10 cluding regulations) relating to swaps, including
11 each rule prescribed by the Commission under
12 this section;

13 “(F) establish procedures for the remedi-
14 ation of noncompliance issues identified by the
15 chief compliance officer through any—

16 “(i) compliance office review;

17 “(ii) look-back;

18 “(iii) internal or external audit find-
19 ing;

20 “(iv) self-reported error; or

21 “(v) validated complaint; and

22 “(G) establish and follow appropriate pro-
23 cedures for the handling, management response,
24 remediation, retesting, and closing of non-
25 compliance issues.

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1 “(3) ANNUAL REPORTS.—

2 “(A) IN GENERAL.—In accordance with
3 rules prescribed by the Commission, the chief
4 compliance officer shall annually prepare and
5 sign a report that contains a description of—

6 “(i) the compliance of the swap dealer
7 or major swap participant with respect to
8 this Act (including regulations); and

9 “(ii) each policy and procedure of the
10 swap dealer or major swap participant of
11 the chief compliance officer (including the
12 code of ethics and conflict of interest poli-
13 cies).

14 “(B) REQUIREMENTS.—A compliance re-
15 port under subparagraph (A) shall—

16 “(i) accompany each appropriate fi-
17 nancial report of the swap dealer or major
18 swap participant that is required to be fur-
19 nished to the Commission pursuant to this
20 section; and

21 “(ii) include a certification that, under
22 penalty of law, the compliance report is ac-
23 curate and complete.”.

1 **SEC. 732. CONFLICTS OF INTEREST.**

2 Section 4d of the Commodity Exchange Act (7 U.S.C.
3 6d) is amended—

4 (1) by redesignating subsection (c) as sub-
5 section (e); and

6 (2) by inserting after subsection (b) the fol-
7 lowing:

8 “(c) CONFLICTS OF INTEREST.—The Commission
9 shall require that futures commission merchants and in-
10 troducing brokers implement conflict-of-interest systems
11 and procedures that—

12 “(1) establish structural and institutional safe-
13 guards to ensure that the activities of any person
14 within the firm relating to research or analysis of
15 the price or market for any commodity are separated
16 by appropriate informational partitions within the
17 firm from the review, pressure, or oversight of per-
18 sons whose involvement in trading or clearing activi-
19 ties might potentially bias the judgment or super-
20 vision of the persons; and

21 “(2) address such other issues as the Commis-
22 sion determines to be appropriate.

23 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
24 CER.—

1 “(1) IN GENERAL.—Each futures commission
2 merchant shall designate an individual to serve as a
3 chief compliance officer.

4 “(2) DUTIES.—The chief compliance officer
5 shall—

6 “(A) report directly to the board or to the
7 senior officer of the futures commission mer-
8 chant;

9 “(B) review the compliance of the futures
10 commission merchant with respect to require-
11 ments described in this section;

12 “(C) in consultation with the board of di-
13 rectors, a body performing a function similar to
14 the board, or the senior officer of the organiza-
15 tion, resolve any conflicts of interest that may
16 arise;

17 “(D) be responsible for administering each
18 policy and procedure that is required to be es-
19 tablished pursuant to this section;

20 “(E) ensure compliance with this Act (in-
21 cluding regulations and each rule prescribed by
22 the Commission under this section) relating,
23 but not limited, to—

24 “(i) contracts of sale of a commodity
25 for future delivery;

1 “(ii) options on the contracts de-
2 scribed in clause (i);

3 “(iii) commodity options;

4 “(iv) retail foreign exchange and retail
5 commodity transactions;

6 “(v) security futures products;

7 “(vi) leverage contracts; and

8 “(vii) swaps;

9 “(F) establish procedures for the remedi-
10 ation of noncompliance issues identified by the
11 chief compliance officer through any—

12 “(i) compliance office review;

13 “(ii) look-back;

14 “(iii) internal or external audit find-
15 ing;

16 “(iv) self-reported error; or

17 “(v) validated complaint; and

18 “(G) establish and follow appropriate pro-
19 cedures for the handling, management response,
20 remediation, retesting, and closing of non-
21 compliance issues.

22 “(3) ANNUAL REPORTS.—

23 “(A) IN GENERAL.—In accordance with
24 rules prescribed by the Commission, the chief

1 compliance officer shall annually prepare and
2 sign a report that contains a description of—

3 “(i) the compliance of the futures
4 commission merchant with respect to this
5 Act (including regulations); and

6 “(ii) each policy and procedure of the
7 futures commission merchant of the chief
8 compliance officer (including the code of
9 ethics and conflict of interest policies).

10 “(B) REQUIREMENTS.—A compliance re-
11 port under subparagraph (A) shall—

12 “(i) accompany each appropriate fi-
13 nancial report of the futures commission
14 merchant that is required to be furnished
15 to the Commission pursuant to this sec-
16 tion; and

17 “(ii) include a certification that, under
18 penalty of law, the compliance report is ac-
19 curate and complete.”.

20 **SEC. 733. SWAP EXECUTION FACILITIES.**

21 The Commodity Exchange Act is amended by insert-
22 ing after section 5g (7 U.S.C. 7b–2) the following:

23 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

24 “(a) REGISTRATION.—

1 “(1) IN GENERAL.—No person may operate a
2 facility for the trading or processing of swaps unless
3 the facility is registered as a swap execution facility
4 or as a designated contract market under this sec-
5 tion.

6 “(2) DUAL REGISTRATION.—Any person that is
7 registered as a swap execution facility under this
8 section shall register with the Commission regardless
9 of whether the person also is registered with the Se-
10 curities and Exchange Commission as a swap execu-
11 tion facility.

12 “(b) TRADING AND TRADE PROCESSING.—A swap
13 execution facility that is registered under subsection (a)
14 may—

15 “(1) make available for trading any swap; and

16 “(2) facilitate trade processing of any swap.

17 “(c) IDENTIFICATION OF FACILITY USED TO TRADE
18 SWAPS BY CONTRACT MARKETS.—A board of trade that
19 operates a contract market shall, to the extent that the
20 board of trade also operates a swap execution facility and
21 uses the same electronic trade execution system for listing
22 and executing trades of swaps on or through the contract
23 market and the swap execution facility, identify whether
24 the electronic trading of such swaps is taking place on or

1 through the contract market or the swap execution facil-
2 ity.

3 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
4 CILITIES.—

5 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

6 “(A) IN GENERAL.—To be registered, and
7 maintain registration, as a swap execution facil-
8 ity, the swap execution facility shall comply
9 with—

10 “(i) the core principles described in
11 this subsection; and

12 “(ii) any requirement that the Com-
13 mission may impose by rule or regulation
14 pursuant to section 8a(5).

15 “(B) REASONABLE DISCRETION OF SWAP
16 EXECUTION FACILITY.—Unless otherwise deter-
17 mined by the Commission by rule or regulation,
18 a swap execution facility described in subpara-
19 graph (A) shall have reasonable discretion in
20 establishing the manner in which the swap exe-
21 cution facility complies with the core principles
22 described in this subsection.

23 “(2) COMPLIANCE WITH RULES.—A swap exe-
24 cution facility shall—

1 “(A) establish and enforce compliance with
2 any rule of the swap execution facility, includ-
3 ing—

4 “(i) the terms and conditions of the
5 swaps traded or processed on or through
6 the swap execution facility; and

7 “(ii) any limitation on access to the
8 swap execution facility;

9 “(B) establish and enforce trading, trade
10 processing, and participation rules that will
11 deter abuses and have the capacity to detect,
12 investigate, and enforce those rules, including
13 means—

14 “(i) to provide market participants
15 with impartial access to the market; and

16 “(ii) to capture information that may
17 be used in establishing whether rule viola-
18 tions have occurred;

19 “(C) establish rules governing the oper-
20 ation of the facility, including rules specifying
21 trading procedures to be used in entering and
22 executing orders traded or posted on the facil-
23 ity, including block trades; and

24 “(D) provide by its rules that when a swap
25 dealer or major swap participant enters into or

1 facilitates a swap that is subject to the manda-
2 tory clearing requirement of section 2(h), the
3 swap dealer or major swap participant shall be
4 responsible for compliance with the mandatory
5 trading requirement under section 2(h)(8).

6 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
7 NIPULATION.—The swap execution facility shall per-
8 mit trading only in swaps that are not readily sus-
9 ceptible to manipulation.

10 “(4) MONITORING OF TRADING AND TRADE
11 PROCESSING.—The swap execution facility shall—

12 “(A) establish and enforce rules or terms
13 and conditions defining, or specifications detail-
14 ing—

15 “(i) trading procedures to be used in
16 entering and executing orders traded on or
17 through the facilities of the swap execution
18 facility; and

19 “(ii) procedures for trade processing
20 of swaps on or through the facilities of the
21 swap execution facility; and

22 “(B) monitor trading in swaps to prevent
23 manipulation, price distortion, and disruptions
24 of the delivery or cash settlement process
25 through surveillance, compliance, and discipli-

1 nary practices and procedures, including meth-
2 ods for conducting real-time monitoring of trad-
3 ing and comprehensive and accurate trade re-
4 constructions.

5 “(5) ABILITY TO OBTAIN INFORMATION.—The
6 swap execution facility shall—

7 “(A) establish and enforce rules that will
8 allow the facility to obtain any necessary infor-
9 mation to perform any of the functions de-
10 scribed in this section;

11 “(B) provide the information to the Com-
12 mission on request; and

13 “(C) have the capacity to carry out such
14 international information-sharing agreements as
15 the Commission may require.

16 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

17 “(A) IN GENERAL.—To reduce the poten-
18 tial threat of market manipulation or conges-
19 tion, especially during trading in the delivery
20 month, a swap execution facility that is a trad-
21 ing facility shall adopt for each of the contracts
22 of the facility, as is necessary and appropriate,
23 position limitations or position accountability
24 for speculators.

1 “(B) POSITION LIMITS.—For any contract
2 that is subject to a position limitation estab-
3 lished by the Commission pursuant to section
4 4a(a), the swap execution facility shall set its
5 position limitation at a level no higher than the
6 Commission limitation.

7 “(C) POSITION ENFORCEMENT.—For any
8 contract that is subject to a position limitation
9 established by the Commission pursuant to sec-
10 tion 4a(a), a swap execution facility shall reject
11 any proposed swap transaction if, based on in-
12 formation readily available to a swap execution
13 facility, any proposed swap transaction would
14 cause a swap execution facility customer that
15 would be a party to such swap transaction to
16 exceed such position limitation.

17 “(7) FINANCIAL INTEGRITY OF TRANS-
18 ACTIONS.—The swap execution facility shall estab-
19 lish and enforce rules and procedures for ensuring
20 the financial integrity of swaps entered on or
21 through the facilities of the swap execution facility,
22 including the clearance and settlement of the swaps
23 pursuant to section 2(h)(1).

24 “(8) EMERGENCY AUTHORITY.—The swap exe-
25 cution facility shall adopt rules to provide for the ex-

1 ercise of emergency authority, in consultation or co-
2 operation with the Commission, as is necessary and
3 appropriate, including the authority to liquidate or
4 transfer open positions in any swap or to suspend or
5 curtail trading in a swap.

6 “(9) TIMELY PUBLICATION OF TRADING INFOR-
7 MATION.—

8 “(A) IN GENERAL.—The swap execution
9 facility shall make public timely information on
10 price, trading volume, and other trading data
11 on swaps to the extent prescribed by the Com-
12 mission.

13 “(B) CAPACITY OF SWAP EXECUTION FA-
14 CILITY.—The swap execution facility shall be
15 required to have the capacity to electronically
16 capture trade information with respect to trans-
17 actions executed on the facility.

18 “(10) RECORDKEEPING AND REPORTING.—

19 “(A) IN GENERAL.—A swap execution fa-
20 cility shall—

21 “(i) maintain records of all activities
22 relating 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; and

1 “(ii) report to the Commission, in a
2 form and manner acceptable to the Com-
3 mission, such information as the Commis-
4 sion determines to be necessary or appro-
5 priate for the Commission to perform the
6 duties of the Commission under this Act.

7 “(B) REQUIREMENTS.—The Commission
8 shall adopt data collection and reporting re-
9 quirements for swap execution facilities that are
10 comparable to corresponding requirements for
11 derivatives clearing organizations and swap
12 data repositories.

13 “(11) ANTITRUST CONSIDERATIONS.—Unless
14 necessary or appropriate to achieve the purposes of
15 this Act, the swap execution facility shall not—

16 “(A) adopt any rules or taking any actions
17 that result in any unreasonable restraint of
18 trade; or

19 “(B) impose any material anticompetitive
20 burden on trading or clearing.

21 “(12) CONFLICTS OF INTEREST.—The swap
22 execution facility shall—

23 “(A) establish and enforce rules to mini-
24 mize conflicts of interest in its decision-making
25 process; and

1 “(B) establish a process for resolving the
2 conflicts of interest.

3 “(13) FINANCIAL RESOURCES.—

4 “(A) IN GENERAL.—The swap execution
5 facility shall have adequate financial, oper-
6 ational, and managerial resources to discharge
7 each responsibility of the swap execution facil-
8 ity.

9 “(B) DETERMINATION OF RESOURCE ADE-
10 QUACY.—The financial resources of a swap exe-
11 cution facility shall be considered to be ade-
12 quate if the value of the financial resources ex-
13 ceeds the total amount that would enable the
14 swap execution facility to cover the operating
15 costs of the swap execution facility for a 1-year
16 period, as calculated on a rolling basis.

17 “(14) SYSTEM SAFEGUARDS.—The swap execu-
18 tion facility shall—

19 “(A) establish and maintain a program of
20 risk analysis and oversight to identify and mini-
21 mize sources of operational risk, through the
22 development of appropriate controls and proce-
23 dures, and automated systems, that—

24 “(i) are reliable and secure; and

25 “(ii) have adequate scalable capacity;

1 “(B) establish and maintain emergency
2 procedures, backup facilities, and a plan for dis-
3 aster recovery that allow for—

4 “(i) the timely recovery and resump-
5 tion of operations; and

6 “(ii) the fulfillment of the responsibil-
7 ities and obligations of the swap execution
8 facility; and

9 “(C) periodically conduct tests to verify
10 that the backup resources of the swap execution
11 facility are sufficient to ensure continued—

12 “(i) order processing and trade
13 matching;

14 “(ii) price reporting;

15 “(iii) market surveillance and

16 “(iv) maintenance of a comprehensive
17 and accurate audit trail.

18 “(15) DESIGNATION OF CHIEF COMPLIANCE
19 OFFICER.—

20 “(A) IN GENERAL.—Each swap execution
21 facility shall designate an individual to serve as
22 a chief compliance officer.

23 “(B) DUTIES.—The chief compliance offi-
24 cer shall—

1 “(i) report directly to the board or to
2 the senior officer of the facility;

3 “(ii) review compliance with the core
4 principles in this subsection;

5 “(iii) in consultation with the board of
6 the facility, a body performing a function
7 similar to that of a board, or the senior of-
8 ficer of the facility, resolve any conflicts of
9 interest that may arise;

10 “(iv) be responsible for establishing
11 and administering the policies and proce-
12 dures required to be established pursuant
13 to this section;

14 “(v) ensure compliance with this Act
15 and the rules and regulations issued under
16 this Act, including rules prescribed by the
17 Commission pursuant to this section; and

18 “(vi) establish procedures for the re-
19 mediation of noncompliance issues found
20 during compliance office reviews, look
21 backs, internal or external audit findings,
22 self-reported errors, or through validated
23 complaints.

24 “(C) REQUIREMENTS FOR PROCEDURES.—

25 In establishing procedures under subparagraph

1 (B)(vi), the chief compliance officer shall design
2 the procedures to establish the handling, man-
3 agement response, remediation, retesting, and
4 closing of noncompliance issues.

5 “(D) ANNUAL REPORTS.—

6 “(i) IN GENERAL.—In accordance
7 with rules prescribed by the Commission,
8 the chief compliance officer shall annually
9 prepare and sign a report that contains a
10 description of—

11 “(I) the compliance of the swap
12 execution facility with this Act; and

13 “(II) the policies and procedures,
14 including the code of ethics and con-
15 flict of interest policies, of the swap
16 execution facility.

17 “(ii) REQUIREMENTS.—The chief
18 compliance officer shall—

19 “(I) submit each report described
20 in clause (i) with the appropriate fi-
21 nancial report of the swap execution
22 facility that is required to be sub-
23 mitted to the Commission pursuant to
24 this section; and

1 “(II) include in the report a cer-
2 tification that, under penalty of law,
3 the report is accurate and complete.

4 “(e) EXEMPTIONS.—The Commission may exempt,
5 conditionally or unconditionally, a swap execution facility
6 from registration under this section if the Commission
7 finds that the facility is subject to comparable, comprehen-
8 sive supervision and regulation on a consolidated basis by
9 the Securities and Exchange Commission, a prudential
10 regulator, or the appropriate governmental authorities in
11 the home country of the facility.

12 “(f) RULES.—The Commission shall prescribe rules
13 governing the regulation of alternative swap execution fa-
14 cilities under this section.”.

15 **SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILI-**
16 **TIES AND EXEMPT BOARDS OF TRADE.**

17 (a) IN GENERAL.—Sections 5a and 5d of the Com-
18 modity Exchange Act (7 U.S.C. 7a, 7a–3) are repealed.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 2 of the Commodity Exchange Act
21 (7 U.S.C. 2) is amended—

22 (A) in subsection (a)(1)(A), in the first
23 sentence, by striking “or 5a”; and

24 (B) in paragraph (2) of subsection (g) (as
25 redesignated by section 723(a)(1)(B)), by strik-

1 “(B) CAPACITY OF CONTRACT MARKET.—

2 The board of trade shall have the capacity to
3 detect, investigate, and apply appropriate sanc-
4 tions to any person that violates any rule of the
5 contract market.

6 “(C) REQUIREMENT OF RULES.—The rules

7 of the contract market shall provide the board
8 of trade with the ability and authority to obtain
9 any necessary information to perform any func-
10 tion described in this subsection, including the
11 capacity to carry out such international infor-
12 mation-sharing agreements as the Commission
13 may require.

14 “(3) CONTRACTS NOT READILY SUBJECT TO

15 MANIPULATION.—The board of trade shall list on
16 the contract market only contracts that are not
17 readily susceptible to manipulation.

18 “(4) PREVENTION OF MARKET DISRUPTION.—

19 The board of trade shall have the capacity and re-
20 sponsibility to prevent manipulation, price distortion,
21 and disruptions of the delivery or cash-settlement
22 process through market surveillance, compliance,
23 and enforcement practices and procedures, includ-
24 ing—

1 “(A) methods for conducting real-time
2 monitoring of trading; and

3 “(B) comprehensive and accurate trade re-
4 constructions.

5 “(5) POSITION LIMITATIONS OR ACCOUNT-
6 ABILITY.—

7 “(A) IN GENERAL.—To reduce the poten-
8 tial threat of market manipulation or conges-
9 tion (especially during trading in the delivery
10 month), the board of trade shall adopt for each
11 contract of the board of trade, as is necessary
12 and appropriate, position limitations or position
13 accountability for speculators.

14 “(B) MAXIMUM ALLOWABLE POSITION
15 LIMITATION.—For any contract that is subject
16 to a position limitation established by the Com-
17 mission pursuant to section 4a(a), the board of
18 trade shall set the position limitation of the
19 board of trade at a level not higher than the po-
20 sition limitation established by the Commission.

21 “(6) EMERGENCY AUTHORITY.—The board of
22 trade, in consultation or cooperation with the Com-
23 mission, shall adopt rules to provide for the exercise
24 of emergency authority, as is necessary and appro-
25 priate, including the authority—

1 “(A) to liquidate or transfer open positions
2 in any contract;

3 “(B) to suspend or curtail trading in any
4 contract; and

5 “(C) to require market participants in any
6 contract to meet special margin requirements.

7 “(7) AVAILABILITY OF GENERAL INFORMA-
8 TION.—The board of trade shall make available to
9 market authorities, market participants, and the
10 public accurate information concerning—

11 “(A) the terms and conditions of the con-
12 tracts of the contract market; and

13 “(B)(i) the rules, regulations, and mecha-
14 nisms for executing transactions on or through
15 the facilities of the contract market; and

16 “(ii) the rules and specifications describing
17 the operation of the contract market’s—

18 “(I) electronic matching platform; or

19 “(II) trade execution facility.

20 “(8) DAILY PUBLICATION OF TRADING INFOR-
21 MATION.—The board of trade shall make public
22 daily information on settlement prices, volume, open
23 interest, and opening and closing ranges for actively
24 traded contracts on the contract market.

25 “(9) EXECUTION OF TRANSACTIONS.—

1 “(A) IN GENERAL.—The board of trade
2 shall provide a competitive, open, and efficient
3 market and mechanism for executing trans-
4 actions that protects the price discovery process
5 of trading in the centralized market of the
6 board of trade.

7 “(B) RULES.—The rules of the board of
8 trade may authorize, for bona fide business
9 purposes—

10 “(i) transfer trades or office trades;

11 “(ii) an exchange of—

12 “(I) futures in connection with a
13 cash commodity transaction;

14 “(II) futures for cash commod-
15 ities; or

16 “(III) futures for swaps; or

17 “(iii) a futures commission merchant,
18 acting as principal or agent, to enter into
19 or confirm the execution of a contract for
20 the purchase or sale of a commodity for fu-
21 ture delivery if the contract is reported, re-
22 corded, or cleared in accordance with the
23 rules of the contract market or a deriva-
24 tives clearing organization.

1 “(12) PROTECTION OF MARKETS AND MARKET
2 PARTICIPANTS.—The board of trade shall establish
3 and enforce rules—

4 “(A) to protect markets and market par-
5 ticipants from abusive practices committed by
6 any party, including abusive practices com-
7 mitted by a party acting as an agent for a par-
8 ticipant; and

9 “(B) to promote fair and equitable trading
10 on the contract market.

11 “(13) DISCIPLINARY PROCEDURES.—The board
12 of trade shall establish and enforce disciplinary pro-
13 cedures that authorize the board of trade to dis-
14 cipline, suspend, or expel members or market par-
15 ticipants that violate the rules of the board of trade,
16 or similar methods for performing the same func-
17 tions, including delegation of the functions to third
18 parties.

19 “(14) DISPUTE RESOLUTION.—The board of
20 trade shall establish and enforce rules regarding,
21 and provide facilities for alternative dispute resolu-
22 tion as appropriate for, market participants and any
23 market intermediaries.

24 “(15) GOVERNANCE FITNESS STANDARDS.—
25 The board of trade shall establish and enforce ap-

1 “(19) ANTITRUST CONSIDERATIONS.—Unless
2 necessary or appropriate to achieve the purposes of
3 this Act, the board of trade shall not—

4 “(A) adopt any rule or taking any action
5 that results in any unreasonable restraint of
6 trade; or

7 “(B) impose any material anticompetitive
8 burden on trading on the contract market.

9 “(20) SYSTEM SAFEGUARDS.—The board of
10 trade shall—

11 “(A) establish and maintain a program of
12 risk analysis and oversight to identify and mini-
13 mize sources of operational risk, through the
14 development of appropriate controls and proce-
15 dures, and the development of automated sys-
16 tems, that are reliable, secure, and have ade-
17 quate scalable capacity;

18 “(B) establish and maintain emergency
19 procedures, backup facilities, and a plan for dis-
20 aster recovery that allow for the timely recovery
21 and resumption of operations and the fulfill-
22 ment of the responsibilities and obligations of
23 the board of trade; and

24 “(C) periodically conduct tests to verify
25 that backup resources are sufficient to ensure

1 continued order processing and trade matching,
2 price reporting, market surveillance, and main-
3 tenance of a comprehensive and accurate audit
4 trail.

5 “(21) FINANCIAL RESOURCES.—

6 “(A) IN GENERAL.—The board of trade
7 shall have adequate financial, operational, and
8 managerial resources to discharge each respon-
9 sibility of the board of trade.

10 “(B) DETERMINATION OF ADEQUACY.—

11 The financial resources of the board of trade
12 shall be considered to be adequate if the value
13 of the financial resources exceeds the total
14 amount that would enable the contract market
15 to cover the operating costs of the contract
16 market for a 1-year period, as calculated on a
17 rolling basis.”.

18 **SEC. 736. MARGIN.**

19 Section 8a(7) of the Commodity Exchange Act (7
20 U.S.C. 12a(7)) is amended—

21 (1) in subparagraph (C), by striking “, except-
22 ing the setting of levels of margin”;

23 (2) by redesignating subparagraphs (D)
24 through (F) as subparagraphs (E) through (G), re-
25 spectively; and

1 (3) by inserting after subparagraph (C) the fol-
2 lowing:

3 “(D) margin requirements, provided that
4 the rules, regulations, or orders shall—

5 “(i) be limited to protecting the finan-
6 cial integrity of the derivatives clearing or-
7 ganization;

8 “(ii) be designed for risk management
9 purposes to protect the financial integrity
10 of transactions; and

11 “(iii) not set specific margin
12 amounts;”.

13 **SEC. 737. POSITION LIMITS.**

14 (a) **AGGREGATE POSITION LIMITS.**—Section 4a(a) of
15 the Commodity Exchange Act (7 U.S.C. 6a(a)) is amend-
16 ed—

17 (1) by inserting after “(a)” the following:

18 “(1) **IN GENERAL.**—”;

19 (2) in the first sentence, by striking “on elec-
20 tronic trading facilities with respect to a significant
21 price discovery contract” and inserting “swaps that
22 perform or affect a significant price discovery func-
23 tion with respect to registered entities”;

24 (3) in the second sentence—

1 (A) by inserting “, including any group or
2 class of traders,” after “held by any person”;
3 and

4 (B) by striking “on an electronic trading
5 facility with respect to a significant price dis-
6 covery contract,” and inserting “swaps traded
7 on or subject to the rules of a designated con-
8 tract market or a swap execution facility, or
9 swaps not traded on or subject to the rules of
10 a designated contract market or a swap execu-
11 tion facility that performs a significant price
12 discovery function with respect to a registered
13 entity,”; and

14 (4) by adding at the end the following:

15 “(2) AGGREGATE POSITION LIMITS.—The Com-
16 mission shall, by rule or regulation, establish limits
17 (including related hedge exemption provisions) on
18 the aggregate number or amount of positions in con-
19 tracts based on the same underlying commodity (as
20 defined by the Commission) that may be held by any
21 person, including any group or class of traders, for
22 each month across—

23 “(A) contracts listed by designated con-
24 tract markets;

1 “(B) with respect to an agreement, con-
2 tract, or transaction that settles against, or in
3 relation to, any price (including the daily or
4 final settlement price) of 1 or more contracts
5 listed for trading on a registered entity, con-
6 tracts traded on a foreign board of trade that
7 provides members or other participants located
8 in the United States with direct access to the
9 electronic trading and order matching system of
10 the foreign board of trade;

11 “(C) swaps traded on or subject to the
12 rules of a swap execution facility; and

13 “(D) swaps not traded on or subject to the
14 rules of a swap execution facility that perform
15 or affect a significant price discovery function
16 with respect to a registered entity.

17 “(3) SIGNIFICANT PRICE DISCOVERY FUNC-
18 TION.—In making a determination as to whether a
19 swap performs or affects a significant price dis-
20 covery function with respect to a registered entity,
21 the Commission shall consider, as appropriate, the
22 following factors:

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 registered entity based on 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 reg-
9 istered entity based on 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 registered entity 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 reg-
25 istered entity.

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 contract
6 traded on a registered entity.

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 that the Com-
12 mission establishes under this section with respect to
13 position limits.”.

14 (b) CONFORMING AMENDMENTS.—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 swap exe-
20 cution 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 swap exe-
24 cution facility”.

1 **SEC. 738. FOREIGN BOARDS OF TRADE.**

2 (a) IN GENERAL.—Section 4(b) of the Commodity
3 Exchange Act (7 U.S.C. 6(b)) is amended—

4 (1) in the first sentence, by striking “The Com-
5 mission” and inserting the following:

6 “(2) PERSONS LOCATED IN THE UNITED
7 STATES.—

8 “(A) IN GENERAL.—The Commission”;

9 (2) in the second sentence, by striking “Such
10 rules and regulations” and inserting the following:

11 “(B) DIFFERENT REQUIREMENTS.—Rules
12 and regulations described in subparagraph
13 (A)”;

14 (3) in the third sentence—

15 (A) by striking “No rule or regulation”
16 and inserting the following:

17 “(C) PROHIBITION.—Except as provided in
18 paragraphs (1) and (2), no rule or regulation”;

19 (B) by striking “that (1) requires” and in-
20 serting the following: “that—

21 “(i) requires”; and

22 (C) by striking “market, or (2) governs”
23 and inserting the following: “market; or

24 “(ii) governs”; and

25 (4) by inserting before paragraph (2) (as des-
26 ignated by paragraph (1)) the following:

1 “(1) FOREIGN BOARDS OF TRADE.—

2 “(A) IN GENERAL.—It shall be unlawful
3 for a foreign board of trade to provide to the
4 members of the foreign board of trade or other
5 participants located in the United States direct
6 access to the electronic trading and order-
7 matching system of the foreign board of trade
8 with respect to an agreement, contract, or
9 transaction that settles against any price (in-
10 cluding the daily or final settlement price) of 1
11 or more contracts listed for trading on a reg-
12 istered entity, unless the Commission deter-
13 mines that—

14 “(i) the foreign board of trade makes
15 public daily trading information regarding
16 the agreement, contract, or transaction
17 that is comparable to the daily trading in-
18 formation published by the registered enti-
19 ty for the 1 or more contracts against
20 which the agreement, contract, or trans-
21 action traded on the foreign board of trade
22 settles; and

23 “(ii) the foreign board of trade (or the
24 foreign futures authority that oversees the
25 foreign board of trade)—

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1 “(I) adopts position limits (in-
2 cluding related hedge exemption provi-
3 sions) for the agreement, contract, or
4 transaction that are comparable to the
5 position limits (including related
6 hedge exemption provisions) adopted
7 by the registered entity for the 1 or
8 more contracts against which the
9 agreement, contract, or transaction
10 traded on the foreign board of trade
11 settles;

12 “(II) has the authority to require
13 or direct market participants to limit,
14 reduce, or liquidate any position the
15 foreign board of trade (or the foreign
16 futures authority that oversees the
17 foreign board of trade) determines to
18 be necessary to prevent or reduce the
19 threat of price manipulation, excessive
20 speculation as described in section 4a,
21 price distortion, or disruption of deliv-
22 ery or the cash settlement process;

23 “(III) agrees to promptly notify
24 the Commission, with regard to the
25 agreement, contract, or transaction

800

1 that settles against any price (includ-
2 ing the daily or final settlement price)
3 of 1 or more contracts listed for trad-
4 ing on a registered entity, of any
5 change regarding—

6 “(aa) the information that
7 the foreign board of trade will
8 make publicly available;

9 “(bb) the position limits
10 that the foreign board of trade or
11 foreign futures authority will
12 adopt and enforce;

13 “(cc) the position reductions
14 required to prevent manipulation,
15 excessive speculation as described
16 in section 4a, price distortion, or
17 disruption of delivery or the cash
18 settlement process; and

19 “(dd) any other area of in-
20 terest expressed by the Commis-
21 sion to the foreign board of trade
22 or foreign futures authority;

23 “(IV) provides information to the
24 Commission regarding large trader
25 positions in the agreement, contract,

1 or transaction that is comparable to
2 the large trader position information
3 collected by the Commission for the 1
4 or more contracts against which the
5 agreement, contract, or transaction
6 traded on the foreign board of trade
7 settles; and

8 “(V) provides the Commission
9 such information as is necessary to
10 publish reports on aggregate trader
11 positions for the agreement, contract,
12 or transaction traded on the foreign
13 board of trade that are comparable to
14 such reports on aggregate trader posi-
15 tions for the 1 or more contracts
16 against which the agreement, con-
17 tract, or transaction traded on the
18 foreign board of trade settles.

19 “(B) EXISTING FOREIGN BOARDS OF
20 TRADE.—Subparagraph (A) shall not be effec-
21 tive with respect to any foreign board of trade
22 to which, prior to the date of enactment of this
23 paragraph, the Commission granted direct ac-
24 cess permission until the date that is 180 days
25 after that date of enactment.”.

1 (b) LIABILITY OF REGISTERED PERSONS TRADING
2 ON A FOREIGN BOARD OF TRADE.—Section 4 of the Com-
3modity Exchange Act (7 U.S.C. 6) is amended—

4 (1) in subsection (a), in the matter preceding
5 paragraph (1), by inserting “or by subsection (e)”
6 after “Unless exempted by the Commission pursuant
7 to subsection (c)”;

8 (2) by adding at the end the following:

9 “(e) LIABILITY OF REGISTERED PERSONS TRADING
10 ON A FOREIGN BOARD OF TRADE.—A person registered
11 with the Commission, or exempt from registration by the
12 Commission, under this Act may not be found to have vio-
13 lated subsection (a) with respect to a transaction in, or
14 in connection with, a contract of sale of a commodity for
15 future delivery if the person has reason to believe that the
16 transaction and the contract is made on or subject to the
17 rules of a foreign board of trade that has complied with
18 paragraphs (1) and (2) of subsection (b).”.

19 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
20 TURES CONTRACTS.—Section 22(a) of the Commodity Ex-
21 change Act (7 U.S.C. 25(a)) (as amended by section 739)
22 is amended by adding at the end the following:

23 “(6) CONTRACT ENFORCEMENT FOR FOREIGN
24 FUTURES CONTRACTS.—A contract of sale of a com-
25modity for future delivery traded or executed on or

1 through the facilities of a board of trade, exchange,
2 or market located outside the United States for pur-
3 poses of section 4(a) shall not be void, voidable, or
4 unenforceable, and a party to such a contract shall
5 not be entitled to rescind or recover any payment
6 made with respect to the contract, based on the fail-
7 ure of the foreign board of trade to comply with any
8 provision of this Act.”.

9 **SEC. 739. LEGAL CERTAINTY FOR SWAPS.**

10 Section 22(a) of the Commodity Exchange Act (7
11 U.S.C. 25(a)) is amended by striking paragraph (4) and
12 inserting the following:

13 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
14 GIBLE COUNTERPARTIES.—

15 “(A) IN GENERAL.—No hybrid instrument
16 sold to any investor shall be void, voidable, or
17 unenforceable, and no party to a hybrid instru-
18 ment shall be entitled to rescind, or recover any
19 payment made with respect to, the hybrid in-
20 strument under this section or any other provi-
21 sion of Federal or State law, based solely on the
22 failure of the hybrid instrument to comply with
23 the terms or conditions of section 2(f) or regu-
24 lations of the Commission.

1 “(B) SWAPS.—No agreement, contract, or
2 transaction between eligible contract partici-
3 pants or persons reasonably believed to be eligi-
4 ble contract participants shall be void, voidable,
5 or unenforceable, and no party to an agree-
6 ment, contract, or transaction shall be entitled
7 to rescind, or recover any payment made with
8 respect to, the agreement, contract, or trans-
9 action under this section or any other provision
10 of Federal or State law, based solely on the fail-
11 ure of the agreement, contract, or transaction—

12 “(i) to meet the definition of a swap
13 under section 1a; or

14 “(ii) to be cleared in accordance with
15 section 2(h)(1).

16 “(5) LEGAL CERTAINTY FOR LONG-TERM
17 SWAPS ENTERED INTO BEFORE THE DATE OF EN-
18 ACTMENT OF THE WALL STREET TRANSPARENCY
19 AND ACCOUNTABILITY ACT OF 2010.—

20 “(A) IN GENERAL.—Any swap entered into
21 before the date of enactment of the Wall Street
22 Transparency and Accountability Act of 2010,
23 the terms of which have not expired as of the
24 date of enactment, shall not be subject to the

1 mandatory clearing requirements under this
2 Act.

3 “(B) EFFECT ON SWAPS.—Unless specifi-
4 cally reserved in the applicable bilateral trading
5 agreement, neither the enactment of the Wall
6 Street Transparency and Accountability Act of
7 2010, nor any requirement under that Act or
8 an amendment made by that Act, shall con-
9 stitute a termination event, force majeure, ille-
10 gality, increased costs, regulatory change, or
11 similar event under a bilateral trading agree-
12 ment (including any related credit support ar-
13 rangement) that would permit a party to termi-
14 nate, renegotiate, modify, amend, or supple-
15 ment 1 or more transactions under the bilateral
16 trading agreement.

17 “(C) POSITION LIMITS.—Any position limit
18 established under the Wall Street Transparency
19 and Accountability Act of 2010 shall not apply
20 to a position acquired in good faith prior to the
21 effective date of any rule, regulation, or order
22 under the Act that establishes the position
23 limit; provided, however, that such positions
24 shall be attributed to the trader if the trader’s

1 position is increased after the effective date of
2 such position limit rule, regulation, or order.”.

3 **SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.**

4 Sections 408 and 409 of the Federal Deposit Insur-
5 ance Corporation Improvement Act of 1991 (12 U.S.C.
6 4421, 4422) are repealed.

7 **SEC. 741. ENFORCEMENT.**

8 (a) ENFORCEMENT AUTHORITY.—The Commodity
9 Exchange Act is amended by inserting after section 4b (7
10 U.S.C. 6b) the following:

11 **“SEC. 4b-1. ENFORCEMENT AUTHORITY.**

12 “(a) COMMISSION.—Except as provided in sub-
13 sections (b), (c), and (d), the Commission shall have pri-
14 mary authority to enforce the amendments made by the
15 Wall Street Transparency and Accountability Act of 2010
16 with respect to any person.

17 “(b) APPROPRIATE FEDERAL BANKING AGENCIES.—

18 The appropriate Federal banking agency for swap dealers
19 or major swap participants that are depository institu-
20 tions, as that term is defined under section 3 of the Fed-
21 eral Deposit Insurance Act (12 U.S.C. 1813), shall have
22 exclusive authority to enforce the provisions of section
23 4s(e) and other prudential requirements of this Act, with
24 respect to depository institutions that are swap dealers or
25 major swap participants.

1 “(c) REFERRALS.—

2 “(1) PRUDENTIAL REGULATORS.—If the pru-
3 dential regulator for a swap dealer or major swap
4 participant has cause to believe that the swap dealer
5 or major swap participant, or any affiliate or divi-
6 sion of the swap dealer or major swap participant,
7 may have engaged in conduct that constitutes a vio-
8 lation of the nonprudential requirements of this Act
9 (including section 4s or rules adopted by the Com-
10 mission under that section), the prudential regulator
11 shall promptly notify the Commission in a written
12 report that includes—

13 “(A) a request that the Commission ini-
14 tiate an enforcement proceeding under this Act;
15 and

16 “(B) an explanation of the facts and cir-
17 cumstances that led to the preparation of the
18 written report.

19 “(2) COMMISSION.—If the Commission has
20 cause to believe that a swap dealer or major swap
21 participant that has a prudential regulator may have
22 engaged in conduct that constitutes a violation of
23 any prudential requirement of section 4s or rules
24 adopted by the Commission under that section, the

1 Commission may notify the prudential regulator of
2 the conduct in a written report that includes—

3 “(A) a request that the prudential regu-
4 lator initiate an enforcement proceeding under
5 this Act or any other Federal law (including
6 regulations); and

7 “(B) an explanation of the concerns of the
8 Commission, and a description of the facts and
9 circumstances, that led to the preparation of
10 the written report.

11 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—

12 “(1) INITIATION OF ENFORCEMENT PRO-
13 CEEDING BY PRUDENTIAL REGULATOR.—If the
14 Commission does not initiate an enforcement pro-
15 ceeding before the end of the 90-day period begin-
16 ning on the date on which the Commission receives
17 a written report under subsection (c)(1), the pruden-
18 tial regulator may initiate an enforcement pro-
19 ceeding.

20 “(2) INITIATION OF ENFORCEMENT PRO-
21 CEEDING BY COMMISSION.—If the prudential regu-
22 lator does not initiate an enforcement proceeding be-
23 fore the end of the 90-day period beginning on the
24 date on which the prudential regulator receives a

1 written report under subsection (c)(2), the Commis-
2 sion may initiate an enforcement proceeding.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 4b of the Commodity Exchange Act
5 (7 U.S.C. 6b) is amended—

6 (A) in subsection (a)(2), by striking “or
7 other agreement, contract, or transaction sub-
8 ject to paragraphs (1) and (2) of section
9 5a(g),” and inserting “or swap,”;

10 (B) in subsection (b), by striking “or other
11 agreement, contract or transaction subject to
12 paragraphs (1) and (2) of section 5a(g),” and
13 inserting “or swap,”; and

14 (C) by adding at the end the following:

15 “(e) It shall be unlawful for any person, directly or
16 indirectly, by the use of any means or instrumentality of
17 interstate commerce, or of the mails, or of any facility of
18 any registered entity, in or in connection with any order
19 to make, or the making of, any contract of sale of any
20 commodity for future delivery (or option on such a con-
21 tract), or any swap, on a group or index of securities (or
22 any interest therein or based on the value thereof)—

23 “(1) to employ any device, scheme, or artifice to
24 defraud;

1 “(2) to make any untrue statement of a mate-
2 rial fact or to omit to state a material fact necessary
3 in order to make the statements made, in the light
4 of the circumstances under which they were made,
5 not misleading; or

6 “(3) to engage in any act, practice, or course of
7 business which operates or would operate as a fraud
8 or deceit upon any person.”.

9 (2) Section 4c(a)(1) of the Commodity Ex-
10 change Act (7 U.S.C. 6c(a)(1)) is amended by in-
11 serting “or swap” before “if the transaction is used
12 or may be used”.

13 (3) Section 6(c) of the Commodity Exchange
14 Act (7 U.S.C. 9) is amended in the first sentence by
15 inserting “or of any swap,” before “or has willfully
16 made”.

17 (4) Section 6(d) of the Commodity Exchange
18 Act (7 U.S.C. 13b) is amended in the first sentence,
19 in the matter preceding the proviso, by inserting “or
20 of any swap,” before “or otherwise is violating”.

21 (5) Section 6c(a) of the Commodity Exchange
22 Act (7 U.S.C. 13a-1(a)) is amended in the matter
23 preceding the proviso by inserting “or any swap”
24 after “commodity for future delivery”.

1 (6) Section 9 of the Commodity Exchange Act
2 (7 U.S.C. 13) is amended—

3 (A) in subsection (a)—

4 (i) in paragraph (2), by inserting “or
5 of any swap,” before “or to corner”; and

6 (ii) in paragraph (4), by inserting
7 “swap data repository,” before “or futures
8 association” and

9 (B) in subsection (e)(1)—

10 (i) by inserting “swap data reposi-
11 tory,” before “or registered futures asso-
12 ciation”; and

13 (ii) by inserting “, or swaps,” before
14 “on the basis”.

15 (7) Section 9(a) of the Commodity Exchange
16 Act (7 U.S.C. 13(a)) is amended by adding at the
17 end the following:

18 “(6) Any person to abuse the end user clearing
19 exemption under section 2(h)(4), as determined by
20 the Commission.”.

21 (8) Section 8(b) of the Federal Deposit Insur-
22 ance Act (12 U.S.C. 1818(b)) is amended by adding
23 at the end the following:

24 “(11) SWAPS.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), this section shall apply to any swap
3 dealer, major swap participant, security-based
4 swap dealer, major security-based swap partici-
5 pant, derivatives clearing organization, swap
6 data repository, or swap execution facility, re-
7 gardless of whether the dealer, participant, or-
8 ganization, repository, or facility is an insured
9 depository institution, for which the Board, the
10 Corporation, or the Office of the Comptroller of
11 the Currency is the appropriate Federal bank-
12 ing agency or prudential regulator for purposes
13 of the amendments made by the Wall Street
14 Transparency and Accountability Act of 2010.

15 “(B) LIMITATION.—The authority de-
16 scribed in subparagraph (A) shall be limited by,
17 and exercised in accordance with, section 4b–1
18 of the Commodity Exchange Act.”.

19 (9) Section 2(c)(2)(B) of the Commodity Ex-
20 change Act (7 U.S.C. 2(c)(2)(B)) is amended—

21 (A) by striking “(dd),” each place it ap-
22 pears;

23 (B) in clause (iii), by inserting “, and ac-
24 counts or pooled investment vehicles described
25 in clause (vi),” before “shall be subject to”; and

1 (C) by adding at the end the following:

2 “(vi) This Act applies to, and the
3 Commission shall have jurisdiction over, an
4 account or pooled investment vehicle that
5 is offered for the purpose of trading, or
6 that trades, any agreement, contract, or
7 transaction in foreign currency described
8 in clause (i).”.

9 (10) Section 2(c)(2)(C) of the Commodity Ex-
10 change Act (7 U.S.C. 2(c)(2)(C)) is amended—

11 (A) by striking “(dd),” each place it ap-
12 pears;

13 (B) in clause (ii)(I), by inserting “, and ac-
14 counts or pooled investment vehicles described
15 in clause (vii),” before “shall be subject to”;
16 and

17 (C) by adding at the end the following:

18 “(vii) This Act applies to, and the
19 Commission shall have jurisdiction over, an
20 account or pooled investment vehicle that
21 is offered for the purpose of trading, or
22 that trades, any agreement, contract, or
23 transaction in foreign currency described
24 in clause (i).”.

1 person that is not an eligible contract
2 participant or eligible commercial en-
3 tity; and

4 “(II) entered into, or offered
5 (even if not entered into), on a lever-
6 aged or margined basis, or financed
7 by the offeror, the counterparty, or a
8 person acting in concert with the of-
9 feror or counterparty on a similar
10 basis.

11 “(ii) EXCEPTIONS.—This subpara-
12 graph shall not apply to—

13 “(I) an agreement, contract, or
14 transaction described in paragraph (1)
15 or subparagraphs (A), (B), or (C), in-
16 cluding any agreement, contract, or
17 transaction specifically excluded from
18 subparagraph (A), (B), or (C);

19 “(II) any security;

20 “(III) a contract of sale that—

21 “(aa) results in actual deliv-
22 ery within 28 days or such other
23 period as the Commission may
24 determine by rule or regulation
25 based upon the typical commer-

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1 cial practice in cash or spot mar-
2 kets for the commodity involved;
3 or

4 “(bb) creates an enforceable
5 obligation to deliver between a
6 seller and a buyer that have the
7 ability to deliver and accept deliv-
8 ery, respectively, in connection
9 with the line of business of the
10 seller and buyer; or

11 “(IV) an agreement, contract, or
12 transaction that is listed on a national
13 securities exchange registered under
14 section 6(a) of the Securities Ex-
15 change Act of 1934 (15 U.S.C.
16 78f(a)); or

17 “(V) an identified banking prod-
18 uct, as defined in section 402(b) of
19 the Legal Certainty for Bank Prod-
20 ucts Act of 2000 (7 U.S.C.27(b)).

21 “(iii) ENFORCEMENT.—Sections 4(a),
22 4(b), and 4b apply to any agreement, con-
23 tract, or transaction described in clause (i),
24 as if the agreement, contract, or trans-

1 action was a contract of sale of a com-
2 modity for future delivery.

3 “(iv) ELIGIBLE COMMERCIAL ENTI-
4 TY.—For purposes of this subparagraph,
5 an agricultural producer, packer, or han-
6 dler shall be considered to be an eligible
7 commercial entity for any agreement, con-
8 tract, or transaction for a commodity in
9 connection with the line of business of the
10 agricultural producer, packer, or handler.

11 “(v) ACTUAL DELIVERY.—For pur-
12 poses of clause (ii)(III), the term ‘actual
13 delivery’ does not include delivery to a
14 third party in a financed transaction in
15 which the commodity is held as collat-
16 eral.”.

17 (b) GRAMM-LEACH-BLILEY ACT.—Section 206(a) of
18 the Gramm-Leach-Bliley Act (Public Law 106–102; 15
19 U.S.C. 78c note) is amended, in the matter preceding
20 paragraph (1), by striking “For purposes of” and insert-
21 ing “Except as provided in subsection (e), for purposes
22 of”.

23 (c) CONFORMING AMENDMENTS RELATING TO RE-
24 TAIL FOREIGN EXCHANGE TRANSACTIONS.—

1 (1) Section 2(c)(2)(B)(i)(II) of the Commodity
2 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-
3 ed—

4 (A) in item (aa), by inserting “United
5 States” before “financial institution”;

6 (B) by striking items (dd) and (ff);

7 (C) by redesignating items (ee) and (gg) as
8 items (dd) and (ff), respectively; and

9 (D) in item (dd) (as so redesignated), by
10 striking the semicolon and inserting “; or”.

11 (2) Section 2(c)(2) of the Commodity Exchange
12 Act (7 U.S.C. 2(c)(2)) (as amended by subsection
13 (a)(2)) is amended by adding at the end the fol-
14 lowing:

15 “(E) PROHIBITION.—

16 “(i) DEFINITION OF FEDERAL REGU-
17 LATORY AGENCY.—In this subparagraph,
18 the term ‘Federal regulatory agency’
19 means—

20 “(I) the Commission;

21 “(II) the Securities and Ex-
22 change Commission;

23 “(III) an appropriate Federal
24 banking agency;

1 “(IV) the National Credit Union
2 Association; and

3 “(V) the Farm Credit Adminis-
4 tration.

5 “(ii) PROHIBITION.—A person de-
6 scribed in subparagraph (B)(i)(II) for
7 which there is a Federal regulatory agency
8 shall not offer to, or enter into with, a per-
9 son that is not an eligible contract partici-
10 pant, any agreement, contract, or trans-
11 action in foreign currency described in sub-
12 paragraph (B)(i)(I) except pursuant to a
13 rule or regulation of a Federal regulatory
14 agency allowing the agreement, contract,
15 or transaction under such terms and condi-
16 tions as the Federal regulatory agency
17 shall prescribe.

18 “(iii) REQUIREMENTS OF RULES AND
19 REGULATIONS.—

20 “(I) IN GENERAL.—The rules
21 and regulations described in clause
22 (ii) shall prescribe appropriate re-
23 quirements with respect to—

24 “(aa) disclosure;

25 “(bb) recordkeeping;

1 “(cc) capital and margin;
2 “(dd) reporting;
3 “(ee) business conduct;
4 “(ff) documentation; and
5 “(gg) such other standards
6 or requirements as the Federal
7 regulatory agency shall determine
8 to be necessary.

9 “(II) TREATMENT.—The rules or
10 regulations described in clause (ii)
11 shall treat all agreements, contracts,
12 and transactions in foreign currency
13 described in subparagraph (B)(i)(I),
14 and all agreements, contracts, and
15 transactions in foreign currency that
16 are functionally or economically simi-
17 lar to agreements, contracts, or trans-
18 actions described in subparagraph
19 (B)(i)(I), similarly.”.

20 **SEC. 743. OTHER AUTHORITY.**

21 Unless otherwise provided by the amendments made
22 by this subtitle, the amendments made by this subtitle do
23 not divest any appropriate Federal banking agency, the
24 Commodity Futures Trading Commission, the Securities
25 and Exchange Commission, or other Federal or State

1 agency of any authority derived from any other applicable
2 law.

3 **SEC. 744. RESTITUTION REMEDIES.**

4 Section 6c(d) of the Commodity Exchange Act (7
5 U.S.C. 13a-1(d)) is amended by adding at the end the
6 following:

7 “(3) **EQUITABLE REMEDIES.**—In any action
8 brought under this section, the Commission may
9 seek, and the court shall have jurisdiction to impose,
10 on a proper showing, on any person found in the ac-
11 tion to have committed any violation, equitable rem-
12 edies including—

13 “(A) restitution to persons who have sus-
14 tained losses proximately caused by such viola-
15 tion (in the amount of such losses); and

16 “(B) disgorgement of gains received in
17 connection with such violation.”.

18 **SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTI-**
19 **TIES.**

20 (a) **EFFECT OF INTERPRETATION.**—Section 5c(a) of
21 the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is
22 amended by striking paragraph (2) and inserting the fol-
23 lowing:

24 “(2) **EFFECT OF INTERPRETATION.**—An inter-
25 pretation issued under paragraph (1) may provide

1 the exclusive means for complying with each section
2 described in paragraph (1).”.

3 (b) NEW CONTRACTS, NEW RULES, AND RULE
4 AMENDMENTS.—

5 (1) IN GENERAL.—A registered entity may elect
6 to list for trading or accept for clearing any new
7 contract, or other instrument, or may elect to ap-
8 prove and implement any new rule or rule amend-
9 ment, by providing to the Commission (and the Sec-
10 retary of the Treasury, in the case of a contract of
11 sale of a government security for future delivery (or
12 option on such a contract) or a rule or rule amend-
13 ment specifically related to such a contract) a writ-
14 ten certification that the new contract or instrument
15 or clearing of the new contract or instrument, new
16 rule, or rule amendment complies with this Act (in-
17 cluding regulations under this Act).

18 (2) RULE REVIEW.—The new rule or rule
19 amendment described in paragraph (1) shall become
20 effective, pursuant to the certification of the reg-
21 istered entity, on the date that is 10 business days
22 after the date on which the Commission receives the
23 certification (or such shorter period as determined
24 by the Commission by rule or regulation) unless the
25 Commission notifies the registered entity within such

1 time that it is staying the certification because there
2 exist novel or complex issues that require additional
3 time to analyze, an inadequate explanation by the
4 submitting registered entity, or a potential inconsis-
5 tency with this Act (including regulations under this
6 Act).

7 (3) STAY OF CERTIFICATION FOR RULES.—

8 (A) A notification by the Commission pur-
9 suant to paragraph (2) shall stay the certifi-
10 cation of the new rule or rule amendment for
11 up to an additional 90 days from the date of
12 the notification.

13 (B) A rule or rule amendment subject to
14 a stay pursuant to subparagraph (A) shall be-
15 come effective, pursuant to the certification of
16 the registered entity, at the expiration of the
17 period described in subparagraph (A) unless the
18 Commission—

19 (i) withdraws the stay prior to that
20 time; or

21 (ii) notifies the registered entity dur-
22 ing such period that it objects to the pro-
23 posed certification on the grounds that it is
24 inconsistent with this Act (including regu-
25 lations under this Act).

1 (4) PRIOR APPROVAL.—

2 (A) IN GENERAL.—A registered entity may
3 request that the Commission grant prior ap-
4 proval to any new contract or other instrument,
5 new rule, or rule amendment.

6 (B) PRIOR APPROVAL REQUIRED.—Not-
7 withstanding any other provision of this section,
8 a designated contract market shall submit to
9 the Commission for prior approval each rule
10 amendment that materially changes the terms
11 and conditions, as determined by the Commis-
12 sion, in any contract of sale for future delivery
13 of a commodity specifically enumerated in sec-
14 tion 1a(10) (or any option thereon) traded
15 through its facilities if the rule amendment ap-
16 plies to contracts and delivery months which
17 have already been listed for trading and have
18 open interest.

19 (C) DEADLINE.—If prior approval is re-
20 quested under subparagraph (A), the Commis-
21 sion shall take final action on the request not
22 later than 90 days after submission of the re-
23 quest, unless the person submitting the request
24 agrees to an extension of the time limitation es-
25 tablished under this subparagraph.

1 (5) APPROVAL.—

2 (A) RULES.—The Commission shall ap-
3 prove a new rule, or rule amendment, of a reg-
4 istered entity unless the Commission finds that
5 the new rule, or rule amendment, is incon-
6 sistent with this subtitle (including regulations).

7 (B) CONTRACTS AND INSTRUMENTS.—The
8 Commission shall approve a new contract or
9 other instrument unless the Commission finds
10 that the new contract or other instrument
11 would violate this subtitle (including regula-
12 tions).

13 (C) SPECIAL RULE FOR REVIEW AND AP-
14 PROVAL OF EVENT CONTRACTS AND SWAPS
15 CONTRACTS.—

16 (i) EVENT CONTRACTS.—In connec-
17 tion with the listing of agreements, con-
18 tracts, transactions, or swaps in excluded
19 commodities that are based upon the oc-
20 currence, extent of an occurrence, or con-
21 tingency (other than a change in the price,
22 rate, value, or levels of a commodity de-
23 scribed in section 1a(2)(i)), by a des-
24 ignated contract market or swap execution
25 facility, the Commission may determine

1 request or on its own motion, the ini-
2 tial eligibility, or the continuing quali-
3 fication, of a derivatives clearing orga-
4 nization to clear such a swap under
5 those criteria, conditions, or rules that
6 the Commission, in its discretion, de-
7 termines.

8 (II) REQUIREMENTS.—Any such
9 criteria, conditions, or rules shall con-
10 sider—

11 (aa) the financial integrity
12 of the derivatives clearing organi-
13 zation; and

14 (bb) any other factors which
15 the Commission determines may
16 be appropriate.

17 (iv) DEADLINE.—The Commission
18 shall take final action under clauses (i)
19 and (ii) in not later than 90 days from the
20 commencement of its review unless the
21 party seeking to offer the contract or swap
22 agrees to an extension of this time limita-
23 tion.

1 (c) VIOLATION OF CORE PRINCIPLES.—Section 5c of
2 the Commodity Exchange Act (7 U.S.C. 7a–2) is amended
3 by striking subsection (d).

4 **SEC. 746. INSIDER TRADING.**

5 Section 4c(a) of the Commodity Exchange Act (7
6 U.S.C. 6c(a)) is amended by adding at the end the fol-
7 lowing:

8 “(3) CONTRACT OF SALE.—It shall be unlawful
9 for any employee or agent of any department or
10 agency of the Federal Government who, by virtue of
11 the employment or position of the employee or
12 agent, acquires information that may affect or tend
13 to affect the price of any commodity in interstate
14 commerce, or for future delivery, or any swap, and
15 which information has not been disseminated by the
16 department or agency of the Federal Government
17 holding or creating the information in a manner
18 which makes it generally available to the trading
19 public, or disclosed in a criminal, civil, or adminis-
20 trative hearing, or in a congressional, administrative,
21 or Government Accountability Office report, hearing,
22 audit, or investigation, to use the information in his
23 personal capacity and for personal gain to enter
24 into, or offer to enter into—

1 “(A) a contract of sale of a commodity for
2 future delivery (or option on such a contract);

3 “(B) an option (other than an option exe-
4 cuted or traded on a national securities ex-
5 change registered pursuant to section 6(a) of
6 the Securities Exchange Act of 1934 (15
7 U.S.C. 78f(a)); or

8 “(C) a swap.

9 “(4) NONPUBLIC INFORMATION.—

10 “(A) IMPARTING OF NONPUBLIC INFORMA-
11 TION.—It shall be unlawful for any employee or
12 agent of any department or agency of the Fed-
13 eral Government who, by virtue of the employ-
14 ment or position of the employee or agent, ac-
15 quires information that may affect or tend to
16 affect the price of any commodity in interstate
17 commerce, or for future delivery, or any swap,
18 and which information has not been dissemi-
19 nated by the department or agency of the Fed-
20 eral Government holding or creating the infor-
21 mation in a manner which makes it generally
22 available to the trading public, or disclosed in
23 a criminal, civil, or administrative hearing, or in
24 a congressional, administrative, or Government
25 Accountability Office report, hearing, audit, or

1 investigation, to impart the information in his
2 personal capacity and for personal gain with in-
3 tent to assist another person, directly or indi-
4 rectly, to use the information to enter into, or
5 offer to enter into—

6 “(i) a contract of sale of a commodity
7 for future delivery (or option on such a
8 contract);

9 “(ii) an option (other than an option
10 executed or traded on a national securities
11 exchange registered pursuant to section
12 6(a) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78f(a)); or

14 “(iii) a swap.

15 “(B) KNOWING USE.—It shall be unlawful
16 for any person who receives information im-
17 parted by any employee or agent of any depart-
18 ment or agency of the Federal Government as
19 described in subparagraph (A) to knowingly use
20 such information to enter into, or offer to enter
21 into—

22 “(i) a contract of sale of a commodity
23 for future delivery (or option on such a
24 contract);

1 “(ii) an option (other than an option
2 executed or traded on a national securities
3 exchange registered pursuant to section
4 6(a) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78f(a)); or

6 “(iii) a swap.

7 “(C) THEFT OF NONPUBLIC INFORMA-
8 TION.—It shall be unlawful for any person to
9 steal, convert, or misappropriate, by any means
10 whatsoever, information held or created by any
11 department or agency of the Federal Govern-
12 ment that may affect or tend to affect the price
13 of any commodity in interstate commerce, or
14 for future delivery, or any swap, where such
15 person knows, or acts in reckless disregard of
16 the fact, that such information has not been
17 disseminated by the department or agency of
18 the Federal Government holding or creating the
19 information in a manner which makes it gen-
20 erally available to the trading public, or dis-
21 closed in a criminal, civil, or administrative
22 hearing, or in a congressional, administrative,
23 or Government Accountability Office report,
24 hearing, audit, or investigation, and to use such
25 information, or to impart such information with

1 the intent to assist another person, directly or
2 indirectly, to use such information to enter into,
3 or offer to enter into—

4 “(i) a contract of sale of a commodity
5 for future delivery (or option on such a
6 contract);

7 “(ii) an option (other than an option
8 executed or traded on a national securities
9 exchange registered pursuant to section
10 6(a) of the Securities Exchange Act of
11 1934 (15 U.S.C. 78f(a)); or

12 “(iii) a swap.

13 *Provided*, however, that nothing in this
14 subparagraph shall preclude a person that
15 has provided information concerning, or
16 generated by, the person, its operations or
17 activities, to any employee or agent of any
18 department or agency of the Federal Gov-
19 ernment, voluntarily or as required by law,
20 from using such information to enter into,
21 or offer to enter into, a contract of sale,
22 option, or swap described in clauses (i),
23 (ii), or (iii).”.

1 **SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.**

2 Section 4c(a) of the Commodity Exchange Act (7
3 U.S.C. 6c(a)) (as amended by section 746) is amended
4 by adding at the end the following:

5 “(5) DISRUPTIVE PRACTICES.—It shall be un-
6 lawful for any person to engage in any trading, prac-
7 tice, or conduct on or subject to the rules of a reg-
8 istered entity that—

9 “(A) violates bids or offers;

10 “(B) demonstrates intentional or reckless
11 disregard for the orderly execution of trans-
12 actions during the closing period; or

13 “(C) is, is of the character of, or is com-
14 monly known to the trade as, ‘spoofing’ (bid-
15 ding or offering with the intent to cancel the
16 bid or offer before execution).

17 “(6) RULEMAKING AUTHORITY.—The Commis-
18 sion may make and promulgate such rules and regu-
19 lations as, in the judgment of the Commission, are
20 reasonably necessary to prohibit the trading prac-
21 tices described in paragraph (5) and any other trad-
22 ing practice that is disruptive of fair and equitable
23 trading.

24 “(7) USE OF SWAPS TO DEFRAUD.—It shall be
25 unlawful for any person to enter into a swap know-
26 ing, or acting in reckless disregard of the fact, that

1 its counterparty will use the swap as part of a de-
2 vice, scheme, or artifice to defraud any third
3 party.”.

4 **SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND**
5 **PROTECTION.**

6 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
7 is amended by adding at the end the following:

8 **“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND**
9 **PROTECTION.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
12 ACTION.—The term ‘covered judicial or administra-
13 tive action’ means any judicial or administrative ac-
14 tion brought by the Commission under this Act that
15 results in monetary sanctions exceeding \$1,000,000.

16 “(2) FUND.—The term ‘Fund’ means the Com-
17 modity Futures Trading Commission Customer Pro-
18 tection Fund established under subsection (g).

19 “(3) MONETARY SANCTIONS.—The term ‘mone-
20 tary sanctions’, when used with respect to any judi-
21 cial or administrative action means—

22 “(A) any monies, including penalties,
23 disgorgement, restitution, and interest ordered
24 to be paid; and

1 “(B) any monies deposited into a
2 disgorgement fund or other fund pursuant to
3 section 308(b) of the Sarbanes-Oxley Act of
4 2002 (15 U.S.C. 7246(b)), as a result of such
5 action or any settlement of such action.

6 “(4) ORIGINAL INFORMATION.—The term
7 ‘original information’ means information that—

8 “(A) is derived from the independent
9 knowledge or analysis of a whistleblower;

10 “(B) is not known to the Commission from
11 any other source, unless the whistleblower is the
12 original source of the information; and

13 “(C) is not exclusively derived from an al-
14 legation made in a judicial or administrative
15 hearing, in a governmental report, hearing,
16 audit, or investigation, or from the news media,
17 unless the whistleblower is a source of the infor-
18 mation.

19 “(5) RELATED ACTION.—The term ‘related ac-
20 tion’, when used with respect to any judicial or ad-
21 ministrative action brought by the Commission
22 under this Act, means any judicial or administrative
23 action brought by an entity described in subclauses
24 (i) through (vi) of subsection (g)(2)(B) that is based
25 upon the original information provided by a whistle-

1 blower pursuant to subsection (a) that led to the
2 successful enforcement of the Commission action.

3 “(6) SUCCESSFUL RESOLUTION.—The term
4 ‘successful resolution’, when used with respect to
5 any judicial or administrative action brought by the
6 Commission under this Act, includes any settlement
7 of such action.

8 “(7) WHISTLEBLOWER.—The term ‘whistle-
9 blower’ means any individual, or 2 or more individ-
10 uals acting jointly, who provides information relating
11 to a violation of this Act to the Commission, in a
12 manner established by rule or regulation, by the
13 Commission.

14 “(b) AWARDS.—

15 “(1) IN GENERAL.—In any covered judicial or
16 administrative action, or related action, the Commis-
17 sion, under regulations prescribed by the Commis-
18 sion and subject to subsection (c), shall pay an
19 award or awards to 1 or more whistleblowers who
20 voluntarily provided original information to the
21 Commission that led to the successful enforcement
22 of the covered judicial or administrative action, or
23 related action, in an aggregate amount equal to—

24 “(A) not less than 10 percent, in total, of
25 what has been collected of the monetary sanc-

1 “(iii) the programmatic interest of the
2 Commission in deterring violations of the
3 Act (including regulations under the Act)
4 by making awards to whistleblowers who
5 provide information that leads to the suc-
6 cessful enforcement of such 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) a appropriate regulatory agency;

17 “(ii) the Department of Justice;

18 “(iii) a registered entity;

19 “(iv) a registered futures association;

20 or

21 “(v) a self-regulatory organization as
22 defined in section 3(a) of the Securities
23 Exchange Act of 1934 (15 U.S.C. 78c(a));

24 or

25 “(vi) a law enforcement organization;

1 “(B) to any whistleblower who is convicted
2 of a criminal violation related to the judicial or
3 administrative action for which the whistle-
4 blower otherwise could receive an award under
5 this section;

6 “(C) to any whistleblower who submits in-
7 formation to the Commission that is based on
8 the facts underlying the covered action sub-
9 mitted previously by another whistleblower;

10 “(D) to any whistleblower who fails to sub-
11 mit information to the Commission in such
12 form as the Commission may, by rule or regula-
13 tion, require.

14 “(d) REPRESENTATION.—

15 “(1) PERMITTED REPRESENTATION.—Any
16 whistleblower who makes a claim for an award under
17 subsection (b) may be represented by counsel.

18 “(2) REQUIRED REPRESENTATION.—

19 “(A) IN GENERAL.—Any whistleblower
20 who anonymously makes a claim for an award
21 under subsection (b) shall be represented by
22 counsel if the whistleblower submits the infor-
23 mation upon which the claim is based.

24 “(B) DISCLOSURE OF IDENTITY.—Prior to
25 the payment of an award, a whistleblower shall

1 disclose the identity of the whistleblower and
2 provide such other information as the Commis-
3 sion may require, directly or through counsel
4 for the whistleblower.

5 “(e) NO CONTRACT NECESSARY.—No contract with
6 the Commission is necessary for any whistleblower to re-
7 ceive an award under subsection (b), unless otherwise re-
8 quired by the Commission, by rule or regulation.

9 “(f) APPEALS.—

10 “(1) IN GENERAL.—Any determination made
11 under this section, including whether, to whom, or in
12 what amount to make awards, shall be in the discre-
13 tion of the Commission.

14 “(2) APPEALS.—Any determination described
15 in paragraph (1) may be appealed to the appropriate
16 court of appeals of the United States not more than
17 30 days after the determination is issued by the
18 Commission.

19 “(3) REVIEW.—The court shall review the de-
20 termination made by the Commission in accordance
21 with section 7064 of title 5, United States Code.

22 “(g) COMMODITY FUTURES TRADING COMMISSION
23 CUSTOMER PROTECTION FUND.—

24 “(1) ESTABLISHMENT.—There is established in
25 the Treasury of the United States a revolving fund

1 to be known as the ‘Commodity Futures Trading
2 Commission Customer Protection Fund’.

3 “(2) USE OF FUND.—The Fund shall be avail-
4 able to the Commission, without further appropria-
5 tion or fiscal year limitation, for—

6 “(A) the payment of awards to whistle-
7 blowers as provided in subsection (a); and

8 “(B) the funding of customer education
9 initiatives designed to help customers protect
10 themselves against fraud or other violations of
11 this Act, or the rules and regulations there-
12 under.

13 “(3) DEPOSITS AND CREDITS.—There shall be
14 deposited into or credited to the Fund—

15 “(A) any monetary judgment collected by
16 the Commission in any judicial or administra-
17 tive action brought by the Commission under
18 this Act, that is not otherwise distributed to
19 victims of a violation of this Act or the rules
20 and regulations thereunder underlying such ac-
21 tion, unless the balance of the Fund at the time
22 the monetary judgment is collected exceeds
23 \$100,000,000; and

24 “(B) all income from investments made
25 under paragraph (4).

1 “(4) INVESTMENTS.—

2 “(A) AMOUNTS IN FUND MAY BE IN-
3 VESTED.—The Commission may request the
4 Secretary of the Treasury to invest the portion
5 of the Fund that is not, in the Commission’s
6 judgment, required to meet the current needs of
7 the Fund.

8 “(B) ELIGIBLE INVESTMENTS.—Invest-
9 ments shall be made by the Secretary of the
10 Treasury in obligations of the United States or
11 obligations that are guaranteed as to principal
12 and interest by the United States, with matu-
13 rities suitable to the needs of the Fund as de-
14 termined by the Commission.

15 “(C) INTEREST AND PROCEEDS CRED-
16 ITED.—The interest on, and the proceeds from
17 the sale or redemption of, any obligations held
18 in the Fund shall be credited to, and form a
19 part of, the Fund.

20 “(5) REPORTS TO CONGRESS.—Not later than
21 October 30 of each year, the Commission shall
22 transmit to the Committee on Agriculture, Nutri-
23 tion, and Forestry of the Senate, and the Committee
24 on Agriculture of the House of Representatives a re-
25 port on—

1 “(A) the Commission’s whistleblower
2 award program under this section, including a
3 description of the number of awards granted
4 and the types of cases in which awards were
5 granted during the preceding fiscal year;

6 “(B) customer education initiatives de-
7 scribed in paragraph (2)(B) that were funded
8 by the Fund during the preceding fiscal year;

9 “(C) the balance of the Fund at the begin-
10 ning of the preceding fiscal year;

11 “(D) the amounts deposited into or cred-
12 ited to the Fund during the preceding fiscal
13 year;

14 “(E) the amount of earnings on invest-
15 ments of amounts in the Fund during the pre-
16 ceding fiscal year;

17 “(F) the amount paid from the Fund dur-
18 ing the preceding fiscal year to whistleblowers
19 pursuant to subsection (b);

20 “(G) the amount paid from the Fund dur-
21 ing the preceding fiscal year for customer edu-
22 cation initiatives described in paragraph (2)(B);

23 “(H) the balance of the Fund at the end
24 of the preceding fiscal year; and

1 “(I) a complete set of audited financial
2 statements, including a balance sheet, income
3 statement, and cash flow analysis.

4 “(h) PROTECTION OF WHISTLEBLOWERS.—

5 “(1) PROHIBITION AGAINST RETALIATION.—

6 “(A) IN GENERAL.—No employer may dis-
7 charge, demote, suspend, threaten, harass, di-
8 rectly or indirectly, or in any other manner dis-
9 criminate against, a whistleblower in the terms
10 and conditions of employment because of any
11 lawful act done by the whistleblower—

12 “(i) in providing information to the
13 Commission in accordance with subsection
14 (b); or

15 “(ii) in assisting in any investigation
16 or judicial or administrative action of the
17 Commission based upon or related to such
18 information.

19 “(B) ENFORCEMENT.—

20 “(i) CAUSE OF ACTION.—An indi-
21 vidual who alleges discharge or other dis-
22 crimination in violation of subparagraph
23 (A) may bring an action under this sub-
24 section in the appropriate district court of
25 the United States for the relief provided in

1 subparagraph (C), unless the individual
2 who is alleging discharge or other discrimi-
3 nation in violation of subparagraph (A) is
4 an employee of the federal government, in
5 which case the individual shall only bring
6 an action under section 1221 of title 5,
7 United States Code.

8 “(ii) SUBPOENAS.—A subpoena re-
9 quiring the attendance of a witness at a
10 trial or hearing conducted under this sub-
11 section may be served at any place in the
12 United States.

13 “(iii) STATUTE OF LIMITATIONS.—An
14 action under this subsection may not be
15 brought more than 2 years after the date
16 on which the violation reported in subpara-
17 graph (A) is committed.

18 “(C) RELIEF.—Relief for an individual
19 prevailing in an action brought under subpara-
20 graph (B) shall include—

21 “(i) reinstatement with the same se-
22 niority status that the individual would
23 have had, but for the discrimination;

1 “(ii) the amount of back pay other-
2 wise owed to the individual, with interest;
3 and

4 “(iii) compensation for any special
5 damages sustained as a result of the dis-
6 charge or discrimination, including litiga-
7 tion costs, expert witness fees, and reason-
8 able attorney’s fees.

9 “(2) CONFIDENTIALITY.—

10 “(A) INFORMATION PROVIDED.—

11 “(i) IN GENERAL.—Except as pro-
12 vided in subparagraph (B), all information
13 provided to the Commission by a whistle-
14 blower shall be confidential and privileged
15 as an evidentiary matter (and shall not be
16 subject to civil discovery or other legal
17 process) in any proceeding in any Federal
18 or State court or administrative agency,
19 and shall be exempt from disclosure, in the
20 hands of a department or agency of the
21 Federal Government, under section 552 of
22 title 5, United States Code (commonly
23 known as the ‘Freedom of Information
24 Act’) or otherwise, unless and until re-
25 quired to be disclosed to a defendant or re-

1 spondent in connection with a public pro-
2 ceeding instituted by the Commission or
3 any entity described in subparagraph (B).

4 “(ii) CONSTRUCTION.—For purposes
5 of section 552 of title 5, United States
6 Code, this paragraph shall be considered to
7 be a statute described in subsection
8 (b)(3)(B) of that section.

9 “(iii) EFFECT.—Nothing in this para-
10 graph is intended to limit the ability of the
11 Attorney General to present such evidence
12 to a grand jury or to share such evidence
13 with potential witnesses or defendants in
14 the course of an ongoing criminal inves-
15 tigation.

16 “(B) AVAILABILITY TO GOVERNMENT
17 AGENCIES.—

18 “(i) IN GENERAL.—Without the loss
19 of its status as confidential and privileged
20 in the hands of the Commission, all infor-
21 mation referred to in subparagraph (A)
22 may, in the discretion of the Commission,
23 when determined by the Commission to be
24 necessary or appropriate to accomplish the
25 purposes of this Act and protect customers

1 and in accordance with clause (ii), be made
2 available to—

3 “(I) the Department of Justice;

4 “(II) an appropriate department
5 or agency of the Federal Government,
6 acting within the scope of its jurisdic-
7 tion;

8 “(III) a registered entity, reg-
9 istered futures association, or self-reg-
10 ulatory organization as defined in sec-
11 tion 3(a) of the Securities Exchange
12 Act of 1934 (15 U.S.C. 78e(a));

13 “(IV) a State attorney general in
14 connection with any criminal inves-
15 tigation;

16 “(V) an appropriate department
17 or agency of any State, acting within
18 the scope of its jurisdiction; and

19 “(VI) a foreign futures authority.

20 “(ii) MAINTENANCE OF INFORMA-
21 TION.—Each of the entities, agencies, or
22 persons described in clause (i) shall main-
23 tain information described in that clause
24 as confidential and privileged, in accord-

1 ance with the requirements in subpara-
2 graph (A).

3 “(3) RIGHTS RETAINED.—Nothing in this sec-
4 tion shall be deemed to diminish the rights, privi-
5 leges, or remedies of any whistleblower under any
6 Federal or State law, or under any collective bar-
7 gaining agreement.

8 “(i) RULEMAKING AUTHORITY.—The Commission
9 shall have the authority to issue such rules and regulations
10 as may be necessary or appropriate to implement the pro-
11 visions of this section consistent with the purposes of this
12 section.

13 “(j) IMPLEMENTING RULES.—The Commission shall
14 issue final rules or regulations implementing the provi-
15 sions of this section not later than 270 days after the date
16 of enactment of the Wall Street Transparency and Ac-
17 countability Act of 2010.

18 “(k) ORIGINAL INFORMATION.—Information sub-
19 mitted to the Commission by a whistleblower in accord-
20 ance with rules or regulations implementing this section
21 shall not lose its status as original information solely be-
22 cause the whistleblower submitted such information prior
23 to the effective date of such rules or regulations, provided
24 such information was submitted after the date of enact-

1 ment of the Wall Street Transparency and Accountability
2 Act of 2010.

3 “(l) AWARDS.—A whistleblower may receive an award
4 pursuant to this section regardless of whether any viola-
5 tion of a provision of this Act, or a rule or regulation
6 thereunder, underlying the judicial or administrative ac-
7 tion upon which the award is based occurred prior to the
8 date of enactment of the Wall Street Transparency and
9 Accountability Act of 2010.

10 “(m) PROVISION OF FALSE INFORMATION.—A whis-
11 tleblower who knowingly and willfully makes any false, fic-
12 titious, or fraudulent statement or representation, or who
13 makes or uses any false writing or document knowing the
14 same to contain any false, fictitious, or fraudulent state-
15 ment or entry, shall not be entitled to an award under
16 this section and shall be subject to prosecution under sec-
17 tion 1001 of title 18, United States Code.”.

18 **SEC. 749. CONFORMING AMENDMENTS.**

19 (a) Section 2(c)(1) of the Commodity Exchange Act
20 (7 U.S.C. 2(c)(1)) is amended, in the matter preceding
21 subparagraph (A), by striking “5a (to the extent provided
22 in section 5a(g)),”.

23 (b) Section 4d of the Commodity Exchange Act (7
24 U.S.C. 6d) (as amended by section 724) is amended—

25 (1) in subsection (a)—

1 (A) in the matter preceding paragraph

2 (1)—

3 (i) by striking “engage as” and insert-
4 ing “be a”; and

5 (ii) by striking “or introducing
6 broker” and all that follows through “or
7 derivatives transaction execution facility”;

8 (B) in paragraph (1), by striking “or in-
9 troducing broker”; and

10 (C) in paragraph (2), by striking “if a fu-
11 tures commission merchant,”; and

12 (2) by adding at the end the following:

13 “(g) It shall be unlawful for any person to be an in-
14 troducing broker unless such person shall have registered
15 under this Act with the Commission as an introducing
16 broker and such registration shall not have expired nor
17 been suspended nor revoked.”.

18 (c) Section 4m(3) of the Commodity Exchange Act
19 (7 U.S.C. 6m(3)) is amended—

20 (1) by striking “(3) Subsection (1) of this sec-
21 tion” and inserting the following:

22 “(3) EXCEPTION.—

23 “(A) IN GENERAL.—Paragraph (1)”;

24 (2) by striking “to any investment trust” and
25 all that follows through the period at the end and

1 inserting the following: “to any commodity pool that
2 is engaged primarily in trading commodity interests.

3 “(B) ENGAGED PRIMARILY.—For purposes
4 of subparagraph (A), a commodity trading advi-
5 sor or a commodity pool shall be considered to
6 be ‘engaged primarily’ in the business of being
7 a commodity trading advisor or commodity pool
8 if it is or holds itself out to the public as being
9 engaged primarily, or proposes to engage pri-
10 marily, in the business of advising on com-
11 modity interests or investing, reinvesting, own-
12 ing, holding, or trading in commodity interests,
13 respectively.

14 “(C) COMMODITY INTERESTS.—For pur-
15 poses of this paragraph, commodity interests
16 shall include contracts of sale of a commodity
17 for future delivery, options on such contracts,
18 security futures, swaps, leverage contracts, for-
19 eign exchange, spot and forward contracts on
20 physical commodities, and any monies held in
21 an account used for trading commodity inter-
22 ests.”.

23 (d) Section 5c of the Commodity Exchange Act (7
24 U.S.C. 7a-2) is amended—

25 (1) in subsection (a)(1)—

1 (A) by striking “, 5a(d),”; and

2 (B) by striking “and section (2)(h)(7) with
3 respect to significant price discovery con-
4 tracts,”; and

5 (2) in subsection (f)(1), by striking “section
6 4d(c) of this Act” and inserting “section 4d(e)”.

7 (e) Section 5e of the Commodity Exchange Act (7
8 U.S.C. 7b) is amended by striking “or revocation of the
9 right of an electronic trading facility to rely on the exemp-
10 tion set forth in section 2(h)(3) with respect to a signifi-
11 cant price discovery contract,”.

12 (f) Section 6(b) of the Commodity Exchange Act (7
13 U.S.C. 8(b)) is amended in the first sentence by striking
14 “, or to revoke the right of an electronic trading facility
15 to rely on the exemption set forth in section 2(h)(3) with
16 respect to a significant price discovery contract,”.

17 (g) Section 12(e)(2)(B) of the Commodity Exchange
18 Act (7 U.S.C. 16(e)(2)(B)) is amended—

19 (1) by striking “section 2(c), 2(d), 2(f), or 2(g)
20 of this Act” and inserting “section 2(e) or 2(f) of
21 this Act”; and

22 (2) by striking “2(h) or”.

23 (h) Section 17(r)(1) of the Commodity Exchange Act
24 (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(c)
25 of this Act” and inserting “section 4d(e)”.

1 (i) Section 22(b)(1)(A) of the Commodity Exchange
2 Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “sec-
3 tion 2(h)(7) or”.

4 (j) Section 408(2)(C) of the Federal Deposit Insur-
5 ance Corporation Improvement Act of 1991 (12 U.S.C.
6 4421(2)(C)) is amended—

7 (1) by striking “section 2(c), 2(d), 2(f), or
8 (2)(g) of such Act” and inserting “section 2(c), 2(f),
9 or 2(i) of that Act”; and

10 (2) by striking “2(h) or”.

11 **SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.**

12 (a) INTERAGENCY WORKING GROUP.—There is es-
13 tablished to carry out this section an interagency working
14 group (referred to in this section as the “interagency
15 group”) composed of the following members or designees:

16 (1) The Chairman of the Commodity Futures
17 Trading Commission (referred to in this section as
18 the “Commission”), who shall serve as Chairman of
19 the interagency group.

20 (2) The Secretary of Agriculture.

21 (3) The Secretary of the Treasury.

22 (4) The Chairman of the Securities and Ex-
23 change Commission.

24 (5) The Administrator of the Environmental
25 Protection Agency.

1 (6) The Chairman of the Federal Energy Regu-
2 latory Commission.

3 (7) The Commissioner of the Federal Trade
4 Commission.

5 (8) The Administrator of the Energy Informa-
6 tion Administration.

7 (b) ADMINISTRATIVE SUPPORT.—The Commission
8 shall provide the interagency group such administrative
9 support services as are necessary to enable the interagency
10 group to carry out the functions of the interagency group
11 under this section.

12 (c) CONSULTATION.—In carrying out this section, the
13 interagency group shall consult with representatives of ex-
14 changes, clearinghouses, self-regulatory bodies, major car-
15 bon market participants, consumers, and the general pub-
16 lic, as the interagency group determines to be appropriate.

17 (d) STUDY.—The interagency group shall conduct a
18 study on the oversight of existing and prospective carbon
19 markets to ensure an efficient, secure, and transparent
20 carbon market, including oversight of spot markets and
21 derivative markets.

22 (e) REPORT.—Not later than 180 days after the date
23 of enactment of this Act, the interagency group shall sub-
24 mit to Congress a report on the results of the study con-
25 ducted under subsection (b), including recommendations

1 for the oversight of existing and prospective carbon mar-
2 kets to ensure an efficient, secure, and transparent carbon
3 market, including oversight of spot markets and derivative
4 markets.

5 **SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVI-**
6 **SORY COMMITTEE.**

7 Section 2(a) of the Commodity Exchange Act (7
8 U.S.C. 2(a)) (as amended by section 727) is amended by
9 adding at the end the following:

10 “(15) ENERGY AND ENVIRONMENTAL MARKETS
11 ADVISORY COMMITTEE.—

12 “(A) ESTABLISHMENT.—

13 “(i) IN GENERAL.—An Energy and
14 Environmental Markets Advisory Com-
15 mittee is hereby established.

16 “(ii) MEMBERSHIP.—The Committee
17 shall have 9 members.

18 “(iii) ACTIVITIES.—The Committee’s
19 objectives and scope of activities shall be—

20 “(I) to conduct public meetings;

21 “(II) to submit reports and rec-
22 ommendations to the Commission (in-
23 cluding dissenting or minority views,
24 if any); and

1 “(III) otherwise to serve as a ve-
2 hicle for discussion and communica-
3 tion on matters of concern to ex-
4 changes, firms, end users, and regu-
5 lators regarding energy and environ-
6 mental markets and their regulation
7 by the Commission.

8 “(B) REQUIREMENTS.—

9 “(i) IN GENERAL.—The Committee
10 shall hold public meetings at such intervals
11 as are necessary to carry out the functions
12 of the Committee, but not less frequently
13 than 2 times per year.

14 “(ii) MEMBERS.—Members shall be
15 appointed to 3-year terms, but may be re-
16 moved for cause by vote of the Commis-
17 sion.

18 “(C) APPOINTMENT.—The Commission
19 shall appoint members with a wide diversity of
20 opinion and who represent a broad spectrum of
21 interests, including hedgers and consumers.

22 “(D) REIMBURSEMENT.—Members shall
23 be entitled to per diem and travel expense reim-
24 bursement by the Commission.

1 “(E) FACA.—The Committee shall not be
2 subject to the Federal Advisory Committee Act
3 (5 U.S.C. App.).”.

4 **SEC. 752. INTERNATIONAL HARMONIZATION.**

5 In order to promote effective and consistent global
6 regulation of swaps and security-based swaps, the Securi-
7 ties and Exchange Commission, the Commodity Futures
8 Trading Commission, the Financial Stability Oversight
9 Council, and the Treasury Department—

10 (1) shall, both individually and collectively, con-
11 sult and coordinate with foreign regulatory authori-
12 ties on the establishment of consistent international
13 standards with respect to the regulation of such
14 swaps; and

15 (2) may, both individually and collectively,
16 agree to such information-sharing arrangements as
17 may be deemed to be necessary or appropriate in the
18 public interest or for the protection of investors and
19 swap counterparties.

20 **SEC. 753. ANTIMARKET MANIPULATION AUTHORITY.**

21 (a) PROHIBITION REGARDING MANIPULATION AND
22 FALSE INFORMATION.—Subsection (c) of section 6 of the
23 Commodity Exchange Act (7 U.S.C. 9, 15) is amended
24 to read as follows:

1 “(c) PROHIBITION REGARDING MANIPULATION AND
2 FALSE INFORMATION.—

3 “(1) PROHIBITION AGAINST MANIPULATION.—

4 It shall be unlawful for any person, directly or indi-
5 rectly, to use or employ, or attempt to use or em-
6 ploy, in connection with any swap, or a contract of
7 sale of any commodity in interstate commerce, or for
8 future delivery on or subject to the rules of any reg-
9 istered entity, any manipulative or deceptive device
10 or contrivance, in contravention of such rules and
11 regulations as the Commission shall promulgate by
12 not later than 1 year after the date of enactment of
13 the Restoring American Financial Stability Act of
14 2010.

15 “(A) SPECIAL PROVISION FOR MANIPULA-
16 TION BY FALSE REPORTING.—Unlawful manip-
17 ulation for purposes of this paragraph shall in-
18 clude, but not be limited to, delivering, or caus-
19 ing to be delivered for transmission through the
20 mails or interstate commerce, by any means of
21 communication whatsoever, a false or mis-
22 leading or inaccurate report concerning crop or
23 market information or conditions that affect or
24 tend to affect the price of any commodity in
25 interstate commerce, knowing, or acting in

1 reckless disregard of the fact, that such report
2 is false, misleading or inaccurate.

3 “(B) EFFECT ON OTHER LAW.—Nothing
4 in this paragraph shall affect, or be construed
5 to affect, the applicability of section 9(a)(2).

6 “(2) PROHIBITION REGARDING FALSE INFOR-
7 MATION.—It shall be unlawful for any person to
8 make any false or misleading statement of a mate-
9 rial fact to the Commission, including in any reg-
10 istration application or any report filed with the
11 Commission under this Act, or any other informa-
12 tion relating to a swap, or a contract of sale of a
13 commodity, in interstate commerce, or for future de-
14 livery on or subject to the rules of any registered en-
15 tity, or to omit to state in any such statement any
16 material fact that is necessary to make any state-
17 ment of a material fact made not misleading in any
18 material respect, if the person knew, or reasonably
19 should have known, the statement to be false or mis-
20 leading.

21 “(3) OTHER MANIPULATION.—In addition to
22 the prohibition in paragraph (1), it shall be unlawful
23 for any person, directly or indirectly, to manipulate
24 or attempt to manipulate the price of any swap, or
25 of any commodity in interstate commerce, or for fu-

1 ture delivery on or subject to the rules of any reg-
2 istered entity.

3 “(4) ENFORCEMENT.—

4 “(A) AUTHORITY OF COMMISSION.—If the
5 Commission has reason to believe that any per-
6 son (other than a registered entity) is violating
7 or has violated this subsection, or any other
8 provision of this Act (including any rule, regula-
9 tion, or order of the Commission promulgated
10 in accordance with this subsection or any other
11 provision of this Act), the Commission may
12 serve upon the person a complaint.

13 “(B) CONTENTS OF COMPLAINT.—A com-
14 plaint under subparagraph (A) shall—

15 “(i) contain a description of the
16 charges against the person that is the sub-
17 ject of the complaint; and

18 “(ii) have attached or contain a notice
19 of hearing that specifies the date and loca-
20 tion of the hearing regarding the com-
21 plaint.

22 “(C) HEARING.—A hearing described in
23 subparagraph (B)(ii)—

1 corded in written form and submitted
2 to the Commission.

3 “(5) SUBPOENA.—For the purpose of securing
4 effective enforcement of the provisions of this Act,
5 for the purpose of any investigation or proceeding
6 under this Act, and for the purpose of any action
7 taken under section 12(f) of this Act, any member
8 of the Commission or any Administrative Law Judge
9 or other officer designated by the Commission (ex-
10 cept as provided in paragraph (7)) may administer
11 oaths and affirmations, subpoena witnesses, compel
12 their attendance, take evidence, and require the pro-
13 duction of any books, papers, correspondence, memo-
14 randa, or other records that the Commission deems
15 relevant or material to the inquiry.

16 “(6) WITNESSES.—The attendance of witnesses
17 and the production of any such records may be re-
18 quired from any place in the United States, any
19 State, or any foreign country or jurisdiction at any
20 designated place of hearing.

21 “(7) SERVICE.—A subpoena issued under this
22 section may be served upon any person who is not
23 to be found within the territorial jurisdiction of any
24 court of the United States in such manner as the
25 Federal Rules of Civil Procedure prescribe for serv-

1 ice of process in a foreign country, except that a
2 subpoena to be served on a person who is not to be
3 found within the territorial jurisdiction of any court
4 of the United States may be issued only on the prior
5 approval of the Commission.

6 “(8) REFUSAL TO OBEY.—In case of contumacy
7 by, or refusal to obey a subpoena issued to, any per-
8 son, the Commission may invoke the aid of any
9 court of the United States within the jurisdiction in
10 which the investigation or proceeding is conducted,
11 or where such person resides or transacts business,
12 in requiring the attendance and testimony of wit-
13 nesses and the production of books, papers, cor-
14 respondence, memoranda, and other records. Such
15 court may issue an order requiring such person to
16 appear before the Commission or member or Admin-
17 istrative Law Judge or other officer designated by
18 the Commission, there to produce records, if so or-
19 dered, or to give testimony touching the matter
20 under investigation or in question.

21 “(9) FAILURE TO OBEY.—Any failure to obey
22 such order of the court may be punished by the
23 court as a contempt thereof. All process in any such
24 case may be served in the judicial district wherein

1 such person is an inhabitant or transacts business or
2 wherever such person may be found.

3 “(10) EVIDENCE.—On the receipt of evidence
4 under paragraph (4)(C)(iii), the Commission may—

5 “(A) prohibit the person that is the subject
6 of the hearing from trading on, or subject to
7 the rules of, any registered entity and require
8 all registered entities to refuse the person all
9 privileges on the registered entities for such pe-
10 riod as the Commission may require in the
11 order;

12 “(B) if the person is registered with the
13 Commission in any capacity, suspend, for a pe-
14 riod not to exceed 180 days, or revoke, the reg-
15 istration of the person;

16 “(C) assess such person—

17 “(i) a civil penalty of not more than
18 an amount equal to the greater of—

19 “(I) \$140,000; or

20 “(II) triple the monetary gain to
21 such person for each such violation; or

22 “(ii) in any case of manipulation or
23 attempted manipulation in violation of this
24 subsection or section 9(a)(2), a civil pen-

1 alty of not more than an amount equal to
2 the greater of—

3 “(I) \$1,000,000; or

4 “(II) triple the monetary gain to
5 the person for each such violation;
6 and

7 “(D) require restitution to customers of
8 damages proximately caused by violations of the
9 person.

10 “(11) ORDERS.—

11 “(A) NOTICE.—The Commission shall pro-
12 vide to a person described in paragraph (10)
13 and the appropriate governing board of the reg-
14 istered entity notice of the order described in
15 paragraph (10) by—

16 “(i) registered mail;

17 “(ii) certified mail; or

18 “(iii) personal delivery.

19 “(B) REVIEW.—

20 “(i) IN GENERAL.—A person de-
21 scribed in paragraph (10) may obtain a re-
22 view of the order or such other equitable
23 relief as determined to be appropriate by a
24 court described in clause (ii).

1 “(ii) PETITION.—To obtain a review
2 or other relief under clause (i), a person
3 may, not later than 15 days after notice is
4 given to the person under clause (i), file a
5 written petition to set aside the order with
6 the United States Court of Appeals—

7 “(I) for the circuit in which the
8 petitioner carries out the business of
9 the petitioner; or

10 “(II) in the case of an order de-
11 nying registration, the circuit in which
12 the principal place of business of the
13 petitioner is located, as listed on the
14 application for registration of the peti-
15 tioner.

16 “(C) PROCEDURE.—

17 “(i) DUTY OF CLERK OF APPRO-
18 PRIATE COURT.—The clerk of the appro-
19 priate court under subparagraph (B)(ii)
20 shall transmit to the Commission a copy of
21 a petition filed under subparagraph (B)(ii).

22 “(ii) DUTY OF COMMISSION.—In ac-
23 cordance with section 2112 of title 28,
24 United States Code, the Commission shall
25 file in the appropriate court described in

1 subparagraph (B)(ii) the record theretofore
2 made.

3 “(iii) JURISDICTION OF APPROPRIATE
4 COURT.—Upon the filing of a petition
5 under subparagraph (B)(ii), the appro-
6 priate court described in subparagraph
7 (B)(ii) shall have jurisdiction to affirm, set
8 aside, or modify the order of the Commis-
9 sion, and the findings of the Commission
10 as to the facts, if supported by the weight
11 of evidence, shall in like manner be conclu-
12 sive.”.

13 (b) CEASE AND DESIST ORDERS, FINES.—Section
14 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is
15 amended to read as follows:

16 “(d) If any person (other than a registered entity),
17 is violating or has violated subsection (c) or any other pro-
18 visions of this Act or of the rules, regulations, or orders
19 of the Commission thereunder, the Commission may, upon
20 notice and hearing, and subject to appeal as in other cases
21 provided for in subsection (c), make and enter an order
22 directing that such person shall cease and desist therefrom
23 and, if such person thereafter and after the lapse of the
24 period allowed for appeal of such order or after the affirm-
25 ance of such order, shall fail or refuse to obey or comply

1 with such order, such person shall be guilty of a mis-
2 demeanor and, upon conviction thereof, shall be fined not
3 more than the higher of \$140,000 or triple the monetary
4 gain to such person, or imprisoned for not less than 6
5 months nor more than 1 year, or both, except that if such
6 failure or refusal to obey or comply with such order in-
7 volves any offense within subsection (a) or (b) of section
8 9 of this Act, such person shall be guilty of a felony and,
9 upon conviction thereof, shall be subject to the penalties
10 of said subsection (a) or (b): Provided, That any such
11 cease and desist order under this subsection against any
12 respondent in any case of manipulation shall be issued
13 only in conjunction with an order issued against such re-
14 spondent under subsection (c). Each day during which
15 such failure or refusal to obey or comply with such order
16 continues shall be deemed a separate offense.”.

17 (c) MANIPULATIONS; PRIVATE RIGHTS OF ACTION.—
18 Section 22(a)(1) of the Commodity Exchange Act (7
19 U.S.C. 25(a)(1)) is amended by striking subparagraph
20 (D) and inserting the following:

21 “(D) who purchased or sold a contract re-
22 ferred to in subparagraph (B) hereof or swap if
23 the violation constitutes—

24 “(i) the use or employment of, or an
25 attempt to use or employ, in connection

1 with a swap, or a contract of sale of a
2 commodity, in interstate commerce, or for
3 future delivery on or subject to the rules of
4 any registered entity, any manipulative de-
5 vice or contrivance in contravention of such
6 rules and regulations as the Commission
7 shall promulgate by not later than 1 year
8 after the date of enactment of the Restor-
9 ing American Financial Stability Act of
10 2010; or

11 “(ii) a manipulation of the price of
12 any such contract or swap or the price of
13 the commodity underlying such contract or
14 swap.”.

15 (d) EFFECTIVE DATE.—

16 (1) The amendments made by this section shall
17 take effect on the date on which the final rule pro-
18 mulgated by the Commodity Futures Trading Com-
19 mission pursuant to this Act takes effect.

20 (2) Paragraph (1) shall not preclude the Com-
21 mission from undertaking prior to the effective date
22 any rulemaking necessary to implement the amend-
23 ments contained in this section.

1 **SEC. 754. EFFECTIVE DATE.**

2 Unless otherwise provided in this title, this subtitle
3 shall take effect on the date that is 180 days after the
4 date of enactment of this Act.

5 **Subtitle B—Regulation of Security-**
6 **Based Swap Markets**

7 **SEC. 761. DEFINITIONS UNDER THE SECURITIES EX-**
8 **CHANGE ACT OF 1934.**

9 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

11 (1) in subparagraphs (A) and (B) of paragraph
12 (5), by inserting “(not including security-based
13 swaps, other than security-based swaps with or for
14 persons that are not eligible contract participants)”
15 after “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.”;

25 (4) in paragraph (14), by adding at the end the
26 following: “For security-based swaps, such terms in-

1 clude the execution, termination (prior to its sched-
2 uled maturity date), assignment, exchange, or simi-
3 lar transfer or conveyance of, or extinguishing of
4 rights or obligations under, a security-based swap,
5 as the context may require.”;

6 (5) in paragraph (39)—

7 (A) in subparagraph (B)(i)—

8 (i) in subclause (I), by striking “or
9 government securities dealer” and insert-
10 ing “government securities dealer, security-
11 based swap dealer, or major security-based
12 swap participant”; and

13 (ii) in subclause (II), by inserting “se-
14 curity-based swap dealer, major security-
15 based swap participant,” after “govern-
16 ment securities dealer,”;

17 (B) in subparagraph (C), by striking “or
18 government securities dealer” and inserting
19 “government securities dealer, security-based
20 swap dealer, or major security-based swap par-
21 ticipant”; and

22 (C) in subparagraph (D), by inserting “se-
23 curity-based swap dealer, major security-based
24 swap participant,” after “government securities
25 dealer,”; and

1 (6) by adding at the end the following:

2 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
3 term ‘eligible contract participant’ has the same
4 meaning as in section 1a of the Commodity Ex-
5 change Act (7 U.S.C. 1a).

6 “(66) MAJOR SWAP PARTICIPANT.—The term
7 ‘major swap participant’ has the same meaning as in
8 section 1a of the Commodity Exchange Act (7
9 U.S.C. 1a).

10 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
11 PANT.—

12 “(A) IN GENERAL.—The term ‘major secu-
13 rity-based swap participant’ means any per-
14 son—

15 “(i) who is not a security-based swap
16 dealer; and

17 “(ii)(I) who maintains a substantial
18 position in security-based swaps for any of
19 the major security-based swap categories,
20 as such categories are determined by the
21 Commission, excluding—

22 “(aa) positions held for hedging
23 or mitigating commercial risk; and

24 “(bb) positions maintained by
25 any employee benefit plan (or any

1 contract held by such a plan), as that
2 term is defined in paragraphs (3) and
3 (32) of section 3 of the Employee Re-
4 tirement Income Security Act of 1974
5 (29 U.S.C. 1002), for the primary
6 purpose of hedging or mitigating any
7 risk directly associated with the oper-
8 ation of the plan;

9 “(II) whose outstanding security-
10 based swaps create substantial
11 counterparty exposure that could have seri-
12 ous adverse effects on the financial sta-
13 bility of the United States banking system
14 or financial markets; or

15 “(III) that is a financial entity that—

16 “(aa) is highly leveraged relative
17 to the amount of capital such entity
18 holds; and

19 “(bb) maintains a substantial po-
20 sition in outstanding security-based
21 swaps in any major security-based
22 swap category, as such categories are
23 determined by the Commission.

24 “(B) DEFINITION OF SUBSTANTIAL POSI-
25 TION.—For purposes of subparagraph (A), the

1 Commission shall define, by rule or regulation,
2 the term ‘substantial position’ at the threshold
3 that the Commission determines to be prudent
4 for the effective monitoring, management, and
5 oversight of entities that are systemically im-
6 portant or can significantly impact the financial
7 system of the United States.

8 “(C) SCOPE OF DESIGNATION.—For pur-
9 poses of subparagraph (A), a person may be
10 designated as a major security-based swap par-
11 ticipant for 1 or more categories of security-
12 based swaps without being classified as a major
13 security-based swap participant for all classes
14 of security-based swaps.

15 “(68) SECURITY-BASED SWAP.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term ‘security-based
18 swap’ means any agreement, contract, or trans-
19 action that—

20 “(i) is a swap, as that term is defined
21 under section 1a of the Commodity Ex-
22 change Act; and

23 “(ii) is based on—

1 “(I) an index that is a narrow-
2 based security index, including any in-
3 terest therein or on the value thereof;

4 “(II) a single security or loan, in-
5 cluding any interest therein or on the
6 value thereof; or

7 “(III) the occurrence, nonoccur-
8 rence, or extent of the occurrence of
9 an event relating to a single issuer of
10 a security or the issuers of securities
11 in a narrow-based security index, pro-
12 vided that such event directly affects
13 the financial statements, financial
14 condition, or financial obligations of
15 the issuer.

16 “(B) RULE OF CONSTRUCTION REGARDING
17 MASTER AGREEMENTS.—The term ‘security-
18 based swap’ shall be construed to include a
19 master agreement that provides for an agree-
20 ment, contract, or transaction that is a secu-
21 rity-based swap pursuant to subparagraph (A),
22 together with all supplements to any such mas-
23 ter agreement, without regard to whether the
24 master agreement contains an agreement, con-
25 tract, or transaction that is not a security-based

1 swap pursuant to subparagraph (A), except
2 that the master agreement shall be considered
3 to be a security-based swap only with respect to
4 each agreement, contract, or transaction under
5 the master agreement that is a security-based
6 swap pursuant to subparagraph (A).

7 “(C) EXCLUSIONS.—The term ‘security-
8 based swap’ does not include any agreement,
9 contract, or transaction that meets the defini-
10 tion of a security-based swap only because such
11 agreement, contract, or transaction references,
12 is based upon, or settles through the transfer,
13 delivery, or receipt of an exempted security
14 under paragraph (12), as in effect on the date
15 of enactment of the Futures Trading Act of
16 1982 (other than any municipal security as de-
17 fined in paragraph (29) as in effect on the date
18 of enactment of the Futures Trading Act of
19 1982), unless such agreement, contract, or
20 transaction is of the character of, or is com-
21 monly known in the trade as, a put, call, or
22 other option.

23 “(D) MIXED SWAP.—The term ‘security-
24 based swap’ includes any agreement, contract,
25 or transaction that is as described in subpara-

1 graph (A) and also is based on the value of 1
2 or more interest or other rates, currencies, com-
3 modities, instruments of indebtedness, indices,
4 quantitative measures, other financial or eco-
5 nomic interest or property of any kind (other
6 than a single security or a narrow-based secu-
7 rity index), or the occurrence, non-occurrence,
8 or the extent of the occurrence of an event or
9 contingency associated with a potential finan-
10 cial, economic, or commercial consequence
11 (other than an event described in subparagraph
12 (A)(ii)(III)).

13 “(69) SWAP.—The term ‘swap’ has the same
14 meaning as in section 1a of the Commodity Ex-
15 change Act (7 U.S.C. 1a).

16 “(70) PERSON ASSOCIATED WITH A SECURITY-
17 BASED SWAP DEALER OR MAJOR SECURITY-BASED
18 SWAP PARTICIPANT.—

19 “(A) IN GENERAL.—The term ‘person as-
20 sociated with a security-based swap dealer or
21 major security-based swap participant’ or ‘asso-
22 ciated person of a security-based swap dealer or
23 major security-based swap participant’ means—

24 “(i) any partner, officer, director, or
25 branch manager of such security-based

1 swap dealer or major security-based swap
2 participant (or any person occupying a
3 similar status or performing similar func-
4 tions);

5 “(ii) any person directly or indirectly
6 controlling, controlled by, or under com-
7 mon control with such security-based swap
8 dealer or major security-based swap partic-
9 ipant; or

10 “(iii) any employee of such security-
11 based swap dealer or major security-based
12 swap participant.

13 “(B) EXCLUSION.—Other than for pur-
14 poses of section 15F(1)(2), the term ‘person as-
15 sociated with a security-based swap dealer or
16 major security-based swap participant’ or ‘asso-
17 ciated person of a security-based swap dealer or
18 major security-based swap participant’ does not
19 include any person associated with a security-
20 based swap dealer or major security-based swap
21 participant whose functions are solely clerical or
22 ministerial.

23 “(71) SECURITY-BASED SWAP DEALER.—

24 “(A) IN GENERAL.—The term ‘security-
25 based swap dealer’ means any person who—

1 “(i) holds themselves out as a dealer in
2 security-based swaps;

3 “(ii) makes a market in security-based
4 swaps;

5 “(iii) regularly engages in the pur-
6 chase and sale of security-based swaps in
7 the ordinary course of a business; or

8 “(iv) engages in any activity causing
9 it to be commonly known in the trade as
10 a dealer or market maker in security-based
11 swaps.

12 “(B) DESIGNATION BY TYPE OR CLASS.—
13 A person may be designated as a security-based
14 swap dealer for a single type or single class or
15 category of security-based swap or activities
16 and considered not to be a security-based swap
17 dealer for other types, classes, or categories of
18 security-based swaps or activities.

19 “(C) CAPITAL.—In setting capital require-
20 ments for a person that is designated as a secu-
21 rity-based swap dealer for a single type or sin-
22 gle class or category of security-based swap or
23 activities, the prudential regulator and the
24 Commission shall take into account the risks
25 associated with other types of security-based

1 swaps or classes of security-based swaps or cat-
2 egories of security-based swaps engaged in and
3 the other activities conducted by that person
4 that are not otherwise subject to regulation ap-
5 plicable to that person by virtue of the status
6 of the person as a security-based swap dealer.

7 “(72) APPROPRIATE FEDERAL BANKING AGEN-
8 CY.—The term ‘appropriate Federal banking agency’
9 has the same meaning as in section 3(q) of the Fed-
10 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

11 “(73) BOARD.—The term ‘Board’ means the
12 Board of Governors of the Federal Reserve System.

13 “(74) PRUDENTIAL REGULATOR.—The term
14 ‘prudential regulator’ has the same meaning as in
15 section 1a of the Commodity Exchange Act (7
16 U.S.C. 1a).

17 “(75) SECURITY-BASED SWAP DATA REPOSI-
18 TORY.—The term ‘security-based swap data reposi-
19 tory’ means any person that collects, calculates, pre-
20 pares, or maintains information or records with re-
21 spect to transactions or positions in, or the terms
22 and conditions of, security-based swaps entered into
23 by third parties.

1 “(76) SWAP DEALER.—The term ‘swap dealer’
2 has the same meaning as in section 1a of the Com-
3 modity Exchange Act (7 U.S.C. 1a).

4 “(77) SWAP EXECUTION FACILITY.—The term
5 ‘swap execution facility’ means a facility in which
6 multiple participants have the ability to execute or
7 trade security-based swaps by accepting bids and of-
8 fers made by other participants that are open to
9 multiple participants in the facility or system, or
10 confirmation facility, that—

11 “(A) facilitates the execution of security-
12 based swaps between persons; and

13 “(B) is not a designated contract market.

14 “(78) SECURITY-BASED SWAP AGREEMENT.—

15 “(A) IN GENERAL.—For purposes of sec-
16 tions 9, 10, 16, 20, and 21A of this Act, and
17 section 17 of the Securities Act of 1933 (15
18 U.S.C. 77q), the term ‘security-based swap
19 agreement’ means a swap agreement as defined
20 in section 206A of the Gramm-Leach-Bliley Act
21 (15 U.S.C. 78c note) of which a material term
22 is based on the price, yield, value, or volatility
23 of any security or any group or index of securi-
24 ties, or any interest therein.

1 “(B) EXCLUSIONS.—The term ‘security-
2 based swap agreement’ does not include any se-
3 curity-based swap.”.

4 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
5 Securities and Exchange Commission may, by rule, fur-
6 ther define the terms “security-based swap”, “security-
7 based swap dealer”, “major security-based swap partici-
8 pant”, and “eligible contract participant” with regard to
9 security-based swaps (as such terms are defined in the
10 amendments made by subsection (a)) for the purpose of
11 including transactions and entities that have been struc-
12 tured to evade this subtitle or the amendments made by
13 this subtitle.

14 (c) OTHER INCORPORATED DEFINITIONS.—Except
15 as the context otherwise requires, in this subtitle, the
16 terms “prudential regulator”, “swap”, “swap dealer”,
17 “major swap participant”, “swap data repository”, “asso-
18 ciated person of a swap dealer or major swap participant”,
19 “eligible contract participant”, “swap execution facility”,
20 “security-based swap”, “security-based swap dealer”,
21 “major security-based swap participant”, “security-based
22 swap data repository”, and “associated person of a secu-
23 rity-based swap dealer or major security-based swap par-
24 ticipant” have the same meanings as in section 1a of the

1 Commodity Exchange Act (7 U.S.C. 1a), as amended by
2 this Act.

3 **SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SE-**
4 **CURITY-BASED SWAP AGREEMENTS.**

5 (a) REPEAL.—Sections 206B and 206C of the
6 Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C.
7 78c note) are repealed.

8 (b) CONFORMING AMENDMENTS TO THE SECURITIES
9 ACT OF 1933.—

10 (1) Section 2A of the Securities Act of 1933
11 (15 U.S.C. 77b–1) is amended—

12 (A) by striking subsection (a) and reserv-
13 ing that subsection; and

14 (B) by striking “(as defined in section
15 206B of the Gramm-Leach-Bliley Act)” each
16 place that such term appears and inserting “(as
17 defined in section 3(a)(78) of the Securities Ex-
18 change Act of 1934)”.

19 (2) Section 17 of the Securities Act of 1933 (15
20 U.S.C. 77q) is amended—

21 (A) in subsection (a)—

22 (i) by inserting “(including security-
23 based swaps)” after “securities”; and

24 (ii) by striking “(as defined in section
25 206B of the Gramm-Leach-Bliley Act)”

1 and inserting “(as defined in section
2 3(a)(78) of the Securities Exchange Act”);
3 and
4 (B) in subsection (d), by striking “206B of
5 the Gramm-Leach-Bliley Act” and inserting
6 “3(a)(78) of the Securities Exchange Act of
7 1934”.

8 (c) CONFORMING AMENDMENTS TO THE SECURITIES
9 EXCHANGE ACT OF 1934.—The Securities Exchange Act
10 of 1934 (15 U.S.C. 78a et seq.) is amended—

11 (1) in section 3A (15 U.S.C. 78c–1)—

12 (A) by striking subsection (a) and reserv-
13 ing that subsection; and

14 (B) by striking “(as defined in section
15 206B of the Gramm-Leach-Bliley Act)” each
16 place that the term appears;

17 (2) in section 9 (15 U.S.C. 78i)—

18 (A) in subsection (a), by striking para-
19 graphs (2) through (5) and inserting the fol-
20 lowing:

21 “(2) To effect, alone or with 1 or more other persons,
22 a series of transactions in any security registered on a na-
23 tional securities exchange, any security not so registered,
24 or in connection with any security-based swap or security-
25 based swap agreement with respect to such security cre-

1 ating actual or apparent active trading in such security,
2 or raising or depressing the price of such security, for the
3 purpose of inducing the purchase or sale of such security
4 by others.

5 “(3) If a dealer, broker, security-based swap dealer,
6 major security-based swap participant, or other person
7 selling or offering for sale or purchasing or offering to
8 purchase the security, a security-based swap, or a secu-
9 rity-based swap agreement with respect to such security,
10 to induce the purchase or sale of any security registered
11 on a national securities exchange, any security not so reg-
12 istered, any security-based swap, or any security-based
13 swap agreement with respect to such security by the cir-
14 culation or dissemination in the ordinary course of busi-
15 ness of information to the effect that the price of any such
16 security will or is likely to rise or fall because of market
17 operations of any 1 or more persons conducted for the
18 purpose of raising or depressing the price of such security.

19 “(4) If a dealer, broker, security-based swap dealer,
20 major security-based swap participant, or other person
21 selling or offering for sale or purchasing or offering to
22 purchase the security, a security-based swap, or security-
23 based swap agreement with respect to such security, to
24 make, regarding any security registered on a national se-
25 curities exchange, any security not so registered, any secu-

1 rity-based swap, or any security-based swap agreement
2 with respect to such security, for the purpose of inducing
3 the purchase or sale of such security, such security-based
4 swap, or such security-based swap agreement any state-
5 ment which was at the time and in the light of the cir-
6 cumstances under which it was made, false or misleading
7 with respect to any material fact, and which that person
8 knew or had reasonable ground to believe was so false or
9 misleading.

10 “(5) For a consideration, received directly or indi-
11 rectly from a broker, dealer, security-based swap dealer,
12 major security-based swap participant, or other person
13 selling or offering for sale or purchasing or offering to
14 purchase the security, a security-based swap, or security-
15 based swap agreement with respect to such security, to
16 induce the purchase of any security registered on a na-
17 tional securities exchange, any security not so registered,
18 any security-based swap, or any security-based swap
19 agreement with respect to such security by the circulation
20 or dissemination of information to the effect that the price
21 of any such security will or is likely to rise or fall because
22 of the market operations of any 1 or more persons con-
23 ducted for the purpose of raising or depressing the price
24 of such security.”; and

1 (B) in subsection (i), by striking “(as de-
2 fined in section 206B of the Gramm-Leach-Bli-
3 ley Act)”;

4 (3) in section 10 (15 U.S.C. 78j)—

5 (A) in subsection (b), by striking “(as de-
6 fined in section 206B of the Gramm-Leach-Bli-
7 ley Act),” each place that term appears; and

8 (B) in the matter following subsection (b),
9 by striking “(as defined in section 206B of the
10 Gramm-Leach-Bliley Act)”;

11 (4) in section 15 (15 U.S.C. 78o)—

12 (A) in subsection (c)(1)(A), by striking
13 “(as defined in section 206B of the Gramm-
14 Leach-Bliley Act),”;

15 (B) in subparagraphs (B) and (C) of sub-
16 section (c)(1), by striking “(as defined in sec-
17 tion 206B of the Gramm-Leach-Bliley Act)”
18 each place that term appears;

19 (C) by redesignating subsection (i), as
20 added by section 303(f) of the Commodity Fu-
21 tures Modernization Act of 2000 (Public Law
22 106–554; 114 Stat. 2763A–455)), as subsection
23 (j); and

1 (D) in subsection (j), as redesignated by
2 subparagraph (C), by striking “(as defined in
3 section 206B of the Gramm-Leach-Bliley Act)”;
4 (5) in section 16 (15 U.S.C. 78p)—

5 (A) in subsection (a)(2)(C), by striking
6 “(as defined in section 206(b) of the Gramm-
7 Leach-Bliley Act (15 U.S.C. 78c note))”;

8 (B) in subsection (a)(3)(B), by inserting
9 “or security-based swaps” after “security-based
10 swap agreement”;

11 (C) in the first sentence of subsection (b),
12 by striking “(as defined in section 206B of the
13 Gramm-Leach-Bliley Act)”;

14 (D) in the third sentence of subsection (b),
15 by striking “(as defined in section 206B of the
16 Gramm-Leach Bliley Act)” and inserting “or a
17 security-based swap”; and

18 (E) in subsection (g), by striking “(as de-
19 fined in section 206B of the Gramm-Leach-Bli-
20 ley Act)”;

21 (6) in section 20 (15 U.S.C. 78t),

22 (A) in subsection (d), by striking “(as de-
23 fined in section 206B of the Gramm-Leach-Bli-
24 ley Act)”;

1 (B) in subsection (f), by striking “(as de-
2 fined in section 206B of the Gramm-Leach-Bli-
3 ley Act)”;

4 (7) in section 21A (15 U.S.C. 78u-1)—

5 (A) in subsection (a)(1), by striking “(as
6 defined in section 206B of the Gramm-Leach-
7 Bliley Act)”;

8 (B) in subsection (g), by striking “(as de-
9 fined in section 206B of the Gramm-Leach-Bli-
10 ley Act)”.

11 **SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE**

12 **ACT OF 1934.**

13 (a) CLEARING FOR SECURITY-BASED SWAPS.—The
14 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
15 is amended by inserting after section 3B (as added by sec-
16 tion 717 of this Act):

17 **“SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.**

18 **“(a) CLEARING REQUIREMENT.—**

19 **“(1) SUBMISSION.—**

20 **“(A) IN GENERAL.—**Except as provided in
21 paragraphs (9) and (10), any person who is a
22 party to a security-based swap shall submit
23 such security-based swap for clearing to a clear-
24 ing agency registered under section 17A of this
25 title.

1 “(B) OPEN ACCESS.—The rules of a reg-
2 istered clearing agency shall—

3 “(i) prescribe that all security-based
4 swaps with the same terms and conditions
5 are economically equivalent and may be
6 offset with each other within the clearing
7 agency; and

8 “(ii) provide for nondiscriminatory
9 clearing of a security-based swap executed
10 bilaterally or on or through the rules of an
11 unaffiliated national securities exchange or
12 swap execution facility, subject to the re-
13 quirements of section 5(b).

14 “(2) COMMISSION APPROVAL.—

15 “(A) IN GENERAL.—A clearing agency
16 shall submit to the Commission for prior ap-
17 proval any group, category, type, or class of se-
18 curity-based swaps that the clearing agency
19 seeks to accept for clearing, which submission
20 the Commission shall make available to the
21 public.

22 “(B) DEADLINE.—The Commission shall
23 take final action on a request submitted pursu-
24 ant to subparagraph (A) not later than 90 days
25 after submission of the request, unless the

1 clearing agency submitting the request agrees
2 to an extension of the time limitation estab-
3 lished under this subparagraph.

4 “(C) APPROVAL.—The Commission shall
5 approve, unconditionally or subject to such
6 terms and conditions as the Commission deter-
7 mines to be appropriate, any request submitted
8 pursuant to subparagraph (A) if the Commis-
9 sion finds that the request is consistent with
10 the requirements of section 17A. The Commis-
11 sion shall not approve any such request if the
12 Commission does not make such finding.

13 “(D) RULES.—The Commission shall
14 adopt rules for a clearing agency’s submission
15 for approval, pursuant to this paragraph, of any
16 group, category, type, or class of security-based
17 swaps that the clearing agency seeks to accept
18 for clearing.

19 “(3) STAY OF CLEARING REQUIREMENT.—At
20 any time after issuance of an approval pursuant to
21 paragraph (2):

22 “(A) REVIEW PROCESS.—The Commission,
23 on application of a counterparty to a security-
24 based swap or on its own initiative, may stay
25 the clearing requirement of paragraph (1) until

1 the Commission completes a review of the terms
2 of the security-based swap, or the group, cat-
3 egory, type, or class of security-based swaps,
4 and the clearing arrangement.

5 “(B) DEADLINE.—The Commission shall
6 complete a review undertaken pursuant to sub-
7 paragraph (A) not later than 90 days after
8 issuance of the stay, unless the clearing agency
9 that clears the security-based swap, or the
10 group, category, type, or class of security-based
11 swaps, agrees to an extension of the time limi-
12 tation established under this subparagraph.

13 “(C) DETERMINATION.—Upon completion
14 of the review undertaken pursuant to subpara-
15 graph (A)—

16 “(i) the Commission may determine,
17 unconditionally or subject to such terms
18 and conditions as the Commission deter-
19 mines to be appropriate, that the security-
20 based swap, or the group, category, type,
21 or class of security-based swaps, must be
22 cleared pursuant to this subsection if the
23 Commission finds that such clearing—

24 “(I) is consistent with the re-
25 quirements of section 17A; and

1 “(II) is otherwise in the public
2 interest, for the protection of inves-
3 tors, and consistent with the purposes
4 of this title;

5 “(ii) the Commission may determine
6 that the clearing requirement of paragraph
7 (1) shall not apply to the security-based
8 swap, or the group, category, type, or class
9 of security-based swaps; or

10 “(iii) if a determination is made that
11 the clearing requirement of paragraph (1)
12 shall no longer apply, then the Commission
13 may still permit such security-based swap,
14 or the group, category, type, or class of se-
15 curity-based swaps to be cleared.

16 “(D) RULES.—The Commission shall
17 adopt rules for reviewing, pursuant to this
18 paragraph, a clearing agency’s clearing of a se-
19 curity-based swap, or a group, category, type,
20 or class of security-based swaps that the Com-
21 mission has accepted for clearing.

22 “(4) SECURITY-BASED SWAPS REQUIRED TO BE
23 ACCEPTED FOR CLEARING.—

24 “(A) RULEMAKING.—The Commission
25 shall adopt rules to further identify any group,

1 category, type, or class of security-based swaps
2 not submitted for approval under paragraph (2)
3 that the Commission deems should be accepted
4 for clearing. In adopting such rules, the Com-
5 mission shall take into account the following
6 factors:

7 “(i) The extent to which any of the
8 terms of the group, category, type, or class
9 of security-based swaps, including price,
10 are disseminated to third parties or are
11 referenced in other agreements, contracts,
12 or transactions.

13 “(ii) The volume of transactions in
14 the group, category, type, or class of secu-
15 rity-based swaps.

16 “(iii) The extent to which the terms of
17 the group, category, type, or class of secu-
18 rity-based swaps are similar to the terms
19 of other agreements, contracts, or trans-
20 actions that are cleared.

21 “(iv) Whether any differences in the
22 terms of the group, category, type, or class
23 of security-based swaps, compared to other
24 agreements, contracts, or transactions that
25 are cleared, are of economic significance.

1 “(v) Whether a clearing agency is pre-
2 pared to clear the group, category, type, or
3 class of security-based swaps and such
4 clearing agency has in place effective risk
5 management systems.

6 “(vi) Any other factor the Commission
7 determines to be appropriate.

8 “(B) OTHER DESIGNATIONS.—At any time
9 after the adoption of the rules required under
10 subparagraph (A), the Commission may sepa-
11 rately designate a particular security-based
12 swap or class of security-based swaps as subject
13 to the clearing requirement of paragraph (1),
14 taking into account the factors established in
15 clauses (i) through (vi) of subparagraph (A)
16 and the rules adopted in such subparagraph.

17 “(C) IN GENERAL.—In accordance with
18 subparagraph (A), the Commission shall, con-
19 sistent with the public interest, adopt rules
20 under the expedited process described in sub-
21 paragraph (D) to establish criteria for deter-
22 mining that a swap, or any group, category,
23 type, or class of swap is required to be cleared.

24 “(D) EXPEDITED RULEMAKING AUTHOR-
25 ITY.—

1 “(i) PROCEDURE.—The promulgation
2 of regulations under subparagraph (A)
3 may be made without regard to—

4 “(I) the notice and comment pro-
5 visions of section 553 of title 5,
6 United States Code; and

7 “(II) chapter 35 of title 44,
8 United States Code (commonly known
9 as the ‘Paperwork Reduction Act’).

10 “(ii) AGENCY RULEMAKING.—In car-
11 rying out subparagraph (A), the Commis-
12 sion shall use the authority provided under
13 section 808 of title 5, United States Code.

14 “(5) PREVENTION OF EVASION.—

15 “(A) IN GENERAL.—The Commission shall
16 have authority to prescribe rules under this sec-
17 tion, or issue interpretations of such rules, as
18 necessary to prevent evasions of this section.

19 “(B) DUTY OF COMMISSION TO INVES-
20 TIGATE AND TAKE CERTAIN ACTIONS.—To the
21 extent the Commission finds that a particular
22 security-based swap or any group, category,
23 type, or class of security-based swaps that
24 would otherwise be subject to mandatory clear-
25 ing but no clearing agency has listed the secu-

1 rity-based swap or the group, category, type, or
2 class of security-based swaps for clearing, the
3 Commission shall—

4 “(i) investigate the relevant facts and
5 circumstances;

6 “(ii) within 30 days issue a public re-
7 port containing the results of the investiga-
8 tion; and

9 “(iii) take such actions as the Com-
10 mission determines to be necessary and in
11 the public interest, which may include re-
12 quiring the retaining of adequate margin
13 or capital by parties to the security-based
14 swap or the group, category, type, or class
15 of security-based swaps.

16 “(C) EFFECT ON AUTHORITY.—Nothing in
17 this paragraph—

18 “(i) authorize the Commission to re-
19 quire a clearing agency to list for clearing
20 a security-based swap or any group, cat-
21 egory, type, or class of security-based
22 swaps if the clearing of the security-based
23 swap or the group, category, type, or class
24 of security-based swaps would adversely af-
25 fect the business operations of the clearing

1 agency, threaten the financial integrity of
2 the clearing agency, or pose a systemic risk
3 to the clearing agency; and

4 “(ii) affect the authority of the Com-
5 mission to enforce the open access provi-
6 sions of paragraph (1) with respect to a se-
7 curity-based swap or the group, category,
8 type, or class of security-based swaps that
9 is listed for clearing by a clearing agency.

10 “(6) REQUIRED REPORTING.—

11 “(A) BOTH COUNTERPARTIES.—Both
12 counterparties to a security-based swap that is
13 not cleared by any clearing agency shall report
14 such a security-based swap either to a reg-
15 istered security-based swap repository described
16 in section 13(n) or, if there is no repository
17 that would accept the security-based swap, to
18 the Commission pursuant to section 13A.

19 “(B) TIMING.—Counterparties to a secu-
20 rity-based swap shall submit the reports re-
21 quired under subparagraph (A) not later than
22 such time period as the Commission may by
23 rule or regulation prescribe.

24 “(7) TRANSITION RULES.—

900

1 “(A) REPORTING TRANSITION RULES.—
2 Rules adopted by the Commission under this
3 section shall provide for the reporting of data,
4 as follows:

5 “(i) Security-based swaps entered into
6 before the date of the enactment of this
7 section shall be reported to a registered se-
8 curity-based swap repository or the Com-
9 mission not later than 180 days after the
10 effective date of this section.

11 “(ii) Security-based swaps entered
12 into on or after such date of enactment
13 shall be reported to a registered security-
14 based swap repository or the Commission
15 not later than the later of—

16 “(I) 90 days after such effective
17 date; or

18 “(II) such other time after enter-
19 ing into the security-based swap as
20 the Commission may prescribe by rule
21 or regulation.

22 “(B) CLEARING TRANSITION RULES.—

23 “(i) Security-based swaps entered into
24 before the date of the enactment of this
25 section are exempt from the clearing re-

1 requirements of this subsection if reported
2 pursuant to subparagraph (A)(i).

3 “(ii) Security-based swaps entered
4 into before application of the clearing re-
5 quirement pursuant to this section are ex-
6 empt from the clearing requirements of
7 this section if reported pursuant to sub-
8 paragraph (A)(ii).

9 “(8) TRADE EXECUTION.—

10 “(A) IN GENERAL.—With respect to trans-
11 actions involving security-based swaps subject
12 to the clearing requirement of paragraph (1),
13 counterparties shall—

14 “(i) execute the transaction on an ex-
15 change; or

16 “(ii) execute the transaction on a
17 swap execution facility registered under
18 section 3D or a swap execution facility
19 that is exempt from registration under sec-
20 tion 3D(e).

21 “(B) EXCEPTION.—The requirements of
22 clauses (i) and (ii) of subparagraph (A) shall
23 not apply—

24 “(i) if no national securities exchange
25 or security-based swap execution facility

1 makes the security-based swap available to
2 trade; or

3 “(ii) to swap transactions where a
4 commercial end user opts to use the clear-
5 ing exemption under paragraph (10).

6 “(9) REQUIRED EXEMPTION.—Subject to para-
7 graph (4), the Commission shall exempt a security-
8 based swap from the requirements of paragraphs (1)
9 and (8) and any rules issued under this subsection,
10 if no clearing agency registered under this Act will
11 accept the security-based swap from clearing.

12 “(10) END USER CLEARING EXEMPTION.—

13 “(A) DEFINITION OF COMMERCIAL END
14 USER.—

15 “(i) IN GENERAL.—In this paragraph,
16 the term ‘commercial end user’ means any
17 person other than a financial entity de-
18 scribed in clause (ii) who, as its primary
19 business activity, owns, uses, produces,
20 processes, manufactures, distributes, mer-
21 chandises, or markets goods, services, or
22 commodities (which shall include coal, nat-
23 ural gas, electricity, ethanol, crude oil, dis-
24 tillates, and other hydrocarbons) either in-
25 dividually or in a fiduciary capacity.

1 “(ii) FINANCIAL ENTITY.—The term
2 ‘financial entity’ means—

3 “(I) a swap dealer, major swap
4 participant, security-based swap deal-
5 er, or major security-based swap par-
6 ticipant;

7 “(II) a person predominantly en-
8 gaged in activities that are in the
9 business of banking or financial in na-
10 ture, as defined in section 4(k) of the
11 Bank Holding Company Act of 1956;

12 “(III) a person predominantly
13 engaged in activities that are financial
14 in nature;

15 “(IV) a private fund as defined
16 in section 202(a) of the Investment
17 Advisers Act of 1940 (15 U.S.C. 80b-
18 2(a)) or a commodity pool as defined
19 in section 1a of the Commodity Ex-
20 change Act (7 U.S.C. 1a); or

21 “(V) a person that is registered
22 or required to be registered with the
23 Commission, but does not include a
24 public company solely because it reg-

1 isters its securities with the Commis-
2 sion.

3 “(B) END USER CLEARING EXEMPTION.—

4 “(i) IN GENERAL.—Subject to clause
5 (ii), in the event that a security-based
6 swap is subject to the mandatory clearing
7 requirement under paragraph (1), and 1 of
8 the counterparties to the security-based
9 swap is a commercial end user that
10 counterparty—

11 “(I)(aa) may elect not to clear
12 the security-based swap, as required
13 under paragraph (1); or

14 “(bb) may elect to require clear-
15 ing of the security-based swap; and

16 “(II) if the end user makes an
17 election under subclause (I)(bb), shall
18 have the sole right to select the clear-
19 ing agency at which the security-based
20 swap will be cleared.

21 “(ii) LIMITATION.—A commercial end
22 user may only make an election under
23 clause (i) if the end user is using the secu-
24 rity-based swap to hedge its own commer-
25 cial risk.

1 “(C) TREATMENT OF AFFILIATES.—

2 “(i) IN GENERAL.—An affiliate of a
3 commercial end user (including affiliate en-
4 tities predominantly engaged in providing
5 financing for the purchase of the merchan-
6 dise or manufactured goods of the com-
7 mercial end user) may make an election
8 under subparagraph (B)(i) only if the affil-
9 iate, acting on behalf of the commercial
10 end user and as an agent, uses the secu-
11 rity-based swap to hedge or mitigate the
12 commercial risk of the commercial end
13 user parent or other affiliates of the com-
14 mercial end user that is not a financial en-
15 tity.

16 “(ii) PROHIBITION RELATING TO CER-
17 TAIN AFFILIATES.—An affiliate of a com-
18 mercial end user shall not use the exemp-
19 tion under subparagraph (B) if the affil-
20 iate is—

21 “(I) a security-based swap dealer;

22 “(II) a security-based security-
23 based swap dealer;

24 “(III) a major security-based
25 swap participant;

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1 “(IV) a major security-based se-
2 curity-based swap participant;

3 “(V) an issuer that would be an
4 investment company, as defined in
5 section 3 of the Investment Company
6 Act of 1940 (15 U.S.C. 80a-3), but
7 for paragraph (1) or (7) of subsection
8 (c) of that section 3 (15 U.S.C. 80a-
9 3(c));

10 “(VI) a commodity pool;

11 “(VII) a bank holding company
12 with over \$50,000,000,000 in consoli-
13 dated assets; or

14 “(VIII) an affiliate of any entity
15 described in subclauses (I) through
16 (VII).

17 “(iii) ABUSE OF EXEMPTION.—The
18 Commission may prescribe such rules, or
19 issue interpretations of the rules, as the
20 Commission determines to be necessary to
21 prevent abuse of the exemption described
22 in subparagraph (B).

23 “(D) OPTION TO CLEAR.—

24 “(i) SECURITY-BASED SWAPS RE-
25 QUIRED TO BE CLEARED ENTERED INTO

1 WITH A FINANCIAL ENTITY.—With respect
2 to any security-based swap that is subject
3 to the mandatory clearing requirement
4 under this subsection and entered into by
5 a security-based swap dealer or a major se-
6 curity-based swap participant with a finan-
7 cial entity, the financial entity shall have
8 the sole right to select the clearing agency
9 at which the security-based swap will be
10 cleared.

11 “(ii) SECURITY-BASED SWAPS NOT
12 REQUIRED TO BE CLEARED ENTERED INTO
13 WITH A FINANCIAL ENTITY OR COMMER-
14 CIAL END USER.—With respect to any se-
15 curity-based swap that is not subject to the
16 mandatory clearing requirement under this
17 subsection and entered into by a security-
18 based swap dealer or a major security-
19 based swap participant with a financial en-
20 tity or commercial end user, the financial
21 entity or commercial end user—

22 “(I) may elect to require clearing
23 of the security-based swap; and

1 “(II) shall have the sole right to
2 select the clearing agency at which the
3 security-based swap will be cleared.

4 “(b) AUDIT COMMITTEE APPROVAL.—Exemptions
5 from the requirements of this section to clear or trade a
6 security-based swap through a national securities ex-
7 change or security-based swap execution facility shall be
8 available to a counterparty that is an issuer of securities
9 that are registered under section 12 or that is required
10 to file reports pursuant to section 15(d), only if the
11 issuer’s audit committee has reviewed and approved the
12 issuer’s decision to enter into security-based swaps that
13 are subject to such exemptions.

14 “(c) PUBLIC AVAILABILITY OF SECURITY-BASED
15 SWAP TRANSACTION DATA.—

16 “(1) IN GENERAL.—

17 “(A) DEFINITION OF REAL-TIME PUBLIC
18 REPORTING.—In this paragraph, the term ‘real-
19 time public reporting’ means to report data re-
20 lating to a security-based swap transaction as
21 soon as technologically practicable after the
22 time at which the security-based swap trans-
23 action has been executed.

24 “(B) PURPOSE.—The purpose of this sub-
25 section is to authorize the Commission to make

1 security-based swap transaction and pricing
2 data available to the public in such form and at
3 such times as the Commission determines ap-
4 propriate to enhance price discovery.

5 “(C) GENERAL RULE.—The Commission is
6 authorized to provide by rule for the public
7 availability of security-based swap transaction
8 and pricing data as follows:

9 “(i) With respect to those security-
10 based swaps that are subject to the man-
11 datory clearing requirement described in
12 subsection (a)(1) (including those security-
13 based swaps that are exempted from those
14 requirements), the Commission shall re-
15 quire real-time public reporting for such
16 transactions.

17 “(ii) With respect to those security-
18 based swaps that are not subject to the
19 mandatory clearing requirement described
20 in subsection (a)(1), but are cleared at a
21 registered clearing agency, the Commission
22 shall require real-time public reporting for
23 such transactions.

24 “(iii) With respect to security-based
25 swaps that are not cleared at a registered

1 clearing agency and which are reported to
2 a security-based swap data repository or
3 the Commission under subsection (a), the
4 Commission shall make available to the
5 public, in a manner that does not disclose
6 the business transactions and market posi-
7 tions of any person, aggregate data on
8 such security-based swap trading volumes
9 and positions.

10 “(iv) With respect to security-based
11 swaps that are exempt from the require-
12 ments of subsection (a)(1), but are subject
13 to the requirements of subsection (a)(8),
14 the Commission shall require real-time
15 public reporting for such transactions.

16 “(D) REGISTERED ENTITIES AND PUBLIC
17 REPORTING.—The Commission may require
18 registered entities to publicly disseminate the
19 security-based swap transaction and pricing
20 data required to be reported under this para-
21 graph.

22 “(E) RULEMAKING REQUIRED.—With re-
23 spect to the rule providing for the public avail-
24 ability of transaction and pricing data for secu-
25 rity-based swaps described in clauses (i) and (ii)

1 of subparagraph (C), the rule promulgated by
2 the Commission shall contain provisions—

3 “(i) to ensure such information does
4 not identify the participants;

5 “(ii) to specify the criteria for deter-
6 mining what constitutes a large notional
7 security-based swap transaction (block
8 trade) for particular markets and con-
9 tracts;

10 “(iii) to specify the appropriate time
11 delay for reporting large notional security-
12 based swap transactions (block trades) to
13 the public; and

14 “(iv) that take into account whether
15 the public disclosure will materially reduce
16 market liquidity.

17 “(F) TIMELINESS OF REPORTING.—Par-
18 ties to a security-based swap (including agents
19 of the parties to a security-based swap) shall be
20 responsible for reporting security-based swap
21 transaction information to the appropriate reg-
22 istered entity in a timely manner as may be
23 prescribed by the Commission.

1 “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-
2 PORTING OF AGGREGATE SECURITY-BASED SWAP
3 DATA.—

4 “(A) IN GENERAL.—In accordance with
5 subparagraph (B), the Commission shall issue a
6 written report on a semiannual and annual
7 basis to make available to the public informa-
8 tion relating to—

9 “(i) the trading and clearing in the
10 major security-based swap categories; and

11 “(ii) the market participants and de-
12 velopments in new products.

13 “(B) USE; CONSULTATION.—In preparing
14 a report under subparagraph (A), the Commis-
15 sion shall—

16 “(i) use information from security-
17 based swap data repositories and clearing
18 agencies; and

19 “(ii) consult with the Office of the
20 Comptroller of the Currency, the Bank for
21 International Settlements, and such other
22 regulatory bodies as may be necessary.

23 “(C) TRANSITION RULE FOR
24 PREENACTMENT SECURITY-BASED SWAPS.—

1 “(i) SECURITY-BASED SWAPS EN-
2 TERED INTO BEFORE THE DATE OF EN-
3 ACTMENT OF THE WALL STREET TRANS-
4 PARENCY AND ACCOUNTABILITY ACT OF
5 2010.—Each security-based swap entered
6 into before the date of enactment of the
7 Wall Street Transparency and Account-
8 ability Act of 2010, the terms of which
9 have not expired as of the date of enact-
10 ment of that Act, shall be reported to a
11 registered security-based swap data reposi-
12 tory or the Commission by a date that is
13 not later than—

14 “(I) 30 days after the date of
15 issuance of the interim final rule; or

16 “(II) such other period as the
17 Commission determines to be appro-
18 priate.

19 “(ii) COMMISSION RULEMAKING.—The
20 Commission shall promulgate an interim
21 final rule within 90 days of the date of en-
22 actment of this section providing for the
23 reporting of each security-based swap en-
24 tered into before the date of enactment as
25 referenced in clause (i).

1 “(D) EFFECTIVE DATE.—The reporting
2 provisions described in this paragraph shall be
3 effective upon the date of enactment of this sec-
4 tion.

5 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
6 CER.—

7 “(1) IN GENERAL.—Each registered clearing
8 agency shall designate an individual to serve as a
9 chief compliance officer.

10 “(2) DUTIES.—The chief compliance officer
11 shall—

12 “(A) report directly to the board or to the
13 senior officer of the clearing agency;

14 “(B) in consultation with its board, a body
15 performing a function similar thereto, or the
16 senior officer of the registered clearing agency,
17 resolve any conflicts of interest that may arise;

18 “(C) be responsible for administering each
19 policy and procedure that is required to be es-
20 tablished pursuant to this section;

21 “(D) ensure compliance with this title (in-
22 cluding regulations issued under this title) re-
23 lating to agreements, contracts, or transactions,
24 including each rule prescribed by the Commis-
25 sion under this section;

1 “(E) establish procedures for the remedi-
2 ation of noncompliance issues identified by the
3 compliance officer through any—

4 “(i) compliance office review;

5 “(ii) look-back;

6 “(iii) internal or external audit find-
7 ing;

8 “(iv) self-reported error; or

9 “(v) validated complaint; and

10 “(F) establish and follow appropriate pro-
11 cedures for the handling, management response,
12 remediation, retesting, and closing of non-
13 compliance issues.

14 “(3) ANNUAL REPORTS.—

15 “(A) IN GENERAL.—In accordance with
16 rules prescribed by the Commission, the chief
17 compliance officer shall annually prepare and
18 sign a report that contains a description of—

19 “(i) the compliance of the registered
20 clearing agency or security-based swap exe-
21 cution facility of the compliance officer
22 with respect to this title (including regula-
23 tions under this title); and

24 “(ii) each policy and procedure of the
25 registered clearing agency of the compli-

1 ance officer (including the code of ethics
2 and conflict of interest policies of the reg-
3 istered clearing agency).

4 “(B) REQUIREMENTS.—A compliance re-
5 port under subparagraph (A) shall—

6 “ (i) accompany each appropriate fi-
7 nancial report of the registered clearing
8 agency that is required to be furnished to
9 the Commission pursuant to this section;
10 and

11 “(ii) include a certification that, under
12 penalty of law, the compliance report is ac-
13 curate and complete.”.

14 (b) CLEARING AGENCY REQUIREMENTS.—Section
15 17A of the Securities Exchange Act of 1934 (15 U.S.C.
16 78q-1) is amended by adding at the end the following:

17 “(g) REGISTRATION REQUIREMENT.—It shall be un-
18 lawful for a clearing agency, unless registered with the
19 Commission, directly or indirectly to make use of the mails
20 or any means or instrumentality of interstate commerce
21 to perform the functions of a clearing agency with respect
22 to a security-based swap.

23 “(h) VOLUNTARY REGISTRATION.—A person that
24 clears agreements, contracts, or transactions that are not

1 required to be cleared under this title may register with
2 the Commission as a clearing agency.

3 “(i) STANDARDS FOR CLEARING AGENCIES CLEAR-
4 ING SECURITY-BASED SWAP TRANSACTIONS.—To be reg-
5 istered and to maintain registration as a clearing agency
6 that clears security-based swap transactions, a clearing
7 agency shall comply with such standards as the Commis-
8 sion may establish by rule. In establishing any such stand-
9 ards, and in the exercise of its oversight of such a clearing
10 agency pursuant to this title, the Commission may con-
11 form such standards or oversight to reflect evolving
12 United States and international standards. Except where
13 the Commission determines otherwise by rule or regula-
14 tion, a clearing agency shall have reasonable discretion in
15 establishing the manner in which it complies with any such
16 standards.

17 “(j) RULES.—The Commission shall adopt rules gov-
18 erning persons that are registered as clearing agencies for
19 security-based swaps under this title.

20 “(k) EXEMPTIONS.—

21 “(1) IN GENERAL.—The Commission may ex-
22 empt, conditionally or unconditionally, a clearing
23 agency from registration under this section for the
24 clearing of security-based swaps if the Commission
25 determines that the clearing agency is subject to

1 comparable, comprehensive supervision and regula-
2 tion by the Commodity Futures Trading Commission
3 or the appropriate government authorities in the
4 home country of the agency. Such conditions may in-
5 clude, but are not limited to, requiring that the
6 clearing agency be available for inspection by the
7 Commission and make available all information re-
8 quested by the Commission.

9 “(2) DERIVATIVES CLEARING ORGANIZA-
10 TIONS.—A person that is required to be registered
11 as a derivatives clearing organization under the
12 Commodity Exchange Act, whose principal business
13 is clearing commodity futures and options on com-
14 modity futures transactions and swaps and which is
15 a derivatives clearing organization registered with
16 the Commodity Futures Trading Commission under
17 the Commodity Exchange Act (7 U.S.C. 1 et seq.),
18 shall be unconditionally exempt from registration
19 under this section solely for the purpose of clearing
20 security-based swaps, unless the Commission finds
21 that such derivatives clearing organization is not
22 subject to comparable, comprehensive supervision
23 and regulation by the Commodity Futures Trading
24 Commission.

1 “(1) MODIFICATION OF CORE PRINCIPLES.—The
2 Commission may conform the core principles established
3 in this section to reflect evolving United States and inter-
4 national standards.”.

5 (c) SECURITY-BASED SWAP EXECUTION FACILI-
6 TIES.—The Securities Exchange Act of 1934 (15 U.S.C.
7 78a et seq.) is amended by inserting after section 3C (as
8 added by subsection (a) of this section) the following:

9 **“SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.**

10 “(a) REGISTRATION.—

11 “(1) IN GENERAL.—No person may operate a
12 facility for the trading or processing of security-
13 based swaps, unless the facility is registered as a se-
14 curity-based swap execution facility or as a national
15 securities exchange under this section.

16 “(2) DUAL REGISTRATION.—Any person that is
17 registered as a security-based swap execution facility
18 under this section shall register with the Commis-
19 sion regardless of whether the person also is reg-
20 istered with the Commodity Futures Trading Com-
21 mission as a swap execution facility.

22 “(b) TRADING AND TRADE PROCESSING.—A secu-
23 rity-based swap execution facility that is registered under
24 subsection (a) may—

1 “(1) make available for trading any security-
2 based swap; and

3 “(2) facilitate trade processing of any security-
4 based swap.

5 “(c) IDENTIFICATION OF FACILITY USED TO TRADE
6 SECURITY-BASED SWAPS BY NATIONAL SECURITIES EX-
7 CHANGES.—A national securities exchange shall, to the ex-
8 tent that the exchange also operates a security-based swap
9 execution facility and uses the same electronic trade execu-
10 tion system for listing and executing trades of security-
11 based swaps on or through the exchange and the facility,
12 identify whether electronic trading of such security-based
13 swaps is taking place on or through the national securities
14 exchange or the security-based swap execution facility.

15 “(d) CORE PRINCIPLES FOR SECURITY-BASED SWAP
16 EXECUTION FACILITIES.—

17 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

18 “(A) IN GENERAL.—To be registered, and
19 maintain registration, as a security-based swap
20 execution facility, the security-based swap exe-
21 cution facility shall comply with—

22 “(i) the core principles described in
23 this subsection; and

24 “(ii) any requirement that the Com-
25 mission may impose by rule or regulation.

1 “(ii) to capture information that may
2 be used in establishing whether rule viola-
3 tions have occurred; and

4 “(C) establish rules governing the oper-
5 ation of the facility, including rules specifying
6 trading procedures to be used in entering and
7 executing orders traded or posted on the facil-
8 ity, including block trades.

9 “(3) SECURITY-BASED SWAPS NOT READILY
10 SUSCEPTIBLE TO MANIPULATION.—The security-
11 based swap execution facility shall permit trading
12 only in security-based swaps that are not readily
13 susceptible to manipulation.

14 “(4) MONITORING OF TRADING AND TRADE
15 PROCESSING.—The security-based swap execution
16 facility shall—

17 “(A) establish and enforce rules or terms
18 and conditions defining, or specifications detail-
19 ing—

20 “(i) trading procedures to be used in
21 entering and executing orders traded on or
22 through the facilities of the security-based
23 swap execution facility; and

24 “(ii) procedures for trade processing
25 of security-based swaps on or through the

1 facilities of the security-based swap execu-
2 tion facility; and

3 “(B) monitor trading in security-based
4 swaps to prevent manipulation, price distortion,
5 and disruptions of the delivery or cash settle-
6 ment process through surveillance, compliance,
7 and disciplinary practices and procedures, in-
8 cluding methods for conducting real-time moni-
9 toring of trading and comprehensive and accu-
10 rate trade reconstructions.

11 “(5) ABILITY TO OBTAIN INFORMATION.—The
12 security-based swap execution facility shall—

13 “(A) establish and enforce rules that will
14 allow the facility to obtain any necessary infor-
15 mation to perform any of the functions de-
16 scribed in this subsection;

17 “(B) provide the information to the Com-
18 mission on request; and

19 “(C) have the capacity to carry out such
20 international information-sharing agreements as
21 the Commission may require.

22 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

23 “(A) IN GENERAL.—To reduce the poten-
24 tial threat of market manipulation or conges-
25 tion, especially during trading in the delivery

1 month, a security-based swap execution facility
2 that is a trading facility shall adopt for each of
3 the contracts listed on or traded through the fa-
4 cility, as is necessary and appropriate, position
5 limitations or position accountability for specu-
6 lators.

7 “(B) POSITION LIMITS.—For any contract
8 or agreement that is subject to a position limi-
9 tation established by the Commission pursuant
10 to section 10B, the security-based swap execu-
11 tion facility shall set its position limitation at a
12 level no higher than the limitation established
13 by the Commission.

14 “(C) POSITION ENFORCEMENT.—For any
15 contract or agreement that is subject to a posi-
16 tion limitation established by the Commission
17 pursuant to section 10B, a security-based swap
18 execution facility shall reject any proposed secu-
19 rity-based swap transaction if, based on infor-
20 mation readily available to a security-based
21 swap execution facility, any proposed security-
22 based swap transaction would cause a security-
23 based swap execution facility customer that
24 would be a party to such swap transaction to
25 exceed such position limitation.

1 “(7) FINANCIAL INTEGRITY OF TRANS-
2 ACTIONS.—The security-based swap execution facil-
3 ity shall establish and enforce rules and procedures
4 for ensuring the financial integrity of security-based
5 swaps entered on or through the facilities of the se-
6 curity-based swap execution facility, including the
7 clearance and settlement of security-based swaps
8 pursuant to section 3C(a)(1).

9 “(8) EMERGENCY AUTHORITY.—The security-
10 based swap execution facility shall adopt rules to
11 provide for the exercise of emergency authority, in
12 consultation or cooperation with the Commission, as
13 is necessary and appropriate, including the authority
14 to liquidate or transfer open positions in any secu-
15 rity-based swap or to suspend or curtail trading in
16 a security-based swap.

17 “(9) TIMELY PUBLICATION OF TRADING INFOR-
18 MATION.—

19 “(A) IN GENERAL.—The security-based
20 swap execution facility shall make public timely
21 information on price, trading volume, and other
22 trading data on security-based swaps to the ex-
23 tent prescribed by the Commission.

24 “(B) CAPACITY OF SECURITY-BASED SWAP
25 EXECUTION FACILITY.—The security-based

1 swap execution facility shall be required to have
2 the capacity to electronically capture and dis-
3 seminate trade information with respect to
4 transactions executed on or through the facility.

5 “(10) RECORDKEEPING AND REPORTING.—

6 “(A) IN GENERAL.—A security-based swap
7 execution facility shall—

8 “(i) maintain records of all activities
9 relating to the business of the facility, in-
10 cluding a complete audit trail, in a form
11 and manner acceptable to the Commission
12 for a period of 5 years; and

13 “(ii) report to the Commission, in a
14 form and manner acceptable to the Com-
15 mission, such information as the Commis-
16 sion determines to be necessary or appro-
17 priate for the Commission to perform the
18 duties of the Commission under this title.

19 “(B) REQUIREMENTS.—The Commission
20 shall adopt data collection and reporting re-
21 quirements for security-based swap execution
22 facilities that are comparable to corresponding
23 requirements for clearing agencies and security-
24 based swap data repositories.

1 “(11) ANTITRUST CONSIDERATIONS.—Unless
2 necessary or appropriate to achieve the purposes of
3 this title, the security-based swap execution facility
4 shall not—

5 “(A) adopt any rules or taking any actions
6 that result in any unreasonable restraint of
7 trade; or

8 “(B) impose any material anticompetitive
9 burden on trading or clearing.

10 “(12) CONFLICTS OF INTEREST.—The security-
11 based swap execution facility shall—

12 “(A) establish and enforce rules to mini-
13 mize conflicts of interest in its decision-making
14 process; and

15 “(B) establish a process for resolving the
16 conflicts of interest.

17 “(13) FINANCIAL RESOURCES.—

18 “(A) IN GENERAL.—The security-based
19 swap execution facility shall have adequate fi-
20 nancial, operational, and managerial resources
21 to discharge each responsibility of the security-
22 based swap execution facility, as determined by
23 the Commission.

24 “(B) DETERMINATION OF RESOURCE ADE-
25 QUACY.—The financial resources of a security-

1 based swap execution facility shall be consid-
2 ered to be adequate if the value of the financial
3 resources—

4 “(i) enables the organization to meet
5 its financial obligations to its members and
6 participants notwithstanding a default by
7 the member or participant creating the
8 largest financial exposure for that organi-
9 zation in extreme but plausible market
10 conditions; and

11 “(ii) exceeds the total amount that
12 would enable the security-based swap exe-
13 cution facility to cover the operating costs
14 of the security-based swap execution facil-
15 ity for a 1-year period, as calculated on a
16 rolling basis.

17 “(14) SYSTEM SAFEGUARDS.—The security-
18 based swap execution facility shall—

19 “(A) establish and maintain a program of
20 risk analysis and oversight to identify and mini-
21 mize sources of operational risk, through the
22 development of appropriate controls and proce-
23 dures, and automated systems, that—

24 “(i) are reliable and secure; and

25 “(ii) have adequate scalable capacity;

1 “(B) establish and maintain emergency
2 procedures, backup facilities, and a plan for dis-
3 aster recovery that allow for—

4 “(i) the timely recovery and resump-
5 tion of operations; and

6 “(ii) the fulfillment of the responsibil-
7 ities and obligations of the security-based
8 swap execution facility; and

9 “(C) periodically conduct tests to verify
10 that the backup resources of the security-based
11 swap execution facility are sufficient to ensure
12 continued—

13 “(i) order processing and trade
14 matching;

15 “(ii) price reporting;

16 “(iii) market surveillance; and

17 “(iv) maintenance of a comprehensive
18 and accurate audit trail.

19 “(15) DESIGNATION OF CHIEF COMPLIANCE
20 OFFICER.—

21 “(A) IN GENERAL.—Each security-based
22 swap execution facility shall designate an indi-
23 vidual to serve as a chief compliance officer.

24 “(B) DUTIES.—The chief compliance offi-
25 cer shall—

1 “(i) report directly to the board or to
2 the senior officer of the facility;

3 “(ii) review compliance with the core
4 principles in this subsection;

5 “(iii) in consultation with the board of
6 the facility, a body performing a function
7 similar to that of a board, or the senior of-
8 ficer of the facility, resolve any conflicts of
9 interest that may arise;

10 “(iv) be responsible for establishing
11 and administering the policies and proce-
12 dures required to be established pursuant
13 to this section;

14 “(v) ensure compliance with this title
15 and the rules and regulations issued under
16 this title, including rules prescribed by the
17 Commission pursuant to this section;

18 “(vi) establish procedures for the re-
19 mediation of noncompliance issues found
20 during—

21 “(I) compliance office reviews;

22 “(II) look backs;

23 “(III) internal or external audit
24 findings;

25 “(IV) self-reported errors; or

1 “(V) through validated com-
2 plaints; and

3 “(vii) establish and follow appropriate
4 procedures for the handling, management
5 response, remediation, retesting, and clos-
6 ing of noncompliance issues.

7 “(C) ANNUAL REPORTS.—

8 “(i) IN GENERAL.—In accordance
9 with rules prescribed by the Commission,
10 the chief compliance officer shall annually
11 prepare and sign a report that contains a
12 description of—

13 “(I) the compliance of the secu-
14 rity-based swap execution facility with
15 this title; and

16 “(II) the policies and procedures,
17 including the code of ethics and con-
18 flict of interest policies, of the secu-
19 rity-based security-based swap execu-
20 tion facility.

21 “(ii) REQUIREMENTS.—The chief
22 compliance officer shall—

23 “(I) submit each report described
24 in clause (i) with the appropriate fi-
25 nancial report of the security-based

1 swap execution facility that is re-
2 quired to be submitted to the Com-
3 mission pursuant to this section; and

4 “(II) include in the report a cer-
5 tification that, under penalty of law,
6 the report is accurate and complete.

7 “(e) EXEMPTIONS.—The Commission may exempt,
8 conditionally or unconditionally, a security-based swap
9 execution facility from registration under this section if
10 the Commission finds that the facility is subject to com-
11 parable, comprehensive supervision and regulation on a
12 consolidated basis by the Commodity Futures Trading
13 Commission.

14 “(f) RULES.—The Commission shall prescribe rules
15 governing the regulation of security-based swap execution
16 facilities under this section.”.

17 (d) SEGREGATION OF ASSETS HELD AS COLLATERAL
18 IN SECURITY-BASED SWAP TRANSACTIONS.—The Securi-
19 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
20 amended by inserting after section 3D (as added by sub-
21 section (b)) the following:

22 **“SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL**
23 **IN SECURITY-BASED SWAP TRANSACTIONS.**

24 “(a) REGISTRATION REQUIREMENT.—It shall be un-
25 lawful for any person to accept any money, securities, or

1 property (or to extend any credit in lieu of money, securi-
2 ties, or property) from, for, or on behalf of a security-
3 based swaps customer to margin, guarantee, or secure a
4 security-based swap cleared by or through a clearing agen-
5 cy (including money, securities, or property accruing to
6 the customer as the result of such a security-based swap),
7 unless the person shall have registered under this title
8 with the Commission as a broker, dealer, or security-based
9 swap dealer, and the registration shall not have expired
10 nor been suspended nor revoked.

11 “(b) CLEARED SECURITY-BASED SWAPS.—

12 “(1) SEGREGATION REQUIRED.—A broker,
13 dealer, or security-based swap dealer shall treat and
14 deal with all money, securities, and property of any
15 security-based swaps customer received to margin,
16 guarantee, or secure a security-based swap cleared
17 by or through a clearing agency (including money, se-
18 curities, or property accruing to the security-based
19 swaps customer as the result of such a security-
20 based swap) as belonging to the security-based
21 swaps customer.

22 “(2) COMMINGLING PROHIBITED.—Money, se-
23 curities, and property of a security-based swaps cus-
24 tomer described in paragraph (1) shall be separately
25 accounted for and shall not be commingled with the

1 funds of the broker, dealer, or security-based swap
2 dealer or be used to margin, secure, or guarantee
3 any trades or contracts of any security-based swaps
4 customer or person other than the person for whom
5 the same are held.

6 “(c) EXCEPTIONS.—

7 “(1) USE OF FUNDS.—

8 “(A) IN GENERAL.—Notwithstanding sub-
9 section (b), money, securities, and property of a
10 security-based swaps customer of a broker,
11 dealer, or security-based swap dealer described
12 in subsection (b) may, for convenience, be com-
13 mingled and deposited in the same 1 or more
14 accounts with any bank or trust company or
15 with a clearing agency.

16 “(B) WITHDRAWAL.—Notwithstanding
17 subsection (b), such share of the money, securi-
18 ties, and property described in subparagraph
19 (A) as in the normal course of business shall be
20 necessary to margin, guarantee, secure, trans-
21 fer, adjust, or settle a cleared security-based
22 swap with a clearing agency, or with any mem-
23 ber of the clearing agency, may be withdrawn
24 and applied to such purposes, including the
25 payment of commissions, brokerage, interest,

1 taxes, storage, and other charges, lawfully ac-
2 cruing in connection with the cleared security-
3 based swap.

4 “(2) COMMISSION ACTION.—Notwithstanding
5 subsection (b), in accordance with such terms and
6 conditions as the Commission may prescribe by rule,
7 regulation, or order, any money, securities, or prop-
8 erty of the security-based swaps customer of a
9 broker, dealer, or security-based swap dealer de-
10 scribed in subsection (b) may be commingled and de-
11 posited as provided in this section with any other
12 money, securities, or property received by the
13 broker, dealer, or security-based swap dealer and re-
14 quired by the Commission to be separately ac-
15 counted for and treated and dealt with as belonging
16 to the security-based swaps customer of the broker,
17 dealer, or security-based swap dealer.

18 “(d) PERMITTED INVESTMENTS.—Money described
19 in subsection (b) may be invested in obligations of the
20 United States, in general obligations of any State or of
21 any political subdivision of a State, and in obligations fully
22 guaranteed as to principal and interest by the United
23 States, or in any other investment that the Commission
24 may by rule or regulation prescribe, and such investments
25 shall be made in accordance with such rules and regula-

1 tions and subject to such conditions as the Commission
2 may prescribe.

3 “(e) PROHIBITION.—It shall be unlawful for any per-
4 son, including any clearing agency and any depository in-
5 stitution, that has received any money, securities, or prop-
6 erty for deposit in a separate account or accounts as pro-
7 vided in subsection (b) to hold, dispose of, or use any such
8 money, securities, or property as belonging to the depos-
9 iting broker, dealer, or security-based swap dealer or any
10 person other than the swaps customer of the broker, deal-
11 er, or security-based swap dealer.”.

12 (e) TRADING IN SECURITY-BASED SWAPS.—Section
13 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
14 is amended by adding at the end the following:

15 “(l) SECURITY-BASED SWAPS.—It shall be unlawful
16 for any person to effect a transaction in a security-based
17 swap with or for a person that is not an eligible contract
18 participant, unless such transaction is effected on a na-
19 tional securities exchange registered pursuant to sub-
20 section (b).”.

21 (f) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
22 TAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the
23 Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is
24 amended by striking paragraphs (1) through (3) and in-
25 serting the following:

1 “(1) any transaction in connection with any se-
2 curity whereby any party to such transaction ac-
3 quires—

4 “(A) any put, call, straddle, or other op-
5 tion or privilege of buying the security from or
6 selling the security to another without being
7 bound to do so;

8 “(B) any security futures product on the
9 security; or

10 “(C) any security-based swap involving the
11 security or the issuer of the security;

12 “(2) any transaction in connection with any se-
13 curity with relation to which such person has, di-
14 rectly or indirectly, any interest in any—

15 “(A) such put, call, straddle, option, or
16 privilege;

17 “(B) such security futures product; or

18 “(C) such security-based swap; or

19 “(3) any transaction in any security for the ac-
20 count of any person who such person has reason to
21 believe has, and who actually has, directly or indi-
22 rectly, any interest in any—

23 “(A) such put, call, straddle, option, or
24 privilege;

1 “(B) such security futures product with re-
2 lation to such security; or

3 “(C) any security-based swap involving
4 such security or the issuer of such security.”.

5 (g) RULEMAKING AUTHORITY TO PREVENT FRAUD,
6 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
7 BASED SWAPS.—Section 9 of the Securities Exchange Act
8 of 1934 (15 U.S.C. 78i) is amended by adding at the end
9 the following:

10 “(j) It shall be unlawful for any person, directly or
11 indirectly, by the use of any means or instrumentality of
12 interstate commerce or of the mails, or of any facility of
13 any national securities exchange, to effect any transaction
14 in, or to induce or attempt to induce the purchase or sale
15 of, any security-based swap, in connection with which such
16 person engages in any fraudulent, deceptive, or manipula-
17 tive act or practice, makes any fictitious quotation, or en-
18 gages in any transaction, practice, or course of business
19 which operates as a fraud or deceit upon any person. The
20 Commission shall, for the purposes of this subsection, by
21 rules and regulations define, and prescribe means reason-
22 ably designed to prevent, such transactions, acts, prac-
23 tices, and courses of business as are fraudulent, deceptive,
24 or manipulative, and such quotations as are fictitious.”.

1 (h) POSITION LIMITS AND POSITION ACCOUNT-
2 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
3 Exchange Act of 1934 is amended by inserting after sec-
4 tion 10A (15 U.S.C. 78j–1) the following:

5 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
6 **ABILITY FOR SECURITY-BASED SWAPS AND**
7 **LARGE TRADER REPORTING.**

8 “(a) POSITION LIMITS.—As a means reasonably de-
9 signed to prevent fraud and manipulation, the Commission
10 shall, by rule or regulation, as necessary or appropriate
11 in the public interest or for the protection of investors,
12 establish limits (including related hedge exemption provi-
13 sions) on the size of positions in any security-based swap
14 that may be held by any person. In establishing such lim-
15 its, the Commission may require any person to aggregate
16 positions in—

17 “(1) any security-based swap and any security
18 or loan or group of securities or loans on which such
19 security-based swap is based, which such security-
20 based swap references, or to which such security-
21 based swap is related as described in paragraph (68)
22 of section 3(a), and any other instrument relating to
23 such security or loan or group or index of securities
24 or loans; or

25 “(2) any security-based swap and—

1 “(A) any security or group or index of se-
2 curities, the price, yield, value, or volatility of
3 which, or of which any interest therein, is the
4 basis for a material term of such security-based
5 swap as described in paragraph (68) of section
6 3(a); and

7 “(B) any other instrument relating to the
8 same security or group or index of securities de-
9 scribed under subparagraph (A).

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 the Com-
15 mission may establish under this section with respect to
16 position limits.

17 “(c) SRO RULES.—

18 “(1) IN GENERAL.—As a means reasonably de-
19 signed to prevent fraud or manipulation, the Com-
20 mission, by rule, regulation, or order, as necessary
21 or appropriate in the public interest, for the protec-
22 tion of investors, or otherwise in furtherance of the
23 purposes of this title, may direct a self-regulatory
24 organization—

1 “(A) to adopt rules regarding the size of
2 positions in any security-based swap that may
3 be held by—

4 “(i) any member of such self-regu-
5 latory organization; or

6 “(ii) any person for whom a member
7 of such self-regulatory organization effects
8 transactions in such security-based swap;
9 and

10 “(B) to adopt rules reasonably designed to
11 ensure compliance with requirements prescribed
12 by the Commission under this subsection.

13 “(2) REQUIREMENT TO AGGREGATE POSI-
14 TIONS.—In establishing the limits under paragraph
15 (1), the self-regulatory organization may require
16 such member or person to aggregate positions in—

17 “(A) any security-based swap and any se-
18 curity or loan or group or narrow-based secu-
19 rity narrow-based security index of securities or
20 loans on which such security-based swap is
21 based, which such security-based swap ref-
22 erences, or to which such security-based swap is
23 related as described in section 3(a)(68), and
24 any other instrument relating to such security

1 or loan or group or narrow-based security index
2 of securities or loans; or

3 “(B)(i) any security-based swap; and

4 “(ii) any security-based swap and any
5 other instrument relating to the same security
6 or group or narrow-based security index of se-
7 curities.

8 “(d) LARGE TRADER REPORTING.—The Commis-
9 sion, by rule or regulation, may require any person that
10 effects transactions for such person’s own account or the
11 account of others in any securities-based swap or
12 uncleared security-based swap and any security or loan or
13 group or narrow-based security index of securities or loans
14 as set forth in paragraphs (1) and (2) of subsection (a)
15 under this section to report such information as the Com-
16 mission may prescribe regarding any position or positions
17 in any security-based swap or uncleared security-based
18 swap and any security or loan or group or narrow-based
19 security index of securities or loans and any other instru-
20 ment relating to such security or loan or group or narrow-
21 based security index of securities or loans as set forth in
22 paragraphs (1) and (2) of subsection (a) under this sec-
23 tion.”.

24 (i) PUBLIC REPORTING AND REPOSITORIES FOR SE-
25 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78m) is amended by add-
2 ing at the end the following:

3 “(m) PUBLIC AVAILABILITY OF SECURITY-BASED
4 SWAP TRANSACTION DATA.—

5 “(1) IN GENERAL.—

6 “(A) DEFINITION OF REAL-TIME PUBLIC
7 REPORTING.—In this paragraph, the term ‘real-
8 time public reporting’ means to report data re-
9 lating to a security-based swap transaction as
10 soon as technologically practicable after the
11 time at which the security-based swap trans-
12 action has been executed.

13 “(B) PURPOSE.—The purpose of this sec-
14 tion is to authorize the Commission to make se-
15 curity-based swap transaction and pricing data
16 available to the public in such form and at such
17 times as the Commission determines appro-
18 priate to enhance price discovery.

19 “(C) GENERAL RULE.—The Commission is
20 authorized to provide by rule for the public
21 availability of security-based swap transaction
22 and pricing data as follows:

23 “(i) With respect to those security-
24 based swaps that are subject to the man-
25 datory clearing requirement described in

1 section 3C(a)(1) (including those security-
2 based swaps that are exempted from the
3 requirement pursuant to section
4 3C(a)(10)), the Commission shall require
5 real-time public reporting for such trans-
6 actions.

7 “(ii) With respect to those security-
8 based swaps that are not subject to the
9 mandatory clearing requirement described
10 in subsection section 3C(a)(1), but are
11 cleared at a registered clearing agency, the
12 Commission shall require real-time public
13 reporting for such transactions.

14 “(iii) With respect to security-based
15 swaps that are not cleared at a registered
16 clearing agency and which are reported to
17 a security-based swap data repository or
18 the Commission under section 3C(a)(6),
19 the Commission shall make available to the
20 public, in a manner that does not disclose
21 the business transactions and market posi-
22 tions of any person, aggregate data on
23 such security-based swap trading volumes
24 and positions.

1 “(iv) With respect to security-based
2 swaps that are exempt from the require-
3 ments of section 3C(a)(1), the Commission
4 shall require real-time public reporting for
5 such transactions.

6 “(D) REGISTERED ENTITIES AND PUBLIC
7 REPORTING.—The Commission may require
8 registered entities to publicly disseminate the
9 security-based swap transaction and pricing
10 data required to be reported under this para-
11 graph.

12 “(E) RULEMAKING REQUIRED.—With re-
13 spect to the rule providing for the public avail-
14 ability of transaction and pricing data for secu-
15 rity-based swaps described in clauses (i) and (ii)
16 of subparagraph (C), the rule promulgated by
17 the Commission shall contain provisions—

18 “(i) to ensure such information does
19 not identify the participants;

20 “(ii) to specify the criteria for deter-
21 mining what constitutes a large notional
22 security-based swap transaction (block
23 trade) for particular markets and con-
24 tracts;

1 “(iii) to specify the appropriate time
2 delay for reporting large notional security-
3 based swap transactions (block trades) to
4 the public; and

5 “(iv) that take into account whether
6 the public disclosure will materially reduce
7 market liquidity.

8 “(F) TIMELINESS OF REPORTING.—Par-
9 ties to a security-based swap (including agents
10 of the parties to a security-based swap) shall be
11 responsible for reporting security-based swap
12 transaction information to the appropriate reg-
13 istered entity in a timely manner as may be
14 prescribed by the Commission.

15 “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-
16 PORTING OF AGGREGATE SECURITY-BASED SWAP
17 DATA.—

18 “(A) IN GENERAL.—In accordance with
19 subparagraph (B), the Commission shall issue a
20 written report on a semiannual and annual
21 basis to make available to the public informa-
22 tion relating to—

23 “(i) the trading and clearing in the
24 major security-based swap categories; and

1 “(ii) the market participants and de-
2 velopments in new products.

3 “(B) USE; CONSULTATION.—In preparing
4 a report under subparagraph (A), the Commis-
5 sion shall—

6 “(i) use information from security-
7 based swap data repositories and deriva-
8 tives clearing organizations; and

9 “(ii) consult with the Office of the
10 Comptroller of the Currency, the Bank for
11 International Settlements, and such other
12 regulatory bodies as may be necessary.

13 “(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

14 “(1) REGISTRATION REQUIREMENT.—It shall
15 be unlawful for any person, unless registered with
16 the Commission, directly or indirectly, to make use
17 of the mails or any means or instrumentality of
18 interstate commerce to perform the functions of a
19 security-based swap data repository.

20 “(2) INSPECTION AND EXAMINATION.—Each
21 registered security-based swap data repository shall
22 be subject to inspection and examination by any rep-
23 resentative of the Commission.

24 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

1 “(A) IN GENERAL.—To be registered, and
2 maintain registration, as a security-based swap
3 data repository, the security-based swap data
4 repository shall comply with—

5 “(i) the core principles described in
6 this subsection; and

7 “(ii) any requirement that the Com-
8 mission may impose by rule or regulation.

9 “(B) REASONABLE DISCRETION OF SECUR-
10 RITY-BASED SWAP DATA REPOSITORY.—Unless
11 otherwise determined by the Commission, by
12 rule or regulation, a security-based swap data
13 repository described in subparagraph (A) shall
14 have reasonable discretion in establishing the
15 manner in which the security-based swap data
16 repository complies with the core principles de-
17 scribed in this subsection.

18 “(4) STANDARD SETTING.—

19 “(A) DATA IDENTIFICATION.—The Com-
20 mission shall prescribe standards that specify
21 the data elements for each security-based swap
22 that shall be collected and maintained by each
23 registered security-based swap data repository.

24 “(B) DATA COLLECTION AND MAINTEN-
25 NANCE.—The Commission shall prescribe data

1 collection and data maintenance standards for
2 security-based swap data repositories.

3 “(C) COMPARABILITY.—The standards
4 prescribed by the Commission under this sub-
5 section shall be comparable to the data stand-
6 ards imposed by the Commission on clearing
7 agencies in connection with their clearing of se-
8 curity-based swaps.

9 “(5) DUTIES.—A security-based swap data re-
10 pository shall—

11 “(A) accept data prescribed by the Com-
12 mission for each security-based swap under sub-
13 section (b);

14 “(B) confirm with both counterparties to
15 the security-based swap the accuracy of the
16 data that was submitted;

17 “(C) maintain the data described in sub-
18 paragraph (A) in such form, in such manner,
19 and for such period as may be required by the
20 Commission;

21 “(D)(i) provide direct electronic access to
22 the Commission (or any designee of the Com-
23 mission, including another registered entity);
24 and

1 “(ii) provide the information described in
2 subparagraph (A) in such form and at such fre-
3 quency as the Commission may require to com-
4 ply with the public reporting requirements set
5 forth in subsection (m);

6 “(E) at the direction of the Commission,
7 establish automated systems for monitoring,
8 screening, and analyzing security-based swap
9 data;

10 “(F) maintain the privacy of any and all
11 security-based swap transaction information
12 that the security-based swap data repository re-
13 ceives from a security-based swap dealer,
14 counterparty, or any other registered entity;
15 and

16 “(G) on a confidential basis pursuant to
17 section 24, upon request, and after notifying
18 the Commission of the request, make available
19 all data obtained by the security-based swap
20 data repository, including individual
21 counterparty trade and position data, to—

22 “(i) each appropriate prudential regu-
23 lator;

24 “(ii) the Financial Stability Oversight
25 Council;

1 “(iii) the Commodity Futures Trading
2 Commission;

3 “(iv) the Department of Justice; and

4 “(v) any other person that the Com-
5 mission determines to be appropriate, in-
6 cluding—

7 “(I) foreign financial supervisors
8 (including foreign futures authorities);

9 “(II) foreign central banks; and

10 “(III) foreign ministries.

11 “(H) CONFIDENTIALITY AND INDEM-
12 NIFICATION AGREEMENT.—Before the security-
13 based swap data repository may share informa-
14 tion with any entity described in subparagraph
15 (G)—

16 “(i) the security-based swap data re-
17 pository shall receive a written agreement
18 from each entity stating that the entity
19 shall abide by the confidentiality require-
20 ments described in section 24 relating to
21 the information on security-based swap
22 transactions that is provided; and

23 “(ii) each entity shall agree to indem-
24 nify the security-based swap data reposi-
25 tory and the Commission for any expenses

1 arising from litigation relating to the infor-
2 mation provided under section 24.

3 “(6) DESIGNATION OF CHIEF COMPLIANCE OF-
4 FICER.—

5 “(A) IN GENERAL.—Each security-based
6 swap data repository shall designate an indi-
7 vidual to serve as a chief compliance officer.

8 “(B) DUTIES.—The chief compliance offi-
9 cer shall—

10 “(i) report directly to the board or to
11 the senior officer of the security-based
12 swap data repository;

13 “(ii) review the compliance of the se-
14 curity-based swap data repository with re-
15 spect to the core principles described in
16 paragraph (7);

17 “(iii) in consultation with the board of
18 the security-based swap data repository, a
19 body performing a function similar to the
20 board of the security-based swap data re-
21 pository, or the senior officer of the secu-
22 rity-based swap data repository, resolve
23 any conflicts of interest that may arise;

1 “(iv) be responsible for administering
2 each policy and procedure that is required
3 to be established pursuant to this section;

4 “(v) ensure compliance with this title
5 (including regulations) relating to agree-
6 ments, contracts, or transactions, including
7 each rule prescribed by the Commission
8 under this section;

9 “(vi) establish procedures for the re-
10 mediation of noncompliance issues identi-
11 fied by the chief compliance officer through
12 any—

13 “(I) compliance office review;

14 “(II) look-back;

15 “(III) internal or external audit
16 finding;

17 “(IV) self-reported error; or

18 “(V) validated complaint; and

19 “(vii) establish and follow appropriate
20 procedures for the handling, management
21 response, remediation, retesting, and clos-
22 ing of noncompliance issues.

23 “(C) ANNUAL REPORTS.—

24 “(i) IN GENERAL.—In accordance
25 with rules prescribed by the Commission,

1 the chief compliance officer shall annually
2 prepare and sign a report that contains a
3 description of—

4 “(I) the compliance of the secu-
5 rity-based swap data repository of the
6 chief compliance officer with respect
7 to this title (including regulations);
8 and

9 “(II) each policy and procedure
10 of the security-based swap data repos-
11 itory of the chief compliance officer
12 (including the code of ethics and con-
13 flict of interest policies of the secu-
14 rity-based swap data repository).

15 “(ii) REQUIREMENTS.—A compliance
16 report under clause (i) shall—

17 “(I) accompany each appropriate
18 financial report of the security-based
19 swap data repository that is required
20 to be furnished to the Commission
21 pursuant to this section; and

22 “(II) include a certification that,
23 under penalty of law, the compliance
24 report is accurate and complete.

1 “(7) CORE PRINCIPLES APPLICABLE TO SECUR-
2 RITY-BASED SWAP DATA REPOSITORIES.—

3 “(A) ANTITRUST CONSIDERATIONS.—Un-
4 less necessary or appropriate to achieve the
5 purposes of this title, the swap data repository
6 shall not—

7 “(i) adopt any rule or take any action
8 that results in any unreasonable restraint
9 of trade; or

10 “(ii) impose any material anticompeti-
11 tive burden on the trading, clearing, or re-
12 porting of transactions.

13 “(B) GOVERNANCE ARRANGEMENTS.—
14 Each security-based swap data repository shall
15 establish governance arrangements that are
16 transparent—

17 “(i) to fulfill public interest require-
18 ments; and

19 “(ii) to support the objectives of the
20 Federal Government, owners, and partici-
21 pants.

22 “(C) CONFLICTS OF INTEREST.—Each se-
23 curity-based swap data repository shall—

24 “(i) establish and enforce rules to
25 minimize conflicts of interest in the deci-

1 sion-making process of the security-based
2 swap data repository; and

3 “(ii) establish a process for resolving
4 any conflicts of interest described in clause
5 (i).

6 “(8) REQUIRED REGISTRATION FOR SECURITY-
7 BASED SWAP DATA REPOSITORIES.—Any person that
8 is required to be registered as a security-based swap
9 data repository under this subsection shall register
10 with the Commission, regardless of whether that
11 person is also licensed under the Commodity Ex-
12 change Act as a swap data repository.

13 “(9) RULES.—The Commission shall adopt
14 rules governing persons that are registered under
15 this subsection.”.

16 **SEC. 764. REGISTRATION AND REGULATION OF SECURITY-**
17 **BASED SWAP DEALERS AND MAJOR SECU-**
18 **RITY-BASED SWAP PARTICIPANTS.**

19 The Securities Exchange Act of 1934 (15 U.S.C. 78a
20 et seq.) is amended by inserting after section 15E (15
21 U.S.C. 78o–7) the following:

22 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
23 **BASED SWAP DEALERS AND MAJOR SECU-**
24 **RITY-BASED SWAP PARTICIPANTS.**

25 “(a) REGISTRATION.—

1 “(1) SECURITY-BASED SWAP DEALERS.—It
2 shall be unlawful for any person to act as a security-
3 based swap dealer unless the person is registered as
4 a security-based swap dealer with the Commission.

5 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
6 PANTS.—It shall be unlawful for any person to act
7 as a major security-based swap participant unless
8 the person is registered as a major security-based
9 swap participant with the Commission.

10 “(b) REQUIREMENTS.—

11 “(1) IN GENERAL.—A person shall register as
12 a security-based swap dealer or major security-based
13 swap participant by filing a registration application
14 with the Commission.

15 “(2) CONTENTS.—

16 “(A) IN GENERAL.—The application shall
17 be made in such form and manner as prescribed
18 by the Commission, and shall contain such in-
19 formation, as the Commission considers nec-
20 essary concerning the business in which the ap-
21 plicant is or will be engaged.

22 “(B) CONTINUAL REPORTING.—A person
23 that is registered as a security-based swap deal-
24 er or major security-based swap participant
25 shall continue to submit to the Commission re-

1 ports that contain such information pertaining
2 to the business of the person as the Commission
3 may require.

4 “(3) EXPIRATION.—Each registration under
5 this section shall expire at such time as the Commis-
6 sion may prescribe by rule or regulation.

7 “(4) RULES.—Except as provided in sub-
8 sections (c), (e), and (f), the Commission may pre-
9 scribe rules applicable to security-based swap dealers
10 and major security-based swap participants, includ-
11 ing rules that limit the activities of non-bank secu-
12 rity-based swap dealers and non-bank major secu-
13 rity-based swap participants.

14 “(5) TRANSITION.—Not later than 1 year after
15 the date of enactment of the Wall Street Trans-
16 parency and Accountability Act of 2010, the Com-
17 mission shall issue rules under this section to pro-
18 vide for the registration of security-based swap deal-
19 ers and major security-based swap participants.

20 “(6) STATUTORY DISQUALIFICATION.—Except
21 to the extent otherwise specifically provided by rule,
22 regulation, or order of the Commission, it shall be
23 unlawful for a security-based swap dealer or a major
24 security-based swap participant to permit any person
25 associated with a security-based swap dealer or a

1 major security-based swap participant who is subject
2 to a statutory disqualification to effect or be involved
3 in effecting security-based swaps on behalf of the se-
4 curity-based swap dealer or major security-based
5 swap participant, if the security-based swap dealer
6 or major security-based swap participant knew, or in
7 the exercise of reasonable care should have known,
8 of the statutory disqualification.

9 “(c) DUAL REGISTRATION.—

10 “(1) SECURITY-BASED SWAP DEALER.—Any
11 person that is required to be registered as a secu-
12 rity-based swap dealer under this section shall reg-
13 ister with the Commission, regardless of whether the
14 person also is registered with the Commodity Fu-
15 tures Trading Commission as a swap dealer.

16 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
17 PANT.—Any person that is required to be registered
18 as a major security-based swap participant under
19 this section shall register with the Commission, re-
20 gardless of whether the person also is registered
21 with the Commodity Futures Trading Commission
22 as a major swap participant.

23 “(d) RULEMAKING.—

24 “(1) IN GENERAL.—The Commission shall
25 adopt rules for persons that are registered as secu-

1 rity-based swap dealers or major security-based swap
2 participants under this section.

3 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
4 MENTS.—

5 “(A) IN GENERAL.—The Commission may
6 not prescribe rules imposing prudential require-
7 ments on security-based swap dealers or major
8 security-based swap participants that are depos-
9 itory institutions, as that term is defined in sec-
10 tion 3 of the Federal Deposit Insurance Act (12
11 U.S.C. 1813).

12 “(B) APPLICABILITY.—Subparagraph (A)
13 does not limit the authority of the Commission
14 to prescribe appropriate business conduct, re-
15 porting, and recordkeeping requirements on se-
16 curity-based swap dealers or major security-
17 based swap participants that are depository in-
18 stitutions to protect investors.

19 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

20 “(1) IN GENERAL.—

21 “(A) SECURITY-BASED SWAP DEALERS
22 AND MAJOR SECURITY-BASED SWAP PARTICI-
23 PANTS THAT ARE DEPOSITORY INSTITU-
24 TIONS.—Each registered security-based swap
25 dealer and major security-based swap partici-

1 pant that is a depository institution, as that
2 term is defined in section 3 of the Federal De-
3 posit Insurance Act (12 U.S.C. 1813), shall
4 meet such minimum capital requirements and
5 minimum initial and variation margin require-
6 ments as the appropriate Federal banking agen-
7 cy shall by rule or regulation prescribe under
8 paragraph (2)(A) to help ensure the safety and
9 soundness of the security-based swap dealer or
10 major security-based swap participant.

11 “(B) SECURITY-BASED SWAP DEALERS
12 AND MAJOR SECURITY-BASED SWAP PARTICI-
13 PANTS THAT ARE NOT DEPOSITORY INSTITU-
14 TIONS.—Each registered security-based swap
15 dealer and major security-based swap partici-
16 pant that is not a depository institution, as that
17 term is defined in section 3 of the Federal De-
18 posit Insurance Act (12 U.S.C. 1813), shall
19 meet such minimum capital requirements and
20 minimum initial and variation margin require-
21 ments as the Commission shall by rule or regu-
22 lation prescribe under paragraph (2)(B) to help
23 ensure the safety and soundness of the security-
24 based swap dealer or major security-based swap
25 participant.

1 “(2) RULES.—

2 “(A) SECURITY-BASED SWAP DEALERS
3 AND MAJOR SECURITY-BASED SWAP PARTICI-
4 PANTS THAT ARE DEPOSITORY INSTITU-
5 TIONS.—The appropriate Federal banking
6 agencies, in consultation with the Commission
7 and the Commodity Futures Trading Commis-
8 sion, shall adopt rules imposing capital and
9 margin requirements under this subsection for
10 security-based swap dealers and major security-
11 based swap participants that are depository in-
12 stitutions, as that term is defined in section 3
13 of the Federal Deposit Insurance Act (12
14 U.S.C. 1813).

15 “(B) SECURITY-BASED SWAP DEALERS
16 AND MAJOR SECURITY-BASED SWAP PARTICI-
17 PANTS THAT ARE NOT DEPOSITORY INSTITU-
18 TIONS.—The Commission shall adopt rules im-
19 posing capital and margin requirements under
20 this subsection for security-based swap dealers
21 and major security-based swap participants that
22 are not depository institutions, as that term is
23 defined in section 3 of the Federal Deposit In-
24 surance Act (12 U.S.C. 1813).

25 “(3) CAPITAL.—

1 “(A) SECURITY-BASED SWAP DEALERS
2 AND MAJOR SECURITY-BASED SWAP PARTICI-
3 PANTS THAT ARE DEPOSITORY INSTITU-
4 TIONS.—The capital requirements prescribed
5 under paragraph (2)(A) for security-based swap
6 dealers and major security-based swap partici-
7 pants that are depository institutions shall con-
8 tain—

9 “(i) a capital requirement that is
10 greater than zero for security-based swaps
11 that are cleared by a clearing agency; and

12 “(ii) to offset the greater risk to the
13 security-based swap dealer or major secu-
14 rity-based swap participant and to the fi-
15 nancial system arising from the use of se-
16 curity-based swaps that are not cleared,
17 substantially higher capital requirements
18 for security-based swaps that are not
19 cleared by a clearing agency than for secu-
20 rity-based swaps that are cleared.

21 “(B) SECURITY-BASED SWAP DEALERS
22 AND MAJOR SECURITY-BASED SWAP PARTICI-
23 PANTS THAT ARE NOT DEPOSITORY INSTITU-
24 TIONS.—The capital requirements prescribed
25 under paragraph (2)(B) for security-based swap

1 dealers and major security-based swap partici-
2 pants that are not depository institutions shall
3 be as strict as or stricter than the capital re-
4 quirements prescribed for security-based swap
5 dealers and major security-based swap partici-
6 pants that are depository institutions under
7 paragraph (2)(A).

8 “(C) CAPITAL.—In setting capital require-
9 ments for a person that is designated as a secu-
10 rity-based swap dealer or a major security-
11 based swap participant for a single type or sin-
12 gle class or category of security-based swap or
13 activities, the prudential regulator and the
14 Commission shall take into account the risks
15 associated with other types of security-based
16 swaps or classes of security-based swaps or cat-
17 egories of security-based swaps engaged in and
18 the other activities conducted by that person
19 that are not otherwise subject to regulation ap-
20 plicable to that person by virtue of the status
21 of the person as a security-based swap dealer or
22 major security-based swap participant.

23 “(D) RULE OF CONSTRUCTION.—

1 “(i) IN GENERAL.—Nothing in this
2 section shall limit, or be construed to limit,
3 the authority—

4 “(I) of the Commission to set fi-
5 nancial responsibility rules for a
6 broker or dealer registered pursuant
7 to section 15(b) (except for section
8 15(b)(11) thereof) in accordance with
9 section 15(c)(3); or

10 “(II) of the Commodity Futures
11 Trading Commission to set financial
12 responsibility rules for a futures com-
13 mission merchant or introducing
14 broker registered pursuant to section
15 4f(a) of the Commodity Exchange Act
16 (except for section 4f(a)(3) thereof) in
17 accordance with section 4f(b) of the
18 Commodity Exchange Act.

19 “(ii) FUTURES COMMISSION MER-
20 CHANTS AND OTHER DEALERS.—A futures
21 commission merchant, introducing broker,
22 broker, or dealer shall maintain sufficient
23 capital to comply with the stricter of any
24 applicable capital requirements to which
25 such futures commission merchant, intro-

1 ducing broker, broker, or dealer is subject
2 to under this title or the Commodity Ex-
3 change Act.

4 “(4) MARGIN.—

5 “(A) SECURITY-BASED SWAP DEALERS
6 AND MAJOR SECURITY-BASED SWAP PARTICI-
7 PANTS THAT ARE DEPOSITORY INSTITU-
8 TIONS.—The appropriate Federal banking
9 agency for security-based swap dealers and
10 major security-based swap participants that are
11 depository institutions shall impose both initial
12 and variation margin requirements in accord-
13 ance with paragraph (2)(A) on all security-
14 based swaps that are not cleared by a clearing
15 agency.

16 “(B) SECURITY-BASED SWAP DEALERS
17 AND MAJOR SECURITY-BASED SWAP PARTICI-
18 PANTS THAT ARE NOT DEPOSITORY INSTITU-
19 TIONS.—The Commission shall impose both ini-
20 tial and variation margin requirements in ac-
21 cordance with paragraph (2)(B) for security-
22 based swap dealers and major security-based
23 swap participants that are not depository insti-
24 tutions on all security-based swaps that are not
25 cleared by a clearing agency. Any such initial

1 and variation margin requirements shall be as
2 strict as or stricter than the margin require-
3 ments prescribed under paragraph (4)(A).

4 “(5) MARGIN REQUIREMENTS.—In prescribing
5 margin requirements under this subsection, the ap-
6 propriate Federal banking agency with respect to se-
7 curity-based swap dealers and major security-based
8 swap participants that are depository institutions,
9 and the Commission with respect to security-based
10 swap dealers and major security-based swap partici-
11 pants that are not depository institutions may per-
12 mit the use of noncash collateral, as the agency or
13 the Commission determines to be consistent with—

14 “(A) preserving the financial integrity of
15 markets trading security-based swaps; and

16 “(B) preserving the stability of the United
17 States financial system.

18 “(6) COMPARABILITY OF CAPITAL AND MARGIN
19 REQUIREMENTS.—

20 “(A) IN GENERAL.—The appropriate Fed-
21 eral banking agencies, the Commission, and the
22 Securities and Exchange Commission shall peri-
23 odically (but not less frequently than annually)
24 consult on minimum capital requirements and

1 minimum initial and variation margin require-
2 ments.

3 “(B) COMPARABILITY.—The entities de-
4 scribed in subparagraph (A) shall, to the max-
5 imum extent practicable, establish and maintain
6 comparable minimum capital requirements and
7 minimum initial and variation margin require-
8 ments, including the use of noncash collateral,
9 for—

10 “(i) security-based swap dealers; and

11 “(ii) major security-based swap par-
12 ticipants.

13 “(7) REQUESTED MARGIN.—If any party to a
14 security-based swap that is exempt from the margin
15 requirements of paragraph (4)(A) or paragraph
16 (4)(B) requests that such security-based swap be
17 margined, then—

18 “(A) the exemption shall not apply; and

19 “(B) the counterparty to such security-
20 based swap shall provide the requested margin.

21 “(8) APPLICABILITY WITH RESPECT TO
22 COUNTERPARTIES.—Paragraphs (4) and (5) shall
23 not apply to initial and variation margin for secu-
24 rity-based swaps in which 1 of the counterparties is
25 not—

1 “(A) a security-based swap dealer;

2 “(B) a major security-based swap partici-
3 pant; or

4 “(C) a financial entity as described in sec-
5 tion 3C(a)(10)(A)(ii), and such counterparty is
6 eligible for and utilizing the commercial end
7 user clearing exemption under section
8 3C(a)(10).

9 “(f) REPORTING AND RECORDKEEPING.—

10 “(1) IN GENERAL.—Each registered security-
11 based swap dealer and major security-based swap
12 participant—

13 “(A) shall make such reports as are re-
14 quired by the Commission, by rule or regula-
15 tion, regarding the transactions and positions
16 and financial condition of the registered secu-
17 rity-based swap dealer or major security-based
18 swap participant;

19 “(B)(i) for which there is a prudential reg-
20 ulator, shall keep books and records of all ac-
21 tivities related to the business as a security-
22 based swap dealer or major security-based swap
23 participant in such form and manner and for
24 such period as may be prescribed by the Com-
25 mission by rule or regulation; and

1 “(ii) for which there is no prudential regu-
2 lator, shall keep books and records in such form
3 and manner and for such period as may be pre-
4 scribed by the Commission by rule or regula-
5 tion; and

6 “(C) shall keep books and records de-
7 scribed in subparagraph (B) open to inspection
8 and examination by any representative of the
9 Commission.

10 “(2) RULES.—The Commission shall adopt
11 rules governing reporting and recordkeeping for se-
12 curity-based swap dealers and major security-based
13 swap participants.

14 “(g) DAILY TRADING RECORDS.—

15 “(1) IN GENERAL.—Each registered security-
16 based swap dealer and major security-based swap
17 participant shall maintain daily trading records of
18 the security-based swaps of the registered security-
19 based swap dealer and major security-based swap
20 participant and all related records (including related
21 cash or forward transactions) and recorded commu-
22 nications, including electronic mail, instant mes-
23 sages, and recordings of telephone calls, for such pe-
24 riod as may be required by the Commission by rule
25 or regulation.

1 “(2) INFORMATION REQUIREMENTS.—The daily
2 trading records shall include such information as the
3 Commission shall require by rule or regulation.

4 “(3) COUNTERPARTY RECORDS.—Each reg-
5 istered security-based swap dealer and major secu-
6 rity-based swap participant shall maintain daily
7 trading records for each counterparty in a manner
8 and form that is identifiable with each security-
9 based swap transaction.

10 “(4) AUDIT TRAIL.—Each registered security-
11 based swap dealer and major security-based swap
12 participant shall maintain a complete audit trail for
13 conducting comprehensive and accurate trade recon-
14 structions.

15 “(5) RULES.—The Commission shall adopt
16 rules governing daily trading records for security-
17 based swap dealers and major security-based swap
18 participants.

19 “(h) BUSINESS CONDUCT STANDARDS.—

20 “(1) IN GENERAL.—Each registered security-
21 based swap dealer and major security-based swap
22 participant shall conform with such business conduct
23 standards as may be prescribed by the Commission,
24 by rule or regulation, that relate to—

1 “(A) fraud, manipulation, and other abu-
2 sive practices involving security-based swaps
3 (including security-based swaps that are offered
4 but not entered into);

5 “(B) diligent supervision of the business of
6 the registered security-based swap dealer and
7 major security-based swap participant;

8 “(C) adherence to all applicable position
9 limits; and

10 “(D) such other matters as the Commis-
11 sion determines to be appropriate.

12 “(2) SPECIAL RULE; FIDUCIARY DUTIES TO
13 CERTAIN ENTITIES.—

14 “(A) GOVERNMENTAL ENTITIES.—A secu-
15 rity-based swap dealer that provides advice re-
16 garding, or offers to enter into, or enters into
17 a security-based swap with a State, State agen-
18 cy, city, county, municipality, or other political
19 subdivision of a State, or a Federal agency shall
20 have a fiduciary duty to the State, State agen-
21 cy, city, county, municipality, or other political
22 subdivision of the State, or the Federal agency,
23 as appropriate.

24 “(B) PENSION PLANS; ENDOWMENTS; RE-
25 TIREMENT PLANS.—A security-based swap deal-

1 er that provides advice regarding, or offers to
2 enter into, or enters into a security-based swap
3 with a pension plan, endowment, or retirement
4 plan shall have a fiduciary duty to the pension
5 plan, endowment, or retirement plan, as appro-
6 priate.

7 “(3) BUSINESS CONDUCT REQUIREMENTS.—
8 Business conduct requirements adopted by the Com-
9 mission under this subsection shall—

10 “(A) establish the standard of care for a
11 security-based swap dealer or major security-
12 based swap participant to verify that any
13 counterparty meets the eligibility standards for
14 an eligible contract participant;

15 “(B) require disclosure by the security-
16 based swap dealer or major security-based swap
17 participant to any counterparty to the trans-
18 action (other than a security-based swap dealer
19 or a major security-based swap participant)
20 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;

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 “(iv)(I) for cleared security-based
11 swaps, upon the request of the
12 counterparty, the daily mark from the ap-
13 propriate clearing agency; and

14 “(II) for uncleared security-based
15 swaps, the daily mark of the security-based
16 swap dealer or the major security-based
17 swap participant;

18 “(C) establish a standard of conduct for a
19 security-based swap dealer or major security-
20 based swap participant to communicate in a
21 fair and balanced manner based on principles of
22 fair dealing and good faith;

23 “(D) establish a standard of conduct for a
24 security-based swap dealer or major security-
25 based swap participant, with respect to a

1 counterparty that is an eligible contract partici-
2 pant within the meaning of subclause (I) or (II)
3 of clause (vii) of section 1a(18) of the Com-
4 modity Exchange Act, to have a reasonable
5 basis to believe that the counterparty has an
6 independent 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 security-
12 based swap dealer or major security-based
13 swap participant;

14 “(iv) undertakes a duty to act in the
15 best interests of the counterparty it rep-
16 resents;

17 “(v) makes appropriate disclosures;
18 and

19 “(vi) will provide written representa-
20 tions to the eligible contract participant re-
21 garding fair pricing and the appropriate-
22 ness of the transaction; and

23 “(E) establish such other standards and
24 requirements as the Commission may determine
25 are appropriate in the public interest, for the

1 protection of investors, or otherwise in further-
2 ance of the purposes of this title.

3 “(4) RULES.—The Commission shall prescribe
4 rules under this subsection governing business con-
5 duct standards for security-based swap dealers and
6 major security-based swap participants.

7 “(i) DOCUMENTATION AND BACK OFFICE STAND-
8 ARDS.—

9 “(1) IN GENERAL.—Each registered security-
10 based swap dealer and major security-based swap
11 participant shall conform with such standards as
12 may be prescribed by the Commission, by rule or
13 regulation, that relate to timely and accurate con-
14 firmation, processing, netting, documentation, and
15 valuation of all security-based swaps.

16 “(2) RULES.—The Commission shall adopt
17 rules governing documentation and back office
18 standards for security-based swap dealers and major
19 security-based swap participants.

20 “(j) DUTIES.—Each registered security-based swap
21 dealer and major security-based swap participant shall, at
22 all times, comply with the following requirements:

23 “(1) MONITORING OF TRADING.—The security-
24 based swap dealer or major security-based swap par-
25 ticipant shall monitor its trading in security-based

1 swaps to prevent violations of applicable position
2 limits.

3 “(2) RISK MANAGEMENT PROCEDURES.—The
4 security-based swap dealer or major security-based
5 swap participant shall establish robust and profes-
6 sional risk management systems adequate for man-
7 aging the day-to-day business of the security-based
8 swap dealer or major security-based swap partici-
9 pant.

10 “(3) DISCLOSURE OF GENERAL INFORMA-
11 TION.—The security-based swap dealer or major se-
12 curity-based swap participant shall disclose to the
13 Commission and to the prudential regulator for the
14 security-based swap dealer or major security-based
15 swap participant, as applicable, information con-
16 cerning—

17 “(A) terms and conditions of its security-
18 based swaps;

19 “(B) security-based swap trading oper-
20 ations, mechanisms, and practices;

21 “(C) financial integrity protections relating
22 to security-based swaps; and

23 “(D) other information relevant to its trad-
24 ing in security-based swaps.

1 “(4) ABILITY TO OBTAIN INFORMATION.—The
2 security-based swap dealer or major security-based
3 swap participant shall—

4 “(A) establish and enforce internal systems
5 and procedures to obtain any necessary infor-
6 mation to perform any of the functions de-
7 scribed in this section; and

8 “(B) provide the information to the Com-
9 mission and to the prudential regulator for the
10 security-based swap dealer or major security-
11 based swap participant, as applicable, on re-
12 quest.

13 “(5) CONFLICTS OF INTEREST.—The security-
14 based swap dealer and major security-based swap
15 participant shall implement conflict-of-interest sys-
16 tems and procedures that—

17 “(A) establish structural and institutional
18 safeguards to ensure that the activities of any
19 person within the firm relating to research or
20 analysis of the price or market for any security-
21 based swap or acting in a role of providing
22 clearing activities or making determinations as
23 to accepting clearing customers are separated
24 by appropriate informational partitions within
25 the firm from the review, pressure, or oversight

1 of persons whose involvement in pricing, trad-
2 ing, or clearing activities might potentially bias
3 their judgment or supervision and contravene
4 the core principles of open access and the busi-
5 ness conduct standards described in this title;
6 and

7 “(B) address such other issues as the
8 Commission determines to be appropriate.

9 “(6) ANTITRUST CONSIDERATIONS.—Unless
10 necessary or appropriate to achieve the purposes of
11 this title, the security-based swap dealer or major se-
12 curity-based swap participant shall not—

13 “(A) adopt any process or take any action
14 that results in any unreasonable restraint of
15 trade; or

16 “(B) impose any material anticompetitive
17 burden on trading or clearing.

18 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
19 CER.—

20 “(1) IN GENERAL.—Each security-based swap
21 dealer and major security-based swap participant
22 shall designate an individual to serve as a chief com-
23 pliance officer.

24 “(2) DUTIES.—The chief compliance officer
25 shall—

1 “(A) report directly to the board or to the
2 senior officer of the security-based swap dealer
3 or major security-based swap participant;

4 “(B) review the compliance of the security-
5 based swap dealer or major security-based swap
6 participant with respect to the security-based
7 swap dealer and major security-based swap par-
8 ticipant requirements described in this section;

9 “(C) in consultation with the board of di-
10 rectors, a body performing a function similar to
11 the board, or the senior officer of the organiza-
12 tion, resolve any conflicts of interest that may
13 arise;

14 “(D) be responsible for administering each
15 policy and procedure that is required to be es-
16 tablished pursuant to this section;

17 “(E) ensure compliance with this title (in-
18 cluding regulations) relating to security-based
19 swaps, including each rule prescribed by the
20 Commission under this section;

21 “(F) establish procedures for the remedi-
22 ation of noncompliance issues identified by the
23 chief compliance officer through any—

24 “(i) compliance office review;

25 “(ii) look-back;

1 “(iii) internal or external audit find-
2 ing;

3 “(iv) self-reported error; or

4 “(v) validated complaint; and

5 “(G) establish and follow appropriate pro-
6 cedures for the handling, management response,
7 remediation, retesting, and closing of non-
8 compliance issues.

9 “(3) ANNUAL REPORTS.—

10 “(A) IN GENERAL.—In accordance with
11 rules prescribed by the Commission, the chief
12 compliance officer shall annually prepare and
13 sign a report that contains a description of—

14 “(i) the compliance of the security-
15 based swap dealer or major swap partici-
16 pant with respect to this title (including
17 regulations); and

18 “(ii) each policy and procedure of the
19 security-based swap dealer or major secu-
20 rity-based swap participant of the chief
21 compliance officer (including the code of
22 ethics and conflict of interest policies).

23 “(B) REQUIREMENTS.—A compliance re-
24 port under subparagraph (A) shall—

1 “(i) accompany each appropriate fi-
2 nancial report of the security-based swap
3 dealer or major security-based swap partic-
4 ipant that is required to be furnished to
5 the Commission pursuant to this section;
6 and

7 “(ii) include a certification that, under
8 penalty of law, the compliance report is ac-
9 curate and complete.

10 “(1) ENFORCEMENT AND ADMINISTRATIVE PRO-
11 CEEDING AUTHORITY.—

12 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

13 “(A) SECURITIES AND EXCHANGE COMMIS-
14 SION.—Except as provided in subparagraph
15 (B), the Commission shall have primary author-
16 ity to enforce subtitle B, and the amendments
17 made by subtitle B of the Wall Street Trans-
18 parency and Accountability Act of 2010, with
19 respect to any person.

20 “(B) APPROPRIATE FEDERAL BANKING
21 AGENCIES.—The appropriate Federal banking
22 agency for security-based swap dealers or major
23 security-based swap participants that are depos-
24 itory institutions, as that term is defined under
25 section 3 of the Federal Deposit Insurance Act

1 (12 U.S.C. 1813), shall have exclusive authority
2 to enforce the provisions of subsection (e) and
3 other prudential requirements of this title, with
4 respect to depository institutions that are secu-
5 rity-based swap dealers or major security-based
6 swap participants.

7 “(C) REFERRAL.—

8 “(i) VIOLATIONS OF NONPRUDENTIAL
9 REQUIREMENTS.—If the appropriate Fed-
10 eral banking agency for security-based
11 swap dealers or major security-based swap
12 participants that are depository institu-
13 tions has cause to believe that such secu-
14 rity-based swap dealer or major security-
15 based swap participant may have engaged
16 in conduct that constitutes a violation of
17 the nonprudential requirements of this sec-
18 tion or rules adopted by the Commission
19 thereunder, the agency may recommend in
20 writing to the Commission that the Com-
21 mission initiate an enforcement proceeding
22 as authorized under this title. The rec-
23 ommendation shall be accompanied by a
24 written explanation of the concerns giving
25 rise to the recommendation.

1 “(ii) VIOLATIONS OF PRUDENTIAL RE-
2 QUIREMENTS.—If the Commission has
3 cause to believe that a securities-based
4 swap dealer or major securities-based swap
5 participant that has a prudential regulator
6 may have engaged in conduct that con-
7 stitute a violation of the prudential re-
8 quirements of subsection (e) or rules
9 adopted thereunder, the Commission may
10 recommend in writing to the prudential
11 regulator that the prudential regulator ini-
12 tiate an enforcement proceeding as author-
13 ized under this title. The recommendation
14 shall be accompanied by a written expla-
15 nation of the concerns giving rise to the
16 recommendation.

17 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
18 AND HEARING.—The Commission, by order, shall
19 censure, place limitations on the activities, functions,
20 or operations of, or revoke the registration of any se-
21 curity-based swap dealer or major security-based
22 swap participant that has registered with the Com-
23 mission pursuant to subsection (b) if the Commis-
24 sion finds, on the record after notice and oppor-
25 tunity for hearing, that such censure, placing of lim-

1 itations, or revocation is in the public interest and
2 that such security-based swap dealer or major secu-
3 rity-based swap participant, or any person associated
4 with such security-based swap dealer or major secu-
5 rity-based swap participant effecting or involved in
6 effecting transactions in security-based swaps on be-
7 half of such security-based swap dealer or major se-
8 curity-based swap participant, whether prior or sub-
9 sequent to becoming so associated—

10 “(A) has committed or omitted any act, or
11 is subject to an order or finding, enumerated in
12 subparagraph (A), (D), or (E) of paragraph (4)
13 of section 15(b);

14 “(B) has been convicted of any offense
15 specified in subparagraph (B) of such para-
16 graph (4) within 10 years of the commencement
17 of the proceedings under this subsection;

18 “(C) is enjoined from any action, conduct,
19 or practice specified in subparagraph (C) of
20 such paragraph (4);

21 “(D) is subject to an order or a final order
22 specified in subparagraph (F) or (H), respec-
23 tively, of such paragraph (4); or

24 “(E) has been found by a foreign financial
25 regulatory authority to have committed or omit-

1 ted any act, or violated any foreign statute or
2 regulation, enumerated in subparagraph (G) of
3 such paragraph (4).

4 “(3) ASSOCIATED PERSONS.—With respect to
5 any person who is associated, who is seeking to be-
6 come associated, or, at the time of the alleged mis-
7 conduct, who was associated or was seeking to be-
8 come associated with a security-based swap dealer or
9 major security-based swap participant for the pur-
10 pose of effecting or being involved in effecting secu-
11 rity-based swaps on behalf of such security-based
12 swap dealer or major security-based swap partici-
13 pant, the Commission, by order, shall censure, place
14 limitations on the activities or functions of such per-
15 son, or suspend for a period not exceeding 12
16 months, or bar such person from being associated
17 with a security-based swap dealer or major security-
18 based swap participant, if the Commission finds, on
19 the record after notice and opportunity for a hear-
20 ing, that such censure, placing of limitations, sus-
21 pension, or bar is in the public interest and that
22 such person—

23 “(A) has committed or omitted any act, or
24 is subject to an order or finding, enumerated in

1 subparagraph (A), (D), or (E) of paragraph (4)
2 of section 15(b);

3 “(B) has been convicted of any offense
4 specified in subparagraph (B) of such para-
5 graph (4) within 10 years of the commencement
6 of the proceedings under this subsection;

7 “(C) is enjoined from any action, conduct,
8 or practice specified in subparagraph (C) of
9 such paragraph (4);

10 “(D) is subject to an order or a final order
11 specified in subparagraph (F) or (H), respec-
12 tively, of such paragraph (4); or

13 “(E) has been found by a foreign financial
14 regulatory authority to have committed or omit-
15 ted any act, or violated any foreign statute or
16 regulation, enumerated in subparagraph (G) of
17 such paragraph (4).

18 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
19 ful—

20 “(A) for any person as to whom an order
21 under paragraph (3) is in effect, without the
22 consent of the Commission, willfully to become,
23 or to be, associated with a security-based swap
24 dealer or major security-based swap participant
25 in contravention of such order; or

1 “(B) for any security-based swap dealer or
2 major security-based swap participant to permit
3 such a person, without the consent of the Com-
4 mission, to become or remain a person associ-
5 ated with the security-based swap dealer or
6 major security-based swap participant in con-
7 travention of such order, if such security-based
8 swap dealer or major security-based swap par-
9 ticipant knew, or in the exercise of reasonable
10 care should have known, of such order.”.

11 **SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.**

12 (a) IN GENERAL.—Not later than 180 days after the
13 date of enactment of the Wall Street Transparency and
14 Accountability Act of 2010, the Securities and Exchange
15 Commission shall determine whether to adopt rules to es-
16 tablish limits on the control of any clearing agency that
17 clears security-based swaps, or on the control of any secu-
18 rity-based swap execution facility or national securities ex-
19 change that posts or makes available for trading security-
20 based swaps, by a bank holding company (as defined in
21 section 2 of the Bank Holding Company Act of 1956 (12
22 U.S.C. 1841)) with total consolidated assets of
23 \$50,000,000,000 or more, a nonbank financial company
24 (as defined in section 102) supervised by the Board of
25 Governors of the Federal Reserve System, affiliate of such

1 a bank holding company or nonbank financial company,
2 a security-based swap dealer, major security-based swap
3 participant, or person associated with a security-based
4 swap dealer or major security-based swap participant.

5 (b) PURPOSES.—The Commission shall adopt rules if
6 the Commission determines, after the review described in
7 subsection (a), that such rules are necessary or appro-
8 priate to improve the governance of, or to mitigate sys-
9 temic risk, promote competition, or mitigate conflicts of
10 interest in connection with a security-based swap dealer
11 or major security-based swap participant's conduct of
12 business with, a clearing agency, national securities ex-
13 change, or security-based swap execution facility that
14 clears, posts, or makes available for trading security-based
15 swaps and in which such security-based swap dealer or
16 major security-based swap participant has a material debt
17 or equity investment.

18 **SEC. 766. REPORTING AND RECORDKEEPING.**

19 (a) IN GENERAL.—The Securities Exchange Act of
20 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
21 section 13 the following:

1 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
2 **TAIN SECURITY-BASED SWAPS.**

3 “(a) REQUIRED REPORTING OF SECURITY-BASED
4 SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR
5 DERIVATIVES CLEARING ORGANIZATION.—

6 “(1) IN GENERAL.—Each security-based swap
7 that is not accepted for clearing by any clearing
8 agency or derivatives clearing organization shall be
9 reported to—

10 “(A) a security-based swap data repository
11 described in section 10B(n); or

12 “(B) in the case in which there is no secu-
13 rity-based swap data repository that would ac-
14 cept the security-based swap, to the Commis-
15 sion pursuant to this section within such time
16 period as the Commission may by rule or regu-
17 lation prescribe.

18 “(2) TRANSITION RULE FOR PREENACTMENT
19 SECURITY-BASED SWAPS.—

20 “(A) SECURITY-BASED SWAPS ENTERED
21 INTO BEFORE THE DATE OF ENACTMENT OF
22 THE WALL STREET TRANSPARENCY AND AC-
23 COUNTABILITY ACT OF 2010.—Each security-
24 based swap entered into before the date of en-
25 actment of the Wall Street Transparency and
26 Accountability Act of 2010, the terms of which

1 have not expired as of the date of enactment of
2 that Act, shall be reported to a registered secu-
3 rity-based swap data repository or the Commis-
4 sion by a date that is not later than—

5 “(i) 30 days after issuance of the in-
6 terim final rule; or

7 “(ii) such other period as the Com-
8 mission determines to be appropriate.

9 “(B) COMMISSION RULEMAKING.—The
10 Commission shall promulgate an interim final
11 rule within 90 days of the date of enactment of
12 this section providing for the reporting of each
13 security-based swap entered into before the date
14 of enactment as referenced in subparagraph
15 (A).

16 “(C) EFFECTIVE DATE.—The reporting
17 provisions described in this section shall be ef-
18 fective upon the date of the enactment of this
19 section.

20 “(3) REPORTING OBLIGATIONS.—

21 “(A) SECURITY-BASED SWAPS IN WHICH
22 ONLY 1 COUNTERPARTY IS A SECURITY-BASED
23 SWAP DEALER OR MAJOR SECURITY-BASED
24 SWAP PARTICIPANT.—With respect to a secu-
25 rity-based swap in which only 1 counterparty is

1 a security-based swap dealer or major security-
2 based swap participant, the security-based swap
3 dealer or major security-based swap participant
4 shall report the security-based swap as required
5 under paragraphs (1) and (2).

6 “(B) SECURITY-BASED SWAPS IN WHICH 1
7 COUNTERPARTY IS A SECURITY-BASED SWAP
8 DEALER AND THE OTHER A MAJOR SECURITY-
9 BASED SWAP PARTICIPANT.—With respect to a
10 security-based swap in which 1 counterparty is
11 a security-based swap dealer and the other a
12 major security-based swap participant, the secu-
13 rity-based swap dealer shall report the security-
14 based swap as required under paragraphs (1)
15 and (2).

16 “(C) OTHER SECURITY-BASED SWAPS.—
17 With respect to any other security-based swap
18 not described in subparagraph (A) or (B), the
19 counterparties to the security-based swap shall
20 select a counterparty to report the security-
21 based swap as required under paragraphs (1)
22 and (2).

23 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
24 vidual or entity that enters into a security-based swap

1 shall meet each requirement described in subsection (c)
2 if the individual or entity did not—

3 “(1) clear the security-based swap in accord-
4 ance with section 3C(a)(1); or

5 “(2) have the data regarding the security-based
6 swap accepted by a security-based swap data reposi-
7 tory in accordance with rules (including timeframes)
8 adopted by the Commission under this title.

9 “(c) REQUIREMENTS.—An individual or entity de-
10 scribed in subsection (b) shall—

11 “(1) upon written request from the Commis-
12 sion, provide reports regarding the security-based
13 swaps held by the individual or entity to the Com-
14 mission in such form and in such manner as the
15 Commission may request; and

16 “(2) maintain books and records pertaining to
17 the security-based swaps held by the individual or
18 entity in such form, in such manner, and for such
19 period as the Commission may require, which shall
20 be open to inspection by—

21 “(A) any representative of the Commis-
22 sion;

23 “(B) an appropriate prudential regulator;

24 “(C) the Commodity Futures Trading
25 Commission;

1 “(D) the Financial Stability Oversight
2 Council; and

3 “(E) the Department of Justice.

4 “(d) IDENTICAL DATA.—In prescribing rules under
5 this section, the Commission shall require individuals and
6 entities described in subsection (b) to submit to the Com-
7 mission a report that contains data that is not less com-
8 prehensive than the data required to be collected by secu-
9 rity-based swap data repositories under this title.”.

10 (b) BENEFICIAL OWNERSHIP REPORTING.—Section
11 13 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78m) is amended—

13 (1) in subsection (d)(1), by inserting “or other-
14 wise becomes or is deemed to become a beneficial
15 owner of any of the foregoing upon the purchase or
16 sale of a security-based swap that the Commission
17 may define by rule, and” after “Alaska Native
18 Claims Settlement Act,”; and

19 (2) in subsection (g)(1), by inserting “or other-
20 wise becomes or is deemed to become a beneficial
21 owner of any security of a class described in sub-
22 section (d)(1) upon the purchase or sale of a secu-
23 rity-based swap that the Commission may define by
24 rule” after “subsection (d)(1) of this section”.

1 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
2 AGERS.—Section 13(f)(1) of the Securities Exchange Act
3 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting
4 “or otherwise becomes or is deemed to become a beneficial
5 owner of any security of a class described in subsection
6 (d)(1) upon the purchase or sale of a security-based swap
7 that the Commission may define by rule,” after “sub-
8 section (d)(1) of this section”.

9 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
10 Section 15(b)(4) of the Securities Exchange Act of 1934
11 (15 U.S.C. 78o(b)(4)) is amended—

12 (1) in subparagraph (C), by inserting “security-
13 based swap dealer, major security-based swap partic-
14 ipant,” after “government securities dealer,”; and

15 (2) in subparagraph (F), by striking “broker or
16 dealer” and inserting “broker, dealer, security-based
17 swap dealer, or a major security-based swap partici-
18 pant”.

19 (e) SECURITY-BASED SWAP BENEFICIAL OWNER-
20 SHIP.—Section 13 of the Securities Exchange Act of 1934
21 (15 U.S.C. 78m) is amended by adding at the end the
22 following:

23 “(o) BENEFICIAL OWNERSHIP.—For purposes of this
24 section and section 16, a person shall be deemed to acquire
25 beneficial ownership of an equity security based on the

1 purchase or sale of a security-based swap, only to the ex-
2 tent that the Commission, by rule, determines after con-
3 sultation with the prudential regulators and the Secretary
4 of the Treasury, that the purchase or sale of the security-
5 based swap, or class of security-based swap, provides inci-
6 dents of ownership comparable to direct ownership of the
7 equity security, and that it is necessary to achieve the pur-
8 poses of this section that the purchase or sale of the secu-
9 rity-based swaps, or class of security-based swap, be
10 deemed the acquisition of beneficial ownership of the eq-
11 uity security.”.

12 **SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.**

13 Section 28(a) of the Securities Exchange Act of 1934
14 (15 U.S.C. 78bb(a)) is amended to read as follows:

15 “(a) **LIMITATION ON JUDGMENTS.**—

16 “(1) **IN GENERAL.**—No person permitted to
17 maintain a suit for damages under the provisions of
18 this title shall recover, through satisfaction of judg-
19 ment in 1 or more actions, a total amount in excess
20 of the actual damages to that person on account of
21 the act complained of. Except as otherwise specifi-
22 cally provided in this title, nothing in this title shall
23 affect the jurisdiction of the securities commission
24 (or any agency or officer performing like functions)
25 of any State over any security or any person insofar

1 as it does not conflict with the provisions of this title
2 or the rules and regulations under this title.

3 “(2) RULE OF CONSTRUCTION.—Except as pro-
4 vided in subsection (f), the rights and remedies pro-
5 vided by this title shall be in addition to any and all
6 other rights and remedies that may exist at law or
7 in equity.

8 “(3) STATE BUCKET SHOP LAWS.—No State
9 law which prohibits or regulates the making or pro-
10 moting of wagering or gaming contracts, or the op-
11 eration of ‘bucket shops’ or other similar or related
12 activities, shall invalidate—

13 “(A) any put, call, straddle, option, privi-
14 lege, or other security subject to this title (ex-
15 cept any security that has a pari-mutuel payout
16 or otherwise is determined by the Commission,
17 acting by rule, regulation, or order, to be appro-
18 priately subject to such laws), or apply to any
19 activity which is incidental or related to the
20 offer, purchase, sale, exercise, settlement, or
21 closeout of any such security;

22 “(B) any security-based swap between eli-
23 gible contract participants; or

1 “(C) any security-based swap effected on a
2 national securities exchange registered pursuant
3 to section 6(b).

4 “(4) OTHER STATE PROVISIONS.—No provision
5 of State law regarding the offer, sale, or distribution
6 of securities shall apply to any transaction in a secu-
7 rity-based swap or a security futures product, except
8 that this paragraph may not be construed as lim-
9 iting any State antifraud law of general applica-
10 bility. A security-based swap may not be regulated
11 as an insurance contract under any provision of
12 State law.”.

13 **SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933;**
14 **TREATMENT OF SECURITY-BASED SWAPS.**

15 (a) DEFINITIONS.—Section 2(a) of the Securities Act
16 of 1933 (15 U.S.C. 77b(a)) is amended—

17 (1) in paragraph (1), by inserting “security-
18 based swap,” after “security future,”;

19 (2) in paragraph (3), by adding at the end the
20 following: “Any offer or sale of a security-based
21 swap by or on behalf of the issuer of the securities
22 upon which such security-based swap is based or is
23 referenced, an affiliate of the issuer, or an under-
24 writer, shall constitute a contract for sale of, sale of,
25 offer for sale, or offer to sell such securities.”; and

1 (3) by adding at the end the following:

2 “(17) The terms ‘swap’ and ‘security-based
3 swap’ have the same meanings as in section 1a of
4 the Commodity Exchange Act (7 U.S.C. 1a).

5 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
6 rity-based swap shall be deemed to mean the execu-
7 tion, termination (prior to its scheduled maturity
8 date), assignment, exchange, or similar transfer or
9 conveyance of, or extinguishing of rights or obliga-
10 tions under, a security-based swap, as the context
11 may require.”.

12 (b) REGISTRATION OF SECURITY-BASED SWAPS.—
13 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
14 is amended by adding at the end the following:

15 “(d) Notwithstanding the provisions of section 3 or
16 4, unless a registration statement meeting the require-
17 ments of section 10(a) is in effect as to a security-based
18 swap, it shall be unlawful for any person, directly or indi-
19 rectly, to make use of any means or instruments of trans-
20 portation or communication in interstate commerce or of
21 the mails to offer to sell, offer to buy or purchase or sell
22 a security-based swap to any person who is not an eligible
23 contract participant as defined in section 1a(18) of the
24 Commodity Exchange Act (7 U.S.C. 1a(18)).”.

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1 SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY**2 ACT OF 1940.**

3 Section 2(a) of the Investment Company Act of 1940
4 (15 U.S.C. 80a-2) is amended by adding at the end the
5 following:

6 “(54) The terms ‘commodity pool’, ‘commodity
7 pool operator’, ‘commodity trading advisor’, ‘major
8 swap participant’, ‘swap’, ‘swap dealer’, and ‘swap
9 execution facility’ have the same meanings as in sec-
10 tion 1a of the Commodity Exchange Act (7 U.S.C.
11 1a).”.

12 SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVI-**13 SORS ACT OF 1940.**

14 Section 202(a) of the Investment Advisers Act of
15 1940 (15 U.S.C. 80b-2) is amended by adding at the end
16 the following:

17 “(29) The terms ‘commodity pool’, ‘commodity
18 pool operator’, ‘commodity trading advisor’, ‘major
19 swap participant’, ‘swap’, ‘swap dealer’, and ‘swap
20 execution facility’ have the same meanings as in sec-
21 tion 1a of the Commodity Exchange Act (7 U.S.C.
22 1a).”.

23 SEC. 771. OTHER AUTHORITY.

24 Unless otherwise provided by its terms, this subtitle
25 does not divest any appropriate Federal banking agency,
26 the Securities and Exchange Commission, the Commodity

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1 Futures Trading Commission, or any other Federal or
2 State agency, of any authority derived from any other pro-
3 vision of applicable law.

4 **SEC. 772. JURISDICTION.**

5 (a) IN GENERAL.—Section 36 of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78mm) is amended by add-
7 ing at the end the following:

8 “(c) DERIVATIVES.—The Commission shall not grant
9 exemptions from the security-based swap provisions of the
10 Wall Street Transparency and Accountability Act of 2010
11 or the amendments made by that Act, except as expressly
12 authorized under the provisions of that Act.”.

13 (b) RULE OF CONSTRUCTION.—Section 30 of the Se-
14 curities Exchange Act of 1934 (15 U.S.C. 78dd) is amend-
15 ed by adding at the end the following:

16 “(c) RULE OF CONSTRUCTION.—No provision of this
17 title that was added by the Wall Street Transparency and
18 Accountability Act of 2010, or any rule or regulation
19 thereunder, shall apply to any person insofar as such per-
20 son transacts a business in security-based swaps without
21 the jurisdiction of the United States, unless such person
22 transacts such business in contravention of such rules and
23 regulations as the Commission may prescribe as necessary
24 or appropriate to prevent the evasion of any provision of
25 this title that was added by the Wall Street Transparency

1 and Accountability Act of 2010. This subsection shall not
2 be construed to limit the jurisdiction of the Commission
3 under any provision of this title, as in effect prior to the
4 date of enactment of the Wall Street Transparency and
5 Accountability Act of 2010.”.

6 **SEC. 773. EFFECTIVE DATE.**

7 Unless otherwise specifically provided in this subtitle,
8 this subtitle, the provisions of this subtitle, and the
9 amendments made by this subtitle shall become effective
10 180 days after the date of enactment of this Act.

11 **TITLE VIII—PAYMENT, CLEAR-**
12 **ING, AND SETTLEMENT SU-**
13 **PERVISION**

14 **SEC. 801. SHORT TITLE.**

15 This title may be cited as the “Payment, Clearing,
16 and Settlement Supervision Act of 2010”.

17 **SEC. 802. FINDINGS AND PURPOSES.**

18 (a) FINDINGS.—Congress finds the following:

19 (1) The proper functioning of the financial mar-
20 kets is dependent upon safe and efficient arrange-
21 ments for the clearing and settlement of payment,
22 securities, and other financial transactions.

23 (2) Financial market utilities that conduct or
24 support multilateral payment, clearing, or settlement
25 activities may reduce risks for their participants and

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1 the broader financial system, but such utilities may
2 also concentrate and create new risks and thus must
3 be well designed and operated in a safe and sound
4 manner.

5 (3) Payment, clearing, and settlement activities
6 conducted by financial institutions also present im-
7 portant risks to the participating financial institu-
8 tions and to the financial system.

9 (4) Enhancements to the regulation and super-
10 vision of systemically important financial market
11 utilities and the conduct of systemically important
12 payment, clearing, and settlement activities by finan-
13 cial institutions are necessary—

14 (A) to provide consistency;

15 (B) to promote robust risk management
16 and safety and soundness;

17 (C) to reduce systemic risks; and

18 (D) to support the stability of the broader
19 financial system.

20 (b) PURPOSE.—The purpose of this title is to miti-
21 gate systemic risk in the financial system and promote fi-
22 nancial stability by—

23 (1) authorizing the Board of Governors to pre-
24 scribe uniform standards for the—

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1 (A) management of risks by systemically
2 important financial market utilities; and

3 (B) conduct of systemically important pay-
4 ment, clearing, and settlement activities by fi-
5 nancial institutions;

6 (2) providing the Board of Governors an en-
7 hanced role in the supervision of risk management
8 standards for systemically important financial mar-
9 ket utilities;

10 (3) strengthening the liquidity of systemically
11 important financial market utilities; and

12 (4) providing the Board of Governors an en-
13 hanced role in the supervision of risk management
14 standards for systemically important payment, clear-
15 ing, and settlement activities by financial institu-
16 tions.

17 **SEC. 803. DEFINITIONS.**

18 In this title, the following definitions shall apply:

19 (1) APPROPRIATE FINANCIAL REGULATOR.—

20 The term “appropriate financial regulator” means—

21 (A) the primary financial regulatory agen-
22 cy, as defined in section 2 of this Act;

23 (B) the National Credit Union Administra-
24 tion, with respect to any insured credit union

1 under the Federal Credit Union Act (12 U.S.C.
2 1751 et seq.); and

3 (C) the Board of Governors, with respect
4 to organizations operating under section 25A of
5 the Federal Reserve Act (12 U.S.C. 611), and
6 any other financial institution engaged in a des-
7 ignated activity.

8 (2) DESIGNATED ACTIVITY.—The term “des-
9 ignated activity” means a payment, clearing, or set-
10 tlement activity that the Council has designated as
11 systemically important under section 804.

12 (3) DESIGNATED FINANCIAL MARKET UTIL-
13 ITY.—The term “designated financial market util-
14 ity” means a financial market utility that the Coun-
15 cil has designated as systemically important under
16 section 804.

17 (4) FINANCIAL INSTITUTION.—The term “fi-
18 nancial institution” means—

19 (A) a depository institution, as defined in
20 section 3 of the Federal Deposit Insurance Act
21 (12 U.S.C. 1813);

22 (B) a branch or agency of a foreign bank,
23 as defined in section 1(b) of the International
24 Banking Act of 1978 (12 U.S.C. 3101);

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1 (C) an organization operating under sec-
2 tion 25 or 25A of the Federal Reserve Act (12
3 U.S.C. 601–604a and 611 through 631);

4 (D) a credit union, as defined in section
5 101 of the Federal Credit Union Act (12
6 U.S.C. 1752);

7 (E) a broker or dealer, as defined in sec-
8 tion 3 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78c);

10 (F) an investment company, as defined in
11 section 3 of the Investment Company Act of
12 1940 (15 U.S.C. 80a–3);

13 (G) an insurance company, as defined in
14 section 2 of the Investment Company Act of
15 1940 (15 U.S.C. 80a–2);

16 (H) an investment adviser, as defined in
17 section 202 of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b–2);

19 (I) a futures commission merchant, com-
20 modity trading advisor, or commodity pool oper-
21 ator, as defined in section 1a of the Commodity
22 Exchange Act (7 U.S.C. 1a); and

23 (J) any company engaged in activities that
24 are financial in nature or incidental to a finan-
25 cial activity, as described in section 4 of the

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1 Bank Holding Company Act of 1956 (12
2 U.S.C. 1843(k)).

3 (5) FINANCIAL MARKET UTILITY.—The term
4 “financial market utility” means any person that
5 manages or operates a multilateral system for the
6 purpose of transferring, clearing, or settling pay-
7 ments, securities, or other financial transactions
8 among financial institutions or between financial in-
9 stitutions and the person.

10 (6) PAYMENT, CLEARING, OR SETTLEMENT AC-
11 TIVITY.—

12 (A) IN GENERAL.—The term “payment,
13 clearing, or settlement activity” means an activ-
14 ity carried out by 1 or more financial institu-
15 tions to facilitate the completion of financial
16 transactions.

17 (B) FINANCIAL TRANSACTION.—For the
18 purposes of subparagraph (A), the term “finan-
19 cial transaction” includes—

- 20 (i) funds transfers;
- 21 (ii) securities contracts;
- 22 (iii) contracts of sale of a commodity
23 for future delivery;
- 24 (iv) forward contracts;
- 25 (v) repurchase agreements;

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- 1 (vi) swaps;
- 2 (vii) security-based swaps;
- 3 (viii) swap agreements;
- 4 (ix) security-based swap agreements;
- 5 (x) foreign exchange contracts;
- 6 (xi) financial derivatives contracts;

7 and

- 8 (xii) any similar transaction that the
- 9 Council determines to be a financial trans-
- 10 action for purposes of this title.

11 (C) INCLUDED ACTIVITIES.—When con-

12 ducted with respect to a financial transaction,

13 payment, clearing, and settlement activities may

14 include—

15 (i) the calculation and communication

16 of unsettled financial transactions between

17 counterparties;

18 (ii) the netting of transactions;

19 (iii) provision and maintenance of

20 trade, contract, or instrument information;

21 (iv) the management of risks and ac-

22 tivities associated with continuing financial

23 transactions;

24 (v) transmittal and storage of pay-

25 ment instructions;

- 1 (vi) the movement of funds;
2 (vii) the final settlement of financial
3 transactions; and
4 (viii) other similar functions that the
5 Council may determine.

6 (7) SUPERVISORY AGENCY.—

7 (A) IN GENERAL.—The term “Supervisory
8 Agency” means the Federal agency that has
9 primary jurisdiction over a designated financial
10 market utility under Federal banking, securi-
11 ties, or commodity futures laws, as follows:

12 (i) The Securities and Exchange Com-
13 mission, with respect to a designated fi-
14 nancial market utility that is a clearing
15 agency registered with the Securities and
16 Exchange Commission.

17 (ii) The Commodity Futures Trading
18 Commission, with respect to a designated
19 financial market utility that is a deriva-
20 tives clearing organization registered with
21 the Commodity Futures Trading Commis-
22 sion.

23 (iii) The appropriate Federal banking
24 agency, with respect to a designated finan-
25 cial market utility that is an institution de-

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1 scribed in section 3(q) of the Federal De-
2 posit Insurance Act.

3 (iv) The Board of Governors, with re-
4 spect to a designated financial market util-
5 ity that is otherwise not subject to the ju-
6 risdiction of any agency listed in clauses
7 (i), (ii), and (iii).

8 (B) MULTIPLE AGENCY JURISDICTION.—If
9 a designated financial market utility is subject
10 to the jurisdictional supervision of more than 1
11 agency listed in subparagraph (A), then such
12 agencies should agree on 1 agency to act as the
13 Supervisory Agency, and if such agencies can-
14 not agree on which agency has primary jurisdic-
15 tion, the Council shall decide which agency is
16 the Supervisory Agency for purposes of this
17 title.

18 (8) SYSTEMICALLY IMPORTANT AND SYSTEMIC
19 IMPORTANCE.—The terms “systemically important”
20 and “systemic importance” mean a situation where
21 the failure of or a disruption to the functioning of
22 a financial market utility or the conduct of a pay-
23 ment, clearing, or settlement activity could create, or
24 increase, the risk of significant liquidity or credit
25 problems spreading among financial institutions or

1 markets and thereby threaten the stability of the fi-
2 nancial system.

3 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

4 (a) DESIGNATION.—

5 (1) FINANCIAL STABILITY OVERSIGHT COUN-
6 CIL.—The Council, on a nondelegable basis and by
7 a vote of not fewer than $\frac{2}{3}$ of members then serving,
8 including an affirmative vote by the Chairperson of
9 the Council, shall designate those financial market
10 utilities or payment, clearing, or settlement activities
11 that the Council determines are, or are likely to be-
12 come, systemically important.

13 (2) CONSIDERATIONS.—In determining whether
14 a financial market utility or payment, clearing, or
15 settlement activity is, or is likely to become, system-
16 ically important, the Council shall take into consid-
17 eration the following:

18 (A) The aggregate monetary value of
19 transactions processed by the financial market
20 utility or carried out through the payment,
21 clearing, or settlement activity.

22 (B) The aggregate exposure of the finan-
23 cial market utility or a financial institution en-
24 gaged in payment, clearing, or settlement activi-
25 ties to its counterparties.

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1 (C) The relationship, interdependencies, or
2 other interactions of the financial market utility
3 or payment, clearing, or settlement activity with
4 other financial market utilities or payment,
5 clearing, or settlement activities.

6 (D) The effect that the failure of or a dis-
7 ruption to the financial market utility or pay-
8 ment, clearing, or settlement activity would
9 have on critical markets, financial institutions,
10 or the broader financial system.

11 (E) Any other factors that the Council
12 deems appropriate.

13 (b) RESCISSION OF DESIGNATION.—

14 (1) IN GENERAL.—The Council, on a nondele-
15 gable basis and by a vote of not fewer than $\frac{2}{3}$ of
16 members then serving, including an affirmative vote
17 by the Chairperson of the Council, shall rescind a
18 designation of systemic importance for a designated
19 financial market utility or designated activity if the
20 Council determines that the utility or activity no
21 longer meets the standards for systemic importance.

22 (2) EFFECT OF RESCISSION.—Upon rescission,
23 the financial market utility or financial institutions
24 conducting the activity will no longer be subject to

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1 the provisions of this title or any rules or orders pre-
2 scribed by the Council under this title.

3 (c) CONSULTATION AND NOTICE AND OPPORTUNITY
4 FOR HEARING.—

5 (1) CONSULTATION.—Before making any deter-
6 mination under subsection (a) or (b), the Council
7 shall consult with the relevant Supervisory Agency
8 and the Board of Governors.

9 (2) ADVANCE NOTICE AND OPPORTUNITY FOR
10 HEARING.—

11 (A) IN GENERAL.—Before making any de-
12 termination under subsection (a) or (b), the
13 Council shall provide the financial market util-
14 ity or, in the case of a payment, clearing, or
15 settlement activity, financial institutions with
16 advance notice of the proposed determination of
17 the Council.

18 (B) NOTICE IN FEDERAL REGISTER.—The
19 Council shall provide such advance notice to fi-
20 nancial institutions by publishing a notice in
21 the Federal Register.

22 (C) REQUESTS FOR HEARING.—Within 30
23 days from the date of any notice of the pro-
24 posed determination of the Council, the finan-
25 cial market utility or, in the case of a payment,

1 clearing, or settlement activity, a financial insti-
2 tution engaged in the designated activity may
3 request, in writing, an opportunity for a written
4 or oral hearing before the Council to dem-
5 onstrate that the proposed designation or re-
6 scission of designation is not supported by sub-
7 stantial evidence.

8 (D) WRITTEN SUBMISSIONS.—Upon re-
9 ceipt of a timely request, the Council shall fix
10 a time, not more than 30 days after receipt of
11 the request, unless extended at the request of
12 the financial market utility or financial institu-
13 tion, and place at which the financial market
14 utility or financial institution may appear, per-
15 sonally or through counsel, to submit written
16 materials, or, at the sole discretion of the Coun-
17 cil, oral testimony or oral argument.

18 (3) EMERGENCY EXCEPTION.—

19 (A) WAIVER OR MODIFICATION BY VOTE
20 OF THE COUNCIL.—The Council may waive or
21 modify the requirements of paragraph (2) if the
22 Council determines, by an affirmative vote of
23 not less than $\frac{2}{3}$ of all members then serving,
24 including an affirmative vote by the Chair-
25 person of the Council, that the waiver or modi-

1 fication is necessary to prevent or mitigate an
2 immediate threat to the financial system posed
3 by the financial market utility or the payment,
4 clearing, or settlement activity.

5 (B) NOTICE OF WAIVER OR MODIFICA-
6 TION.—The Council shall provide notice of the
7 waiver or modification to the financial market
8 utility concerned or, in the case of a payment,
9 clearing, or settlement activity, to financial in-
10 stitutions, as soon as practicable, which shall be
11 no later than 24 hours after the waiver or
12 modification in the case of a financial market
13 utility and 3 business days in the case of finan-
14 cial institutions. The Council shall provide the
15 notice to financial institutions by posting a no-
16 tice on the website of the Council and by pub-
17 lishing a notice in the Federal Register.

18 (d) NOTIFICATION OF FINAL DETERMINATION.—

19 (1) AFTER HEARING.—Within 60 days of any
20 hearing under subsection (c)(3), the Council shall
21 notify the financial market utility or financial insti-
22 tutions of the final determination of the Council in
23 writing, which shall include findings of fact upon
24 which the determination of the Council is based.

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1 (2) WHEN NO HEARING REQUESTED.—If the
2 Council does not receive a timely request for a hear-
3 ing under subsection (c)(3), the Council shall notify
4 the financial market utility or financial institutions
5 of the final determination of the Council in writing
6 not later than 30 days after the expiration of the
7 date by which a financial market utility or a finan-
8 cial institution could have requested a hearing. All
9 notices to financial institutions under this subsection
10 shall be published in the Federal Register.

11 (e) EXTENSION OF TIME PERIODS.—The Council
12 may extend the time periods established in subsections (c)
13 and (d) as the Council determines to be necessary or ap-
14 propriate.

15 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**
16 **NANCIAL MARKET UTILITIES AND PAYMENT,**
17 **CLEARING, OR SETTLEMENT ACTIVITIES.**

18 (a) AUTHORITY TO PRESCRIBE STANDARDS.—The
19 Board, by rule or order, and in consultation with the
20 Council and the Supervisory Agencies, shall prescribe risk
21 management standards, taking into consideration relevant
22 international standards and existing prudential require-
23 ments, governing—

1 (1) the operations related to the payment, clear-
2 ing, and settlement activities of designated financial
3 market utilities; and

4 (2) the conduct of designated activities by fi-
5 nancial institutions.

6 (b) OBJECTIVES AND PRINCIPLES.—The objectives
7 and principles for the risk management standards pre-
8 scribed under subsection (a) shall be to—

9 (1) promote robust risk management;

10 (2) promote safety and soundness;

11 (3) reduce systemic risks; and

12 (4) support the stability of the broader financial
13 system.

14 (c) SCOPE.—The standards prescribed under sub-
15 section (a) may address areas such as—

16 (1) risk management policies and procedures;

17 (2) margin and collateral requirements;

18 (3) participant or counterparty default policies
19 and procedures;

20 (4) the ability to complete timely clearing and
21 settlement of financial transactions;

22 (5) capital and financial resource requirements
23 for designated financial market utilities; and

1 (6) other areas that the Board determines are
2 necessary to achieve the objectives and principles in
3 subsection (b).

4 (d) **THRESHOLD LEVEL.**—The standards prescribed
5 under subsection (a) governing the conduct of designated
6 activities by financial institutions shall, where appropriate,
7 establish a threshold as to the level or significance of en-
8 gagement in the activity at which a financial institution
9 will become subject to the standards with respect to that
10 activity.

11 (e) **COMPLIANCE REQUIRED.**—Designated financial
12 market utilities and financial institutions subject to the
13 standards prescribed by the Board of Governors for a des-
14 ignated activity shall conduct their operations in compli-
15 ance with the applicable risk management standards pre-
16 scribed by the Board of Governors.

17 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**
18 **KET UTILITIES.**

19 (a) **FEDERAL RESERVE ACCOUNT AND SERVICES.**—
20 The Board of Governors may authorize a Federal Reserve
21 Bank to establish and maintain an account for a des-
22 ignated financial market utility and provide services to the
23 designated financial market utility that the Federal Re-
24 serve Bank is authorized under the Federal Reserve Act
25 to provide to a depository institution, subject to any appli-

1 cable rules, orders, standards, or guidelines prescribed by
2 the Board of Governors.

3 (b) ADVANCES.—The Board of Governors may au-
4 thorize a Federal Reserve Bank to provide to a designated
5 financial market utility the same discount and borrowing
6 privileges as the Federal Reserve Bank may provide to a
7 depository institution under the Federal Reserve Act, sub-
8 ject to any applicable rules, orders, standards, or guide-
9 lines prescribed by the Board of Governors.

10 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—
11 A Federal Reserve Bank may pay earnings on balances
12 maintained by or on behalf of a designated financial mar-
13 ket utility in the same manner and to the same extent
14 as the Federal Reserve Bank may pay earnings to a depos-
15 itory institution under the Federal Reserve Act, subject
16 to any applicable rules, orders, standards, or guidelines
17 prescribed by the Board of Governors.

18 (d) RESERVE REQUIREMENTS.—The Board of Gov-
19 ernors may exempt a designated financial market utility
20 from, or modify any, reserve requirements under section
21 19 of the Federal Reserve Act (12 U.S.C. 461) applicable
22 to a designated financial market utility.

23 (e) CHANGES TO RULES, PROCEDURES, OR OPER-
24 ATIONS.—

25 (1) ADVANCE NOTICE.—

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1 (A) ADVANCE NOTICE OF PROPOSED
2 CHANGES REQUIRED.—A designated financial
3 market utility shall provide notice 60 days in
4 advance notice to its Supervisory Agency and
5 the Board of Governors of any proposed change
6 to its rules, procedures, or operations that
7 could, as defined in rules of the Board of Gov-
8 ernors, materially affect, the nature or level of
9 risks presented by the designated financial mar-
10 ket utility.

11 (B) TERMS AND STANDARDS PRESCRIBED
12 BY THE BOARD OF GOVERNORS.—The Board of
13 Governors shall prescribe regulations that de-
14 fine and describe the standards for determining
15 when notice is required to be provided under
16 subparagraph (A).

17 (C) CONTENTS OF NOTICE.—The notice of
18 a proposed change shall describe—

19 (i) the nature of the change and ex-
20 pected effects on risks to the designated fi-
21 nancial market utility, its participants, or
22 the market; and

23 (ii) how the designated financial mar-
24 ket utility plans to manage any identified
25 risks.

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1 (D) ADDITIONAL INFORMATION.—The Su-
2 pervisory Agency or the Board of Governors
3 may require a designated financial market util-
4 ity to provide any information necessary to as-
5 sess the effect the proposed change would have
6 on the nature or level of risks associated with
7 the designated financial market utility’s pay-
8 ment, clearing, or settlement activities and the
9 sufficiency of any proposed risk management
10 techniques.

11 (E) NOTICE OF OBJECTION.—The Super-
12 visory Agency or the Board of Governors shall
13 notify the designated financial market utility of
14 any objection regarding the proposed change
15 within 60 days from the later of—

16 (i) the date that the notice of the pro-
17 posed change is received; or

18 (ii) the date any further information
19 requested for consideration of the notice is
20 received.

21 (F) CHANGE NOT ALLOWED IF OBJEC-
22 TION.—A designated financial market utility
23 shall not implement a change to which the
24 Board of Governors or the Supervisory Agency
25 has an objection.

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1 (G) CHANGE ALLOWED IF NO OBJECTION
2 WITHIN 60 DAYS.—A designated financial mar-
3 ket utility may implement a change if it has not
4 received an objection to the proposed change
5 within 60 days of the later of—

6 (i) the date that the Supervisory
7 Agency or the Board of Governors receives
8 the notice of proposed change; or

9 (ii) the date the Supervisory Agency
10 or the Board of Governors receives any
11 further information it requests for consid-
12 eration of the notice.

13 (H) REVIEW EXTENSION FOR NOVEL OR
14 COMPLEX ISSUES.—The Supervisory Agency or
15 the Board of Governors may, during the 60-day
16 review period, extend the review period for an
17 additional 60 days for proposed changes that
18 raise novel or complex issues, subject to the Su-
19 pervisory Agency or the Board of Governors
20 providing the designated financial market utility
21 with prompt written notice of the extension.
22 Any extension under this subparagraph will ex-
23 tend the time periods under subparagraphs (D)
24 and (F).

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1 (I) CHANGE ALLOWED EARLIER IF NOTI-
2 FIED OF NO OBJECTION.—A designated finan-
3 cial market utility may implement a change in
4 less than 60 days from the date of receipt of
5 the notice of proposed change by the Super-
6 visory Agency or the Board of Governors, or the
7 date the Supervisory Agency or the Board of
8 Governors receives any further information it
9 requested, if the Supervisory Agency or the
10 Board of Governors notifies the designated fi-
11 nancial market utility in writing that it does
12 not object to the proposed change and author-
13 izes the designated financial market utility to
14 implement the change on an earlier date, sub-
15 ject to any conditions imposed by the Super-
16 visory Agency or the Board of Governors.

17 (2) EMERGENCY CHANGES.—

18 (A) IN GENERAL.—A designated financial
19 market utility may implement a change that
20 would otherwise require advance notice under
21 this subsection if it determines that—

22 (i) an emergency exists; and

23 (ii) immediate implementation of the
24 change is necessary for the designated fi-
25 nancial market utility to continue to pro-

1 vide its services in a safe and sound man-
2 ner.

3 (B) NOTICE REQUIRED WITHIN 24
4 HOURS.—The designated financial market util-
5 ity shall provide notice of any such emergency
6 change to its Supervisory Agency and the
7 Board of Governors, as soon as practicable,
8 which shall be no later than 24 hours after im-
9 plementation of the change.

10 (C) CONTENTS OF EMERGENCY NOTICE.—
11 In addition to the information required for
12 changes requiring advance notice, the notice of
13 an emergency change shall describe—

14 (i) the nature of the emergency; and
15 (ii) the reason the change was nec-
16 essary for the designated financial market
17 utility to continue to provide its services in
18 a safe and sound manner.

19 (D) MODIFICATION OR RESCISSION OF
20 CHANGE MAY BE REQUIRED.—The Supervisory
21 Agency or the Board of Governors may require
22 modification or rescission of the change if it
23 finds that the change is not consistent with the
24 purposes of this Act or any rules, orders, or

1 standards prescribed by the Board of Governors
2 hereunder.

3 (3) COPYING THE BOARD OF GOVERNORS.—The
4 Supervisory Agency shall provide the Board of Gov-
5 ernors concurrently with a complete copy of any no-
6 tice, request, or other information it issues, submits,
7 or receives under this subsection.

8 (4) CONSULTATION WITH BOARD OF GOV-
9 ERNORS.—Before taking any action on, or com-
10 pleting its review of, a change proposed by a des-
11 ignated financial market utility, the Supervisory
12 Agency shall consult with the Board of Governors.

13 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS**
14 **AGAINST DESIGNATED FINANCIAL MARKET**
15 **UTILITIES.**

16 (a) EXAMINATION.—Notwithstanding any other pro-
17 vision of law and subject to subsection (d), the Supervisory
18 Agency shall conduct examinations of a designated finan-
19 cial market utility at least once annually in order to deter-
20 mine the following:

21 (1) The nature of the operations of, and the
22 risks borne by, the designated financial market util-
23 ity.

24 (2) The financial and operational risks pre-
25 sented by the designated financial market utility to

1 financial institutions, critical markets, or the broad-
2 er financial system.

3 (3) The resources and capabilities of the des-
4 igned financial market utility to monitor and con-
5 trol such risks.

6 (4) The safety and soundness of the designated
7 financial market utility.

8 (5) The designated financial market utility's
9 compliance with—

10 (A) this title; and

11 (B) the rules and orders prescribed by the
12 Board of Governors under this title.

13 (b) SERVICE PROVIDERS.—Whenever a service inte-
14 gral to the operation of a designated financial market util-
15 ity is performed for the designated financial market utility
16 by another entity, whether an affiliate or non-affiliate and
17 whether on or off the premises of the designated financial
18 market utility, the Supervisory Agency may examine
19 whether the provision of that service is in compliance with
20 applicable law, rules, orders, and standards to the same
21 extent as if the designated financial market utility were
22 performing the service on its own premises.

23 (c) ENFORCEMENT.—For purposes of enforcing the
24 provisions of this section, a designated financial market
25 utility shall be subject to, and the appropriate Supervisory

1 Agency shall have authority under the provisions of sub-
2 sections (b) through (n) of section 8 of the Federal De-
3 posit Insurance Act (12 U.S.C. 1818) in the same manner
4 and to the same extent as if the designated financial mar-
5 ket utility was an insured depository institution and the
6 Supervisory Agency was the appropriate Federal banking
7 agency for such insured depository institution.

8 (d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-
9 NATIONS.—

10 (1) BOARD OF GOVERNORS CONSULTATION ON
11 EXAMINATION PLANNING.—The Supervisory Agency
12 shall consult with the Board of Governors regarding
13 the scope and methodology of any examination con-
14 ducted under subsections (a) and (b).

15 (2) BOARD OF GOVERNORS PARTICIPATION IN
16 EXAMINATION.—The Board of Governors may, in its
17 discretion, participate in any examination led by a
18 Supervisory Agency and conducted under sub-
19 sections (a) and (b).

20 (e) BOARD OF GOVERNORS ENFORCEMENT REC-
21 OMMENDATIONS.—

22 (1) RECOMMENDATION.—The Board of Gov-
23 ernors may at any time recommend to the Super-
24 visory Agency that such agency take enforcement ac-
25 tion against a designated financial market utility.

1 Any such recommendation for enforcement action
2 shall provide a detailed analysis supporting the rec-
3 ommendation of the Board of Governors.

4 (2) CONSIDERATION.—The Supervisory Agency
5 shall consider the recommendation of the Board of
6 Governors and submit a response to the Board of
7 Governors within 60 days.

8 (3) MEDIATION.—If the Supervisory Agency re-
9 jects, in whole or in part, the recommendation of the
10 Board of Governors, the Board of Governors may
11 dispute the matter by referring the recommendation
12 to the Council, which shall attempt to resolve the
13 dispute.

14 (4) ENFORCEMENT ACTION.—If the Council is
15 unable to resolve the dispute under paragraph (3)
16 within 30 days from the date of referral, the Board
17 of Governors may, upon a vote of its members—

18 (A) exercise the enforcement authority ref-
19 erenced in subsection (c) as if it were the Su-
20 pervisory Agency; and

21 (B) take enforcement action against the
22 designated financial market utility.

23 (f) EMERGENCY ENFORCEMENT ACTIONS BY THE
24 BOARD OF GOVERNORS.—

1 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—

2 The Board of Governors may, after consulting with
3 the Council and the Supervisory Agency, take en-
4 forcement action against a designated financial mar-
5 ket utility if the Board of Governors has reasonable
6 cause to believe that—

7 (A) either—

8 (i) an action engaged in, or con-
9 templated by, a designated financial mar-
10 ket utility (including any change proposed
11 by the designated financial market utility
12 to its rules, procedures, or operations that
13 would otherwise be subject to section
14 806(e)) poses an imminent risk of substan-
15 tial harm to financial institutions, critical
16 markets, or the broader financial system;
17 or

18 (ii) the condition of a designated fi-
19 nancial market utility poses an imminent
20 risk of substantial harm to financial insti-
21 tutions, critical markets, or the broader fi-
22 nancial system; and

23 (B) the imminent risk of substantial harm
24 precludes the Board of Governors' use of the
25 procedures in subsection (e).

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1 (2) ENFORCEMENT AUTHORITY.—For purposes
2 of taking enforcement action under paragraph (1), a
3 designated financial market utility shall be subject
4 to, and the Board of Governors shall have authority
5 under the provisions of subsections (b) through (n)
6 of section 8 of the Federal Deposit Insurance Act
7 (12 U.S.C. 1818) in the same manner and to the
8 same extent as if the designated financial market
9 utility was an insured depository institution and the
10 Board of Governors was the appropriate Federal
11 banking agency for such insured depository institu-
12 tion.

13 (3) PROMPT NOTICE TO SUPERVISORY AGENCY
14 OF ENFORCEMENT ACTION.—Within 24 hours of
15 taking an enforcement action under this subsection,
16 the Board of Governors shall provide written notice
17 to the designated financial market utility's Super-
18 visory Agency containing a detailed analysis of the
19 action of the Board of Governors, with supporting
20 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 appropriate financial regu-
6 lator is authorized to examine a financial institution sub-
7 ject to the standards prescribed by the Board of Governors
8 for a designated activity in order to determine the fol-
9 lowing:

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 appropriate financial regulator shall
7 have authority under the provisions of subsections (b)
8 through (n) of section 8 of the Federal Deposit Insurance
9 Act (12 U.S.C. 1818) in the same manner and to the same
10 extent as if the financial institution was an insured deposi-
11 tory institution and the appropriate financial regulator
12 was the appropriate Federal banking agency for such in-
13 sured 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 appropriate financial regu-
17 lators to ensure that the rules and orders prescribed by
18 the Board of Governors under this title are interpreted
19 and applied in as consistent and uniform a manner as
20 practicable.

21 (d) DELEGATION.—

22 (1) EXAMINATION.—

23 (A) REQUEST TO BOARD OF GOV-
24 ERNORS.—The appropriate financial regulator
25 may request the Board of Governors to conduct

1 or participate in an examination of a financial
2 institution subject to the standards prescribed
3 by the Board of Governors for a designated ac-
4 tivity in order to assess the compliance of such
5 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 appropriate financial regulator mutually
15 agree.

16 (2) ENFORCEMENT.—

17 (A) REQUEST TO BOARD OF GOV-
18 ERNORS.—The appropriate financial regulator
19 may request the Board of Governors to enforce
20 this title or the rules or orders prescribed by
21 the Board of Governors under this title against
22 a financial institution that is subject to the
23 standards prescribed by the Board of Governors
24 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 the type de-
24 scribed in subsection (a) of any financial insti-
25 tution that is subject to the standards pre-

1 scribed 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 appro-
21 priate financial regulator and the Council
22 of its belief under clause (i) with sup-
23 porting documentation included;

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1 (iii) requested the appropriate finan-
2 cial regulator to conduct a prompt exam-
3 ination 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 appropriate financial regu-
9 lator within 30 days after the date of
10 the Board's notification under clause
11 (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 appropriate financial regulator a rea-
22 sonable opportunity to participate in
23 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 appro-
10 priate financial regulator and the Council
11 of its belief under clause (i) with sup-
12 porting documentation included and with a
13 recommendation that the appropriate fi-
14 nancial regulator 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 appropriate financial regulator
20 of the commencement of an enforce-
21 ment action recommended by the
22 Board of Governors against the finan-
23 cial institution within 60 days from
24 the date of the notification under
25 clause (ii); or

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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 appropriate financial regulator of the
11 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 Coun-
6 cil is authorized to require any financial market util-
7 ity to submit such information as the Council may
8 require for the sole purpose of assessing whether
9 that financial market utility is systemically impor-
10 tant, but only if the Council 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 Council is authorized to require any financial
17 institution to submit such information as the Coun-
18 cil may require for the sole purpose of assessing
19 whether any payment, clearing, or settlement activ-
20 ity engaged in or supported by a financial institution
21 is systemically important, but only if the Council 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 Council
3 may require a designated financial market utility to
4 submit reports or data to the Board of Governors
5 and the Council in such frequency and form as
6 deemed necessary by the Board of Governors and
7 the Council in order to assess the safety and sound-
8 ness of the utility and the systemic risk that the
9 utility’s operations pose to the financial system.

10 (2) FINANCIAL INSTITUTIONS SUBJECT TO
11 STANDARDS FOR DESIGNATED ACTIVITIES.—The
12 Board of Governors and the Council may require 1
13 or more financial institutions subject to the stand-
14 ards prescribed by the Board of Governors for a des-
15 ignated activity to submit, in such frequency and
16 form as deemed necessary by the Board of Gov-
17 ernors and the Council, reports and data to the
18 Board of Governors and the Council solely with re-
19 spect to the conduct of the designated activity and
20 solely to assess 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 Council shall co-
13 ordinate with the Supervisory Agency for a financial
14 market utility or the appropriate financial regulator
15 for a financial institution to determine if the infor-
16 mation is available from or may be obtained by the
17 agency in the form, format, or detail required by the
18 Board of Governors and the Council.

19 (2) SUPERVISORY REPORTS.—Notwithstanding
20 any other provision of law, the Supervisory Agency,
21 the appropriate financial regulator, and the Board of
22 Governors are authorized to disclose to each other
23 and the Council copies of its examination reports or
24 similar reports regarding any financial market utility

1 or any financial institution engaged in payment,
2 clearing, 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 Council under subsection (c)(1) are not provided in
7 full by the Supervisory Agency or the appropriate financial
8 regulator in less than 15 days after the date on which
9 the material is requested, the Board of Governors or the
10 Council may request the information or impose record-
11 keeping 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 Council, the appropriate financial regulator, and
18 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 Council, the appropriate financial regulator, or
4 any Supervisory Agency may, under such terms and
5 conditions as it deems appropriate, provide confiden-
6 tial supervisory information and other information
7 obtained under this title to other persons it deems
8 appropriate, including the Secretary, State financial
9 institution supervisory agencies, foreign financial su-
10 pervisors, foreign central banks, and foreign finance
11 ministries, subject to reasonable assurances of con-
12 fidentiality.

13 (f) PRIVILEGE MAINTAINED.—The Board of Gov-
14 ernors, the Council, the appropriate financial regulator,
15 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 Council under this sec-
23 tion and any materials prepared by the Board of Gov-
24 ernors or the Council 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 Council 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
14 Council, respectively, and prevent evasions thereof.

15 **SEC. 811. OTHER AUTHORITY.**

16 Unless otherwise provided by its terms, this title does
17 not divest any appropriate financial regulator, any Super-
18 visory Agency, or any other Federal or State agency, of
19 any authority derived from any other applicable law, ex-
20 cept 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 **SEC. 901. SHORT TITLE.**

9 This title may be cited as the “Investor Protection
10 and Securities Reform Act of 2010”.

11 **Subtitle A—Increasing Investor**
12 **Protection**

13 **SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

14 Title I of the Securities Exchange Act of 1934 (15
15 U.S.C. 78a et seq.) is amended by adding at the end the
16 following:

17 **“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

18 **“(a) ESTABLISHMENT AND PURPOSE.—**

19 **“(1) ESTABLISHMENT.—**There is established
20 within the Commission the Investor Advisory Com-
21 mittee (referred to in this section as the ‘Com-
22 mittee’).

23 **“(2) PURPOSE.—**The Committee shall—

24 **“(A) advise and consult with the Commis-**
25 **sion on—**

1 “(i) regulatory priorities of the Com-
2 mission;

3 “(ii) issues relating to the regulation
4 of securities products, trading strategies,
5 and fee structures, and the effectiveness of
6 disclosure;

7 “(iii) initiatives to protect investor in-
8 terest; and

9 “(iv) initiatives to promote investor
10 confidence and the integrity of the securi-
11 ties marketplace; and

12 “(B) submit to the Commission such find-
13 ings and recommendations as the Committee
14 determines are appropriate, including rec-
15 ommendations for proposed legislative changes.

16 “(b) MEMBERSHIP.—

17 “(1) IN GENERAL.—The members of the Com-
18 mittee shall be—

19 “(A) the Investor Advocate;

20 “(B) a representative of State securities
21 commissions;

22 “(C) a representative of the interests of
23 senior citizens; and

1 “(D) not fewer than 10, and not more
2 than 20, members appointed by the Commis-
3 sion, from among individuals who—

4 “(i) represent the interests of indi-
5 vidual equity and debt investors, including
6 investors in mutual funds;

7 “(ii) represent the interests of institu-
8 tional investors, including the interests of
9 pension funds and registered investment
10 companies;

11 “(iii) are knowledgeable about invest-
12 ment issues and decisions; and

13 “(iv) have reputations of integrity.

14 “(2) TERM.—Each member of the Committee
15 appointed under paragraph (1)(B) shall serve for a
16 term of 4 years.

17 “(3) MEMBERS NOT COMMISSION EMPLOY-
18 EES.—Members appointed under paragraph (1)(B)
19 shall not be deemed to be employees or agents of the
20 Commission solely because of membership on the
21 Committee.

22 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
23 SISTANT SECRETARY.—

1 “(1) IN GENERAL.—The members of the Com-
2 mittee shall elect, from among the members of the
3 Committee—

4 “(A) a chairman, who may not be em-
5 ployed by an issuer;

6 “(B) a vice chairman, who may not be em-
7 ployed by an issuer;

8 “(C) a secretary; and

9 “(D) an assistant secretary.

10 “(2) TERM.—Each member elected under para-
11 graph (1) shall serve for a term of 3 years in the
12 capacity for which the member was elected under
13 paragraph (1).

14 “(d) MEETINGS.—

15 “(1) FREQUENCY OF MEETINGS.—The Com-
16 mittee shall meet—

17 “(A) not less frequently than twice annu-
18 ally, at the call of the chairman of the Com-
19 mittee; and

20 “(B) from time to time, at the call of the
21 Commission.

22 “(2) NOTICE.—The chairman of the Committee
23 shall give the members of the Committee written no-
24 tice of each meeting, not later than 2 weeks before
25 the date of the meeting.

1 “(e) COMPENSATION AND TRAVEL EXPENSES.—
2 Each member of the Committee who is not a full-time em-
3 ployee of the United States shall—

4 “(1) be entitled to receive compensation at a
5 rate not to exceed the daily equivalent of the annual
6 rate of basic pay in effect for a position at level V
7 of the Executive Schedule under section 5316 of title
8 5, United States Code, for each day during which
9 the member is engaged in the actual performance of
10 the duties of the Committee; and

11 “(2) while away from the home or regular place
12 of business of the member in the performance of
13 services for the Committee, be allowed travel ex-
14 penses, including per diem in lieu of subsistence, in
15 the same manner as persons employed intermittently
16 in the Government service are allowed expenses
17 under section 5703(b) of title 5, United States Code.

18 “(f) STAFF.—The Commission shall make available
19 to the Committee such staff as the chairman of the Com-
20 mittee determines are necessary to carry out this section.

21 “(g) REVIEW BY COMMISSION.—The Commission
22 shall—

23 “(1) review the findings and recommendations
24 of the Committee; and

1 “(2) each time the Committee submits a finding
2 or recommendation to the Commission, promptly
3 issue a public statement—

4 “(A) assessing the finding or recommenda-
5 tion of the Committee; and

6 “(B) disclosing the action, if any, the Com-
7 mission intends to take with respect to the find-
8 ing or recommendation.

9 “(h) COMMITTEE FINDINGS.—Nothing in this section
10 shall require the Commission to agree to or act upon any
11 finding or recommendation of the Committee.

12 “(i) FEDERAL ADVISORY COMMITTEE ACT.—The
13 Federal Advisory Committee Act (5 U.S.C. App.) shall not
14 apply with respect to the Committee and its activities.

15 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
16 is authorized to be appropriated to the Commission such
17 sums as are necessary to carry out this section.”.

18 **SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMIS-**
19 **SION TO ENGAGE IN INVESTOR TESTING.**

20 Section 19 of the Securities Act of 1933 (15 U.S.C.
21 77s) is amended by adding at the end the following:

22 “(e) EVALUATION OF RULES OR PROGRAMS.—For
23 the purpose of evaluating any rule or program of the Com-
24 mission issued or carried out under any provision of the
25 securities laws, as defined in section 3 of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78c), and the purposes
2 of considering, proposing, adopting, or engaging in any
3 such rule or program or developing new rules or programs,
4 the Commission may—

5 “(1) gather information from and communicate
6 with investors or other members of the public;

7 “(2) engage in such temporary investor testing
8 programs as the Commission determines are in the
9 public interest or would protect investors; and

10 “(3) consult with academics and consultants, as
11 necessary to carry out this subsection.

12 “(f) RULE OF CONSTRUCTION.—For purposes of the
13 Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any
14 action taken under subsection (e) shall not be construed
15 to be a collection of information.”.

16 **SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGA-**
17 **TIONS OF BROKERS, DEALERS, AND INVEST-**
18 **MENT ADVISERS.**

19 (a) DEFINITIONS.—In this section—

20 (1) the term “FINRA” means the Financial In-
21 dustry Regulatory Authority; and

22 (2) the term “retail customer” means an indi-
23 vidual customer of a broker, dealer, investment ad-
24 viser, person associated with a broker or dealer, or
25 a person associated with an investment adviser.

1 (b) IN GENERAL.—The Commission shall conduct a
2 study to evaluate—

3 (1) the effectiveness of existing legal or regu-
4 latory standards of care for brokers, dealers, invest-
5 ment advisers, persons associated with brokers or
6 dealers, and persons associated with investment ad-
7 visers for providing personalized investment advice
8 and recommendations about securities to retail cus-
9 tomers imposed by the Commission and FINRA,
10 and other Federal and State legal or regulatory
11 standards; and

12 (2) whether there are legal or regulatory gaps
13 or overlap in legal or regulatory standards in the
14 protection of retail customers relating to the stand-
15 ards of care for brokers, dealers, investment advis-
16 ers, persons associated with brokers or dealers, and
17 persons associated with investment advisers for pro-
18 viding personalized investment advice about securi-
19 ties to retail customers that should be addressed by
20 rule or statute.

21 (c) CONSIDERATIONS.—In conducting the study re-
22 quired under subsection (b), the Commission shall con-
23 sider—

24 (1) the regulatory, examination, and enforce-
25 ment resources devoted to, and activities of, the

1 Commission and FINRA to enforce the standards of
2 care for brokers, dealers, investment advisers, per-
3 sons associated with brokers or dealers, and persons
4 associated with investment advisers when providing
5 personalized investment advice and recommendations
6 about securities to retail customers, including—

7 (A) the frequency of examinations of bro-
8 kers, dealers, and investment advisers; and

9 (B) the length of time of the examinations;

10 (2) the substantive differences, compared and
11 contrasted in detail, in the regulation of brokers,
12 dealers, and investment advisers, when providing
13 personalized investment advice and recommendations
14 about securities to retail customers, including the
15 differences in the amount of resources devoted to the
16 regulation and examination of brokers, dealers, and
17 investment advisers, by the Commission and
18 FINRA;

19 (3) the specific instances in which—

20 (A) the regulation and oversight of invest-
21 ment advisers provide greater protection to re-
22 tail customers than the regulation and oversight
23 of brokers and dealers; and

24 (B) the regulation and oversight of brokers
25 and dealers provide greater protection to retail

1 customers than the regulation and oversight of
2 investment advisers;

3 (4) the existing legal or regulatory standards of
4 State securities regulators and other regulators in-
5 tended to protect retail customers;

6 (5) the potential impact on retail customers, in-
7 cluding the potential impact on access of retail cus-
8 tomers to the range of products and services offered
9 by brokers and dealers, of imposing upon brokers,
10 dealers, and persons associated with brokers or deal-
11 ers—

12 (A) the standard of care applied under the
13 Investment Advisers Act of 1940 (15 U.S.C.
14 80b–1 et seq.) for providing personalized invest-
15 ment advice about securities to retail customers
16 of investment advisers; and

17 (B) other requirements of the Investment
18 Advisers Act of 1940 (15 U.S.C. 80b–1 et
19 seq.);

20 (6) the potential impact of—

21 (A) imposing on investment advisers the
22 standard of care applied by the Commission
23 and FINRA under the Securities Exchange Act
24 of 1934 (15 U.S.C. 78a et seq.) for providing
25 recommendations about securities to retail cus-

1 tomers of brokers and dealers and other Com-
2 mission and FINRA requirements applicable to
3 brokers and dealers; and

4 (B) authorizing the Commission to des-
5 ignate 1 or more self-regulatory organizations
6 to augment the efforts of the Commission to
7 oversee investment advisers;

8 (7) the potential impact of eliminating the
9 broker and dealer exclusion from the definition of
10 “investment adviser” under section 202(a)(11)(C) of
11 the Investment Advisers Act of 1940 (15 U.S.C.
12 80b–2(a)(11)(C)), in terms of—

13 (A) the potential benefits or harm to retail
14 customers that could result from such a change,
15 including any potential impact on access to per-
16 sonalized investment advice and recommenda-
17 tions about securities to retail customers or the
18 availability of such advice and recommenda-
19 tions;

20 (B) the number of additional entities and
21 individuals that would be required to register
22 under, or become subject to, the Investment
23 Advisers Act of 1940 (15 U.S.C. 80b–1 et
24 seq.), and the additional requirements to which
25 brokers, dealers, and persons associated with

1 brokers and dealers would become subject, in-
2 cluding—

3 (i) any potential additional associated
4 person licensing, registration, and exam-
5 ination requirements; and

6 (ii) the additional costs, if any, to the
7 additional entities and individuals; and

8 (C) the impact on Commission resources
9 to—

10 (i) conduct examinations of registered
11 investment advisers and the representatives
12 of registered investment advisers, including
13 the impact on the examination cycle; and

14 (ii) enforce the standard of care and
15 other applicable requirements imposed
16 under the Investment Advisers Act of 1940
17 (15 U.S.C. 80b–1 et seq.);

18 (8) the ability of investors to understand the
19 differences in terms of regulatory oversight and ex-
20 aminations between brokers, dealers, and investment
21 advisers;

22 (9) the varying level of services provided by bro-
23 kers, dealers, investment advisers, persons associated
24 with brokers or dealers, and persons associated with
25 investment advisers to retail customers and the vary-

1 ing scope and terms of retail customer relationships
2 of brokers, dealers, investment advisers, persons as-
3 sociated with brokers or dealers, and persons associ-
4 ated with investment advisers with such retail cus-
5 tomers;

6 (10) any potential benefits or harm to retail
7 customers that could result from any potential
8 changes in the regulatory requirements or legal
9 standards affecting brokers, dealers, investment ad-
10 visers, persons associated with brokers or dealers,
11 and persons associated with investment advisers re-
12 lating to their obligations to retail customers, includ-
13 ing any potential impact on—

14 (A) protection from fraud;

15 (B) access to personalized investment ad-
16 vice, and recommendations about securities to
17 retail customers; or

18 (C) the availability of such advice and rec-
19 ommendations;

20 (11) the additional costs and expenses to retail
21 customers and to brokers, dealers, and investment
22 advisers resulting from potential changes in the reg-
23 ulatory requirements or legal standards affecting
24 brokers, dealers, investment advisers, persons associ-
25 ated with brokers or dealers, and persons associated

1 with investment advisers relating to their obligations
2 to retail customers; and

3 (12) any other consideration that the Commis-
4 sion deems necessary and appropriate to effectively
5 execute the study required under subsection (b).

6 (d) REPORT.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of enactment of this Act, the Commission
9 shall submit a report on the study required under
10 subsection (b) to—

11 (A) the Committee on Banking, Housing,
12 and Urban Affairs of the Senate; and

13 (B) the Committee on Financial Services
14 of the House of Representatives.

15 (2) CONTENT REQUIREMENTS.—The report re-
16 quired under paragraph (1) shall describe the find-
17 ings, conclusions, and recommendations of the Com-
18 mission from the study required under subsection
19 (b), including—

20 (A) a description of the considerations,
21 analysis, and public and industry input that the
22 Commission considered, as required under sub-
23 section (e), to make such findings, conclusions,
24 and policy recommendations; and

25 (B) an analysis of—

1 (i) whether any identified legal or reg-
2 ulatory gaps or overlap in legal or regu-
3 latory standards in the protection of retail
4 customers relating to the standards of care
5 for brokers, dealers, investment advisers,
6 persons associated with brokers or dealers,
7 and persons associated with investment ad-
8 visers for providing personalized invest-
9 ment advice about securities to retail cus-
10 tomers can be addressed by rule; and

11 (ii) whether, and the extent to which,
12 the Commission would require additional
13 statutory authority to address such gaps or
14 overlap.

15 (e) PUBLIC COMMENT.—The Commission shall seek
16 and consider public input, comments, and data in order
17 to prepare the report required under subsection (d).

18 (f) RULEMAKING.—

19 (1) IN GENERAL.—If the study required under
20 subsection (b) identifies any gaps or overlap in the
21 legal or regulatory standards in the protection of re-
22 tail customers relating to the standards of care for
23 brokers, dealers, investment advisers, persons associ-
24 ated with brokers or dealers, and persons associated
25 with investment advisers for providing personalized

1 investment advice about securities to such retail cus-
2 tomers, the Commission, not later than 2 years after
3 the date of enactment of this Act, shall—

4 (A) commence a rulemaking, as necessary
5 or appropriate in the public interest and for the
6 protection of retail customers, to address such
7 regulatory gaps and overlap that can be ad-
8 dressed by rule, using its authority under the
9 Securities Exchange Act of 1934 (15 U.S.C.
10 78a et seq.) and the Investment Advisers Act of
11 1940 (15 U.S.C. 80b–1 et seq.); and

12 (B) consider and take into account the
13 findings, conclusions, and recommendations of
14 the study required under this section.

15 (2) **RULE OF CONSTRUCTION.**—Nothing in this
16 section shall be construed to limit the rulemaking
17 authority of the Commission under any other provi-
18 sion of Federal law.

19 **SEC. 914. OFFICE OF THE INVESTOR ADVOCATE.**

20 Section 4 of the Securities Exchange Act of 1934 (15
21 U.S.C. 78d) is amended by adding at the end the fol-
22 lowing:

23 “(g) **OFFICE OF THE INVESTOR ADVOCATE.**—

24 “(1) **OFFICE ESTABLISHED.**—There is estab-
25 lished within the Commission the Office of the In-

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1 investor Advocate (in this subsection referred to as the
2 ‘Office’).

3 “(2) INVESTOR ADVOCATE.—

4 “(A) IN GENERAL.—The head of the Of-
5 fice shall be the Investor Advocate, who shall—

6 “(i) report directly to the Chairman;
7 and

8 “(ii) be appointed by the Chairman, in
9 consultation with the Commission, from
10 among individuals having experience in ad-
11 vocating for the interests of investors in se-
12 curities and investor protection issues,
13 from the perspective of investors.

14 “(B) COMPENSATION.—The annual rate of
15 pay for the Investor Advocate shall be equal to
16 the highest rate of annual pay for a Senior Ex-
17 ecutive Service position within the Commission.

18 “(C) LIMITATION ON SERVICE.—An indi-
19 vidual who serves as the Investor Advocate may
20 not be employed by the Commission—

21 “(i) during the 2-year period ending
22 on the date of appointment as Investor Ad-
23 vocate; or

1 “(ii) during the 5-year period begin-
2 ning on the date on which the person
3 ceases to serve as the Investor Advocate.

4 “(3) STAFF OF OFFICE.—The Investor Advo-
5 cate, after consultation with the Chairman of the
6 Commission, may retain or employ independent
7 counsel, research staff, and service staff, as the In-
8 vestor Advocate deems necessary to carry out the
9 functions, powers, and duties of the Office.

10 “(4) FUNCTIONS OF THE INVESTOR ADVO-
11 CATE.—The Investor Advocate shall—

12 “(A) assist retail investors in resolving sig-
13 nificant problems such investors may have with
14 the Commission or with self-regulatory organi-
15 zations;

16 “(B) identify areas in which investors
17 would benefit from changes in the regulations
18 of the Commission or the rules of self-regu-
19 latory organizations;

20 “(C) identify problems that investors have
21 with financial service providers and investment
22 products;

23 “(D) analyze the potential impact on inves-
24 tors of—

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1 “(i) proposed regulations of the Com-
2 mission; and

3 “(ii) proposed rules of self-regulatory
4 organizations registered under this title;
5 and

6 “(E) to the extent practicable, propose to
7 the Commission changes in the regulations or
8 orders of the Commission and to Congress any
9 legislative, administrative, or personnel changes
10 that may be appropriate to mitigate problems
11 identified under this paragraph and to promote
12 the interests of investors.

13 “(5) ACCESS TO DOCUMENTS.—The Commis-
14 sion shall ensure that the Investor Advocate has full
15 access to the documents of the Commission and any
16 self-regulatory organization, as necessary to carry
17 out the functions of the Office.

18 “(6) ANNUAL REPORTS.—

19 “(A) REPORT ON OBJECTIVES.—

20 “(i) IN GENERAL.—Not later than
21 June 30 of each year after 2010, the In-
22 vestor Advocate shall submit to the Com-
23 mittee on Banking, Housing, and Urban
24 Affairs of the Senate and the Committee
25 on Financial Services of the House of Rep-

1 representatives a report on the objectives of
2 the Investor Advocate for the following fis-
3 cal year.

4 “(ii) CONTENTS.—Each report re-
5 quired under clause (i) shall contain full
6 and substantive analysis and explanation.

7 “(B) REPORT ON ACTIVITIES.—

8 “(i) IN GENERAL.—Not later than
9 December 31 of each year after 2010, the
10 Investor Advocate shall submit to the Com-
11 mittee on Banking, Housing, and Urban
12 Affairs of the Senate and the Committee
13 on Financial Services of the House of Rep-
14 resentatives a report on the activities of
15 the Investor Advocate during the imme-
16 diately preceding fiscal year.

17 “(ii) CONTENTS.—Each report re-
18 quired under clause (i) shall include—

19 “(I) appropriate statistical infor-
20 mation and full and substantive anal-
21 ysis;

22 “(II) information on steps that
23 the Investor Advocate has taken dur-
24 ing the reporting period to improve in-
25 vestor services and the responsiveness

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1 of the Commission and self-regulatory
2 organizations to investor concerns;

3 “(III) a summary of the most se-
4 rious problems encountered by inves-
5 tors during the reporting period;

6 “(IV) an inventory of the items
7 described in subclauses (III) that in-
8 cludes—

9 “(aa) identification of any
10 action taken by the Commission
11 or the self-regulatory organiza-
12 tion and the result of such ac-
13 tion;

14 “(bb) the length of time that
15 each item has remained on such
16 inventory; and

17 “(cc) for items on which no
18 action has been taken, the rea-
19 sons for inaction, and an identi-
20 fication of any official who is re-
21 sponsible for such action;

22 “(V) recommendations for such
23 administrative and legislative actions
24 as may be appropriate to resolve prob-
25 lems encountered by investors; and

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1 “(VI) any other information, as
2 determined appropriate by the Inves-
3 tor Advocate.

4 “(iii) INDEPENDENCE.—Each report
5 required under this paragraph shall be pro-
6 vided directly to the Committees listed in
7 clause (i) without any prior review or com-
8 ment from the Commission, any commis-
9 sioner, any other officer or employee of the
10 Commission, or the Office of Management
11 and Budget.

12 “(iv) CONFIDENTIALITY.—No report
13 required under clause (i) may contain con-
14 fidential information.

15 “(7) REGULATIONS.—The Commission shall, by
16 regulation, establish procedures requiring a formal
17 response to all recommendations submitted to the
18 Commission by the Investor Advocate, not later than
19 3 months after the date of such submission.”.

20 **SEC. 915. STREAMLINING OF FILING PROCEDURES FOR**
21 **SELF-REGULATORY ORGANIZATIONS.**

22 (a) FILING PROCEDURES.—Section 19(b) of the Se-
23 curities Exchange Act of 1934 (15 U.S.C. 78s(b)) is
24 amended by striking paragraph (2) (including the undesig-

1 nated matter immediately following subparagraph (B))
2 and inserting the following:

3 “(2) APPROVAL PROCESS.—

4 “(A) APPROVAL PROCESS ESTABLISHED.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), not later than 45 days
7 after the date of publication of a proposed
8 rule change under paragraph (1), the Com-
9 mission shall—

10 “(I) by order, approve the pro-
11 posed rule change; or

12 “(II) institute proceedings under
13 subparagraph (B) to determine wheth-
14 er the proposed rule change should be
15 disapproved.

16 “(ii) EXTENSION OF TIME PERIOD.—

17 The Commission may extend the period es-
18 tablished under clause (i) by not more than
19 an additional 45 days, if—

20 “(I) the Commission determines
21 that a longer period is appropriate
22 and publishes the reasons for such de-
23 termination; or

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1 “(II) the self-regulatory organiza-
2 tion that filed the proposed rule
3 change consents to the longer period.

4 “(B) PROCEEDINGS.—

5 “(i) NOTICE AND HEARING.—If the
6 Commission does not approve a proposed
7 rule change under subparagraph (A), the
8 Commission shall provide to the self-regu-
9 latory organization that filed the proposed
10 rule change—

11 “(I) notice of the grounds for
12 disapproval under consideration; and

13 “(II) opportunity for hearing, to
14 be concluded not later than 180 days
15 after the date of publication of notice
16 of the filing of the proposed rule
17 change.

18 “(ii) ORDER OF APPROVAL OR DIS-
19 APPROVAL.—

20 “(I) IN GENERAL.—Except as
21 provided in subelause (II), not later
22 than 180 days after the date of publi-
23 cation under paragraph (1), the Com-
24 mission shall issue an order approving

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1 or disapproving the proposed rule
2 change.

3 “(II) EXTENSION OF TIME PE-
4 RIOD.—The Commission may extend
5 the period for issuance under clause
6 (I) by not more than 60 days, if—

7 “(aa) the Commission deter-
8 mines that a longer period is ap-
9 propriate and publishes the rea-
10 sons for such determination; or

11 “(bb) the self-regulatory or-
12 ganization that filed the proposed
13 rule change consents to the
14 longer period.

15 “(C) STANDARDS FOR APPROVAL AND DIS-
16 APPROVAL.—

17 “(i) APPROVAL.—The Commission
18 shall approve a proposed rule change of a
19 self-regulatory organization if it finds that
20 such proposed rule change is consistent
21 with the requirements of this title and the
22 rules and regulations issued under this
23 title that are applicable to such organiza-
24 tion.

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1 “(ii) DISAPPROVAL.—The Commission
2 shall disapprove a proposed rule change of
3 a self-regulatory organization if it does not
4 make a finding described in clause (i).

5 “(iii) TIME FOR APPROVAL.—The
6 Commission may not approve a proposed
7 rule change earlier than 30 days after the
8 date of publication under paragraph (1),
9 unless the Commission finds good cause
10 for so doing and publishes the reason for
11 the finding.

12 “(D) RESULT OF FAILURE TO INSTITUTE
13 OR CONCLUDE PROCEEDINGS.—A proposed rule
14 change shall be deemed to have been approved
15 by the Commission, if—

16 “(i) the Commission does not approve
17 the proposed rule change or begin pro-
18 ceedings under subparagraph (B) within
19 the period described in subparagraph (A);
20 or

21 “(ii) the Commission does not issue
22 an order approving or disapproving the
23 proposed rule change under subparagraph
24 (B) within the period described in subpara-
25 graph (B)(ii).

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1 “(E) PUBLICATION DATE BASED ON FED-
2 ERAL REGISTER PUBLISHING.—For purposes of
3 this paragraph, if, after filing a proposed rule
4 change with the Commission pursuant to para-
5 graph (1), a self-regulatory organization pub-
6 lishes a notice of the filing of such proposed
7 rule change, together with the substantive
8 terms of such proposed rule change, on a pub-
9 licly accessible website, the Commission shall
10 thereafter send the notice to the Federal Reg-
11 ister for publication thereof under paragraph
12 (1) within 15 days of the date on which such
13 website publication is made. If the Commission
14 fails to send the notice for publication thereof
15 within such 15 day period, then the date of
16 publication shall be deemed to be the date on
17 which such website publication was made.

18 “(F) RULEMAKING.—

19 “(i) IN GENERAL.—Not later than
20 180 days after the date of enactment of
21 the Restoring American Financial Stability
22 Act of 2010, after consultation with other
23 regulatory agencies, the Commission shall
24 promulgate rules setting forth the proce-

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1 dural requirements of the proceedings re-
2 quired under this paragraph.

3 “(ii) NOTICE AND COMMENT NOT RE-
4 QUIRED.—The rules promulgated by the
5 Commission under clause (i) are not re-
6 quired to include republication of proposed
7 rule changes or solicitation of public com-
8 ment.”.

9 (b) CLARIFICATION OF FILING DATE.—

10 (1) RULE OF CONSTRUCTION.—Section 19(b) of
11 the Securities Exchange Act of 1934 (15 U.S.C.
12 78s(b)) is amended by adding at the end the fol-
13 lowing:

14 “(10) RULE OF CONSTRUCTION RELATING TO
15 FILING DATE OF PROPOSED RULE CHANGES.—

16 “(A) IN GENERAL.—For purposes of this
17 subsection, the date of filing of a proposed rule
18 change shall be deemed to be the date on which
19 the Commission receives the proposed rule
20 change.

21 “(B) EXCEPTION.—A proposed rule
22 change has not been received by the Commis-
23 sion for purposes of subparagraph (A) if, not
24 later than 7 business days after the date of re-
25 ceipt by the Commission, the Commission noti-

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1 fies the self-regulatory organization that such
2 proposed rule change does not comply with the
3 rules of the Commission relating to the required
4 form of a proposed rule change, except that if
5 the Commission determines that the proposed
6 rule change is unusually lengthy and is complex
7 or raises novel regulatory issues, the Commis-
8 sion shall inform the self-regulatory organiza-
9 tion of such determination not later than 7
10 business days after the date of receipt by the
11 Commission and, for the purposes of subpara-
12 graph (A), a proposed rule change has not been
13 received by the Commission, if, not later than
14 21 days after the date of receipt by the Com-
15 mission, the Commission notifies the self-regu-
16 latory organization that such proposed rule
17 change does not comply with the rules of the
18 Commission relating to the required form of a
19 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 2 years 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 past performance data, funds that have
11 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 18 months after the
20 date of enactment of this Act, the Comptroller General
21 of the United States shall submit a report on the results
22 of the 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 PRODUCTS AND**
4 **SERVICES.**

5 Section 15 of the Securities Exchange Act of 1934
6 (15 U.S.C. 78o) is amended by adding at the end the fol-
7 lowing:

8 “(k) DISCLOSURES TO RETAIL INVESTORS.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of the securities laws, the Commission may
11 issue rules designating documents or information
12 that shall be provided by a broker or dealer to a re-
13 tail investor before the purchase of an investment
14 product or service by the retail investor.

15 “(2) CONSIDERATIONS.—In developing any
16 rules under paragraph (1), the Commission shall
17 consider whether the rules will promote investor pro-
18 tection, efficiency, competition, and capital forma-
19 tion.

20 “(3) FORM AND CONTENTS OF DOCUMENTS
21 AND INFORMATION.—Any documents or information
22 designated under a rule promulgated under para-
23 graph (1) shall—

24 “(A) be in a summary format; and

25 “(B) contain clear and concise information
26 about—

1 “(i) investment objectives, strategies,
2 costs, and risks; and

3 “(ii) any compensation or other finan-
4 cial incentive received by a broker, dealer,
5 or other intermediary in connection with
6 the purchase of retail investment prod-
7 ucts.”.

8 **SEC. 919. STUDY ON CONFLICTS OF INTEREST.**

9 (a) IN GENERAL.—The Comptroller General of the
10 United States shall conduct a study—

11 (1) to identify and examine potential conflicts
12 of interest that exist between the staffs of the invest-
13 ment banking and equity and fixed income securities
14 analyst functions within the same firm; and

15 (2) to make recommendations to Congress de-
16 signed to protect investors in light of such conflicts.

17 (b) CONSIDERATIONS.—In conducting the study
18 under subsection (a), the Comptroller General shall—

19 (1) consider—

20 (A) the potential for investor harm result-
21 ing from conflicts, including consideration of
22 the forms of misconduct engaged in by the sev-
23 eral securities firms and individuals that en-
24 tered into the Global Analyst Research Settle-

1 ments in 2003 (also known as the “Global Set-
2 tlement”);

3 (B) the nature and benefits of the under-
4 takings to which those firms agreed in enforce-
5 ment proceedings, including firewalls between
6 research and investment banking, separate re-
7 porting lines, dedicated legal and compliance
8 staffs, allocation of budget, physical separation,
9 compensation, employee performance evalua-
10 tions, coverage decisions, limitations on solici-
11 tating investment banking business, disclosures,
12 transparency, and other measures;

13 (C) whether any such undertakings should
14 be codified and applied permanently to securi-
15 ties firms, or whether the Commission should
16 adopt rules applying any such undertakings to
17 securities firms; and

18 (D) whether to recommend regulatory or
19 legislative measures designed to mitigate pos-
20 sible adverse consequences to investors arising
21 from the conflicts of interest or to enhance in-
22 vestor protection or confidence in the integrity
23 of the securities markets; and

24 (2) consult with State attorneys general, State
25 securities officials, the Commission, the Financial

1 Industry Regulatory Authority (“FINRA”), NYSE
2 Regulation, investor advocates, brokers, dealers, re-
3 tail investors, institutional investors, and academics.

4 (c) REPORT.—The Comptroller General shall submit
5 a report on the results of the study required by this section
6 to the Committee on Banking, Housing, and Urban Af-
7 fairs of the Senate and the Committee on Financial Serv-
8 ices of the House of Representatives, not later than 18
9 months after the date of enactment of this Act.

10 **SEC. 919A. STUDY ON IMPROVED INVESTOR ACCESS TO IN-**
11 **FORMATION ON INVESTMENT ADVISERS AND**
12 **BROKER-DEALERS.**

13 (a) STUDY.—

14 (1) IN GENERAL.—Not later than 6 months
15 after the date of enactment of this Act, the Commis-
16 sion shall complete a study, including recommenda-
17 tions, of ways to improve the access of investors to
18 registration information (including disciplinary ac-
19 tions, regulatory, judicial, and arbitration pro-
20 ceedings, and other information) about registered
21 and previously registered investment advisers, asso-
22 ciated persons of investment advisers, brokers and
23 dealers and their associated persons on the existing
24 Central Registration Depository and Investment Ad-
25 viser Registration Depository systems, as well as

1 identify additional information that should be made
2 publicly available.

3 (2) CONTENTS.—The study required by sub-
4 section (a) shall include an analysis of the advan-
5 tages and disadvantages of further centralizing ac-
6 cess to the information contained in the 2 systems,
7 including—

8 (A) identification of those data pertinent
9 to investors; and

10 (B) the identification of the method and
11 format for displaying and publishing such data
12 to enhance accessibility by and utility to inves-
13 tors.

14 (b) IMPLEMENTATION.—Not later than 18 months
15 after the date of completion of the study required by sub-
16 section (a), the Commission shall implement any rec-
17 ommendations of the study.

18 **SEC. 919B. STUDY ON FINANCIAL PLANNERS AND THE USE**
19 **OF FINANCIAL DESIGNATIONS.**

20 (a) IN GENERAL.—The Comptroller General of the
21 United States shall conduct a study to evaluate—

22 (1) the effectiveness of State and Federal regu-
23 lations to protect consumers from individuals who
24 hold themselves out as financial planners through
25 the use of misleading designations;

1 (2) current State and Federal oversight struc-
2 ture and regulations for financial planners; and

3 (3) legal or regulatory gaps in the regulation of
4 financial planners and other individuals who provide
5 or offer to provide financial planning services to con-
6 sumers.

7 (b) CONSIDERATIONS.—In conducting the study re-
8 quired under subsection (a), the Comptroller General shall
9 consider—

10 (1) the role of financial planners in providing
11 advice regarding the management of financial re-
12 sources, including investment planning, income tax
13 planning, education planning, retirement planning,
14 estate planning, and risk management;

15 (2) whether current regulations at the State
16 and Federal level provide adequate ethical and pro-
17 fessional standards for financial planners;

18 (3) the use of the title “financial planner” and
19 misleading designations in connection with sale of fi-
20 nancial products, including insurance and securities;

21 (4) the possible risk posed to consumers by in-
22 dividuals who hold themselves out as financial plan-
23 ners through the use of misleading designations, in-
24 cluding “financial advisor” and “financial consult-
25 ant”;

1 (5) the ability of consumers to understand li-
2 censing requirements and standards of care that
3 apply to individuals who provide financial advice;

4 (6) the possible benefits to consumers of regula-
5 tion and professional oversight of financial planners;
6 and

7 (7) any other consideration that the Comp-
8 troller General deems necessary or appropriate to ef-
9 fectively execute the study required under subsection
10 (a).

11 (c) RECOMMENDATIONS.—In providing recommenda-
12 tions for the appropriate regulation of financial planners
13 and other individuals who provide or offer to provide fi-
14 nancial planning services, in order to protect consumers
15 of financial planning services, the Comptroller General
16 shall consider—

17 (1) the appropriate structure for regulation of
18 financial planners and individuals providing financial
19 planning services; and

20 (2) the appropriate scope of the regulations
21 needed to protect consumers, including but not lim-
22 ited to the need to establish competency standards,
23 practice standards, ethical guidelines, disciplinary
24 authority, and transparency to consumers.

25 (d) REPORT.—

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1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Comp-
3 troller General shall submit a report on the study re-
4 quired under subsection (a) to—

5 (A) the Committee on Banking, Housing,
6 and Urban Affairs of the Senate;

7 (B) the Special Committee on Aging of the
8 Senate; and

9 (C) the Committee on Financial Services of
10 the House of Representatives.

11 (2) CONTENT REQUIREMENTS.—The report re-
12 quired under paragraph (1) shall describe the find-
13 ings and determinations made by the Comptroller
14 General in carrying out the study required under
15 subsection (a), including a description of the consid-
16 erations, analysis, and government, public, industry,
17 nonprofit and consumer input that the Comptroller
18 General considered to make such findings, conclu-
19 sions, and legislative, regulatory, or other rec-
20 ommendations.

1 **Subtitle B—Increasing Regulatory**
2 **Enforcement and Remedies**

3 **SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MAN-**
4 **DATORY PREDISPUTE ARBITRATION.**

5 (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF
6 1934.—Section 15 of the Securities Exchange Act of 1934
7 (15 U.S.C. 78o), as amended by section 918, is amended
8 by adding at the end the following:

9 “(1) AUTHORITY TO RESTRICT MANDATORY
10 PREDISPUTE ARBITRATION.—The Commission may reaffirm or
11 prohibit, or impose or not impose conditions or
12 limitations on the use of, agreements that require cus-
13 tomers or clients of any broker, dealer, or municipal secu-
14 rities dealer to arbitrate any dispute between them and
15 such broker, dealer, or municipal securities dealer that
16 arises under the securities laws or the rules of a self-regu-
17 latory organization, if the Commission finds that such re-
18 affirmation, prohibition, imposition of conditions or limita-
19 tions, or other action is in the public interest and for the
20 protection of investors pursuant to a public rulemaking.”.

21 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
22 1940.—Section 205 of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b–5) is amended by adding at the end
24 the following:

1 “(f) AUTHORITY TO ISSUE RULES RELATED TO
2 MANDATORY PREDISPUTE ARBITRATION.—The Commis-
3 sion may reaffirm or prohibit, or impose or not impose
4 conditions or limitations on the use of, agreements that
5 require customers or clients of any investment adviser to
6 arbitrate any dispute between them and such investment
7 adviser that arises under the securities laws, as defined
8 in section 3 of the Securities Exchange Act of 1934 (15
9 U.S.C. 78e), or the rules of a self-regulatory organization,
10 if the Commission finds that such reaffirmation, prohibi-
11 tion, imposition of conditions or limitations, or other ac-
12 tion is in the public interest and for the protection of in-
13 vestors pursuant to a public rulemaking.”.

14 **SEC. 922. WHISTLEBLOWER PROTECTION.**

15 (a) IN GENERAL.—The Securities Exchange Act of
16 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
17 section 21E the following:

18 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
19 **PROTECTION.**

20 “(a) DEFINITIONS.—In this section the following
21 definitions shall apply:

22 “(1) COVERED JUDICIAL OR ADMINISTRATIVE
23 ACTION.—The term ‘covered judicial or administra-
24 tive action’ means any judicial or administrative ac-
25 tion brought by the Commission under the securities

1 laws that results in monetary sanctions exceeding
2 \$1,000,000.

3 “(2) FUND.—The term ‘Fund’ means the Secu-
4 rities and Exchange Commission Investor Protection
5 Fund.

6 “(3) ORIGINAL INFORMATION.—The term
7 ‘original information’ means information that—

8 “(A) is derived from the independent
9 knowledge or analysis of a whistleblower;

10 “(B) is not known to the Commission from
11 any other source, unless the whistleblower is the
12 original source of the information; and

13 “(C) is not exclusively derived from an al-
14 legation made in a judicial or administrative
15 hearing, in a governmental report, hearing,
16 audit, or investigation, or from the news media,
17 unless the whistleblower is a source of the infor-
18 mation.

19 “(4) MONETARY SANCTIONS.—The term ‘mone-
20 tary sanctions’, when used with respect to any judi-
21 cial or administrative action, means—

22 “(A) any monies, including penalties,
23 disgorgement, and interest, ordered to be paid;
24 and

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1 “(B) any monies deposited into a
2 disgorgement fund or other fund pursuant to
3 section 308(b) of the Sarbanes-Oxley Act of
4 2002 (15 U.S.C. 7246(b)), as a result of such
5 action or any settlement of such action.

6 “(5) RELATED ACTION.—The term ‘related ac-
7 tion’, when used with respect to any judicial or ad-
8 ministrative action brought by the Commission
9 under the securities laws, means any judicial or ad-
10 ministrative action brought by an entity described in
11 subclauses (I) through (IV) of subsection
12 (h)(2)(D)(i) that is based upon the original informa-
13 tion provided by a whistleblower pursuant to sub-
14 section (a) that led to the successful enforcement of
15 the Commission action.

16 “(6) WHISTLEBLOWER.—The term ‘whistle-
17 blower’ means any individual, or 2 or more individ-
18 uals acting jointly, who provides information relating
19 to a violation of the securities laws to the Commis-
20 sion, in a manner established, by rule or regulation,
21 by the Commission.

22 “(b) AWARDS.—

23 “(1) IN GENERAL.—In any covered judicial or
24 administrative action, or related action, the Commis-
25 sion, under regulations prescribed by the Commis-

1 sion and subject to subsection (c), shall pay an
2 award or awards to 1 or more whistleblowers who
3 voluntarily provided original information to the
4 Commission that led to the successful enforcement
5 of the covered judicial or administrative action, or
6 related action, in an aggregate amount equal to—

7 “(A) not less than 10 percent, in total, of
8 what has been collected of the monetary sanc-
9 tions imposed in the action or related actions;
10 and

11 “(B) not more than 30 percent, in total, of
12 what has been collected of the monetary sanc-
13 tions imposed in the action or related actions.

14 “(2) PAYMENT OF AWARDS.—Any amount paid
15 under paragraph (1) shall be paid from the Fund.

16 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
17 NIAL OF AWARD.—

18 “(1) DETERMINATION OF AMOUNT OF
19 AWARD.—

20 “(A) DISCRETION.—The determination of
21 the amount of an award made under subsection
22 (b) shall be in the discretion of the Commission.

23 “(B) CRITERIA.—In determining the
24 amount of an award made under subsection (b),
25 the Commission—

1 “(i) shall take into consideration—

2 “(I) the significance of the infor-
3 mation provided by the whistleblower
4 to the success of the covered judicial
5 or administrative action;

6 “(II) the degree of assistance
7 provided by the whistleblower and any
8 legal representative of the whistle-
9 blower in a covered judicial or admin-
10 istrative action;

11 “(III) the programmatic interest
12 of the Commission in deterring viola-
13 tions of the securities laws by making
14 awards to whistleblowers who provide
15 information that lead to the successful
16 enforcement of such laws; and

17 “(IV) such additional relevant
18 factors as the Commission may estab-
19 lish by rule or regulation; and

20 “(ii) shall not take into consideration
21 the balance of the Fund.

22 “(2) DENIAL OF AWARD.—No award under
23 subsection (b) shall be made—

24 “(A) to any whistleblower who is, or was at
25 the time the whistleblower acquired the original

1 information submitted to the Commission, a
2 member, officer, or employee of—

3 “(i) an appropriate regulatory agency;

4 “(ii) the Department of Justice;

5 “(iii) a self-regulatory organization;

6 “(iv) the Public Company Accounting
7 Oversight Board; or

8 “(v) a law enforcement organization;

9 “(B) to any whistleblower who is convicted
10 of a criminal violation related to the judicial or
11 administrative action for which the whistle-
12 blower otherwise could receive an award under
13 this section;

14 “(C) to any whistleblower who gains the
15 information through the performance of an
16 audit of financial statements required under the
17 securities laws and for whom such submission
18 would be contrary to the requirements of sec-
19 tion 101A of the Securities Exchange Act of
20 1934 (15 U.S.C. 78j-1); or

21 “(D) to any whistleblower who fails to sub-
22 mit information to the Commission in such
23 form as the Commission may, by rule, require.

24 “(d) REPRESENTATION.—

1 “(1) PERMITTED REPRESENTATION.—Any
2 whistleblower who makes a claim for an award under
3 subsection (b) may be represented by counsel.

4 “(2) REQUIRED REPRESENTATION.—

5 “(A) IN GENERAL.—Any whistleblower
6 who anonymously makes a claim for an award
7 under subsection (b) shall be represented by
8 counsel if the whistleblower anonymously sub-
9 mits the information upon which the claim is
10 based.

11 “(B) DISCLOSURE OF IDENTITY.—Prior to
12 the payment of an award, a whistleblower shall
13 disclose the identity of the whistleblower and
14 provide such other information as the Commis-
15 sion may require, directly or through counsel
16 for the whistleblower.

17 “(e) NO CONTRACT NECESSARY.—No contract with
18 the Commission is necessary for any whistleblower to re-
19 ceive an award under subsection (b), unless otherwise re-
20 quired by the Commission by rule or regulation.

21 “(f) APPEALS.—Any determination made under this
22 section, including whether, to whom, or in what amount
23 to make awards, shall be in the discretion of the Commis-
24 sion. Any such determination may be appealed to the ap-
25 propriate court of appeals of the United States not more

1 than 30 days after the determination is issued by the
2 Commission. The court shall review the determination
3 made by the Commission in accordance with section 706
4 of title 5, United States Code.

5 “(g) INVESTOR PROTECTION FUND.—

6 “(1) FUND ESTABLISHED.—There is estab-
7 lished in the Treasury of the United States a fund
8 to be known as the ‘Securities and Exchange Com-
9 mission Investor Protection Fund’.

10 “(2) USE OF FUND.—The Fund shall be avail-
11 able to the Commission, without further appropria-
12 tion or fiscal year limitation, for—

13 “(A) paying awards to whistleblowers as
14 provided in subsection (b); and

15 “(B) funding the activities of the Inspector
16 General of the Commission under section 4(i).

17 “(3) DEPOSITS AND CREDITS.—

18 “(A) IN GENERAL.—There shall be depos-
19 ited into or credited to the Fund an amount
20 equal to—

21 “(i) any monetary sanction collected
22 by the Commission in any judicial or ad-
23 ministrative action brought by the Com-
24 mission under the securities laws that is
25 not added to a disgorgement fund or other

1 fund under section 308 of the Sarbanes-
2 Oxley Act of 2002 (15 U.S.C. 7246) or
3 otherwise distributed to victims of a viola-
4 tion of the securities laws, or the rules and
5 regulations thereunder, underlying such ac-
6 tion, unless the balance of the Fund at the
7 time the monetary sanction is collected ex-
8 ceeds \$300,000,000;

9 “(ii) any monetary sanction added to
10 a disgorgement fund or other fund under
11 section 308 of the Sarbanes-Oxley Act of
12 2002 (15 U.S.C. 7246) that is not distrib-
13 uted to the victims for whom the Fund was
14 established, unless the balance of the
15 disgorgement fund at the time the deter-
16 mination is made not to distribute the
17 monetary sanction to such victims exceeds
18 \$200,000,000; and

19 “(iii) all income from investments
20 made under paragraph (4).

21 “(B) ADDITIONAL AMOUNTS.—If the
22 amounts deposited into or credited to the Fund
23 under subparagraph (A) are not sufficient to
24 satisfy an award made under subsection (b),
25 there shall be deposited into or credited to the

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1 Fund an amount equal to the unsatisfied por-
2 tion of the award from any monetary sanction
3 collected by the Commission in the covered judi-
4 cial or administrative action on which the
5 award is based.

6 “(4) INVESTMENTS.—

7 “(A) AMOUNTS IN FUND MAY BE IN-
8 VESTED.—The Commission may request the
9 Secretary of the Treasury to invest the portion
10 of the Fund that is not, in the discretion of the
11 Commission, required to meet the current needs
12 of the Fund.

13 “(B) ELIGIBLE INVESTMENTS.—Invest-
14 ments shall be made by the Secretary of the
15 Treasury in obligations of the United States or
16 obligations that are guaranteed as to principal
17 and interest by the United States, with matu-
18 rities suitable to the needs of the Fund as de-
19 termined by the Commission on the record.

20 “(C) INTEREST AND PROCEEDS CRED-
21 ITED.—The interest on, and the proceeds from
22 the sale or redemption of, any obligations held
23 in the Fund shall be credited to the Fund.

24 “(5) REPORTS TO CONGRESS.—Not later than
25 October 30 of each fiscal year beginning after the

1 date of enactment of this subsection, the Commis-
2 sion shall submit to the Committee on Banking,
3 Housing, and Urban Affairs of the Senate, and the
4 Committee on Financial Services of the House of
5 Representatives a report on—

6 “(A) the whistleblower award program, es-
7 tablished under this section, including—

8 “(i) a description of the number of
9 awards granted; and

10 “(ii) the types of cases in which
11 awards were granted during the preceding
12 fiscal year;

13 “(B) the balance of the Fund at the begin-
14 ning of the preceding fiscal year;

15 “(C) the amounts deposited into or cred-
16 ited to the Fund during the preceding fiscal
17 year;

18 “(D) the amount of earnings on invest-
19 ments made under paragraph (4) during the
20 preceding fiscal year;

21 “(E) the amount paid from the Fund dur-
22 ing the preceding fiscal year to whistleblowers
23 pursuant to subsection (b);

24 “(F) the balance of the Fund at the end
25 of the preceding fiscal year; and

1 “(G) a complete set of audited financial
2 statements, including—

3 “(i) a balance sheet;

4 “(ii) income statement; and

5 “(iii) cash flow analysis.

6 “(h) PROTECTION OF WHISTLEBLOWERS.—

7 “(1) PROHIBITION AGAINST RETALIATION.—

8 “(A) IN GENERAL.—No employer may dis-
9 charge, demote, suspend, threaten, harass, di-
10 rectly or indirectly, or in any other manner dis-
11 criminate against, a whistleblower in the terms
12 and conditions of employment because of any
13 lawful act done by the whistleblower—

14 “(i) in providing information to the
15 Commission in accordance with subsection
16 (a);

17 “(ii) in initiating, testifying in, or as-
18 sisting in any investigation or judicial or
19 administrative action of the Commission
20 based upon or related to such information;
21 or

22 “(iii) in making disclosures that are
23 required or protected under the Sarbanes-
24 Oxley Act of 2002 (15 U.S.C. 7201 et
25 seq.), the Securities Exchange Act of 1934

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1 (15 U.S.C. 78a et seq.), including section
2 10A(m) of such Act (15 U.S.C. 78f(m)),
3 section 1513(e) of title 18, United States
4 Code, and any other law, rule, or regula-
5 tion subject to the jurisdiction of the Com-
6 mission.

7 “(B) ENFORCEMENT.—

8 “(i) CAUSE OF ACTION.—An indi-
9 vidual who alleges discharge or other dis-
10 crimination in violation of subparagraph
11 (A) may bring an action under this sub-
12 section in the appropriate district court of
13 the United States for the relief provided in
14 subparagraph (C).

15 “(ii) SUBPOENAS.—A subpoena re-
16 quiring the attendance of a witness at a
17 trial or hearing conducted under this sec-
18 tion may be served at any place in the
19 United States.

20 “(iii) STATUTE OF LIMITATIONS.—

21 “(I) IN GENERAL.—An action
22 under this subsection may not be
23 brought—

24 “(aa) more than 6 years
25 after the date on which the viola-

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1 tion of subparagraph (A) oc-
2 curred; or

3 “(bb) more than 3 years
4 after the date when facts mate-
5 rial to the right of action are
6 known or reasonably should have
7 been known by the employee al-
8 leging a violation of subpara-
9 graph (A).

10 “(II) REQUIRED ACTION WITHIN
11 10 YEARS.—Notwithstanding sub-
12 clause (I), an action under this sub-
13 section may not in any circumstance
14 be brought more than 10 years after
15 the date on which the violation occurs.

16 “(C) RELIEF.—Relief for an individual
17 prevailing in an action brought under subpara-
18 graph (B) shall include—

19 “(i) reinstatement with the same se-
20 niority status that the individual would
21 have had, but for the discrimination;

22 “(ii) 2 times the amount of back pay
23 otherwise owed to the individual, with in-
24 terest; and

1 “(iii) compensation for litigation
2 costs, expert witness fees, and reasonable
3 attorneys’ fees.

4 “(2) CONFIDENTIALITY.—

5 “(A) IN GENERAL.—Unless and until re-
6 quired to be disclosed to a defendant or re-
7 spondent in connection with a proceeding insti-
8 tuted by the Commission or any entity de-
9 scribed in subparagraph (D), all information
10 provided to the Commission by a whistle-
11 blower—

12 “(i) in any proceeding in any Federal
13 or State court or administrative agency—

14 “(I) shall be confidential and
15 privileged as an evidentiary matter;
16 and

17 “(II) shall not be subject to civil
18 discovery or other legal process; and

19 “(ii) shall not be subject to disclosure
20 under section 552 of title 5, United States
21 Code (commonly referred to as the Free-
22 dom of Information Act) or under any pro-
23 ceeding under that section.

24 “(B) EXEMPTED STATUTE.—For purposes
25 of section 552 of title 5, United States Code,

1 this paragraph shall be considered a statute de-
2 scribed in subsection (b)(3)(B) of such section
3 552.

4 “(C) RULE OF CONSTRUCTION.—Nothing
5 in this section is intended to limit, or shall be
6 construed to limit, the ability of the Attorney
7 General to present such evidence to a grand
8 jury or to share such evidence with potential
9 witnesses or defendants in the course of an on-
10 going criminal investigation.

11 “(D) AVAILABILITY TO GOVERNMENT
12 AGENCIES.—

13 “(i) IN GENERAL.—Without the loss
14 of its status as confidential and privileged
15 in the hands of the Commission, all infor-
16 mation referred to in subparagraph (A)
17 may, in the discretion of the Commission,
18 when determined by the Commission to be
19 necessary to accomplish the purposes of
20 this Act and to protect investors, be made
21 available to—

22 “(I) the Attorney General of the
23 United States;

24 “(II) an appropriate regulatory
25 authority;

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1 “(III) a self-regulatory organiza-
2 tion;

3 “(IV) a State attorney general in
4 connection with any criminal inves-
5 tigation;

6 “(V) any appropriate State regu-
7 latory authority;

8 “(VI) the Public Company Ac-
9 counting Oversight Board;

10 “(VII) a foreign securities au-
11 thority; and

12 “(VIII) a foreign law enforce-
13 ment authority.

14 “(ii) CONFIDENTIALITY.—

15 “(I) IN GENERAL.—Each of the
16 entities described in subclauses (I)
17 through (VI) of clause (i) shall main-
18 tain such information as confidential
19 and privileged, in accordance with the
20 requirements established under sub-
21 paragraph (A).

22 “(II) FOREIGN AUTHORITIES.—
23 Each of the entities described in sub-
24 clauses (VII) and (VIII) of clause (i)
25 shall maintain such information in ac-

1 cordance with such assurances of con-
2 fidentiality as the Commission deter-
3 mines appropriate.

4 “(3) RIGHTS RETAINED.—Nothing in this sec-
5 tion shall be deemed to diminish the rights, privi-
6 leges, or remedies of any whistleblower under any
7 Federal or State law, or under any collective bar-
8 gaining agreement.

9 “(i) PROVISION OF FALSE INFORMATION.—A whis-
10 tleblower shall not be entitled to an award under this sec-
11 tion if the whistleblower—

12 “(1) knowingly and willfully makes any false,
13 fictitious, or fraudulent statement or representation;
14 or

15 “(2) uses any false writing or document know-
16 ing the writing or document contains any false, ficti-
17 tious, or fraudulent statement or entry.

18 “(j) RULEMAKING AUTHORITY.—The Commission
19 shall have the authority to issue such rules and regulations
20 as may be necessary or appropriate to implement the pro-
21 visions of this section consistent with the purposes of this
22 section.”.

23 (b) PROTECTION FOR EMPLOYEES OF NATIONALLY
24 RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

1 Section 1514A(a) of title 18, United States Code, is
2 amended—

3 (1) by inserting “or nationally recognized sta-
4 tistical rating organization (as defined in section
5 3(a) of the Securities Exchange Act of 1934 (15
6 U.S.C. 78c),” after “78o(d),”; and

7 (2) by inserting “or nationally recognized sta-
8 tistical rating organization” after “such company”.

9 (c) SECTION 1514A OF TITLE 18, UNITED STATES
10 CODE.—

11 (1) STATUTE OF LIMITATIONS; JURY TRIAL.—
12 Section 1514A(b)(2) of title 18, United States Code,
13 is amended—

14 (A) in subparagraph (D)—

15 (i) by striking “90” and inserting
16 “180”; and

17 (ii) by striking the period at the end
18 and inserting “, or after the date on which
19 the employee became aware of the viola-
20 tion.”; and

21 (B) by adding at the end the following:

22 “(E) JURY TRIAL.—A party to an action
23 brought under paragraph (1)(B) shall be enti-
24 tled to trial by jury.”.

1 (2) PRIVATE SECURITIES LITIGATION WIT-
2 NESSES; NONENFORCEABILITY; INFORMATION.—Sec-
3 tion 1514A of title 18, United States Code, is
4 amended by adding at the end the following:

5 “(e) NONENFORCEABILITY OF CERTAIN PROVISIONS
6 WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBI-
7 TRATION OF DISPUTES.—

8 “(1) WAIVER OF RIGHTS AND REMEDIES.—The
9 rights and remedies provided for in this section may
10 not be waived by any agreement, policy form, or con-
11 dition of employment, including by a predispute ar-
12 bitration agreement.

13 “(2) PREDISPUTE ARBITRATION AGREE-
14 MENTS.—No predispute arbitration agreement shall
15 be valid or enforceable, if the agreement requires ar-
16 bitration of a dispute arising under this section.”.

17 (d) STUDY OF WHISTLEBLOWER PROTECTION PRO-
18 GRAM.—

19 (1) STUDY.—The Inspector General of the
20 Commission shall conduct a study of the whistle-
21 blower protections established under the amend-
22 ments made by this section, including—

23 (A) whether the final rules and regulation
24 issued under the amendments made by this sec-
25 tion have made the whistleblower protection

1 program (referred to in this subsection as the
2 “program”) clearly defined and user-friendly;

3 (B) whether the program is promoted on
4 the website of the Commission and has been
5 widely publicized;

6 (C) whether the Commission is prompt
7 in—

8 (i) its responses to—

9 (I) information provided by whis-
10 tleblowers; and

11 (II) applications for awards filed
12 by whistleblowers;

13 (ii) updating whistleblowers about the
14 status of their applications; and

15 (iii) other communications with the
16 interested parties;

17 (D) whether the minimum and maximum
18 reward levels are adequate to entice whistle-
19 blowers to come forward with information and
20 whether the reward levels are so high as to en-
21 courage illegitimate whistleblower claims;

22 (E) whether the appeals process has been
23 unduly burdensome for the Commission;

24 (F) whether the funding mechanism for
25 the Investor Protection Fund is adequate;

1 (G) whether, in the interest of protecting
2 investors and identifying and preventing fraud,
3 it would be useful for Congress to consider em-
4 powering whistleblowers or other individuals,
5 who have already attempted to pursue the case
6 through the Commission, to have a private right
7 of action to bring suit based on the facts of the
8 same case, on behalf of the Government and
9 themselves, against persons who have com-
10 mittee securities fraud; and

11 (H) such other matters as the Inspector
12 General deems appropriate.

13 (2) REPORT.—Not later than 30 months after
14 the date of enactment of this Act, the Inspector
15 General shall—

16 (A) submit a report on the findings of the
17 study required under paragraph (1) to the
18 Committee on Banking, Housing, and Urban
19 Affairs of the Senate and the Committee on Fi-
20 nancial Services of the House; and

21 (B) make the report described in subpara-
22 graph (A) available to the public through publi-
23 cation of the report on the website of the Com-
24 mission.

1 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-**
2 **BLOWER PROTECTION.**

3 (a) IN GENERAL.—

4 (1) SECURITIES ACT OF 1933.—Section
5 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C.
6 77t(d)(3)(A)) is amended by inserting “and section
7 21F of the Securities Exchange Act of 1934” after
8 “the Sarbanes-Oxley Act of 2002”.

9 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-
10 tion 42(e)(3)(A) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by
12 inserting “and section 21F of the Securities Ex-
13 change Act of 1934” after “the Sarbanes-Oxley Act
14 of 2002”.

15 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-
16 tion 209(e)(3)(A) of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by in-
18 serting “and section 21F of the Securities Exchange
19 Act of 1934” after “the Sarbanes-Oxley Act of
20 2002”.

21 (b) SECURITIES EXCHANGE ACT.—

22 (1) SECTION 21.—Section 21(d)(3)(C)(i) of the
23 Securities Exchange Act of 1934 (15 U.S.C.
24 78u(d)(3)(C)(i)) is amended by inserting “and sec-
25 tion 21F of this title” after “the Sarbanes-Oxley Act
26 of 2002”.

1 (2) SECTION 21A.—Section 21A of the Securi-
2 ties Exchange Act of 1934 (15 U.S.C. 78u–1) is
3 amended—

4 (A) in subsection (d)(1) by—

5 (i) striking “(subject to subsection
6 (e))”; and

7 (ii) inserting “and section 21F of this
8 title” after “the Sarbanes-Oxley Act of
9 2002”;

10 (B) by striking subsection (e); and

11 (C) by redesignating subsections (f) and
12 (g) as subsections (e) and (f), respectively.

13 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**
14 **FOR WHISTLEBLOWER PROTECTION.**

15 (a) IMPLEMENTING RULES.—The Commission shall
16 issue final regulations implementing the provisions of sec-
17 tion 21F of the Securities Exchange Act of 1934, as added
18 by this subtitle, not later than 270 days after the date
19 of enactment of this Act.

20 (b) ORIGINAL INFORMATION.—Information provided
21 to the Commission by a whistleblower in accordance with
22 the regulations referenced in subsection (a) shall not lose
23 the status of original information (as defined in section
24 21F(i)(1) of the Securities Exchange Act of 1934, as
25 added by this subtitle) solely because the whistleblower

1 provided the information prior to the effective date of the
2 regulations, provided that the information is—

3 (1) provided by the whistleblower after the date
4 of enactment of this subtitle, or monetary sanctions
5 are collected after the date of enactment of this sub-
6 title; or

7 (2) related to a violation for which an award
8 under section 21F of the Securities Exchange Act of
9 1934, as added by this subtitle, could have been paid
10 at the time the information was provided by the
11 whistleblower.

12 (c) AWARDS.—A whistleblower may receive an award
13 pursuant to section 21F of the Securities Exchange Act
14 of 1934, as added by this subtitle, regardless of whether
15 any violation of a provision of the securities laws, or a
16 rule or regulation thereunder, underlying the judicial or
17 administrative action upon which the award is based, oc-
18 curred prior to the date of enactment of this subtitle.

19 **SEC. 925. COLLATERAL BARS.**

20 (a) SECURITIES EXCHANGE ACT OF 1934.—

21 (1) SECTION 15.—Section 15(b)(6)(A) of the
22 Securities Exchange Act of 1934 (15 U.S.C.
23 78o(b)(6)(A)) is amended by striking “12 months,
24 or bar such person from being associated with a
25 broker or dealer,” and inserting “12 months, or bar

1 any such person from being associated with a
2 broker, dealer, investment adviser, municipal securi-
3 ties dealer, municipal advisor, transfer agent, or na-
4 tionally recognized statistical rating organization,”.

5 (2) SECTION 15B.—Section 15B(c)(4) of the Se-
6 curities Exchange Act of 1934 (15 U.S.C. 78o-
7 4(c)(4)) is amended by striking “twelve months or
8 bar any such person from being associated with a
9 municipal securities dealer,” and inserting “12
10 months or bar any such person from being associ-
11 ated with a broker, dealer, investment adviser, mu-
12 nicipal securities dealer, municipal advisor, transfer
13 agent, or nationally recognized statistical rating or-
14 ganization,”.

15 (3) SECTION 17A.—Section 17A(c)(4)(C) of the
16 Securities Exchange Act of 1934 (15 U.S.C. 78q-
17 1(c)(4)(C)) is amended by striking “twelve months
18 or bar any such person from being associated with
19 the transfer agent,” and inserting “12 months or
20 bar any such person from being associated with any
21 transfer agent, broker, dealer, investment adviser,
22 municipal securities dealer, municipal advisor, or na-
23 tionally recognized statistical rating organization,”.

24 (b) INVESTMENT ADVISERS ACT OF 1940.—Section
25 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.

1 80b–3(f)) is amended by striking “twelve months or bar
2 any such person from being associated with an investment
3 adviser,” and inserting “12 months or bar any such per-
4 son from being associated with an investment adviser,
5 broker, dealer, municipal securities dealer, municipal advi-
6 sor, transfer agent, or nationally recognized statistical rat-
7 ing organization,”.

8 **SEC. 926. DISQUALIFYING FELONS AND OTHER “BAD AC-**
9 **TORS” FROM REGULATION D OFFERINGS.**

10 Not later than 1 year after the date of enactment
11 of this Act, the Commission shall issue rules for the dis-
12 qualification of offerings and sales of securities made
13 under section 230.506 of title 17, Code of Federal Regula-
14 tions, that—

15 (1) are substantially similar to the provisions of
16 section 230.262 of title 17, Code of Federal Regula-
17 tions, or any successor thereto; and

18 (2) disqualify any offering or sale of securities
19 by a person that—

20 (A) is subject to a final order of a State
21 securities commission (or an agency or officer
22 of a State performing like functions), a State
23 authority that supervises or examines banks,
24 savings associations, or credit unions, a State
25 insurance commission (or an agency or officer

1 of a State performing like functions), an appro-
2 priate Federal banking agency, or the National
3 Credit Union Administration, that—

4 (i) bars the person from—

5 (I) association with an entity reg-
6 ulated by such commission, authority,
7 agency, or officer;

8 (II) engaging in the business of
9 securities, insurance, or banking; or

10 (III) engaging in savings associa-
11 tion or credit union activities; or

12 (ii) constitutes a final order based on
13 a violation of any law or regulation that
14 prohibits fraudulent, manipulative, or de-
15 ceptive conduct within the 10-year period
16 ending on the date of the filing of the offer
17 or sale; or

18 (B) has been convicted of any felony or
19 misdemeanor in connection with the purchase
20 or sale of any security or involving the making
21 of any false filing with the Commission.

22 **SEC. 927. EQUAL TREATMENT OF SELF-REGULATORY ORGA-**
23 **NIZATION RULES.**

24 Section 29(a) of the Securities Exchange Act of 1934
25 (15 U.S.C. 78cc(a)) is amended by striking “an exchange

1 required thereby” and inserting “a self-regulatory organi-
2 zation,”.

3 **SEC. 928. CLARIFICATION THAT SECTION 205 OF THE IN-**
4 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
5 **APPLY TO STATE-REGISTERED ADVISERS.**

6 Section 205(a) of the Investment Advisers Act of
7 1940 (15 U.S.C. 80b–5(a)) is amended, in the matter pre-
8 ceding paragraph (1)—

9 (1) by striking “, unless exempt from registra-
10 tion pursuant to section 203(b),” and inserting
11 “registered or required to be registered with the
12 Commission”;

13 (2) by striking “make use of the mails or any
14 means or instrumentality of interstate commerce, di-
15 rectly or indirectly, to”; and

16 (3) by striking “to” after “in any way”.

17 **SEC. 929. UNLAWFUL MARGIN LENDING.**

18 Section 7(c)(1)(A) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
20 and” and inserting “; or”.

21 **SEC. 929A. PROTECTION FOR EMPLOYEES OF SUBSIDI-**
22 **ARIES AND AFFILIATES OF PUBLICLY TRAD-**
23 **ED COMPANIES.**

24 Section 1514A of title 18, United States Code, is
25 amended by inserting “including any subsidiary or affil-

1 iate whose financial information is included in the consoli-
2 dated financial statements of such company” after “the
3 Securities Exchange Act of 1934 (15 U.S.C. 78o(d))”.

4 **SEC. 929B. FAIR FUND AMENDMENTS.**

5 Section 308 of the Sarbanes-Oxley Act of 2002 (15
6 U.S.C. 7246(a)) is amended—

7 (1) by striking subsection (a) and inserting the
8 following:

9 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-
10 LIEF OF VICTIMS.—If, in any judicial or administrative
11 action brought by the Commission under the securities
12 laws, the Commission obtains a civil penalty against any
13 person for a violation of such laws, or such person agrees,
14 in settlement of any such action, to such civil penalty, the
15 amount of such civil penalty shall, on the motion or at
16 the direction of the Commission, be added to and become
17 part of a disgorgement fund or other fund established for
18 the benefit of the victims of such violation.”;

19 (2) in subsection (b)—

20 (A) by striking “for a disgorgement fund
21 described in subsection (a)” and inserting “for
22 a disgorgement fund or other fund described in
23 subsection (a)”;

24 (B) by striking “in the disgorgement fund”
25 and inserting “in such fund”; and

1 (3) by striking subsection (e).

2 **SEC. 929C. INCREASING THE BORROWING LIMIT ON TREAS-**
3 **URY LOANS.**

4 Section 4(h) of the Securities Investor Protection Act
5 of 1970 (15 U.S.C. 78ddd(h)) is amended in the first sen-
6 tence, by striking “\$1,000,000,000” and inserting
7 “\$2,500,000,000”.

8 **SEC. 929D. LOST AND STOLEN SECURITIES.**

9 Section 17(f)(1) of the Securities Exchange Act of
10 1934 (15 U.S.C. 78q(f)(1)) is amended—

11 (1) in subparagraph (A), by striking “missing,
12 lost, counterfeit, or stolen securities” and inserting
13 “securities that are missing, lost, counterfeit, stolen,
14 or cancelled”; and

15 (2) in subparagraph (B), by striking “or sto-
16 len” and inserting “stolen, cancelled, or reported in
17 such other manner as the Commission, by rule, may
18 prescribe”.

19 **SEC. 929E. NATIONWIDE SERVICE OF SUBPOENAS.**

20 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
21 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
22 inserting after the second sentence the following: “In any
23 action or proceeding instituted by the Commission under
24 this title in a United States district court for any judicial
25 district, a subpoena issued to compel the attendance of

1 a witness or the production of documents or tangible
2 things (or both) at a hearing or trial may be served at
3 any place within the United States. Rule 45(c)(3)(A)(ii)
4 of the Federal Rules of Civil Procedure shall not apply
5 to a subpoena issued under the preceding sentence.”.

6 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
7 27 of the Securities Exchange Act of 1934 (15 U.S.C.
8 78aa) is amended by inserting after the third sentence the
9 following: “In any action or proceeding instituted by the
10 Commission under this title in a United States district
11 court for any judicial district, a subpoena issued to compel
12 the attendance of a witness or the production of docu-
13 ments or tangible things (or both) at a hearing or trial
14 may be served at any place within the United States. Rule
15 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
16 shall not apply to a subpoena issued under the preceding
17 sentence.”.

18 (c) INVESTMENT COMPANY ACT OF 1940.—Section
19 44 of the Investment Company Act of 1940 (15 U.S.C.
20 80a–43) is amended by inserting after the fourth sentence
21 the following: “In any action or proceeding instituted by
22 the Commission under this title in a United States district
23 court for any judicial district, a subpoena issued to compel
24 the attendance of a witness or the production of docu-
25 ments or tangible things (or both) at a hearing or trial

1 may be served at any place within the United States. Rule
2 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
3 shall not apply to a subpoena issued under the preceding
4 sentence.”.

5 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
6 214 of the Investment Advisers Act of 1940 (15 U.S.C.
7 80b–14) is amended by inserting after the third sentence
8 the following: “In any action or proceeding instituted by
9 the Commission under this title in a United States district
10 court for any judicial district, a subpoena issued to compel
11 the attendance of a witness or the production of docu-
12 ments or tangible things (or both) at a hearing or trial
13 may be served at any place within the United States. Rule
14 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
15 shall not apply to a subpoena issued under the preceding
16 sentence.”.

17 **SEC. 929F. FORMERLY ASSOCIATED PERSONS.**

18 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-
19 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of
20 the Securities Exchange Act of 1934 (15 U.S.C. 78o–
21 4(c)(8)) is amended by striking “any member or em-
22 ployee” and inserting “any person who is, or at the time
23 of the alleged violation or abuse was, a member or em-
24 ployee”.

1 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-
2 CURITIES BROKER OR DEALER.—Section 15C(c) of the
3 Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)) is
4 amended—

5 (1) in paragraph (1)(C), by striking “any per-
6 son associated, or seeking to become associated,”
7 and inserting “any person who is, or at the time of
8 the alleged misconduct was, associated or seeking to
9 become associated”; and

10 (2) in paragraph (2)—

11 (A) in subparagraph (A), by inserting “,
12 seeking to become associated, or, at the time of
13 the alleged misconduct, associated or seeking to
14 become associated” after “any person associ-
15 ated”; and

16 (B) in subparagraph (B), by inserting “,
17 seeking to become associated, or, at the time of
18 the alleged misconduct, associated or seeking to
19 become associated” after “any person associ-
20 ated”.

21 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-
22 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-
23 TIES ASSOCIATION.—Section 21(a)(1) of the Securities
24 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended,
25 in the first sentence, by inserting “, or, as to any act or

1 practice, or omission to act, while associated with a mem-
2 ber, formerly associated” after “member or a person asso-
3 ciated”.

4 (d) PARTICIPANT OF A REGISTERED CLEARING
5 AGENCY.—Section 21(a)(1) of the Securities Exchange
6 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended, in the first
7 sentence, by inserting “or, as to any act or practice, or
8 omission to act, while a participant, was a participant,”
9 after “in which such person is a participant,”.

10 (e) OFFICER OR DIRECTOR OF A SELF-REGULATORY
11 ORGANIZATION.—Section 19(h)(4) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

13 (1) by striking “any officer or director” and in-
14 serting “any person who is, or at the time of the al-
15 leged misconduct was, an officer or director”; and

16 (2) by striking “such officer or director” and
17 inserting “such person”.

18 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-
19 PANY.—Section 36(a) of the Investment Company Act of
20 1940 (15 U.S.C. 80a–35(a)) is amended—

21 (1) by striking “a person serving or acting” and
22 inserting “a person who is, or at the time of the al-
23 leged misconduct was, serving or acting”; and

24 (2) by striking “such person so serves or acts”
25 and inserting “such person so serves or acts, or at

1 the time of the alleged misconduct, so served or
2 acted”.

3 (g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-
4 ING FIRM.—

5 (1) SARBANES-OXLEY ACT OF 2002 AMEND-
6 MENT.—Section 2(a)(9) of the Sarbanes-Oxley Act
7 of 2002 (15 U.S.C. 7201(9)) is amended by adding
8 at the end the following:

9 “(C) INVESTIGATIVE AND ENFORCEMENT
10 AUTHORITY.—For purposes of sections 3(c),
11 101(c), 105, and 107(c) and the rules of the
12 Board and Commission issued thereunder, ex-
13 cept to the extent specifically excepted by such
14 rules, the terms defined in subparagraph (A)
15 shall include any person associated, seeking to
16 become associated, or formerly associated with
17 a public accounting firm, except that—

18 “(i) the authority to conduct an inves-
19 tigation of such person under section
20 105(b) shall apply only with respect to any
21 act or practice, or omission to act, by the
22 person while such person was associated or
23 seeking to become associated with a reg-
24 istered public accounting firm; and

1 “(ii) the authority to commence a dis-
2 ciplinary proceeding under section
3 105(c)(1), or impose sanctions under sec-
4 tion 105(c)(4), against such person shall
5 apply only with respect to—

6 “(I) conduct occurring while such
7 person was associated or seeking to
8 become associated with a registered
9 public accounting firm; or

10 “(II) non-cooperation, as de-
11 scribed in section 105(b)(3), with re-
12 spect to a demand in a Board inves-
13 tigation for testimony, documents, or
14 other information relating to a period
15 when such person was associated or
16 seeking to become associated with a
17 registered public accounting firm.”.

18 (2) SECURITIES EXCHANGE ACT OF 1934
19 AMENDMENT.—Section 21(a)(1) of the Securities
20 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is
21 amended by striking “or a person associated with
22 such a firm” and inserting “, a person associated
23 with such a firm, or, as to any act, practice, or omis-
24 sion to act, while associated with such firm, a person
25 formerly associated with such a firm”.

1 (h) SUPERVISORY PERSONNEL OF AN AUDIT
2 FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of
3 2002 (15 U.S.C. 7215(c)(6)) is amended—

4 (1) in subparagraph (A), by striking “the su-
5 pervisory personnel” and inserting “any person who
6 is, or at the time of the alleged failure reasonably to
7 supervise was, a supervisory person”; and

8 (2) in subparagraph (B)—

9 (A) by striking “No associated person”
10 and inserting “No current or former super-
11 visory person”; and

12 (B) by striking “any other person” and in-
13 serting “any associated person”.

14 (i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING
15 OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-
16 Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by
17 striking “any member” and inserting “any person who is,
18 or at the time of the alleged misconduct was, a member”.

19 **SEC. 929G. STREAMLINED HIRING AUTHORITY FOR MAR-**
20 **KET SPECIALISTS.**

21 (a) APPOINTMENT AUTHORITY.—Section 3114 of
22 title 5, United States Code, is amended by striking the
23 section heading and all that follows through the end of
24 subsection (a) and inserting the following:

1 **“§ 3114. Appointment of candidates to certain posi-**
2 **tions in the competitive service by the**
3 **Securities and Exchange Commission**

4 “(a) **APPLICABILITY.**—This section applies with re-
5 spect to any position of accountant, economist, and securi-
6 ties compliance examiner at the Commission that is in the
7 competitive service, and any position at the Commission
8 in the competitive service that requires specialized knowl-
9 edge of financial and capital market formation or regula-
10 tion, financial market structures or surveillance, or infor-
11 mation technology.”.

12 (b) **CLERICAL AMENDMENT.**—The table of sections
13 for chapter 31 of title 5, United States Code, is amended
14 by striking the item relating to section 3114 and inserting
15 the following:

“3114. Appointment of candidates to positions in the competitive service by the
Securities and Exchange Commission.”.

16 (c) **PAY AUTHORITY.**—The Commission may set the
17 rate of pay for experts and consultants appointed under
18 the authority of section 3109 of title 5, United States
19 Code, in the same manner in which it sets the rate of pay
20 for employees of the Commission.

21 **SEC. 929H. SIPC REFORMS.**

22 (a) **INCREASING THE CASH LIMIT OF PROTEC-**
23 **TION.**—Section 9 of the Securities Investor Protection Act
24 of 1970 (15 U.S.C. 78fff–3) is amended—

1 (1) in subsection (a)(1), by striking “\$100,000
2 for each such customer” and inserting “the standard
3 maximum cash advance amount for each such cus-
4 tomer, as determined in accordance with subsection
5 (d)”; and

6 (2) by adding the following new subsections:

7 “(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT
8 DEFINED.—For purposes of this section, the term ‘stand-
9 ard maximum cash advance amount’ means \$250,000, as
10 such amount may be adjusted after December 31, 2010,
11 as provided under subsection (e).

12 “(e) INFLATION ADJUSTMENT.—

13 “(1) IN GENERAL.—Not later than January 1,
14 2011, and every 5 years thereafter, and subject to
15 the approval of the Commission as provided under
16 section 3(e)(2), the Board of Directors of SIPC shall
17 determine whether an inflation adjustment to the
18 standard maximum cash advance amount is appro-
19 priate. If the Board of Directors of SIPC determines
20 such an adjustment is appropriate, then the stand-
21 ard maximum cash advance amount shall be an
22 amount equal to—

23 “(A) \$250,000 multiplied by

24 “(B) the ratio of the annual value of the
25 Personal Consumption Expenditures Chain-

1 Type Price Index (or any successor index there-
2 to), published by the Department of Commerce,
3 for the calendar year preceding the year in
4 which such determination is made, to the pub-
5 lished annual value of such index for the cal-
6 endar year preceding the year in which this
7 subsection was enacted.

8 The index values used in calculations under this
9 paragraph shall be, as of the date of the calculation,
10 the values most recently published by the Depart-
11 ment of Commerce.

12 “(2) ROUNDING.—If the standard maximum
13 cash advance amount determined under paragraph
14 (1) for any period is not a multiple of \$10,000, the
15 amount so determined shall be rounded down to the
16 nearest \$10,000.

17 “(3) PUBLICATION AND REPORT TO THE CON-
18 GRESS.—Not later than April 5 of any calendar year
19 in which a determination is required to be made
20 under paragraph (1)—

21 “(A) the Commission shall publish in the
22 Federal Register the standard maximum cash
23 advance amount; and

1 “(B) the Board of Directors of SIPC shall
2 submit a report to the Congress stating the
3 standard maximum cash advance amount.

4 “(4) IMPLEMENTATION PERIOD.—Any adjust-
5 ment to the standard maximum cash advance
6 amount shall take effect on January 1 of the year
7 immediately succeeding the calendar year in which
8 such adjustment is made.

9 “(5) INFLATION ADJUSTMENT CONSIDER-
10 ATIONS.—In making any determination under para-
11 graph (1) to increase the standard maximum cash
12 advance amount, the Board of Directors of SIPC
13 shall consider—

14 “(A) the overall state of the fund and the
15 economic conditions affecting members of
16 SIPC;

17 “(B) the potential problems affecting mem-
18 bers of SIPC; and

19 “(C) such other factors as the Board of
20 Directors of SIPC may determine appro-
21 priate.”.

22 (b) LIQUIDATION OF A CARRYING BROKER-DEAL-
23 ER.—Section 5(a)(3) of the Securities Investor Protection
24 Act of 1970 (15 U.S.C. 78eee(a)(3)) is amended—

1 (1) by striking the undesignated matter imme-
2 diately following subparagraph (B);

3 (2) in subparagraph (A), by striking “any mem-
4 ber of SIPC” and inserting “the member”;

5 (3) in subparagraph (B), by striking the comma
6 at the end and inserting a period;

7 (4) by striking “If SIPC” and inserting the fol-
8 lowing:

9 “(A) IN GENERAL.—SIPC may, upon no-
10 tice to a member of SIPC, file an application
11 for a protective decree with any court of com-
12 petent jurisdiction specified in section 21(e) or
13 27 of the Securities Exchange Act of 1934, ex-
14 cept that no such application shall be filed with
15 respect to a member, the only customers of
16 which are persons whose claims could not be
17 satisfied by SIPC advances pursuant to section
18 9, if SIPC”; and

19 (5) by adding at the end the following:

20 “(B) CONSENT REQUIRED.—No member of
21 SIPC that has a customer may enter into an in-
22 solvency, receivership, or bankruptcy pro-
23 ceeding, under Federal or State law, without
24 the specific consent of SIPC, except as provided

1 in title II of the Restoring American Financial
2 Stability Act of 2010.”.

3 **SEC. 929I. PROTECTING CONFIDENTIALITY OF MATERIALS**
4 **SUBMITTED TO THE COMMISSION.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
6 24 of the Securities Exchange Act of 1934 (15 U.S.C.
7 78x) is amended—

8 (1) in subsection (d), by striking “subsection
9 (e)” and inserting “subsection (f)”;

10 (2) by redesignating subsection (e) as sub-
11 section (f); and

12 (3) by inserting after subsection (d) the fol-
13 lowing:

14 “(e) RECORDS OBTAINED FROM REGISTERED PER-
15 SONS.—

16 “(1) IN GENERAL.—Except as provided in sub-
17 section (f), the Commission shall not be compelled to
18 disclose records or information obtained pursuant to
19 section 17(b), or records or information based upon
20 or derived from such records or information, if such
21 records or information have been obtained by the
22 Commission for use in furtherance of the purposes
23 of this title, including surveillance, risk assessments,
24 or other regulatory and oversight activities.

1 “(2) TREATMENT OF INFORMATION.—For pur-
2 poses of section 552 of title 5, United States Code,
3 this subsection shall be considered a statute de-
4 scribed in subsection (b)(3)(B) of such section 552.
5 Collection of information pursuant to section 17
6 shall be an administrative action involving an agency
7 against specific individuals or agencies pursuant to
8 section 3518(c)(1) of title 44, United States Code.”.

9 (b) INVESTMENT COMPANY ACT OF 1940.—Section
10 31 of the Investment Company Act of 1940 (15 U.S.C.
11 80a-30) is amended—

12 (1) by striking subsection (c) and inserting the
13 following:

14 “(c) LIMITATIONS ON DISCLOSURE BY COMMIS-
15 SION.—Notwithstanding any other provision of law, the
16 Commission shall not be compelled to disclose any records
17 or information provided to the Commission under this sec-
18 tion, or records or information based upon or derived from
19 such records or information, if such records or information
20 have been obtained by the Commission for use in further-
21 ance of the purposes of this title, including surveillance,
22 risk assessments, or other regulatory and oversight activi-
23 ties. Nothing in this subsection authorizes the Commission
24 to withhold information from the Congress or prevent the
25 Commission from complying with a request for informa-

1 tion from any other Federal department or agency re-
2 questing the information for purposes within the scope of
3 jurisdiction of that department or agency, or complying
4 with an order of a court of the United States in an action
5 brought by the United States or the Commission. For pur-
6 poses of section 552 of title 5, United States Code, this
7 section shall be considered a statute described in sub-
8 section (b)(3)(B) of such section 552. Collection of infor-
9 mation pursuant to section 31 shall be an administrative
10 action involving an agency against specific individuals or
11 agencies pursuant to section 3518(e)(1) of title 44, United
12 States Code.”;

13 (2) by striking subsection (d); and

14 (3) by redesignating subsections (e) and (f) as
15 subsections (d) and (e), respectively.

16 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
17 210 of the Investment Advisers Act of 1940 (15 U.S.C.
18 80b-10) is amended by adding at the end the following:

19 “(d) LIMITATIONS ON DISCLOSURE BY THE COMMIS-
20 SION.—Notwithstanding any other provision of law, the
21 Commission shall not be compelled to disclose any records
22 or information provided to the Commission under this sec-
23 tion, or records or information based upon or derived from
24 such records or information, if such records or information
25 have been obtained by the Commission for use in further-

1 ance of the purposes of this title, including surveillance,
2 risk assessments, or other regulatory and oversight activi-
3 ties. Nothing in this subsection authorizes the Commission
4 to withhold information from the Congress or prevent the
5 Commission from complying with a request for informa-
6 tion from any other Federal department or agency re-
7 questing the information for purposes within the scope of
8 jurisdiction of that department or agency, or complying
9 with an order of a court of the United States in an action
10 brought by the United States or the Commission. For pur-
11 poses of section 552 of title 5, United States Code, this
12 section shall be considered a statute described in sub-
13 section (b)(3)(B) of such section 552. Collection of infor-
14 mation pursuant to section 31 shall be an administrative
15 action involving an agency against specific individuals or
16 agencies pursuant to section 3518(c)(1) of title 44, United
17 States Code.”.

18 **SEC. 929J. EXPANSION OF AUDIT INFORMATION TO BE PRO-**
19 **DUCED AND EXCHANGED.**

20 Section 106 of the Sarbanes-Oxley Act of 2002 (15
21 U.S.C. 7216) is amended—

22 (1) by striking subsection (b) and inserting the
23 following:

24 “(b) PRODUCTION OF DOCUMENTS.—

1 “(1) PRODUCTION BY FOREIGN FIRMS.—If a
2 foreign public accounting firm issues an audit re-
3 port, performs audit work, conducts interim reviews,
4 or performs material services upon which a reg-
5 istered public accounting firm relies in the conduct
6 of an audit or interim review, the foreign public ac-
7 counting firm shall—

8 “(A) produce its audit work papers and all
9 other documents related to any such audit work
10 or interim review to the Commission or the
11 Board; and

12 “(B) be subject to the jurisdiction of the
13 courts of the United States for purposes of en-
14 forcement of any request for such documents.

15 “(2) OTHER PRODUCTION.—Any registered
16 public accounting firm that relies, in whole or in
17 part, on the work of a foreign public accounting firm
18 in issuing an audit report, performing audit work, or
19 conducting an interim review, shall—

20 “(A) produce the audit work papers of the
21 foreign public accounting firm and all other
22 documents related to any such work in response
23 to a request for production by the Commission
24 or the Board; and

1 “(B) secure the agreement of any foreign
2 public accounting firm to such production, as a
3 condition of the reliance by the registered public
4 accounting firm on the work of that foreign
5 public accounting firm.”;

6 (2) by redesignating subsection (d) as sub-
7 section (g); and

8 (3) by inserting after subsection (c) the fol-
9 lowing:

10 “(d) SERVICE OF REQUESTS OR PROCESS.—

11 “(1) IN GENERAL.—Any foreign public account-
12 ing firm that performs work for a domestic reg-
13 istered public accounting firm shall furnish to the
14 domestic registered public accounting firm a written
15 irrevocable consent and power of attorney that des-
16 ignates the domestic registered public accounting
17 firm as an agent upon whom may be served any
18 process, pleadings, or other papers in any action
19 brought to enforce this section.

20 “(2) SPECIFIC AUDIT WORK.—Any foreign pub-
21 lic accounting firm that issues an audit report, per-
22 forms audit work, performs interim reviews, or per-
23 forms material services upon which a registered pub-
24 lic accounting firm relies in the conduct of an audit
25 or interim review, shall designate to the Commission

1 or the Board an agent in the United States upon
2 whom may be served any process, pleading, or other
3 papers in any action brought to enforce this section
4 or any request by the Commission or the Board
5 under this section.

6 “(e) SANCTIONS.—A willful refusal to comply, in
7 whole in or in part, with any request by the Commission
8 or the Board under this section, shall be deemed a viola-
9 tion of this Act.

10 “(f) OTHER MEANS OF SATISFYING PRODUCTION
11 OBLIGATIONS.—Notwithstanding any other provisions of
12 this section, the staff of the Commission or the Board may
13 allow a foreign public accounting firm that is subject to
14 this section to meet production obligations under this sec-
15 tion through alternate means, such as through foreign
16 counterparts of the Commission or the Board.”.

17 **SEC. 929K. SHARING PRIVILEGED INFORMATION WITH**
18 **OTHER AUTHORITIES.**

19 Section 24 of the Securities Exchange Act of 1934
20 (15 U.S.C. 78x) is amended—

21 (1) in subsection (d), as amended by subsection
22 (d)(1)(A), by striking “subsection (f)” and inserting
23 “subsection (g)”;

1 (2) in subsection (e), as added by subsection
2 (d)(1)(C), by striking “subsection (f)” and inserting
3 “subsection (g)”;

4 (3) by redesignating subsection (f) as sub-
5 section (g); and

6 (4) by inserting after subsection (e) the fol-
7 lowing:

8 “(f) SHARING PRIVILEGED INFORMATION WITH
9 OTHER AUTHORITIES.—

10 “(1) PRIVILEGED INFORMATION PROVIDED BY
11 THE COMMISSION.—The Commission shall not be
12 deemed to have waived any privilege applicable to
13 any information by transferring that information to
14 or permitting that information to be used by—

15 “(A) any agency (as defined in section 6 of
16 title 18, United States Code);

17 “(B) the Public Company Accounting
18 Oversight Board;

19 “(C) any self-regulatory organization;

20 “(D) any foreign securities authority;

21 “(E) any foreign law enforcement author-
22 ity; or

23 “(F) any State securities or law enforce-
24 ment authority.

1 “(2) NONDISCLOSURE OF PRIVILEGED INFOR-
2 MATION PROVIDED TO THE COMMISSION.—The Com-
3 mission shall not be compelled to disclose privileged
4 information obtained from any foreign securities au-
5 thority, or foreign law enforcement authority, if the
6 authority has in good faith determined and rep-
7 resented to the Commission that the information is
8 privileged.

9 “(3) NONWAIVER OF PRIVILEGED INFORMATION
10 PROVIDED TO THE COMMISSION.—

11 “(A) IN GENERAL.—Federal agencies,
12 State securities and law enforcement authori-
13 ties, self-regulatory organizations, and the Pub-
14 lic Company Accounting Oversight Board shall
15 not be deemed to have waived any privilege ap-
16 plicable to any information by transferring that
17 information to or permitting that information
18 to be used by the Commission.

19 “(B) EXCEPTION.—The provisions of sub-
20 paragraph (A) shall not apply to a self-regu-
21 latory organization or the Public Company Ac-
22 counting Oversight Board with respect to infor-
23 mation used by the Commission in an action
24 against such organization.

1 “(4) DEFINITIONS.—For purposes of this sub-
2 section—

3 “(A) the term ‘privilege’ includes any
4 work-product privilege, attorney-client privilege,
5 governmental privilege, or other privilege recog-
6 nized under Federal, State, or foreign law;

7 “(B) the term ‘foreign law enforcement au-
8 thority’ means any foreign authority that is em-
9 powered under foreign law to detect, investigate
10 or prosecute potential violations of law; and

11 “(C) the term ‘State securities or law en-
12 forcement authority’ means the authority of any
13 State or territory that is empowered under
14 State or territory law to detect, investigate, or
15 prosecute potential violations of law.”.

16 **SEC. 929L. ENHANCED APPLICATION OF ANTIFRAUD PRO-**
17 **VISIONS.**

18 The Securities Exchange Act of 1934 (15 U.S.C. 78a
19 et seq.) is amended—

20 (1) in section 9—

21 (A) by striking “registered on a national
22 securities exchange” each place that term ap-
23 pears and inserting “other than a government
24 security”;

1 (B) in subsection (b), by striking “by use
2 of any facility of a national securities ex-
3 change,”; and

4 (C) in subsection (c), by inserting after
5 “unlawful for any” the following: “broker, deal-
6 er, or”;

7 (2) in section 10(a)(1), by striking “registered
8 on a national securities exchange” and inserting
9 “other than a government security”; and

10 (3) in section 15(c)(1)(A), by striking “other-
11 wise than on a national securities exchange of which
12 it is a member”.

13 **SEC. 929M. AIDING AND ABETTING AUTHORITY UNDER THE**
14 **SECURITIES ACT AND THE INVESTMENT COM-**
15 **PANY ACT.**

16 (a) UNDER THE SECURITIES ACT OF 1933.—Section
17 15 of the Securities Act of 1933 (15 U.S.C. 77o) is
18 amended—

19 (1) by striking “Every person who” and insert-
20 ing “(a) CONTROLLING PERSONS.—Every person
21 who”; and

22 (2) by adding at the end the following:

23 “(b) PROSECUTION OF PERSONS WHO AID AND
24 ABET VIOLATIONS.—For purposes of any action brought
25 by the Commission under subparagraph (b) or (d) of sec-

1 tion 20, any person that knowingly provides substantial
2 assistance to another person in violation of a provision of
3 this Act, or of any rule or regulation issued under this
4 Act, shall be deemed to be in violation of such provision
5 to the same extent as the person to whom such assistance
6 is provided.”.

7 (b) UNDER THE INVESTMENT COMPANY ACT OF
8 1940.—Section 48 of the Investment Company Act of
9 1940 (15 U.S.C. 80a–48) is amended by redesignating
10 subsection (b) as subsection (c) and inserting after sub-
11 section (a) the following:

12 “(b) For purposes of any action brought by the Com-
13 mission under subsection (d) or (e) of section 42, any per-
14 son that knowingly provides substantial assistance to an-
15 other person in violation of a provision of this Act, or of
16 any rule or regulation issued under this Act, shall be
17 deemed to be in violation of such provision to the same
18 extent as the person to whom such assistance is pro-
19 vided.”.

20 **SEC. 929N. AUTHORITY TO IMPOSE PENALTIES FOR AIDING**
21 **AND ABETTING VIOLATIONS OF THE INVEST-**
22 **MENT ADVISERS ACT.**

23 Section 209 of the Investment Advisers Act of 1940
24 (15 U.S.C. 80b–9) is amended by inserting at the end the
25 following new subsection:

1 “(f) AIDING AND ABETTING.—For purposes of any
2 action brought by the Commission under subsection (e),
3 any person that knowingly has aided, abetted, counseled,
4 commanded, induced, or procured a violation of any provi-
5 sion of this Act, or of any rule, regulation, or order here-
6 under, shall be deemed to be in violation of such provision,
7 rule, regulation, or order to the same extent as the person
8 that committed such violation.”.

9 **Subtitle C—Improvements to the**
10 **Regulation of Credit Rating**
11 **Agencies**

12 **SEC. 931. FINDINGS.**

13 Congress finds the following:

14 (1) Because of the systemic importance of cred-
15 it ratings and the reliance placed on credit ratings
16 by individual and institutional investors and finan-
17 cial regulators, the activities and performances of
18 credit rating agencies, including nationally recog-
19 nized statistical rating organizations, are matters of
20 national public interest, as credit rating agencies are
21 central to capital formation, investor confidence, and
22 the efficient performance of the United States econ-
23 omy.

24 (2) Credit rating agencies, including nationally
25 recognized statistical rating organizations, play a

1 critical “gatekeeper” role in the debt market that is
2 functionally similar to that of securities analysts,
3 who evaluate the quality of securities in the equity
4 market, and auditors, who review the financial state-
5 ments of firms. Such role justifies a similar level of
6 public oversight and accountability.

7 (3) Because credit rating agencies perform eval-
8 uative and analytical services on behalf of clients,
9 much as other financial “gatekeepers” do, the activi-
10 ties of credit rating agencies are fundamentally com-
11 mercial in character and should be subject to the
12 same standards of liability and oversight as apply to
13 auditors, securities analysts, and investment bank-
14 ers.

15 (4) In certain activities, particularly in advising
16 arrangers of structured financial products on poten-
17 tial ratings of such products, credit rating agencies
18 face conflicts of interest that need to be carefully
19 monitored and that therefore should be addressed
20 explicitly in legislation in order to give clearer au-
21 thority to the Securities and Exchange Commission.

22 (5) In the recent financial crisis, the ratings on
23 structured financial products have proven to be inac-
24 curate. This inaccuracy contributed significantly to
25 the mismanagement of risks by financial institutions

1 and investors, which in turn adversely impacted the
2 health of the economy in the United States and
3 around the world. Such inaccuracy necessitates in-
4 creased accountability on the part of credit rating
5 agencies.

6 **SEC. 932. ENHANCED REGULATION, ACCOUNTABILITY, AND**
7 **TRANSPARENCY OF NATIONALLY RECOG-**
8 **NIZED STATISTICAL RATING ORGANIZA-**
9 **TIONS.**

10 Section 15E of the Securities Exchange Act of 1934
11 (15 U.S.C. 78o-7) is amended—

12 (1) in subsection (c)—

13 (A) in paragraph (2)—

14 (i) in the second sentence, by insert-
15 ing “any other provision of this section,
16 or” after “Notwithstanding”; and

17 (ii) by inserting after the period at
18 the end the following: “Nothing in this
19 paragraph may be construed to afford a
20 defense against any action or proceeding
21 brought by the Commission to enforce the
22 antifraud provisions of the securities
23 laws.”; and

24 (B) by adding at the end the following:

1 “(3) INTERNAL CONTROLS OVER PROCESSES
2 FOR DETERMINING CREDIT RATINGS.—

3 “(A) IN GENERAL.—Each nationally recog-
4 nized statistical rating organization shall estab-
5 lish, maintain, enforce, and document an effec-
6 tive internal control structure governing the im-
7 plementation of and adherence to policies, pro-
8 cedures, and methodologies for determining
9 credit ratings, taking into consideration such
10 factors as the Commission may prescribe, by
11 rule.

12 “(B) ATTESTATION REQUIREMENT.—The
13 Commission shall prescribe rules requiring each
14 nationally recognized statistical rating organiza-
15 tion to submit to the Commission an annual in-
16 ternal controls report, which shall contain—

17 “(i) a description of the responsibility
18 of the management of the nationally recog-
19 nized statistical rating organization in es-
20 tablishing and maintaining an effective in-
21 ternal control structure under subpara-
22 graph (A);

23 “(ii) an assessment of the effective-
24 ness of the internal control structure of the

1 nationally recognized statistical rating or-
2 ganization; and

3 “(iii) the attestation of the chief execu-
4 tive officer, or equivalent individual, of
5 the nationally recognized statistical rating
6 organization.”;

7 (2) in subsection (d)—

8 (A) by inserting after “or revoke the reg-
9 istration of any nationally recognized statistical
10 rating organization” the following: “, or with
11 respect to any person who is associated with,
12 who is seeking to become associated with, or, at
13 the time of the alleged misconduct, who was as-
14 sociated or was seeking to become associated
15 with a nationally recognized statistical rating
16 organization, the Commission, by order, shall
17 censure, place limitations on the activities or
18 functions of such person, suspend for a period
19 not exceeding 1 year, or bar such person from
20 being associated with a nationally recognized
21 statistical rating organization,”;

22 (B) by inserting “bar” after “placing of
23 limitations, suspension,”;

24 (C) in paragraph (2), by redesignating
25 subparagraphs (A) and (B) as clauses (i) and

1 (ii), respectively, and adjusting the clause mar-
2 gins accordingly;

3 (D) by redesignating paragraphs (1)
4 through (5) as subparagraphs (A) through (E),
5 respectively, and adjusting the subparagraph
6 margins accordingly;

7 (E) in the matter preceding subparagraph
8 (A), as so redesignated, by striking “The Com-
9 mission” and inserting the following:

10 “(1) IN GENERAL.—The Commission”;

11 (F) in subparagraph (D), as so redesi-
12 gnated, by striking “or” at the end;

13 (G) in subparagraph (E), as so redesi-
14 gnated, by striking the period at the end and in-
15 serting a semicolon; and

16 (H) by adding at the end the following:

17 “(F) has failed reasonably to supervise,
18 with a view to preventing a violation of the se-
19 curities laws, an individual who commits such a
20 violation, if the individual is subject to the su-
21 pervision of that person.

22 “(2) SUSPENSION OR REVOCATION FOR PAR-
23 TICULAR CLASS OF SECURITIES.—

24 “(A) IN GENERAL.—The Commission may
25 temporarily suspend or permanently revoke the

1 registration of a nationally recognized statistical
2 rating organization with respect to a particular
3 class or subclass of securities, if the Commis-
4 sion finds, on the record after notice and oppor-
5 tunity for hearing, that the nationally recog-
6 nized statistical rating organization does not
7 have adequate financial and managerial re-
8 sources to consistently produce credit ratings
9 with integrity.

10 “(B) CONSIDERATIONS.—In making any
11 determination under subparagraph (A), the
12 Commission shall consider—

13 “(i) whether the nationally recognized
14 statistical rating organization has failed
15 over a sustained period of time, as deter-
16 mined by the Commission, to produce rat-
17 ings that are accurate for that class or
18 subclass of securities; and

19 “(ii) such other factors as the Com-
20 mission may determine.”;

21 (3) in subsection (h), by adding at the end the
22 following:

23 “(3) SEPARATION OF RATINGS FROM SALES
24 AND MARKETING.—

1 “(A) RULES REQUIRED.—The Commission
2 shall issue rules to prevent the sales and mar-
3 keting considerations of a nationally recognized
4 statistical rating organization from influencing
5 the production of ratings by the nationally rec-
6 ognized statistical rating organization.

7 “(B) CONTENTS OF RULES.—The rules
8 issued under subparagraph (A) shall provide
9 for—

10 “(i) exceptions for small nationally
11 recognized statistical rating organizations
12 with respect to which the Commission de-
13 termines that the separation of the produc-
14 tion of ratings and sales and marketing ac-
15 tivities is not appropriate; and

16 “(ii) suspension or revocation of the
17 registration of a nationally recognized sta-
18 tistical rating organization, if the Commis-
19 sion finds, on the record, after notice and
20 opportunity for a hearing, that—

21 “(I) the nationally recognized
22 statistical rating organization has
23 committed a violation of a rule issued
24 under this subsection; and

1 “(II) the violation of a rule
2 issued under this subsection affected a
3 rating.”;

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.—Each nationally recognized sta-
7 tistical rating organization shall file the reports
8 required under subparagraph (A) together with
9 the financial report that is required to be sub-
10 mitted to the Commission under this section.”;
11 and

12 (5) by striking subsection (p) and inserting the
13 following:

14 “(p) REGULATION OF NATIONALLY RECOGNIZED
15 STATISTICAL RATING ORGANIZATIONS.—

16 “(1) ESTABLISHMENT OF OFFICE OF CREDIT
17 RATINGS.—

18 “(A) OFFICE ESTABLISHED.—The Com-
19 mission shall establish within the Commission
20 an Office of Credit Ratings (referred to in this
21 subsection as the ‘Office’) to administer the
22 rules of the Commission—

23 “(i) with respect to the practices of
24 nationally recognized statistical rating or-
25 ganizations in determining ratings, for the

1 protection of users of credit ratings and in
2 the public interest;

3 “(ii) to promote accuracy in credit
4 ratings issued by nationally recognized sta-
5 tistical rating organizations; and

6 “(iii) to ensure that such ratings are
7 not unduly influenced by conflicts of inter-
8 est.

9 “(B) DIRECTOR OF THE OFFICE.—The
10 head of the Office shall be the Director, who
11 shall report to the Chairman.

12 “(2) STAFFING.—The Office established under
13 this subsection shall be staffed sufficiently to carry
14 out fully the requirements of this section. The staff
15 shall include persons with knowledge of and exper-
16 tise in corporate, municipal, and structured debt fi-
17 nance.

18 “(3) COMMISSION EXAMINATIONS.—

19 “(A) ANNUAL EXAMINATIONS RE-
20 QUIRED.—The Office shall conduct an examina-
21 tion of each nationally recognized statistical
22 rating organization at least annually.

23 “(B) CONDUCT OF EXAMINATIONS.—Each
24 examination under subparagraph (A) shall in-
25 clude a review of—

1 “(i) whether the nationally recognized
2 statistical rating organization conducts
3 business in accordance with the policies,
4 procedures, and rating methodologies of
5 the nationally recognized statistical rating
6 organization;

7 “(ii) the management of conflicts of
8 interest by the nationally recognized statis-
9 tical rating organization;

10 “(iii) implementation of ethics policies
11 by the nationally recognized statistical rat-
12 ing organization;

13 “(iv) the internal supervisory controls
14 of the nationally recognized statistical rat-
15 ing organization;

16 “(v) the governance of the nationally
17 recognized statistical rating organization;

18 “(vi) the activities of the individual
19 designated by the nationally recognized
20 statistical rating organization under sub-
21 section (j)(1);

22 “(vii) the processing of complaints by
23 the nationally recognized statistical rating
24 organization; and

1 “(viii) the policies of the nationally
2 recognized statistical rating organization
3 governing the post-employment activities of
4 former staff of the nationally recognized
5 statistical rating organization.

6 “(C) INSPECTION REPORTS.—The Com-
7 mission shall make available to the public, in an
8 easily understandable format, an annual report
9 summarizing—

10 “(i) the essential findings of all ex-
11 aminations conducted under subparagraph
12 (A), as deemed appropriate by the Com-
13 mission;

14 “(ii) the responses by the nationally
15 recognized statistical rating organizations
16 to any material regulatory deficiencies
17 identified by the Commission under clause
18 (i); and

19 “(iii) whether the nationally recog-
20 nized statistical rating organizations have
21 appropriately addressed the recommenda-
22 tions of the Commission contained in pre-
23 vious reports under this subparagraph.

24 “(4) RULEMAKING AUTHORITY.—The Commis-
25 sion shall—

1 “(A) establish, by rule, fines, and other
2 penalties applicable to any nationally recognized
3 statistical rating organization that violates the
4 requirements of this subsection and the rules
5 thereunder; and

6 “(B) issue such rules as may be necessary
7 to carry out this subsection.

8 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

9 “(1) RULEMAKING REQUIRED.—The Commis-
10 sion shall, by rule, require that each nationally rec-
11 ognized statistical rating organization publicly dis-
12 close information on the initial credit ratings deter-
13 mined by the nationally recognized statistical rating
14 organization for each type of obligor, security, and
15 money market instrument, and any subsequent
16 changes to such credit ratings, for the purpose of al-
17 lowing users of credit ratings to evaluate the accu-
18 racy of ratings and compare the performance of rat-
19 ings by different nationally recognized statistical rat-
20 ing organizations.

21 “(2) CONTENT.—The rules of the Commission
22 under this subsection shall require, at a minimum,
23 disclosures that—

24 “(A) are comparable among nationally rec-
25 ognized statistical rating organizations, to allow

1 users of credit ratings to compare the perform-
2 ance of credit ratings across nationally recog-
3 nized statistical rating organizations;

4 “(B) are clear and informative for inves-
5 tors having a wide range of sophistication who
6 use or might use credit ratings;

7 “(C) include performance information over
8 a range of years and for a variety of types of
9 credit ratings, including for credit ratings with-
10 drawn by the nationally recognized statistical
11 rating organization;

12 “(D) are published and made freely avail-
13 able by the nationally recognized statistical rat-
14 ing organization, on an easily accessible portion
15 of its website, and in writing, when requested;
16 and

17 “(E) are appropriate to the business model
18 of a nationally recognized statistical rating or-
19 ganization.

20 “(r) CREDIT RATINGS METHODOLOGIES.—The Com-
21 mission shall prescribe rules, for the protection of inves-
22 tors and in the public interest, with respect to the proce-
23 dures and methodologies, including qualitative and quan-
24 titative data and models, used by nationally recognized

1 statistical rating organizations that require each nation-
2 ally recognized statistical rating organization—

3 “(1) to ensure that credit ratings are deter-
4 mined using procedures and methodologies, includ-
5 ing qualitative and quantitative data and models,
6 that are—

7 “(A) approved by the board of the nation-
8 ally recognized statistical rating organization, a
9 body performing a function similar to that of a
10 board, or the senior credit officer of the nation-
11 ally recognized statistical rating organization;
12 and

13 “(B) in accordance with the policies and
14 procedures of the nationally recognized statis-
15 tical rating organization for the development
16 and modification of credit rating procedures
17 and methodologies;

18 “(2) to ensure that when material changes to
19 credit rating procedures and methodologies (includ-
20 ing changes to qualitative and quantitative data and
21 models) are made, that—

22 “(A) the changes are applied consistently
23 to all credit ratings to which the changed proce-
24 dures and methodologies apply;

1 “(B) to the extent that changes are made
2 to credit rating surveillance procedures and
3 methodologies, the changes are applied to then-
4 current credit ratings by the nationally recog-
5 nized statistical rating organization within a
6 reasonable time period determined by the Com-
7 mission, by rule; and

8 “(C) the nationally recognized statistical
9 rating organization publicly discloses the reason
10 for the change; and

11 “(3) to notify users of credit ratings—

12 “(A) of the version of a procedure or meth-
13 odology, including the qualitative methodology
14 or quantitative inputs, used with respect to a
15 particular credit rating;

16 “(B) when a material change is made to a
17 procedure or methodology, including to a quali-
18 tative model or quantitative inputs;

19 “(C) when a significant error is identified
20 in a procedure or methodology, including a
21 qualitative or quantitative model, that may re-
22 sult in credit rating actions; and

23 “(D) of the likelihood of a material change
24 described in subparagraph (B) resulting in a
25 change in current credit ratings.

1 “(s) TRANSPARENCY OF CREDIT RATING METH-
2 ODOLOGIES AND INFORMATION REVIEWED.—

3 “(1) FORM FOR DISCLOSURES.—The Commis-
4 sion shall require, by rule, each nationally recognized
5 statistical rating organization to prescribe a form to
6 accompany the publication of each credit rating that
7 discloses—

8 “(A) information relating to—

9 “(i) the assumptions underlying the
10 credit rating procedures and methodolo-
11 gies;

12 “(ii) the data that was relied on to de-
13 termine the credit rating; and

14 “(iii) if applicable, how the nationally
15 recognized statistical rating organization
16 used servicer or remittance reports, and
17 with what frequency, to conduct surveil-
18 lance of the credit rating; and

19 “(B) information that can be used by in-
20 vestors and other users of credit ratings to bet-
21 ter understand credit ratings in each class of
22 credit rating issued by the nationally recognized
23 statistical rating organization.

24 “(2) FORMAT.—The form developed under
25 paragraph (1) shall—

1 “(A) be easy to use and helpful for users
2 of credit ratings to understand the information
3 contained in the report;

4 “(B) require the nationally recognized sta-
5 tistical rating organization to provide the con-
6 tent described in paragraph (3)(B) in a manner
7 that is directly comparable across types of secu-
8 rities; and

9 “(C) be made readily available to users of
10 credit ratings, in electronic or paper form, as
11 the Commission may, by rule, determine.

12 “(3) CONTENT OF FORM.—

13 “(A) QUALITATIVE CONTENT.—Each na-
14 tionally recognized statistical rating organiza-
15 tion shall disclose on the form developed under
16 paragraph (1)—

17 “(i) the credit ratings produced by the
18 nationally recognized statistical rating or-
19 ganization;

20 “(ii) the main assumptions and prin-
21 ciples used in constructing procedures and
22 methodologies, including qualitative meth-
23 odologies and quantitative inputs and as-
24 sumptions about the correlation of defaults

1 across underlying assets used in rating
2 structured products;

3 “(iii) the potential limitations of the
4 credit ratings, and the types of risks ex-
5 cluded from the credit ratings that the na-
6 tionally recognized statistical rating orga-
7 nization does not comment on, including li-
8 quidity, market, and other risks;

9 “(iv) information on the uncertainty
10 of the credit rating, including—

11 “(I) information on the reli-
12 ability, accuracy, and quality of the
13 data relied on in determining the
14 credit rating; and

15 “(II) a statement relating to the
16 extent to which data essential to the
17 determination of the credit rating
18 were reliable or limited, including—

19 “(aa) any limits on the
20 scope of historical data; and

21 “(bb) any limits in accessi-
22 bility to certain documents or
23 other types of information that
24 would have better informed the
25 credit rating;

1 “(v) whether and to what extent third
2 party due diligence services have been used
3 by the nationally recognized statistical rat-
4 ing organization, a description of the infor-
5 mation that such third party reviewed in
6 conducting due diligence services, and a
7 description of the findings or conclusions
8 of such third party;

9 “(vi) a description of the data about
10 any obligor, issuer, security, or money
11 market instrument that were relied upon
12 for the purpose of determining the credit
13 rating;

14 “(vii) a statement containing an over-
15 all assessment of the quality of information
16 available and considered in producing a
17 rating for an obligor, security, or money
18 market instrument, in relation to the qual-
19 ity of information available to the nation-
20 ally recognized statistical rating organiza-
21 tion in rating similar issuances;

22 “(viii) information relating to conflicts
23 of interest of the nationally recognized sta-
24 tistical rating organization; and

1 “(ix) such additional information as
2 the Commission may require.

3 “(B) QUANTITATIVE CONTENT.—Each na-
4 tionally recognized statistical rating organiza-
5 tion shall disclose on the form developed under
6 this subsection—

7 “(i) an explanation or measure of the
8 potential volatility of the credit rating, in-
9 cluding—

10 “(I) any factors that might lead
11 to a change in the credit ratings; and

12 “(II) the magnitude of the
13 change that a user can expect under
14 different market conditions;

15 “(ii) information on the content of the
16 rating, including—

17 “(I) the historical performance of
18 the rating; and

19 “(II) the expected probability of
20 default and the expected loss in the
21 event of default;

22 “(iii) information on the sensitivity of
23 the rating to assumptions made by the na-
24 tionally recognized statistical rating orga-
25 nization, including—

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1 “(I) 5 assumptions made in the
2 ratings process that, without account-
3 ing for any other factor, would have
4 the greatest impact on a rating if the
5 assumptions were proven false or in-
6 accurate; and

7 “(II) an analysis, using specific
8 examples, of how each of the 5 as-
9 sumptions identified under subclause
10 (I) impacts a rating;

11 “(iv) such additional information as
12 may be required by the Commission.

13 “(4) DUE DILIGENCE SERVICES FOR ASSET-
14 BACKED SECURITIES.—

15 “(A) FINDINGS.—The issuer or under-
16 writer of any asset-backed security shall make
17 publicly available the findings and conclusions
18 of any third-party due diligence report obtained
19 by the issuer or underwriter.

20 “(B) CERTIFICATION REQUIRED.—In any
21 case in which third-party due diligence services
22 are employed by a nationally recognized statis-
23 tical rating organization, an issuer, or an un-
24 derwriter, the person providing the due dili-
25 gence services shall provide to any nationally

1 recognized statistical rating organization that
2 produces a rating to which such services relate,
3 written certification, as provided in subpara-
4 graph (C).

5 “(C) FORMAT AND CONTENT.—The Com-
6 mission shall establish the appropriate format
7 and content for the written certifications re-
8 quired under subparagraph (B), to ensure that
9 providers of due diligence services have con-
10 ducted a thorough review of data, documenta-
11 tion, and other relevant information necessary
12 for a nationally recognized statistical rating or-
13 ganization to provide an accurate rating.

14 “(D) DISCLOSURE OF CERTIFICATION.—
15 The Commission shall adopt rules requiring a
16 nationally recognized statistical rating organiza-
17 tion, at the time at which the nationally recog-
18 nized statistical rating organization produces a
19 rating, to disclose the certification described in
20 subparagraph (B) to the public in a manner
21 that allows the public to determine the ade-
22 quacy and level of due diligence services pro-
23 vided by a third party.

24 “(t) CORPORATE GOVERNANCE, ORGANIZATION, AND
25 MANAGEMENT OF CONFLICTS OF INTEREST.—

1 “(1) BOARD OF DIRECTORS.—Each nationally
2 recognized statistical rating organization shall have
3 a board of directors.

4 “(2) INDEPENDENT DIRECTORS.—

5 “(A) IN GENERAL.—At least $\frac{1}{2}$ of the
6 board of directors, but not fewer than 2 of the
7 members thereof, shall be independent of the
8 nationally recognized statistical rating agency.
9 A portion of the independent directors shall in-
10 clude users of ratings from a nationally recog-
11 nized statistical rating organization.

12 “(B) INDEPENDENCE DETERMINATION.—
13 In order to be considered independent for pur-
14 poses of this subsection, a member of the board
15 of directors of a nationally recognized statistical
16 rating organization—

17 “(i) may not, other than in his or her
18 capacity as a member of the board of di-
19 rectors or any committee thereof—

20 “(I) accept any consulting, advi-
21 sory, or other compensatory fee from
22 the nationally recognized statistical
23 rating organization; or

24 “(II) be a person associated with
25 the nationally recognized statistical

1 rating organization or with any affili-
2 ated company thereof; and

3 “(ii) shall be disqualified from any de-
4 liberation involving a specific rating in
5 which the independent board member has
6 a financial interest in the outcome of the
7 rating.

8 “(C) COMPENSATION AND TERM.—The
9 compensation of the independent members of
10 the board of directors of a nationally recognized
11 statistical rating organization shall not be
12 linked to the business performance of the na-
13 tionally recognized statistical rating organiza-
14 tion, and shall be arranged so as to ensure the
15 independence of their judgment. The term of
16 office of the independent directors shall be for
17 a pre-agreed fixed period, not to exceed 5 years,
18 and shall not be renewable.

19 “(3) DUTIES OF BOARD OF DIRECTORS.—In
20 addition to the overall responsibilities of the board of
21 directors, the board shall oversee—

22 “(A) the establishment, maintenance, and
23 enforcement of policies and procedures for de-
24 termining credit ratings;

1 “(B) the establishment, maintenance, and
2 enforcement of policies and procedures to ad-
3 dress, manage, and disclose any conflicts of in-
4 terest;

5 “(C) the effectiveness of the internal con-
6 trol system with respect to policies and proce-
7 dures for determining credit ratings; and

8 “(D) the compensation and promotion poli-
9 cies and practices of the nationally recognized
10 statistical rating organization.

11 “(4) TREATMENT OF NRSRO SUBSIDIARIES.—If
12 a nationally recognized statistical rating organiza-
13 tion is a subsidiary of a parent entity, the board of
14 the directors of the parent entity may satisfy the re-
15 quirements of this subsection by assigning to a com-
16 mittee of such board of directors the duties under
17 paragraph (3), if—

18 “(A) at least $\frac{1}{2}$ of the members of the
19 committee (including the chairperson of the
20 committee) are independent, as defined in this
21 section; and

22 “(B) at least 1 member of the committee
23 is a user of ratings from a nationally recognized
24 statistical rating organization.

1 “(5) EXCEPTION AUTHORITY.—If the Commis-
2 sion finds that compliance with the provisions of this
3 subsection present an unreasonable burden on a
4 small nationally recognized statistical rating organi-
5 zation, the Commission may permit the nationally
6 recognized statistical rating organization to delegate
7 such responsibilities to a committee that includes at
8 least one individual who is a user of ratings of a na-
9 tionally recognized statistical rating organization.”.

10 **SEC. 933. STATE OF MIND IN PRIVATE ACTIONS.**

11 (a) ACCOUNTABILITY.—Section 15E(m) of the Secu-
12 rities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) is
13 amended to read as follows:

14 “(m) ACCOUNTABILITY.—

15 “(1) IN GENERAL.—The enforcement and pen-
16 alty provisions of this title shall apply to statements
17 made by a credit rating agency in the same manner
18 and to the same extent as such provisions apply to
19 statements made by a registered public accounting
20 firm or a securities analyst under the securities laws,
21 and such statements shall not be deemed forward-
22 looking statements for the purposes of section 21E.

23 “(2) RULEMAKING.—The Commission shall
24 issue such rules as may be necessary to carry out
25 this subsection.”.

1 (b) STATE OF MIND.—Section 21D(b)(2) of the Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2))
3 is amended—

4 (1) by striking “In any” and inserting the fol-
5 lowing:

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), in any”; and

8 (2) by adding at the end the following:

9 “(B) EXCEPTION.—In the case of an ac-
10 tion for money damages brought against a cred-
11 it rating agency or a controlling person under
12 this title, it shall be sufficient, for purposes of
13 pleading any required state of mind in relation
14 to such action, that the complaint state with
15 particularity facts giving rise to a strong infer-
16 ence that the credit rating agency knowingly or
17 recklessly failed—

18 “(i) to conduct a reasonable investiga-
19 tion of the rated security with respect to
20 the factual elements relied upon by its own
21 methodology for evaluating credit risk; or

22 “(ii) to obtain reasonable verification
23 of such factual elements (which verification
24 may be based on a sampling technique that
25 does not amount to an audit) from other

1 sources that the credit rating agency con-
2 sidered to be competent and that were
3 independent of the issuer and under-
4 writer.”.

5 **SEC. 934. REFERRING TIPS TO LAW ENFORCEMENT OR**
6 **REGULATORY AUTHORITIES.**

7 Section 15E of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o-7), as amended by this subtitle, is amend-
9 ed by adding at the end the following:

10 “(u) DUTY TO REPORT TIPS ALLEGING MATERIAL
11 VIOLATIONS OF LAW.—

12 “(1) DUTY TO REPORT.—Each nationally rec-
13 ognized statistical rating organization shall refer to
14 the appropriate law enforcement or regulatory au-
15 thorities any information that the nationally recog-
16 nized statistical rating organization receives from a
17 third party and finds credible that alleges that an
18 issuer of securities rated by the nationally recog-
19 nized statistical rating organization has committed
20 or is committing a material violation of law that has
21 not been adjudicated by a Federal or State court.

22 “(2) RULE OF CONSTRUCTION.—Nothing in
23 paragraph (1) may be construed to require a nation-
24 ally recognized statistical rating organization to

1 verify the accuracy of the information described in
2 paragraph (1).”.

3 **SEC. 935. CONSIDERATION OF INFORMATION FROM**
4 **SOURCES OTHER THAN THE ISSUER IN RAT-**
5 **ING DECISIONS.**

6 Section 15E of the Securities Exchange Act of 1934
7 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
8 ed by adding at the end the following:

9 “(v) INFORMATION FROM SOURCES OTHER THAN
10 THE ISSUER.—In producing a credit rating, a nationally
11 recognized statistical rating organization shall consider in-
12 formation about an issuer that the nationally recognized
13 statistical rating organization has, or receives from a
14 source other than the issuer or underwriter, that the na-
15 tionally recognized statistical rating organization finds
16 credible and potentially significant to a rating decision.”.

17 **SEC. 936. QUALIFICATION STANDARDS FOR CREDIT RAT-**
18 **ING ANALYSTS.**

19 Not later than 1 year after the date of enactment
20 of this Act, the Commission shall issue rules that are rea-
21 sonably designed to ensure that any person employed by
22 a nationally recognized statistical rating organization to
23 perform credit ratings—

24 (1) meets standards of training, experience, and
25 competence necessary to produce accurate ratings

1 for the categories of issuers whose securities the per-
2 son rates; and

3 (2) is tested for knowledge of the credit rating
4 process.

5 **SEC. 937. TIMING OF REGULATIONS.**

6 Unless otherwise specifically provided in this subtitle,
7 the Commission shall issue final regulations, as required
8 by this subtitle and the amendments made by this subtitle,
9 not later than 1 year after the date of enactment of this
10 Act.

11 **SEC. 938. UNIVERSAL RATINGS SYMBOLS.**

12 (a) RULEMAKING.—The Commission shall require, by
13 rule, each nationally recognized statistical rating organiza-
14 tion to establish, maintain, and enforce written policies
15 and procedures that—

16 (1) assess the probability that an issuer of a se-
17 curity or money market instrument will default, fail
18 to make timely payments, or otherwise not make
19 payments to investors in accordance with the terms
20 of the security or money market instrument;

21 (2) clearly define and disclose the meaning of
22 any symbol used by the nationally recognized statis-
23 tical rating organization to denote a credit rating;
24 and

1 (3) apply any symbol described in paragraph
2 (2) in a manner that is consistent for all types of
3 securities and money market instruments for which
4 the symbol is used.

5 (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-
6 tion shall prohibit a nationally recognized statistical rating
7 organization from using distinct sets of symbols to denote
8 credit ratings for different types of securities or money
9 market instruments.

10 **SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CRED-**
11 **IT RATINGS.**

12 (a) **FEDERAL DEPOSIT INSURANCE ACT.**—The Fed-
13 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
14 amended—

15 (1) in section 7(b)(1)(E)(i), by striking “credit
16 rating entities, and other private economic” and in-
17 sert “private economic, credit,”;

18 (2) in section 28(d)—

19 (A) in the subsection heading, by striking
20 “NOT OF INVESTMENT GRADE”;

21 (B) in paragraph (1), by striking “not of
22 investment grade” and inserting “that does not
23 meet standards of credit-worthiness as estab-
24 lished by the Corporation”;

1 (C) in paragraph (2), by striking “not of
2 investment grade”;

3 (D) by striking paragraph (3);

4 (E) by redesignating paragraph (4) as
5 paragraph (3); and

6 (F) in paragraph (3), as so redesignated—

7 (i) by striking subparagraph (A);

8 (ii) by redesignating subparagraphs
9 (B) and (C) as subparagraphs (A) and
10 (B), respectively; and

11 (iii) in subparagraph (B), as so redesi-
12 gnated, by striking “not of investment
13 grade” and inserting “that does not meet
14 standards of credit-worthiness as estab-
15 lished by the Corporation”; and

16 (3) in section 28(e)—

17 (A) in the subsection heading, by striking
18 “NOT OF INVESTMENT GRADE”;

19 (B) in paragraph (1), by striking “not of
20 investment grade” and inserting “that does not
21 meet standards of credit-worthiness as estab-
22 lished by the Corporation”; and

23 (C) in paragraphs (2) and (3), by striking
24 “not of investment grade” each place that it ap-
25 pears and inserting “that does not meet stand-

1 ards of credit-worthiness established by the
2 Corporation”.

3 (b) FEDERAL HOUSING ENTERPRISES FINANCIAL
4 SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319
5 of the Federal Housing Enterprises Financial Safety and
6 Soundness Act of 1992 (12 U.S.C. 4519) is amended by
7 striking “that is a nationally recognized statistical rating
8 organization, as such term is defined in section 3(a) of
9 the Securities Exchange Act of 1934,”.

10 (c) INVESTMENT COMPANY ACT OF 1940.—Section
11 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15
12 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking “is
13 rated investment grade by not less than 1 nationally recog-
14 nized statistical rating organization” and inserting “meets
15 such standards of credit-worthiness as the Commission
16 shall adopt”.

17 (d) REVISED STATUTES.—Section 5136A of title
18 LXII of the Revised Statutes of the United States (12
19 U.S.C. 24a) is amended—

20 (1) in subsection (a)(2)(E), by striking “any
21 applicable rating” and inserting “standards of cred-
22 it-worthiness established by the Comptroller of the
23 Currency”;

1 (2) in the heading for subsection (a)(3) by
2 striking “RATING OR COMPARABLE REQUIREMENT”
3 and inserting “REQUIREMENT”;

4 (3) subsection (a)(3), by amending subpara-
5 graph (A) to read as follows:

6 “(A) IN GENERAL.—A national bank meets
7 the requirements of this paragraph if the bank
8 is one of the 100 largest insured banks and has
9 not fewer than 1 issue of outstanding debt that
10 meets standards of credit-worthiness or other
11 criteria as the Secretary of the Treasury and
12 the Board of Governors of the Federal Reserve
13 System may jointly establish.”.

14 (4) in the heading for subsection (f), by striking
15 “MAINTAIN PUBLIC RATING OR” and inserting
16 “MEET STANDARDS OF CREDIT-WORTHINESS”; and

17 (5) in subsection (f)(1), by striking “any appli-
18 cable rating” and inserting “standards of credit-wor-
19 thiness established by the Comptroller of the Cur-
20 rency”.

21 (e) SECURITIES EXCHANGE ACT OF 1934.—Section
22 3(a) Securities Exchange Act of 1934 (15 U.S.C.
23 78a(3)(a)) is amended—

24 (1) in paragraph (41), by striking “is rated in
25 one of the two highest rating categories by at least

1 one nationally recognized statistical rating organiza-
2 tion” and inserting “meets standards of credit-wor-
3 thiness as established by the Commission”; and

4 (2) in paragraph (53)(A), by striking “is rated
5 in 1 of the 4 highest rating categories by at least 1
6 nationally recognized statistical rating organization”
7 and inserting “meets standards of credit-worthiness
8 as established by the Commission”.

9 (f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of
10 the amendment in the nature of a substitute to the text
11 of H.R. 4645, as ordered reported from the Committee
12 on Banking, Finance and Urban Affairs on September 22,
13 1988, as enacted into law by section 555 of Public Law
14 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking
15 “credit rating” and inserting “credit-worthiness”.

16 (g) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect 2 years after the date of en-
18 actment of this Act.

19 (h) STUDY AND REPORT.—

20 (1) IN GENERAL.—Commission shall undertake
21 a study on the feasibility and desirability of—

22 (A) standardizing credit ratings termi-
23 nology, so that all credit rating agencies issue
24 credit ratings using identical terms;

1 (B) standardizing the market stress condi-
2 tions under which ratings are evaluated;

3 (C) requiring a quantitative correspond-
4 ence between credit ratings and a range of de-
5 fault probabilities and loss expectations under
6 standardized conditions of economic stress; and

7 (D) standardizing credit rating termi-
8 nology across asset classes, so that named rat-
9 ings correspond to a standard range of default
10 probabilities and expected losses independent of
11 asset class and issuing entity.

12 (2) REPORT.—Not later than 1 year after the
13 date of enactment of this Act, the Commission shall
14 submit to Congress a report containing the findings
15 of the study under paragraph (1) and the rec-
16 ommendations, if any, of the Commission with re-
17 spect to the study.

18 **SEC. 939A. SECURITIES AND EXCHANGE COMMISSION**
19 **STUDY ON STRENGTHENING CREDIT RATING**
20 **AGENCY INDEPENDENCE.**

21 (a) STUDY.—The Commission shall conduct a study
22 of—

23 (1) the independence of nationally recognized
24 statistical rating organizations; and

1 (2) how the independence of nationally recog-
2 nized statistical rating organizations affects the rat-
3 ings issued by the nationally recognized statistical
4 rating organizations.

5 (b) SUBJECTS FOR EVALUATION.—In conducting the
6 study under subsection (a), the Commission shall evalu-
7 ate—

8 (1) the management of conflicts of interest
9 raised by a nationally recognized statistical rating
10 organization providing other services, including risk
11 management advisory services, ancillary assistance,
12 or consulting services;

13 (2) the potential impact of rules prohibiting a
14 nationally recognized statistical rating organization
15 that provides a rating to an issuer from providing
16 other services to the issuer; and

17 (3) any other issue relating to nationally recog-
18 nized statistical rating organizations, as the Chair-
19 man of the Commission determines is appropriate.

20 (c) REPORT.—Not later than 3 years after the date
21 of enactment of this Act, the Chairman of the Commission
22 shall submit to the Committee on Banking, Housing, and
23 Urban Affairs of the Senate and the Committee on Finan-
24 cial Services of the House of Representatives a report on
25 the results of the study conducted under subsection (a),

1 including recommendations, if any, for improving the in-
2 tegrity of ratings issued by nationally recognized statis-
3 tical rating organizations.

4 **SEC. 939B. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
5 **ON ALTERNATIVE BUSINESS MODELS.**

6 (a) **STUDY.**—The Comptroller General of the United
7 States shall conduct a study on alternative means for com-
8 pensating nationally recognized statistical rating organiza-
9 tions in order to create incentives for nationally recognized
10 statistical rating organizations to provide more accurate
11 credit ratings, including any statutory changes that would
12 be required to facilitate the use of an alternative means
13 of compensation.

14 (b) **REPORT.**—Not later than 18 months after the
15 date of enactment of this Act, the Comptroller General
16 shall submit to the Committee on Banking, Housing, and
17 Urban Affairs of the Senate and the Committee on Finan-
18 cial Services of the House of Representatives a report on
19 the results of the study conducted under subsection (a),
20 including recommendations, if any, for providing incen-
21 tives to credit rating agencies to improve the credit rating
22 process.

1 **SEC. 939C. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **ON THE CREATION OF AN INDEPENDENT**
3 **PROFESSIONAL ANALYST ORGANIZATION.**

4 (a) STUDY.—The Comptroller General of the United
5 States shall conduct a study on the feasibility and merits
6 of creating an independent professional organization for
7 rating analysts employed by nationally recognized statis-
8 tical rating organizations that would be responsible for—

9 (1) establishing independent standards for gov-
10 erning the profession of rating analysts;

11 (2) establishing a code of ethical conduct; and

12 (3) overseeing the profession of rating analysts.

13 (b) REPORT.—Not later than 1 year after the date
14 of publication of the rules issued by the Commission pur-
15 suant to section 936, the Comptroller General shall submit
16 to the Committee on Banking, Housing, and Urban Af-
17 fairs of the Senate and the Committee on Financial Serv-
18 ices of the House of Representatives a report on the re-
19 sults of the study conducted under subsection (a).

20 **SEC. 939D. INITIAL CREDIT RATING ASSIGNMENTS.**

21 Section 15E of the Securities Exchange Act of 1934
22 (15 U.S.C. 78o–7), as amended by this Act, is amended
23 by adding at the end the following:

24 “(w) INITIAL CREDIT RATING ASSIGNMENTS.—

25 “(1) DEFINITIONS.—In this subsection the fol-
26 lowing definitions shall apply:

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1 “(II) CONSIDERATIONS.—In
2 issuing the regulations required under
3 subclause (I), the Commission shall
4 consider—

5 “(aa) the types of issuers
6 that issue structured finance
7 products;

8 “(bb) the types of investors
9 who purchase structured finance
10 products;

11 “(cc) the different categories
12 of structured finance products
13 according to—

14 “(AA) the types of cap-
15 ital flow and legal structure
16 used;

17 “(BB) the types of un-
18 derlying products used; and

19 “(CC) the types of
20 terms used in debt securi-
21 ties;

22 “(dd) the different values of
23 debt securities; and

1 “(ee) the different numbers
2 of units of debt securities that
3 are issued together.

4 “(ii) REASONABLE FEE.—The Board
5 shall issue regulations to define the term
6 ‘reasonable fee’.

7 “(2) CREDIT RATING AGENCY BOARD.—

8 “(A) IN GENERAL.—Not later than 180
9 days after the date of enactment of the Restor-
10 ing American Financial Stability Act of 2010,
11 the Commission shall—

12 “(i) establish the Credit Rating Agen-
13 cy Board, which shall be a self-regulatory
14 organization;

15 “(ii) subject to subparagraph (C), se-
16 lect the initial members of the Board; and

17 “(iii) establish a schedule to ensure
18 that the Board begins assigning qualified
19 nationally recognized statistical rating or-
20 ganizations to provide initial ratings not
21 later than 1 year after the selection of the
22 members of the Board.

23 “(B) SCHEDULE.—The schedule estab-
24 lished under subparagraph (A)(iii) shall pre-
25 scribe when—

1 “(i) the Board will conduct a study of
2 the securitization and ratings process and
3 provide recommendations to the Commis-
4 sion;

5 “(ii) the Commission will issue rules
6 and regulations under this section;

7 “(iii) the Board may issue rules under
8 this subsection; and

9 “(iv) the Board will—

10 “(I) begin accepting applications
11 to select qualified national recognized
12 statistical rating organizations; and

13 “(II) begin assigning qualified
14 national recognized statistical rating
15 organizations to provide initial rat-
16 ings.

17 “(C) MEMBERSHIP.—

18 “(i) IN GENERAL.—The Board shall
19 initially be composed of an odd number of
20 members selected from the industry, with
21 the total numerical membership of the
22 Board to be determined by the Commis-
23 sion.

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1 nation and election of future members
2 of the Board.

3 “(II) MODIFICATIONS OF THE
4 BOARD.—Prior to the expiration of
5 the terms of office of the initial mem-
6 bers, the Commission—

7 “(aa) may increase the size
8 of the board to a larger odd num-
9 ber and adjust the length of fu-
10 ture terms; and

11 “(bb) shall retain the com-
12 position of members described in
13 clause (ii).

14 “(v) RESPONSIBILITIES OF MEM-
15 BERS.—Members shall perform, at a min-
16 imum, the duties described in this sub-
17 section.

18 “(vi) RULEMAKING AUTHORITY.—The
19 Commission shall, if it determines nec-
20 essary and appropriate, issue further rules
21 and regulations on the composition of the
22 membership of the Board and the respon-
23 sibilities of the members.

24 “(D) OTHER AUTHORITIES OF THE
25 BOARD.—The Board shall have the authority to

1 “(I) information regarding the
2 institutional and technical capacity of
3 the nationally recognized statistical
4 rating organization to issue credit rat-
5 ings;

6 “(II) information on whether the
7 nationally recognized statistical rating
8 organization has been exempted by
9 the Commission from any require-
10 ments under any other provision of
11 this section; and

12 “(III) any additional information
13 the Board may require.

14 “(iii) REJECTION OF APPLICATIONS.—
15 The Board may reject an application sub-
16 mitted under this paragraph if the nation-
17 ally recognized statistical rating organiza-
18 tion has been exempted by the Commission
19 from any requirements under any other
20 provision of this section.

21 “(B) SELECTION.—The Board shall select
22 qualified national recognized statistical rating
23 organizations with respect to each category of
24 structured finance products from among nation-
25 ally recognized statistical rating organizations

1 that submit applications under subparagraph
2 (A).

3 “(C) RETENTION OF STATUS AND OBLIGA-
4 TIONS AFTER SELECTION.—An entity selected
5 as a qualified nationally recognized statistical
6 rating organization shall retain its status and
7 obligations under the law as a nationally recog-
8 nized statistical rating organization, and noth-
9 ing in this subsection grants authority to the
10 Commission or the Board to exempt qualified
11 nationally recognized statistical rating organiza-
12 tions from obligations or requirements other-
13 wise imposed by Federal law on nationally rec-
14 ognized statistical rating organizations.

15 “(4) REQUESTING AN INITIAL CREDIT RAT-
16 ING.—An issuer that seeks an initial credit rating
17 for a structured finance product—

18 “(A) may not request an initial credit rat-
19 ing from a nationally recognized statistical rat-
20 ing organization; and

21 “(B) shall submit a request for an initial
22 credit rating to the Board, in such form and
23 manner as the Board may prescribe.

24 “(5) ASSIGNMENT OF RATING DUTIES.—

1 “(A) IN GENERAL.—For each request re-
2 ceived by the Board under paragraph (4)(B),
3 the Board shall select a qualified nationally rec-
4 ognized statistical rating organization to pro-
5 vide the initial credit rating to the issuer.

6 “(B) METHOD OF SELECTION.—

7 “(i) IN GENERAL.—The Board shall—

8 “(I) evaluate a number of selec-
9 tion methods, including a lottery or
10 rotating assignment system, incor-
11 porating the factors described in
12 clause (ii), to reduce the conflicts of
13 interest that exist under the issuer-
14 pays model; and

15 “(II) prescribe and publish the
16 selection method to be used under
17 subparagraph (A).

18 “(ii) CONSIDERATION.—In evaluating
19 a selection method described in clause
20 (i)(I), the Board shall consider—

21 “(I) the information submitted
22 by the qualified nationally recognized
23 statistical rating organization under
24 paragraph (3)(A)(ii) regarding the in-
25 stitutional and technical capacity of

1 the qualified nationally recognized sta-
2 tistical rating organization to issue
3 credit ratings;

4 “(II) evaluations conducted
5 under paragraph (7);

6 “(III) formal feedback from insti-
7 tutional investors; and

8 “(IV) information from sub-
9 clauses (I) and (II) to implement a
10 mechanism which increases or de-
11 creases assignments based on past
12 performance.

13 “(iii) PROHIBITION.—The Board, in
14 choosing a selection method, may not use
15 a method that would allow for the solicita-
16 tion or consideration of the preferred na-
17 tional recognized statistical rating organi-
18 zations of the issuer.

19 “(iv) ADJUSTMENT OF PROCESS.—
20 The Board shall issue rules describing the
21 process by which it can modify the assign-
22 ment process described in clause (i).

23 “(C) RIGHT OF REFUSAL.—

24 “(i) REFUSAL.—A qualified nationally
25 recognized statistical rating organization

1 selected under subparagraph (A) may
2 refuse to accept a selection for a particular
3 request by—

4 “(I) notifying the Board of such
5 refusal; and

6 “(II) submitting to the Board a
7 written explanation of the refusal.

8 “(ii) SELECTION.—Upon receipt of a
9 notification under clause (i), the Board
10 shall make an additional selection under
11 subparagraph (A).

12 “(iii) INSPECTION REPORTS.—The
13 Board shall annually submit any expla-
14 nations of refusals received under clause
15 (i)(II) to the Commission, and such ex-
16 planatory submissions shall be published in
17 the annual inspection reports required
18 under subsection (p)(3)(C).

19 “(6) DISCLAIMER REQUIRED.—Each initial
20 credit rating issued under this subsection shall in-
21 clude, in writing, the following disclaimer: ‘This ini-
22 tial rating has not been evaluated, approved, or cer-
23 tified by the Government of the United States or by
24 a Federal agency.’.

25 “(7) EVALUATION OF PERFORMANCE.—

1 “(A) IN GENERAL.—The Board shall pre-
2 scribe rules by which the Board will evaluate
3 the performance of each qualified nationally
4 recognized statistical rating organization, in-
5 cluding rules that require, at a minimum, an
6 annual evaluation of each qualified nationally
7 recognized statistical rating organization.

8 “(B) CONSIDERATIONS.—The Board, in
9 conducting an evaluation under subparagraph
10 (A), shall consider—

11 “(i) the results of the annual exam-
12 ination conducted under subsection (p)(3);

13 “(ii) surveillance of credit ratings con-
14 ducted by the qualified nationally recog-
15 nized statistical rating organization after
16 the credit ratings are issued, including—

17 “(I) how the rated instruments
18 perform;

19 “(II) the accuracy of the ratings
20 provided by the qualified nationally
21 recognized statistical rating organiza-
22 tion as compared to the other nation-
23 ally recognized statistical rating orga-
24 nizations; and

1 “(III) the effectiveness of the
2 methodologies used by the qualified
3 nationally recognized statistical rating
4 organization; and

5 “(iii) any additional factors the Board
6 determines to be relevant.

7 “(C) REQUEST FOR REEVALUATION.—Sub-
8 ject to rules prescribed by the Board, and not
9 less frequently than once a year, a qualified na-
10 tionally recognized statistical rating organiza-
11 tion may request that the Board conduct an
12 evaluation under this paragraph.

13 “(D) DISCLOSURE.—The Board shall
14 make the evaluations conducted under this
15 paragraph available to Congress.

16 “(8) RATING FEES CHARGED TO ISSUERS.—

17 “(A) LIMITED TO REASONABLE FEES.—A
18 qualified nationally recognized statistical rating
19 organization shall charge an issuer a reasonable
20 fee, as determined by the Commission, for an
21 initial credit rating provided under this section.

22 “(B) FEES.—Fees may be determined by
23 the qualified national recognized statistical rat-
24 ing organizations unless the Board determines
25 it is necessary to issue rules on fees.

1 “(9) NO PROHIBITION ON ADDITIONAL RAT-
2 INGS.—Nothing in this section shall prohibit an
3 issuer from requesting or receiving additional credit
4 ratings with respect to a debt security, if the initial
5 credit rating is provided in accordance with this sec-
6 tion.

7 “(10) NO PROHIBITION ON INDEPENDENT RAT-
8 INGS OFFERED BY NATIONALLY RECOGNIZED STA-
9 TISTICAL RATING ORGANIZATIONS.—

10 “(A) IN GENERAL.—Nothing in this sec-
11 tion shall prohibit a nationally recognized sta-
12 tistical rating organization from independently
13 providing a credit rating with respect to a debt
14 security, if—

15 “(i) the nationally recognized statis-
16 tical rating organization does not enter
17 into a contract with the issuer of the debt
18 security to provide the initial credit rating;
19 and

20 “(ii) the nationally recognized statis-
21 tical rating organization is not paid by the
22 issuer of the debt security to provide the
23 initial credit rating.

24 “(B) RULE OF CONSTRUCTION.—For pur-
25 poses of this section, a credit rating described

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1 in subparagraph (A) may not be construed to
2 be an initial credit rating.

3 “(11) PUBLIC COMMUNICATIONS.—Any commu-
4 nications made with the public by an issuer with re-
5 spect to the credit rating of a debt security shall
6 clearly specify whether the credit rating was made
7 by—

8 “(A) a qualified nationally recognized sta-
9 tistical rating organization selected under para-
10 graph (5)(A) to provide the initial credit rating
11 for such debt security; or

12 “(B) a nationally recognized statistical rat-
13 ing organization not selected under paragraph
14 (5)(A).

15 “(12) PROHIBITION ON MISREPRESENTA-
16 TION.—With respect to a debt security, it shall be
17 unlawful for any person to misrepresent any subse-
18 quent credit rating provided for such debt security
19 as an initial credit rating provided for such debt se-
20 curity by a qualified nationally recognized statistical
21 rating organization selected under paragraph (5)(A).

22 “(13) INITIAL CREDIT RATING REVISION AFTER
23 MATERIAL CHANGE IN CIRCUMSTANCE.—If the
24 Board determines that it is necessary or appropriate
25 in the public interest or for the protection of inves-

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1 motivated by a personal or family re-
2 lationship.

3 “(ii) EMPLOYMENT NEGOTIATIONS
4 PROHIBITION.—A member or employee of
5 the Board shall not engage in employment
6 negotiations with any nationally recognized
7 statistical rating organization, issuer, or
8 investor, unless the member or employee—

9 “(I) discloses the negotiations
10 immediately upon initiation of the ne-
11 gotiations; and

12 “(II) recuses himself from all
13 proceedings concerning the entity in-
14 volved in the negotiations until termi-
15 nation of negotiations or until termi-
16 nation of his employment by the
17 Board, if an offer of employment is
18 accepted.

19 “(B) CREDIT ANALYSTS.—

20 “(i) IN GENERAL.—A credit analyst of
21 a qualified nationally recognized statistical
22 rating organization shall not accept any
23 loan of money or securities, or anything
24 above nominal value, from any issuer or in-
25 vestor.

1 “(ii) EXCEPTION.—The prohibition
2 described in clause (i) does not apply to a
3 loan made in the context of disclosed, rou-
4 tine banking and brokerage agreements, or
5 a loan that is clearly motivated by a per-
6 sonal or family relationship.

7 “(15) EVALUATION OF CREDIT RATING AGENCY
8 BOARD.—Not later than 5 years after the date that
9 the Board begins assigning qualified nationally rec-
10 ognized statistical rating organizations to provide
11 initial ratings, the Commission shall submit to Con-
12 gress a report that provides recommendations of—

13 “(A) the continuation of the Board;

14 “(B) any modification to the procedures of
15 the Board; and

16 “(C) modifications to the provisions in this
17 subsection.”.

18 **Subtitle D—Improvements to the**
19 **Asset-Backed Securitization**
20 **Process**

21 **SEC. 941. REGULATION OF CREDIT RISK RETENTION.**

22 (a) DEFINITION OF ASSET-BACKED SECURITY.—Sec-
23 tion 3(a) of the Securities Exchange Act of 1934 (15
24 U.S.C. 78c(a)) is amended by adding at the end the fol-
25 lowing:

1 “(77) ASSET-BACKED SECURITY.—The term
2 ‘asset-backed security’—

3 “(A) means a fixed-income or other secu-
4 rity collateralized by any type of self-liquidating
5 financial asset (including a loan, a lease, a
6 mortgage, or a secured or unsecured receivable)
7 that allows the holder of the security to receive
8 payments that depend primarily on cash flow
9 from the asset, including—

10 “(i) a collateralized mortgage obliga-
11 tion;

12 “(ii) a collateralized debt obligation;

13 “(iii) a collateralized bond obligation;

14 “(iv) a collateralized debt obligation of
15 asset-backed securities;

16 “(v) a collateralized debt obligation of
17 collateralized debt obligations; and

18 “(vi) a security that the Commission,
19 by rule, determines to be an asset-backed
20 security for purposes of this section; and

21 “(B) does not include a security issued by
22 a finance subsidiary held by the parent com-
23 pany or a company controlled by the parent
24 company, if none of the securities issued by the

1 finance subsidiary are held by an entity that is
2 not controlled by the parent company.”.

3 (b) CREDIT RISK RETENTION.—The Securities Ex-
4 change Act of 1934 (15 U.S.C. 78a et seq.) is amended
5 by inserting after section 15F, as added by this Act, the
6 following:

7 **“SEC. 15G. CREDIT RISK RETENTION.**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘Federal banking agencies’ means
10 the Office of the Comptroller of the Currency, the
11 Board of Governors of the Federal Reserve System,
12 and the Federal Deposit Insurance Corporation;

13 “(2) the term ‘insured depository institution’
14 has the same meaning as in section 3(e) of the Fed-
15 eral Deposit Insurance Act (12 U.S.C. 1813(e));

16 “(3) the term ‘securitizer’ means—

17 “(A) an issuer of an asset-backed security;

18 or

19 “(B) a person who organizes and initiates
20 an asset-backed securities transaction by selling
21 or transferring assets, either directly or indi-
22 rectly, including through an affiliate, to the
23 issuer; and

24 “(4) the term ‘originator’ means a person
25 who—

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1 “(A) through the extension of credit or
2 otherwise, creates a financial asset that
3 collateralizes an asset-backed security; and

4 “(B) sells an asset to a securitizer.

5 “(b) IN GENERAL.—Not later than 270 days after
6 the date of enactment of this section, the Federal banking
7 agencies and the Commission shall jointly prescribe regu-
8 lations to require any securitizer to retain an economic
9 interest in a portion of the credit risk for any asset that
10 the securitizer, through the issuance of an asset-backed
11 security, transfers, sells, or conveys to a third party.

12 “(c) STANDARDS FOR REGULATIONS.—

13 “(1) STANDARDS.—The regulations prescribed
14 under subsection (b) shall—

15 “(A) prohibit a securitizer from directly or
16 indirectly hedging or otherwise transferring the
17 credit risk that the securitizer is required to re-
18 tain with respect to an asset;

19 “(B) require a securitizer to retain—

20 “(i) not less than 5 percent of the
21 credit risk for any asset—

22 “(I) that is not a qualified resi-
23 dential mortgage that is transferred,
24 sold, or conveyed through the issuance

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1 of an asset-backed security by the
2 securitizer; or

3 “(II) that is a qualified residen-
4 tial mortgage that is transferred, sold,
5 or conveyed through the issuance of
6 an asset-backed security by the
7 securitizer, if 1 or more of the assets
8 that collateralize the asset-backed se-
9 curity are not qualified residential
10 mortgages; or

11 “(ii) less than 5 percent of the credit
12 risk for an asset that is not a qualified res-
13 idential mortgage that is transferred, sold,
14 or conveyed through the issuance of an
15 asset-backed security by the securitizer, if
16 the originator of the asset meets the un-
17 derwriting standards prescribed under
18 paragraph (2)(B);

19 “(C) specify—

20 “(i) the permissible forms of risk re-
21 tention for purposes of this section;

22 “(ii) the minimum duration of the
23 risk retention required under this section;

24 and

1 “(iii) that a securitizer is not required
2 to retain any part of the credit risk for an
3 asset that is transferred, sold or conveyed
4 through the issuance of an asset-backed se-
5 curity by the securitizer, if all of the assets
6 that collateralize the asset-backed security
7 are qualified residential mortgages;

8 “(D) apply, regardless of whether the
9 securitizer is an insured depository institution;
10 and

11 “(E) with respect to a commercial mort-
12 gage, specify the permissible types, forms, and
13 amounts of risk retention that would meet the
14 requirements of subparagraph (B), such as—

15 “(i) retention of a specified amount or
16 percentage of the total credit risk of the
17 asset;

18 “(ii) retention of the first-loss position
19 by a third-party purchaser that specifically
20 negotiates for the purchase of such first-
21 loss position and provides due diligence on
22 all individual assets in the pool before the
23 issuance of the asset-backed securities;

24 “(iii) a determination by a Federal
25 banking agency or the Commission that

1 the underwriting standards and controls
2 for the asset are adequate; and

3 “(iv) provision of adequate representa-
4 tions and warranties and related enforce-
5 ment mechanisms; and

6 “(F) provide for—

7 “(i) a total or partial exemption of
8 any securitization, as may be appropriate
9 in the public interest and for the protec-
10 tion of investors;

11 “(ii) a total or partial exemption for
12 the securitization of an asset issued or
13 guaranteed by the United States, or an
14 agency of the United States, as the Fed-
15 eral banking agencies and the Commission
16 jointly determine appropriate in the public
17 interest and for the protection of investors,
18 except that, for purposes of this clause, the
19 Federal National Mortgage Association
20 and the Federal Home Loan Mortgage
21 Corporation are not agencies of the United
22 States;

23 “(iii) a total or partial exemption for
24 any asset-backed security that is a security
25 issued or guaranteed by any State of the

1 United States, or by any political subdivi-
2 sion of a State or territory, or by any pub-
3 lic instrumentality of a State or territory
4 that is exempt from the registration re-
5 quirements of the Securities Act of 1933
6 by reason of section 3(a)(2) of that Act
7 (15 U.S.C. 77c(a)(2)), or a security de-
8 fined as a qualified scholarship funding
9 bond in section 150(d)(2) of the Internal
10 Revenue Code of 1986, as may be appro-
11 priate in the public interest and for the
12 protection of investors; and

13 “(iv) the allocation of risk retention
14 obligations between a securitizer and an
15 originator in the case of a securitizer that
16 purchases assets from an originator, as the
17 Federal banking agencies and the Commis-
18 sion jointly determine appropriate.

19 “(2) ASSET CLASSES.—

20 “(A) ASSET CLASSES.—The regulations
21 prescribed under subsection (b) shall establish
22 asset classes with separate rules for securitizers
23 of different classes of assets, including residen-
24 tial mortgages, commercial mortgages, commer-
25 cial loans, auto loans, and any other class of as-

1 sets that the Federal banking agencies and the
2 Commission deem appropriate.

3 “(B) CONTENTS.—For each asset class es-
4 tablished under subparagraph (A), the regula-
5 tions prescribed under subsection (b) shall in-
6 clude underwriting standards established by the
7 Federal banking agencies that specify the
8 terms, conditions, and characteristics of a loan
9 within the asset class that indicate a low credit
10 risk with respect to the loan.

11 “(d) ORIGINATORS.—In determining how to allocate
12 risk retention obligations between a securitizer and an
13 originator under subsection (c)(1)(E)(iv), the Federal
14 banking agencies and the Commission shall—

15 “(1) reduce the percentage of risk retention ob-
16 ligations required of the securitizer by the percent-
17 age of risk retention obligations required of the
18 originator; and

19 “(2) consider—

20 “(A) whether the assets sold to the
21 securitizer have terms, conditions, and charac-
22 teristics that reflect low credit risk;

23 “(B) whether the form or volume of trans-
24 actions in securitization markets creates incen-

1 tives for imprudent origination of the type of
2 loan or asset to be sold to the securitizer; and

3 “(C) the potential impact of the risk reten-
4 tion obligations on the access of consumers and
5 businesses to credit on reasonable terms, which
6 may not include the transfer of credit risk to a
7 third party.

8 “(e) EXEMPTIONS, EXCEPTIONS, AND ADJUST-
9 MENTS.—

10 “(1) IN GENERAL.—The Federal banking agen-
11 cies and the Commission may jointly adopt or issue
12 exemptions, exceptions, or adjustments to the rules
13 issued under this section, including exemptions, ex-
14 ceptions, or adjustments for classes of institutions or
15 assets relating to the risk retention requirement and
16 the prohibition on hedging under subsection (c)(1).

17 “(2) APPLICABLE STANDARDS.—Any exemp-
18 tion, exception, or adjustment adopted or issued by
19 the Federal banking agencies and the Commission
20 under this paragraph shall—

21 “(A) help ensure high quality underwriting
22 standards for the securitizers and originators of
23 assets that are securitized or available for
24 securitization; and

1 “(B) encourage appropriate risk manage-
2 ment practices by the securitizers and origina-
3 tors of assets, improve the access of consumers
4 and businesses to credit on reasonable terms, or
5 otherwise be in the public interest and for the
6 protection of investors.

7 “(3) FARM CREDIT SYSTEM INSTITUTIONS.—A
8 Farm Credit System institution, including the Fed-
9 eral Agricultural Mortgage Corporation, that is
10 chartered and subject to the provisions of the Farm
11 Credit Act of 1971, as amended (12 U.S.C. 2001 et
12 seq.), shall be exempt from the risk retention provi-
13 sions of this subsection.

14 “(4) EXEMPTION FOR QUALIFIED RESIDENTIAL
15 MORTGAGES.—

16 “(A) IN GENERAL.—The Federal banking
17 agencies, the Commission, the Secretary of
18 Housing and Urban Development, and the Di-
19 rector of the Federal Housing Finance Agency
20 shall jointly issue regulations to exempt quali-
21 fied residential mortgages from the risk reten-
22 tion requirements of this subsection.

23 “(B) QUALIFIED RESIDENTIAL MORT-
24 GAGE.—The Federal banking agencies, the
25 Commission, the Secretary of Housing and

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1 Urban Development, and the Director of the
2 Federal Housing Finance Agency shall jointly
3 define the term ‘qualified residential mortgage’
4 for purposes of this subsection, taking into con-
5 sideration underwriting and product features
6 that historical loan performance data indicate
7 result in a lower risk of default, such as—

8 “(i) documentation and verification of
9 the financial resources relied upon to qual-
10 ify the mortgagor;

11 “(ii) standards with respect to—

12 “(I) the residual income of the
13 mortgagor after all monthly obliga-
14 tions;

15 “(II) the ratio of the housing
16 payments of the mortgagor to the
17 monthly income of the mortgagor;

18 “(III) the ratio of total monthly
19 installment payments of the mort-
20 gagor to the income of the mortgagor;

21 “(iii) mitigating the potential for pay-
22 ment shock on adjustable rate mortgages
23 through product features and underwriting
24 standards;

1 “(iv) mortgage guarantee insurance
2 obtained at the time of origination for
3 loans with combined loan-to-value ratios of
4 greater than 80 percent; and

5 “(v) prohibiting or restricting the use
6 of balloon payments, negative amortization,
7 prepayment penalties, interest-only pay-
8 ments, and other features that have been
9 demonstrated to exhibit a higher risk of
10 borrower default.

11 “(5) CONDITION FOR QUALIFIED RESIDENTIAL
12 MORTGAGE EXEMPTION.—The regulations issued
13 under paragraph (4) shall provide that an asset-
14 backed security that is collateralized by tranches of
15 other asset-backed securities shall not be exempt
16 from the risk retention requirements of this sub-
17 section.

18 “(6) CERTIFICATION.—The Commission shall
19 require an issuer to certify, for each issuance of an
20 asset-backed security collateralized exclusively by
21 qualified residential mortgages, that the issuer has
22 evaluated the effectiveness of the internal super-
23 visory controls of the issuer with respect to the proc-
24 ess for ensuring that all assets that collateralize the

1 asset-backed security are qualified residential mort-
2 gages.

3 “(f) ENFORCEMENT.—The regulations issued under
4 this section shall be enforced by—

5 “(1) the appropriate Federal banking agency,
6 with respect to any securitizer that is an insured de-
7 pository institution; and

8 “(2) the Commission, with respect to any
9 securitizer that is not an insured depository institu-
10 tion.

11 “(g) AUTHORITY OF COMMISSION.—The authority of
12 the Commission under this section shall be in addition to
13 the authority of the Commission to otherwise enforce the
14 securities laws.

15 “(h) EFFECTIVE DATE OF REGULATIONS.—The reg-
16 ulations issued under this section shall become effective—

17 “(1) with respect to securitizers and originators
18 of asset-backed securities backed by residential
19 mortgages, 1 year after the date on which final rules
20 under this section are published in the Federal Reg-
21 ister; and

22 “(2) with respect to securitizers and originators
23 of all other classes of asset-backed securities, 2 years
24 after the date on which final rules under this section
25 are published in the Federal Register.”.

1 **SEC. 942. DISCLOSURES AND REPORTING FOR ASSET-**
2 **BACKED SECURITIES.**

3 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
4 15(d) of the 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 than
13 any class of asset-backed securities,”; and

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 ments appropriate for each class of issuers of
2 asset-backed securities.”.

3 (b) SECURITIES ACT OF 1933.—Section 7 of the Se-
4 curities Act of 1933 (15 U.S.C. 77g) is amended by add-
5 ing at the end the following:

6 “(c) DISCLOSURE REQUIREMENTS.—

7 “(1) IN GENERAL.—The Commission shall
8 adopt regulations under this subsection requiring
9 each issuer of an asset-backed security to disclose,
10 for each tranche or class of security, information re-
11 garding the assets backing that security.

12 “(2) CONTENT OF REGULATIONS.—In adopting
13 regulations under this subsection, the Commission
14 shall—

15 “(A) set standards for the format of the
16 data provided by issuers of an asset-backed se-
17 curity, which shall, to the extent feasible, facili-
18 tate comparison of such data across securities
19 in similar types of asset classes; and

20 “(B) require issuers of asset-backed securi-
21 ties, at a minimum, to disclose asset-level or
22 loan-level data, if such data are necessary for
23 investors to independently perform due dili-
24 gence, including—

1 “(i) data having unique identifiers re-
2 lating to loan brokers or originators;

3 “(ii) the nature and extent of the
4 compensation of the broker or originator of
5 the assets backing the security; and

6 “(iii) the amount of risk retention by
7 the originator and the securitizer of such
8 assets.”.

9 **SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-**
10 **BACKED OFFERINGS.**

11 Not later than 180 days after the date of enactment
12 of this Act, the Securities and Exchange Commission shall
13 prescribe regulations on the use of representations and
14 warranties in the market for asset-backed securities (as
15 that term is defined in section 3(a)(77) of the Securities
16 Exchange Act of 1934, as added by this subtitle) that—

17 (1) require each national recognized statistical
18 rating organization to include in any report accom-
19 panying a credit rating a description of—

20 (A) the representations, warranties, and
21 enforcement mechanisms available to investors;
22 and

23 (B) how they differ from the representa-
24 tions, warranties, and enforcement mechanisms
25 in issuances of similar securities; and

1 (2) require any securitizer (as that term is de-
2 fined in section 15G(a) of the Securities Exchange
3 Act of 1934, as added by this subtitle) to disclose
4 fulfilled and unfulfilled repurchase requests across
5 all trusts aggregated by the securitizer, so that in-
6 vestors may identify asset originators with clear un-
7 derwriting deficiencies.

8 **SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
9 **TIES ACT OF 1933.**

10 (a) EXEMPTION ELIMINATED.—Section 4 of the Se-
11 curities Act of 1933 (15 U.S.C. 77d) is amended—

12 (1) by striking paragraph (5); and

13 (2) by striking “(6) transactions” and inserting
14 the following:

15 “(5) transactions”.

16 (b) CONFORMING AMENDMENT.—Section
17 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking
19 “4(6)” and inserting “4(5)”.

20 **SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN**
21 **ASSET-BACKED SECURITIES ISSUES.**

22 Section 7 of the Securities Act of 1933 (15 U.S.C.
23 77g), as amended by this subtitle, is amended by adding
24 at the end the following:

1 “(d) REGISTRATION STATEMENT FOR ASSET-
2 BACKED SECURITIES.—Not later than 180 days after the
3 date of enactment of this subsection, the Commission shall
4 issue rules relating to the registration statement required
5 to be filed by any issuer of an asset-backed security (as
6 that term is defined in section 3(a)(77) of the Securities
7 Exchange Act of 1934) that require any issuer of an asset-
8 backed security—

9 “(1) to perform a review of the assets under-
10 lying the asset-backed security; and

11 “(2) to disclose the nature of the review under
12 paragraph (1).”.

13 **Subtitle E—Accountability and**
14 **Executive Compensation**

15 **SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**
16 **TION DISCLOSURES.**

17 The Securities Exchange Act of 1934 (15 U.S.C. 78a
18 et seq.) is amended by inserting after section 14 (15
19 U.S.C. 78n) the following:

20 **“SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECU-**
21 **TIVE COMPENSATION.**

22 “(a) SEPARATE RESOLUTION REQUIRED.—Any
23 proxy or consent or authorization for an annual or other
24 meeting of the shareholders occurring after the end of the
25 6-month period beginning on the date of enactment of this

1 section, for which the proxy solicitation rules of the Com-
2 mission require compensation disclosure, shall include a
3 separate resolution subject to shareholder vote to approve
4 the compensation of executives, as disclosed pursuant to
5 section 229.402 of title 17, Code of Federal Regulations,
6 or any successor thereto.

7 “(b) **RULE OF CONSTRUCTION.**—The shareholder
8 vote referred to in subsection (a) shall not be binding on
9 the issuer or the board of directors of an issuer, and may
10 not be construed—

11 “(1) as overruling a decision by such issuer or
12 board of directors;

13 “(2) to create or imply any change to the fidu-
14 ciary duties of such issuer or board of directors;

15 “(3) to create or imply any additional fiduciary
16 duties for such issuer or board of directors; or

17 “(4) to restrict or limit the ability of share-
18 holders to make proposals for inclusion in proxy ma-
19 terials related to executive compensation.”.

20 **SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.**

21 The Securities Exchange Act of 1934 (15 U.S.C. 78
22 et seq.) is amended by inserting after section 10B, as
23 added by section 753, the following:

1 **“SEC. 10C. COMPENSATION COMMITTEES.**

2 “(a) INDEPENDENCE OF COMPENSATION COMMIT-
3 TEES.—

4 “(1) LISTING STANDARDS.—The Commission
5 shall, by rule, direct the national securities ex-
6 changes and national securities associations to pro-
7 hibit the listing of any equity security of an issuer,
8 other than an issuer that is a controlled company,
9 limited partnership, company in bankruptcy pro-
10 ceedings, open-ended management investment com-
11 pany that is registered under the Investment Com-
12 pany Act of 1940, or a foreign private issuer that
13 provides annual disclosures to shareholders of the
14 reasons that the foreign private issuer does not have
15 an independent compensation committee, that does
16 not comply with the requirements of this subsection.

17 “(2) INDEPENDENCE OF COMPENSATION COM-
18 MITTEES.—The rules of the Commission under para-
19 graph (1) shall require that each member of the
20 compensation committee of the board of directors of
21 an issuer be—

22 “(A) a member of the board of directors of
23 the issuer; and

24 “(B) independent.

25 “(3) INDEPENDENCE.—The rules of the Com-
26 mission under paragraph (1) shall require that, in

1 determining the definition of the term ‘independ-
2 ence’ for purposes of paragraph (2), the national se-
3 curities exchanges and the national securities asso-
4 ciations shall consider relevant factors, including—

5 “(A) the source of compensation of a mem-
6 ber of the board of directors of an issuer, in-
7 cluding any consulting, advisory, or other com-
8 pensatory fee paid by the issuer to such mem-
9 ber of the board of directors; and

10 “(B) whether a member of the board of di-
11 rectors of an issuer is affiliated with the issuer,
12 a subsidiary of the issuer, or an affiliate of a
13 subsidiary of the issuer.

14 “(4) EXEMPTION AUTHORITY.—The rules of
15 the Commission under paragraph (1) shall permit a
16 national securities exchange or a national securities
17 association to exempt a particular relationship from
18 the requirements of paragraph (2), with respect to
19 the members of a compensation committee, as the
20 national securities exchange or national securities
21 association determines is appropriate, taking into
22 consideration the size of an issuer and any other rel-
23 evant factors.

1 “(b) INDEPENDENCE OF COMPENSATION CONSULT-
2 ANTS AND OTHER COMPENSATION COMMITTEE ADVIS-
3 ERS.—

4 “(1) IN GENERAL.—The compensation com-
5 mittee of an issuer may only select a compensation
6 consultant, legal counsel, or other adviser to the
7 compensation committee after taking into consider-
8 ation the factors identified by the Commission under
9 paragraph (2).

10 “(2) RULES.—The Commission shall identify
11 factors that affect the independence of a compensa-
12 tion consultant, legal counsel, or other adviser to a
13 compensation committee of an issuer, including—

14 “(A) the provision of other services to the
15 issuer by the person that employs the com-
16 pensation consultant, legal counsel, or other ad-
17 viser;

18 “(B) the amount of fees received from the
19 issuer by the person that employs the com-
20 pensation consultant, legal counsel, or other ad-
21 viser, as a percentage of the total revenue of
22 the person that employs the compensation con-
23 sultant, legal counsel, or other adviser;

24 “(C) the policies and procedures of the
25 person that employs the compensation consult-

1 ant, legal counsel, or other adviser that are de-
2 signed to prevent conflicts of interest;

3 “(D) any business or personal relationship
4 of the compensation consultant, legal counsel,
5 or other adviser with a member of the com-
6 pensation committee; and

7 “(E) any stock of the issuer owned by the
8 compensation consultant, legal counsel, or other
9 adviser.

10 “(c) COMPENSATION COMMITTEE AUTHORITY RE-
11 LATING TO COMPENSATION CONSULTANTS.—

12 “(1) AUTHORITY TO RETAIN COMPENSATION
13 CONSULTANT.—

14 “(A) IN GENERAL.—The compensation
15 committee of an issuer, in its capacity as a
16 committee of the board of directors, may, in its
17 sole discretion, retain or obtain the advice of a
18 compensation consultant.

19 “(B) DIRECT RESPONSIBILITY OF COM-
20 PENSATION COMMITTEE.—The compensation
21 committee of an issuer shall be directly respon-
22 sible for the appointment, compensation, and
23 oversight of the work of a compensation con-
24 sultant.

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1 “(C) RULE OF CONSTRUCTION.—This
2 paragraph may not be construed—

3 “(i) to require the compensation com-
4 mittee to implement or act consistently
5 with the advice or recommendations of the
6 compensation consultant; or

7 “(ii) to affect the ability or obligation
8 of a compensation committee to exercise its
9 own judgment in fulfillment of the duties
10 of the compensation committee.

11 “(2) DISCLOSURE.—In any proxy or consent
12 solicitation material for an annual meeting of the
13 shareholders (or a special meeting in lieu of the an-
14 nual meeting) occurring on or after the date that is
15 1 year after the date of enactment of this section,
16 each issuer shall disclose in the proxy or consent
17 material, in accordance with regulations of the Com-
18 mission, whether—

19 “(A) the compensation committee of the
20 issuer retained or obtained the advice of a com-
21 pensation consultant; and

22 “(B) the work of the compensation con-
23 sultant has raised any conflict of interest and,
24 if so, the nature of the conflict and how the
25 conflict is being addressed.

1 “(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL
2 COUNSEL AND OTHER ADVISERS.—

3 “(1) IN GENERAL.—The compensation com-
4 mittee of an issuer, in its capacity as a committee
5 of the board of directors, may, in its sole discretion,
6 retain and obtain the advice of independent legal
7 counsel and other advisers.

8 “(2) DIRECT RESPONSIBILITY OF COMPENSA-
9 TION COMMITTEE.—The compensation committee of
10 an issuer shall be directly responsible for the ap-
11 pointment, compensation, and oversight of the work
12 of independent legal counsel and other advisers.

13 “(3) RULE OF CONSTRUCTION.—This sub-
14 section may not be construed—

15 “(A) to require a compensation committee
16 to implement or act consistently with the advice
17 or recommendations of independent legal coun-
18 sel or other advisers under this subsection; or

19 “(B) to affect the ability or obligation of a
20 compensation committee to exercise its own
21 judgment in fulfillment of the duties of the
22 compensation committee.

23 “(e) COMPENSATION OF COMPENSATION CONSULT-
24 ANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER AD-
25 VISERS.—Each issuer shall provide for appropriate fund-

1 ing, as determined by the compensation committee in its
2 capacity as a committee of the board of directors, for pay-
3 ment of reasonable compensation—

4 “(1) to a compensation consultant; and

5 “(2) to independent legal counsel or any other
6 adviser to the compensation committee.

7 “(f) COMMISSION RULES.—

8 “(1) IN GENERAL.—Not later than 360 days
9 after the date of enactment of this section, the Com-
10 mission shall, by rule, direct the national securities
11 exchanges and national securities associations to
12 prohibit the listing of any security of an issuer that
13 is not in compliance with the requirements of this
14 section.

15 “(2) OPPORTUNITY TO CURE DEFECTS.—The
16 rules of the Commission under paragraph (1) shall
17 provide for appropriate procedures for an issuer to
18 have a reasonable opportunity to cure any defects
19 that would be the basis for the prohibition under
20 paragraph (1), before the imposition of such prohibi-
21 tion.

22 “(3) EXEMPTION AUTHORITY.—

23 “(A) IN GENERAL.—The rules of the Com-
24 mission under paragraph (1) shall permit a na-
25 tional securities exchange or a national securi-

1 ties association to exempt a category of issuers
2 from the requirements under this section, as
3 the national securities exchange or the national
4 securities association determines is appropriate.

5 “(B) CONSIDERATIONS.—In determining
6 appropriate exemptions under subparagraph
7 (A), the national securities exchange or the na-
8 tional securities association shall take into ac-
9 count the potential impact of the requirements
10 of this section on smaller reporting issuers.

11 “(g) CONTROLLED COMPANY EXEMPTION.—

12 “(1) IN GENERAL.—This section shall not apply
13 to any controlled company.

14 “(2) DEFINITION.—For purposes of this sec-
15 tion, the term ‘controlled company’ means an
16 issuer—

17 “(A) that is listed on a national securities
18 exchange or by a national securities association;
19 and

20 “(B) that holds an election for the board
21 of directors of the issuer in which more than 50
22 percent of the voting power is held by an indi-
23 vidual, a group, or another issuer.”.

1 **SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.**

2 (a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—

3 Section 14 of the Securities Exchange Act of 1934 (15
4 U.S.C. 78n), as amended by this title, is amended by add-
5 ing at the end the following:

6 “(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—

7 The Commission shall, by rule, require each issuer to dis-
8 close in any proxy or consent solicitation material for an
9 annual meeting of the shareholders of the issuer a clear
10 description of any compensation required to be disclosed
11 by the issuer under section 229.402 of title 17, Code of
12 Federal Regulations (or any successor thereto), including
13 information that shows the relationship between executive
14 compensation actually paid and the financial performance
15 of the issuer, taking into account any change in the value
16 of the shares of stock and dividends of the issuer and any
17 distributions. The disclosure under this subsection may in-
18 clude a graphic representation of the information required
19 to be disclosed.”.

20 (b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

21 (1) IN GENERAL.—The Commission shall
22 amend section 229.402 of title 17, Code of Federal
23 Regulations, to require each issuer to disclose in any
24 filing of the issuer described in section 229.10(a) of
25 title 17, Code of Federal Regulations (or any suc-
26 cessor thereto)—

1 (A) the median of the annual total com-
2 pensation of all employees of the issuer, except
3 the chief executive officer (or any equivalent po-
4 sition) of the issuer;

5 (B) the annual total compensation of the
6 chief executive officer (or any equivalent posi-
7 tion) of the issuer; and

8 (C) the ratio of the amount described in
9 subparagraph (A) to the amount described in
10 subparagraph (B).

11 (2) TOTAL COMPENSATION.—For purposes of
12 this subsection, the total compensation of an em-
13 ployee of an issuer shall be determined in accordance
14 with section 229.402(c)(2)(x) of title 17, Code of
15 Federal Regulations, as in effect on the day before
16 the date of enactment of this Act.

17 **SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COM-**
18 **PENSATION.**

19 The Securities Exchange Act of 1934 is amended by
20 inserting after section 10C, as added by section 952, the
21 following:

22 **“SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COM-**
23 **PENSATION POLICY.**

24 “(a) LISTING STANDARDS.—The Commission shall,
25 by rule, direct the national securities exchanges and na-

1 tional securities associations to prohibit the listing of any
2 security of an issuer that does not comply with the re-
3 quirements of this section.

4 “(b) RECOVERY OF FUNDS.—The rules of the Com-
5 mission under subsection (a) shall require each issuer to
6 develop and implement a policy providing—

7 “(1) for disclosure of the policy of the issuer on
8 incentive-based compensation that is based on finan-
9 cial information required to be reported under the
10 securities laws; and

11 “(2) that, in the event that the issuer is re-
12 quired to prepare an accounting restatement due to
13 the material noncompliance of the issuer with any fi-
14 nancial reporting requirement under the securities
15 laws, the issuer will recover from any current or
16 former executive officer of the issuer who received
17 incentive-based compensation (including stock op-
18 tions awarded as compensation) during the 3-year
19 period preceding the date on which the issuer is re-
20 quired to prepare an accounting restatement, based
21 on the erroneous data, in excess of what would have
22 been paid to the executive officer under the account-
23 ing restatement.”.

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1 **SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIREC-**
2 **TOR HEDGING.**

3 Section 14 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78n), as amended by this title, is amended by
5 adding at the end the following:

6 “(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND
7 DIRECTORS.—The Commission shall, by rule, require each
8 issuer to disclose in any proxy or consent solicitation mate-
9 rial for an annual meeting of the shareholders of the issuer
10 whether any employee or member of the board of directors
11 of the issuer, or any designee of such employee or member,
12 is permitted to purchase financial instruments (including
13 prepaid variable forward contracts, equity swaps, collars,
14 and exchange funds) that are designed to hedge or offset
15 any decrease in the market value of equity securities—

16 “(1) granted to the employee or member of the
17 board of directors by the issuer as part of the com-
18 pensation of the employee or member of the board
19 of directors; or

20 “(2) held, directly or indirectly, by the employee
21 or member of the board of directors.”.

22 **SEC. 956. EXCESSIVE COMPENSATION BY HOLDING COMPA-**
23 **NIES OF DEPOSITORY INSTITUTIONS.**

24 Section 5 of the Bank Holding Company Act of 1956
25 (12 U.S.C. 1844) is amended by adding at the end the
26 following:

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1 “(i) EXCESSIVE COMPENSATION.—

2 “(1) IN GENERAL.—Not later than 180 days
3 after the transfer date established under section 311
4 of the Restoring American Financial Stability Act of
5 2010, the Board of Governors, in consultation with
6 the Comptroller of the Currency and the Federal
7 Deposit Insurance Corporation, shall, by rule or
8 guideline, establish standards for bank holding com-
9 panies and savings and loan holding companies pro-
10 hibiting as an unsafe and unsound practice any com-
11 pensation plan of a bank holding company or sav-
12 ings and loan holding company that—

13 “(A) provides an executive officer, em-
14 ployee, director, or principal shareholder of the
15 bank holding company or savings and loan
16 holding company with excessive compensation,
17 fees, or benefits; or

18 “(B) could lead to material financial loss
19 to the bank holding company or savings and
20 loan holding company.

21 “(2) STANDARDS.—The Board of Governors
22 shall—

23 “(A) ensure that the standards established
24 under paragraph (1) are comparable to the
25 standards established under section 39 of the

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1 Federal Deposit Insurance Act (12 U.S.C.
2 1831p-1) for insured depository institutions;
3 and

4 “(B) in establishing the standards under
5 paragraph (1), take into consideration—

6 “(i) the compensation standards de-
7 scribed in section 39(c) of the Federal De-
8 posit Insurance Act (12 U.S.C. 1831p-
9 1(c)); and

10 “(ii) the views and recommendations
11 of the Comptroller of the Currency and the
12 Federal Deposit Insurance Corporation.”.

13 **SEC. 957. VOTING BY BROKERS.**

14 Section 6(b) of the Securities Exchange Act of 1934
15 (15 U.S.C. 78f(b)) is amended—

16 (1) in paragraph (9)—

17 (A) in subparagraph (A), by redesignating
18 clauses (i) through (v) as subclauses (I)
19 through (V), respectively, and adjusting the
20 margins accordingly;

21 (B) by redesignating subparagraphs (A)
22 through (D) as clauses (i) through (iv), respec-
23 tively, and adjusting the margins accordingly;

24 (C) by inserting “(A)” after “(9)”; and

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1 (D) in the matter immediately following
2 clause (iv), as so redesignated, by striking “As
3 used” and inserting the following:

4 “(B) As used”.

5 (2) by adding at the end the following:

6 “(10)(A) The rules of the exchange prohibit
7 any member that is not the beneficial owner of a se-
8 curity registered under section 12 from granting a
9 proxy to vote the security in connection with a
10 shareholder vote described in subparagraph (B), un-
11 less the beneficial owner of the security has in-
12 structed the member to vote the proxy in accordance
13 with the voting instructions of the beneficial owner.

14 “(B) A shareholder vote described in this sub-
15 paragraph is a shareholder vote with respect to the
16 election of a member of the board of directors of an
17 issuer, executive compensation, or any other signifi-
18 cant matter, as determined by the Commission, by
19 rule.

20 “(C) Nothing in this paragraph shall be con-
21 strued to prohibit a national securities exchange
22 from prohibiting a member that is not the beneficial
23 owner of a security registered under section 12 from
24 granting a proxy to vote the security in connection

1 with a shareholder vote not described in subpara-
2 graph (A).”.

3 **Subtitle F—Improvements to the**
4 **Management of the Securities**
5 **and Exchange Commission**

6 **SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SU-**
7 **PERVISORY CONTROLS.**

8 (a) ANNUAL REPORTS AND CERTIFICATION.—Not
9 later than 90 days after the end of each fiscal year, the
10 Commission shall submit a report to the Committee on
11 Banking, Housing, and Urban Affairs of the Senate and
12 the Committee on Financial Services of the House of Rep-
13 resentatives on the conduct by the Commission of exami-
14 nations of registered entities, enforcement investigations,
15 and review of corporate financial securities filings.

16 (b) CONTENTS OF REPORTS.—Each report under
17 subsection (a) shall contain—

18 (1) an assessment, as of the end of the most re-
19 cent fiscal year, of the effectiveness of—

20 (A) the internal supervisory controls of the
21 Commission; and

22 (B) the procedures of the Commission ap-
23 plicable to the staff of the Commission who per-
24 form examinations of registered entities, en-

1 enforcement investigations, and reviews of cor-
2 porate financial securities filings;

3 (2) a certification that the Commission has ade-
4 quate internal supervisory controls to carry out the
5 duties of the Commission described in paragraph
6 (1)(B); and

7 (3) a summary by the Comptroller General of
8 the United States of the review carried out under
9 subsection (d).

10 (c) CERTIFICATION.—

11 (1) SIGNATURE.—The certification under sub-
12 section (b)(2) shall be signed by the Director of the
13 Division of Enforcement, the Director of the Divi-
14 sion of Corporation Finance, and the Director of the
15 Office of Compliance Inspections and Examinations
16 (or the head of any successor division or office).

17 (2) CONTENT OF CERTIFICATION.—Each indi-
18 vidual described in paragraph (1) shall certify that
19 the individual—

20 (A) is directly responsible for establishing
21 and maintaining the internal supervisory con-
22 trols of the Division or Office of which the indi-
23 vidual is the head;

1 (B) is knowledgeable about the internal su-
2 pervisory controls of the Division or Office of
3 which the individual is the head;

4 (C) has evaluated the effectiveness of the
5 internal supervisory controls during the 90-day
6 period ending on the final day of the fiscal year
7 to which the report relates; and

8 (D) has disclosed to the Commission any
9 significant deficiencies in the design or oper-
10 ation of internal supervisory controls that could
11 adversely affect the ability of the Division or
12 Office to consistently conduct inspections, or in-
13 vestigations, or reviews of filings with profes-
14 sional competence and integrity.

15 (d) NEW DIRECTOR OR ACTING DIRECTOR.—Not-
16 withstanding subsection (a), if the Director of the Division
17 of Enforcement, the Director of the Division of Corporate
18 Finance, or the Director of the Office of Compliance In-
19 spections and Examinations has served as Director of the
20 Division or Office for less than 90 days on the date on
21 which a report is required to be submitted under sub-
22 section (a), the Commission may submit the report on the
23 date on which the Director has served as Director for 90
24 days. If there is no Director of the Division of Enforce-
25 ment, the Division of Corporate Finance, or the Office of

1 Compliance Inspections and Examinations, on the date on
2 which a report is required to be submitted under sub-
3 section (a), the Acting Director of the Division or Office
4 may make the certification required under subsection (c).

5 (e) REVIEW BY THE COMPTROLLER GENERAL.—

6 (1) REPORT.—The Comptroller General of the
7 United States shall submit to the Committee on
8 Banking, Housing, and Urban Affairs of the Senate
9 and the Committee on Financial Services of the
10 House of Representatives a report that contains a
11 review of the adequacy and effectiveness of the inter-
12 nal supervisory control structure and procedures de-
13 scribed in subsection (b)(1), not less frequently than
14 once every 3 years, at a time to coincide with the
15 publication of the reports of the Commission under
16 this section.

17 (2) AUTHORITY TO HIRE EXPERTS.—The
18 Comptroller General of the United States may hire
19 independent consultants with specialized expertise in
20 any area relevant to the duties of the Comptroller
21 General described in this section, in order to assist
22 the Comptroller General in carrying out such duties.

1 **SEC. 962. TRIENNIAL REPORT ON PERSONNEL MANAGE-**
2 **MENT.**

3 (a) TRIENNIAL REPORT REQUIRED.—Once every 3
4 years, the Comptroller General of the United States shall
5 submit a report to the Committee on Banking, Housing,
6 and Urban Affairs of the Senate and the Committee on
7 Financial Services of the House of Representatives on the
8 quality of personnel management by the Commission.

9 (b) CONTENTS OF REPORT.—Each report under sub-
10 section (a) shall include—

11 (1) an evaluation of—

12 (A) the effectiveness of supervisors in
13 using the skills, talents, and motivation of the
14 employees of the Commission to achieve the
15 goals of the Commission;

16 (B) the criteria for promoting employees of
17 the Commission to supervisory positions;

18 (C) the fairness of the application of the
19 promotion criteria to the decisions of the Com-
20 mission;

21 (D) the competence of the professional
22 staff of the Commission;

23 (E) the efficiency of communication be-
24 tween the units of the Commission regarding
25 the work of the Commission (including commu-
26 nication between divisions and between subunits

1 of a division) and the efforts by the Commission
2 to promote such communication;

3 (F) the turnover within subunits of the
4 Commission, including the consideration of su-
5 pervisors whose subordinates have an unusually
6 high rate of turnover;

7 (G) whether there are excessive numbers of
8 low-level, mid-level, or senior-level managers;

9 (H) any initiatives of the Commission that
10 increase the competence of the staff of the
11 Commission;

12 (I) the actions taken by the Commission
13 regarding employees of the Commission who
14 have failed to perform their duties and cir-
15 cumstances under which the Commission has
16 issued to employees a notice of termination; and

17 (J) such other factors relating to the man-
18 agement of the Commission as the Comptroller
19 General determines are appropriate;

20 (2) an evaluation of any improvements made
21 with respect to the areas described in paragraph (1)
22 since the date of submission of the previous report;
23 and

24 (3) recommendations for how the Commission
25 can use the human resources of the Commission

1 more effectively and efficiently to carry out the mis-
2 sion of the Commission.

3 (c) CONSULTATION.—In preparing the report under
4 subsection (a), the Comptroller General shall consult with
5 current employees of the Commission, retired employees
6 and other former employees of the Commission, the In-
7 spector General of the Commission, persons that have
8 business before the Commission, any union representing
9 the employees of the Commission, private management
10 consultants, academics, and any other source that the
11 Comptroller General deems appropriate.

12 (d) REPORT BY COMMISSION.—Not later than 90
13 days after the date on which the Comptroller General sub-
14 mits each report under subsection (a), the Commission
15 shall submit to the Committee on Banking, Housing, and
16 Urban Affairs of the Senate and the Committee on Finan-
17 cial Services of the House of Representatives a report de-
18 scribing the actions taken by the Commission in response
19 to the recommendations contained in the report under
20 subsection (a).

21 (e) REIMBURSEMENTS FOR COST OF REPORTS.—

22 (1) REIMBURSEMENTS REQUIRED.—The Com-
23 mission shall reimburse the Government Account-
24 ability Office for the full cost of making the reports

1 under this section, as billed therefor by the Comp-
2 troller General.

3 (2) CREDITING AND USE OF REIMBURSE-
4 MENTS.—Such reimbursements shall—

5 (A) be credited to the appropriation ac-
6 count “Salaries and Expenses, Government Ac-
7 countability Office” current when the payment
8 is received; and

9 (B) remain available until expended.

10 (f) AUTHORITY TO HIRE EXPERTS.—The Comp-
11 troller General of the United States may hire independent
12 consultants with specialized expertise in any area relevant
13 to the duties of the Comptroller General described in this
14 section, in order to assist the Comptroller General in car-
15 rying out such duties.

16 **SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.**

17 (a) REPORTS OF COMMISSION.—

18 (1) ANNUAL REPORTS REQUIRED.—Not later
19 than 6 months after the end of each fiscal year, the
20 Commission shall publish and submit to Congress a
21 report that—

22 (A) describes the responsibility of the man-
23 agement of the Commission for establishing and
24 maintaining an adequate internal control struc-
25 ture and procedures for financial reporting; and

1 (B) contains an assessment of the effec-
2 tiveness of the internal control structure and
3 procedures for financial reporting of the Com-
4 mission during that fiscal year.

5 (2) ATTESTATION.—The reports required under
6 paragraph (1) shall be attested to by the Chairman
7 and chief financial officer of the Commission.

8 (b) REPORT BY COMPTROLLER GENERAL.—

9 (1) REPORT REQUIRED.—Not later than 6
10 months after the end of the first fiscal year after the
11 date of enactment of this Act, the Comptroller Gen-
12 eral of the United States shall submit a report to
13 Congress that assesses—

14 (A) the effectiveness of the internal control
15 structure and procedures of the Commission for
16 financial reporting; and

17 (B) the assessment of the Commission
18 under subsection (a)(1)(B).

19 (2) ATTESTATION.—The Comptroller General
20 shall attest to, and report on, the assessment made
21 by the Commission under subsection (a).

22 (c) REIMBURSEMENTS FOR COST OF REPORTS.—

23 (1) REIMBURSEMENTS REQUIRED.—The Com-
24 mission shall reimburse the Government Account-
25 ability Office for the full cost of making the reports

1 under subsection (b), as billed therefor by the Comp-
2 troller General.

3 (2) CREDITING AND USE OF REIMBURSE-
4 MENTS.—Such reimbursements shall—

5 (A) be credited to the appropriation ac-
6 count “Salaries and Expenses, Government Ac-
7 countability Office” current when the payment
8 is received; and

9 (B) remain available until expended.

10 **SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURI-**
11 **TIES ASSOCIATIONS.**

12 (a) REPORT REQUIRED.—Not later than 2 years
13 after the date of enactment of this Act, and every 3 years
14 thereafter, the Comptroller General of the United States
15 shall submit to the Committee on Banking, Housing, and
16 Urban Affairs of the Senate and the Committee on Finan-
17 cial Services of the House of Representatives a report that
18 includes an evaluation of the oversight by the Commission
19 of national securities associations registered under section
20 15A of the Securities Exchange Act of 1934 (15 U.S.C.
21 78o–3) with respect to—

22 (1) the governance of such national securities
23 associations, including the identification and man-
24 agement of conflicts of interest by such national se-
25 curities associations, together with an analysis of the

1 impact of any conflicts of interest on the regulatory
2 enforcement or rulemaking by such national securi-
3 ties associations;

4 (2) the examinations carried out by the national
5 securities associations, including the expertise of the
6 examiners;

7 (3) the executive compensation practices of such
8 national securities associations;

9 (4) the arbitration services provided by the na-
10 tional securities associations;

11 (5) the review performed by national securities
12 associations of advertising by the members of the
13 national securities associations;

14 (6) the cooperation with and assistance to State
15 securities administrators by the national securities
16 associations to promote investor protection;

17 (7) how the funding of national securities asso-
18 ciations is used to support the mission of the na-
19 tional securities associations, including—

20 (A) the methods of funding;

21 (B) the sufficiency of funds;

22 (C) how funds are invested by the national
23 securities association pending use; and

1 (D) the impact of the methods, sufficiency,
2 and investment of funds on regulatory enforce-
3 ment by the national securities associations;

4 (8) the policies regarding the employment of
5 former employees of national securities associations
6 by regulated entities;

7 (9) the ongoing effectiveness of the rules of the
8 national securities associations in achieving the goals
9 of the rules;

10 (10) the transparency of governance and activi-
11 ties of the national securities associations; and

12 (11) any other issue that has an impact, as de-
13 termined by the Comptroller General, on the effec-
14 tiveness of such national securities associations in
15 performing their mission and in dealing fairly with
16 investors and members;

17 (b) 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 subsection (a), as billed therefor by the Comp-
22 troller General.

23 (2) CREDITING AND USE OF REIMBURSE-
24 MENTS.—Such reimbursements shall—

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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. 965. COMPLIANCE EXAMINERS.**

7 Section 4 of the Securities Exchange Act of 1934 (15
8 U.S.C. 78d) is amended by adding at the end the fol-
9 lowing:

10 “(h) EXAMINERS.—

11 “(1) DIVISION OF TRADING AND MARKETS.—

12 The Division of Trading and Markets of the Com-
13 mission, or any successor organizational unit, shall
14 have a staff of examiners who shall—

15 “(A) perform compliance inspections and
16 examinations of entities under the jurisdiction
17 of that Division; and

18 “(B) report to the Director of that Divi-
19 sion.

20 “(2) DIVISION OF INVESTMENT MANAGE-
21 MENT.—The Division of Investment Management of
22 the Commission, or any successor organizational
23 unit, shall have a staff of examiners who shall—

1 “(A) perform compliance inspections and
2 examinations of entities under the jurisdiction
3 of that Division; and

4 “(B) report to the Director of that Divi-
5 sion.”.

6 **SEC. 966. SUGGESTION PROGRAM FOR EMPLOYEES OF THE**
7 **COMMISSION.**

8 The Securities Exchange Act of 1934 (15 U.S.C. 78a
9 et seq.) is amended by inserting after section 4C (15
10 U.S.C. 78d-3) the following:

11 **“SEC. 4D. ADDITIONAL DUTIES OF INSPECTOR GENERAL.**

12 “(a) SUGGESTION SUBMISSIONS BY COMMISSION EM-
13 PLOYEES.—

14 “(1) HOTLINE ESTABLISHED.—The Inspector
15 General of the Commission shall establish and main-
16 tain a telephone hotline or other electronic means for
17 the receipt of—

18 “(A) suggestions by employees of the Com-
19 mission for improvements in the work effi-
20 ciency, effectiveness, and productivity, and the
21 use of the resources, of the Commission; and

22 “(B) allegations by employees of the Com-
23 mission of waste, abuse, misconduct, or mis-
24 management within the Commission.

1 “(2) CONFIDENTIALITY.—The Inspector Gen-
2 eral shall maintain as confidential—

3 “(A) the identity of any individual who
4 provides information by the means established
5 under paragraph (1), unless the individual re-
6 quests otherwise, in writing; and

7 “(B) at the request of any such individual,
8 any specific information provided by the indi-
9 vidual.

10 “(b) CONSIDERATION OF REPORTS.—The Inspector
11 General shall consider any suggestions or allegations re-
12 ceived by the means established under subsection (a)(1),
13 and shall recommend appropriate action in relation to
14 such suggestions or allegations.

15 “(c) RECOGNITION.—The Inspector General may rec-
16 ognize any employee who makes a suggestion under sub-
17 section (a)(1) (or by other means) that would or does—

18 “(1) increase the work efficiency, effectiveness,
19 or productivity of the Commission; or

20 “(2) reduce waste, abuse, misconduct, or mis-
21 management within the Commission.

22 “(d) REPORT.—The Inspector General of the Com-
23 mission shall submit to Congress an annual report con-
24 taining a description of—

1 “(1) the nature, number, and potential benefits
2 of any suggestions received under subsection (a);

3 “(2) the nature, number, and seriousness of
4 any allegations received under subsection (a);

5 “(3) any recommendations made or actions
6 taken by the Inspector General in response to sub-
7 stantiated allegations received under subsection (a);
8 and

9 “(4) any action the Commission has taken in
10 response to suggestions or allegations received under
11 subsection (a).

12 “(e) FUNDING.—The activities of the Inspector Gen-
13 eral under this subsection shall be funded by the Securities
14 and Exchange Commission Investor Protection Fund es-
15 tablished under section 21F.”.

16 **Subtitle G—Strengthening** 17 **Corporate Governance**

18 **SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN**

19 **UNCONTESTED ELECTIONS.**

20 The Securities Exchange Act of 1934 (15 U.S.C. 78a
21 et seq.) is amended by inserting after section 14A, as
22 added by this title, the following:

23 **“SEC. 14B. CORPORATE GOVERNANCE.**

24 “(a) CORPORATE GOVERNANCE STANDARDS.—

25 “(1) LISTING STANDARDS.—

1 “(A) IN GENERAL.—Not later than 1 year
2 after the date of enactment of this subsection,
3 the Commission shall, by rule, direct the na-
4 tional securities exchanges and national securi-
5 ties associations to prohibit the listing of any
6 security of an issuer that is not in compliance
7 with any of the requirements of this subsection.

8 “(B) OPPORTUNITY TO COMPLY AND
9 CURE.—The rules established under this para-
10 graph shall allow an issuer to have an oppor-
11 tunity to come into compliance with the require-
12 ments of this subsection, and to cure any defect
13 that would be the basis for a prohibition under
14 subparagraph (A), before the imposition of such
15 prohibition.

16 “(C) AUTHORITY TO EXEMPT.—The Com-
17 mission may, by rule or order, exempt an issuer
18 from any or all of the requirements of this sub-
19 section and the rules issued under this sub-
20 section, based on the size of the issuer, the
21 market capitalization of the issuer, the number
22 of shareholders of record of the issuer, or any
23 other criteria, as the Commission deems nec-
24 essary and appropriate in the public interest or
25 for the protection of investors.

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1 of time, as established by the
2 Commission; and

3 “(cc) make the date under
4 item (bb) public within a reason-
5 able period of time, as estab-
6 lished by the Commission; or

7 “(II) shall, upon a unanimous
8 vote of the board, decline to accept
9 the resignation and, not later than 30
10 days after the date of the vote (or
11 within such shorter period as the
12 Commission may establish), make
13 public, together with a discussion of
14 the analysis used in reaching the con-
15 clusion, the specific reasons that—

16 “(aa) the board chose not to
17 accept the resignation; and

18 “(bb) the decision was in the
19 best interests of the issuer and
20 the shareholders of the issuer.”.

21 **SEC. 972. PROXY ACCESS.**

22 (a) PROXY ACCESS.—Section 14(a) of the Securities
23 Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

24 (1) by inserting “(1)” after “(a)”; and

25 (2) by adding at the end the following:

1 “(2) The rules and regulations prescribed by the
2 Commission under paragraph (1) may include—

3 “(A) a requirement that a solicitation of proxy,
4 consent, or authorization by (or on behalf of) an
5 issuer include a nominee submitted by a shareholder
6 to serve on the board of directors of the issuer; and

7 “(B) a requirement that an issuer follow a cer-
8 tain procedure in relation to a solicitation described
9 in subparagraph (A).”.

10 (b) REGULATIONS.—The Commission may issue rules
11 permitting the use by shareholders of proxy solicitation
12 materials supplied by an issuer of securities for the pur-
13 pose of nominating individuals to membership on the
14 board of directors of the issuer, under such terms and con-
15 ditions as the Commission determines are in the interests
16 of shareholders and for the protection of investors.

17 **SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO**
18 **STRUCTURES.**

19 Section 14B of the Securities Exchange Act of 1934,
20 as added by section 971, is amended by adding at the end
21 the following:

22 “(b) DISCLOSURES REGARDING CHAIRMAN AND CEO
23 STRUCTURES.—Not later than 180 days after the date of
24 enactment of this subsection, the Commission shall issue

1 rules that require an issuer to disclose in the annual proxy
2 sent to investors the reasons why the issuer has chosen—

3 “(1) the same person to serve as chairman of
4 the board of directors and chief executive officer (or
5 in equivalent positions); or

6 “(2) different individuals to serve as chairman
7 of the board of directors and chief executive officer
8 (or in equivalent positions of the issuer).”.

9 **Subtitle H—Municipal Securities**

10 **SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND** 11 **CHANGES TO THE BOARD OF THE MSRB.**

12 (a) REGISTRATION OF MUNICIPAL SECURITIES
13 DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of
14 the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a))
15 is amended—

16 (1) in paragraph (1)—

17 (A) by inserting “(A)” after “(1)”; and

18 (B) by adding at the end the following:

19 “(B) It shall be unlawful for a municipal
20 advisor to provide advice to or on behalf of a
21 municipal entity or obligated person with re-
22 spect to municipal financial products or the
23 issuance of municipal securities, or to under-
24 take a solicitation of a municipal entity or obli-

1 gated person, unless the municipal advisor is
2 registered in accordance with this subsection.”;

3 (2) in paragraph (2), by inserting “or municipal
4 advisor” after “municipal securities dealer” each
5 place that term appears;

6 (3) in paragraph (3), by inserting “or municipal
7 advisor” after “municipal securities dealer” each
8 place that term appears;

9 (4) in paragraph (4), by striking “dealer, or
10 municipal securities dealer or class of brokers, deal-
11 ers, or municipal securities dealers” and inserting
12 “dealer, municipal securities dealer, or municipal ad-
13 visor, or class of brokers, dealers, municipal securi-
14 ties dealers, or municipal advisors”; and

15 (5) by adding at the end the following:

16 “(5) No municipal advisor shall make use of the
17 mails or any means or instrumentality of interstate
18 commerce to provide advice to or on behalf of a mu-
19 nicipal entity or obligated person with respect to mu-
20 nicipal financial products, the issuance of municipal
21 securities, or to undertake a solicitation of a munic-
22 ipal entity or obligated person, in connection with
23 which such municipal advisor engages in any fraudu-
24 lent, deceptive, or manipulative act or practice.”.

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1 (b) MUNICIPAL SECURITIES RULEMAKING BOARD.—
2 Section 15B(b) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78o-4(b)) is amended—

4 (1) in paragraph (1)—

5 (A) in the first sentence, by striking “Not
6 later than” and all that follows through “ap-
7 pointed by the Commission” and inserting “The
8 Municipal Securities Rulemaking Board shall be
9 composed of 15 members, or such other number
10 of members as specified by rules of the Board
11 pursuant to paragraph (2)(B),”;

12 (B) by striking the second sentence and in-
13 serting the following: “The members of the
14 Board shall serve as members for a term of 3
15 years or for such other terms as specified by
16 rules of the Board pursuant to paragraph
17 (2)(B), and shall consist of (A) 8 individuals
18 who are not associated with any broker, dealer,
19 municipal securities dealer, or municipal advisor
20 (other than by reason of being under common
21 control with, or indirectly controlling, any
22 broker or dealer which is not a municipal secu-
23 rities broker or municipal securities dealer), at
24 least 1 of whom shall be representative of insti-
25 tutional or retail investors in municipal securi-

1 ties, at least 1 of whom shall be representative
2 of municipal entities, and at least 1 of whom
3 shall be a member of the public with knowledge
4 of or experience in the municipal industry
5 (which members are hereinafter referred to as
6 ‘public representatives’); and (B) 7 individuals
7 who are associated with a broker, dealer, mu-
8 nicipal securities dealer, or municipal advisor,
9 including at least 1 individual who is associated
10 with and representative of brokers, dealers, or
11 municipal securities dealers that are not banks
12 or subsidiaries or departments or divisions of
13 banks (which members are hereinafter referred
14 to as ‘broker-dealer representatives’), at least 1
15 individual who is associated with and represent-
16 ative of municipal securities dealers which are
17 banks or subsidiaries or departments or divi-
18 sions of banks (which members are hereinafter
19 referred to as ‘bank representatives’), and at
20 least 1 individual who is associated with a mu-
21 nicipal advisor (which member is hereinafter re-
22 ferred to as the ‘advisor representative’).”; and
23 (C) in the third sentence, by striking “ini-
24 tial”;
25 (2) in paragraph (2)—

1 (A) in the matter preceding subparagraph

2 (A)—

3 (i) by inserting before the period at
4 the end of the first sentence the following:
5 “and advice provided to or on behalf of
6 municipal entities or obligated persons by
7 brokers, dealers, municipal securities deal-
8 ers, and municipal advisors with respect to
9 municipal financial products, the issuance
10 of municipal securities, and solicitations of
11 municipal entities or obligated persons un-
12 dertaken by brokers, dealers, municipal se-
13 curities dealers, and municipal advisors”;
14 and

15 (ii) by striking the second sentence;

16 (B) in subparagraph (A)—

17 (i) in the matter preceding clause

18 (i)—

19 (I) by inserting “, and no broker,
20 dealer, municipal securities dealer, or
21 municipal advisor shall provide advice
22 to or on behalf of a municipal entity
23 or obligated person with respect to
24 municipal financial products or the
25 issuance of municipal securities,”

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1 after “sale of, any municipal secu-
2 rity”; and

3 (II) by inserting “and municipal
4 entities or obligated persons” after
5 “protection of investors”;

6 (ii) in clause (i), by striking “munic-
7 ipal securities brokers and municipal secu-
8 rities dealers” each place that term ap-
9 pears and inserting “municipal securities
10 brokers, municipal securities dealers, and
11 municipal advisors”;

12 (iii) in clause (ii), by adding “and” at
13 the end;

14 (iv) in clause (iii), by striking “; and”
15 and inserting a period; and

16 (v) by striking clause (iv);

17 (C) in subparagraph (B), by striking
18 “nominations and elections” and all that follows
19 through “specify” and inserting “nominations
20 and elections of public representatives, broker-
21 dealer representatives, bank representatives,
22 and advisor representatives. Such rules shall
23 provide that the membership of the Board shall
24 at all times be as evenly divided in number as
25 possible between entities or individuals who are

1 subject to regulation by the Board and entities
2 or individuals not subject to regulation by the
3 Board, provided, however, that a majority of
4 the members of the Board shall at all times be
5 public representatives. Such rules shall also
6 specify”;

7 (D) in subparagraph (C)—

8 (i) by inserting “and municipal finan-
9 cial products” after “municipal securities”
10 the first two times that term appears;

11 (ii) by inserting “, municipal entities,
12 obligated persons,” before “and the public
13 interest”;

14 (iii) by striking “between” and insert-
15 ing “among”;

16 (iv) by striking “issuers, municipal se-
17 curities brokers, or municipal securities
18 dealers, to fix” and inserting “municipal
19 entities, obligated persons, municipal secu-
20 rities brokers, municipal securities dealers,
21 or municipal advisors, to fix”; and

22 (v) by striking “brokers or municipal
23 securities dealers, to regulate” and insert-
24 ing “brokers, municipal securities dealers,
25 or municipal advisors, to regulate”;

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1 (E) in subparagraph (D)—

2 (i) by inserting “and advice con-
3 cerning municipal financial products” after
4 “transactions in municipal securities”;

5 (ii) by striking “That no” and insert-
6 ing “that no”;

7 (iii) by inserting “municipal advisor,”
8 before “or person associated”; and

9 (iv) by striking “a municipal securi-
10 ties broker or municipal securities dealer
11 may be compelled” and inserting “a mu-
12 nicipal securities broker, municipal securi-
13 ties dealer, or municipal advisor may be
14 compelled”;

15 (F) in subparagraph (E)—

16 (i) by striking “municipal securities
17 brokers and municipal securities dealers”
18 and inserting “municipal securities bro-
19 kers, municipal securities dealers, and mu-
20 nicipal advisors”; and

21 (ii) by striking “municipal securities
22 broker or municipal securities dealer” and
23 inserting “municipal securities broker, mu-
24 nicipal securities dealer, or municipal advi-
25 sor”;

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1 (G) in subparagraph (G), by striking “mu-
2 nicipal securities brokers and municipal securi-
3 ties dealers” and inserting “municipal securities
4 brokers, municipal securities dealers, and mu-
5 nicipal advisors”;

6 (H) in subparagraph (J)—

7 (i) by striking “municipal securities
8 broker and each municipal securities deal-
9 er” and inserting “municipal securities
10 broker, municipal securities dealer, and
11 municipal advisor”; and

12 (ii) by striking the period at the end
13 of the second sentence and inserting “,
14 which may include charges for failure to
15 submit to the Board, or to any information
16 system operated by the Board, within the
17 prescribed timeframes, any items of infor-
18 mation or documents required to be sub-
19 mitted under any rule issued by the
20 Board.”;

21 (I) in subparagraph (K)—

22 (i) by inserting “broker, dealer, or”
23 before “municipal securities dealer” each
24 place that term appears; and

1 (ii) by striking “municipal securities
2 investment portfolio” and inserting “re-
3 lated account of a broker, dealer, or mu-
4 nicipal securities dealer”; and
5 (J) by adding at the end the following:

6 “(L) provide continuing education require-
7 ments for municipal advisors.

8 “(M) provide professional standards.

9 “(N) not impose a regulatory burden on
10 small municipal advisors that is not necessary
11 or appropriate in the public interest and for the
12 protection of investors, municipal entities, and
13 obligated persons, provided that there is robust
14 protection of investors against fraud.”;

15 (3) by redesignating paragraph (3) as para-
16 graph (7); and

17 (4) by inserting after paragraph (2) the fol-
18 lowing:

19 “(3) The Board, in conjunction with or on be-
20 half of any Federal financial regulator or self-regu-
21 latory organization, may—

22 “(A) establish information systems; and

23 “(B) assess such reasonable fees and
24 charges for the submission of information to, or
25 the receipt of information from, such systems

1 from any persons which systems may be devel-
2 oped for the purposes of serving as a repository
3 of information from municipal market partici-
4 pants or otherwise in furtherance of the pur-
5 poses of the Board, a Federal financial regu-
6 lator, or a self-regulatory organization, except
7 that the Board—

8 “(i) may not charge a fee to municipal
9 entities or obligated persons to submit doc-
10 uments or other information to the Board
11 or charge a fee to any person to obtain, di-
12 rectly from the Internet site of the Board,
13 documents or information submitted by
14 municipal entities, obligated persons, bro-
15 kers, dealers, municipal securities dealers,
16 or municipal advisors, including documents
17 submitted under the rules of the Board or
18 the Commission; and

19 “(ii) shall not be prohibited from
20 charging commercially reasonable fees for
21 automated subscription-based feeds or
22 similar services, or for charging for other
23 data or document-based services cus-
24 tomized upon request of any person, made
25 available to commercial enterprises, munic-

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1 “(ii) examination and enforcement of
2 compliance with Board rules.”.

3 (c) DISCIPLINE OF DEALERS AND MUNICIPAL ADVI-
4 SORS AND OTHER MATTERS.—Section 15B(c) of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78o–4(c)) is
6 amended—

7 (1) in paragraph (1), by inserting “, and no
8 broker, dealer, municipal securities dealer, or munic-
9 ipal advisor shall make use of the mails or any
10 means or instrumentality of interstate commerce to
11 provide advice to or on behalf of a municipal entity
12 or obligated person with respect to municipal finan-
13 cial products, the issuance of municipal securities, or
14 to undertake a solicitation of a municipal entity or
15 obligated person,” after “any municipal security”;

16 (2) in paragraph (2), by inserting “or municipal
17 advisor” after “municipal securities dealer” each
18 place that term appears;

19 (3) in paragraph (3)—

20 (A) by inserting “or municipal entities or
21 obligated person” after “protection of inves-
22 tors” each place that term appears; and

23 (B) by inserting “or municipal advisor”
24 after “municipal securities dealer” each place
25 that term appears;

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1 (4) in paragraph (4), by inserting “or municipal
2 advisor” after “municipal securities dealer or obli-
3 gated person” each place that term appears;

4 (5) in paragraph (6)(B), by inserting “or mu-
5 nicipal entities or obligated person” after “protec-
6 tion of investors”;

7 (6) in paragraph (7)—

8 (A) in subparagraph (A)—

9 (i) in clause (i), by striking “; and”
10 and inserting a semicolon;

11 (ii) in clause (ii), by striking the pe-
12 riod and inserting “; and”; and

13 (iii) by adding at the end the fol-
14 lowing:

15 “(iii) the Commission, or its designee,
16 in the case of municipal advisors.”.

17 (B) in subparagraph (B), by inserting “or
18 municipal entities or obligated person” after
19 “protection of investors”; and

20 (7) by adding at the end the following:

21 “(9)(A) Fines collected by the Commission for
22 violations of the rules of the Board shall be equally
23 divided between the Commission and the Board.

24 “(B) Fines collected by a registered securities
25 association under section 15A(7) with respect to vio-

1 lations of the rules of the Board shall be accounted
2 for by such registered securities association sepa-
3 rately from other fines collected under section
4 15A(7) and shall be allocated between such reg-
5 istered securities association and the Board, and
6 such allocation shall require the registered securities
7 association to pay to the Board $\frac{1}{3}$ of all fines col-
8 lected by the registered securities association reason-
9 ably allocable to violations of the rules of the Board,
10 or such other portion of such fines as may be di-
11 rected by the Commission upon agreement between
12 the registered securities association and the Board.”.

13 (d) ISSUANCE OF MUNICIPAL SECURITIES.—Section
14 15B(d)(2) of the Securities Exchange Act of 1934 (15
15 U.S.C. 78o-4(d)) is amended—

16 (1) by striking “through a municipal securities
17 broker or municipal securities dealer or otherwise”
18 and inserting “through a municipal securities
19 broker, municipal securities dealer, municipal advi-
20 sor, or otherwise”; and

21 (2) by inserting “or municipal advisors” before
22 “to furnish”.

23 (e) DEFINITIONS.—Section 15B of the Securities Ex-
24 change Act of 1934 (15 U.S.C. 78o-4) is amended by add-
25 ing at the end the following:

1 “(e) DEFINITIONS.—For purposes of this section—

2 “(1) the term ‘Board’ means the Municipal Se-
3 curities Rulemaking Board established under sub-
4 section (b)(1);

5 “(2) the term ‘guaranteed investment contract’
6 includes any investment that has specified with-
7 drawal or reinvestment provisions and a specifically
8 negotiated or bid interest rate, and also includes any
9 agreement to supply investments on 2 or more fu-
10 ture dates, such as a forward supply contract;

11 “(3) the term ‘investment strategies’ includes
12 plans or programs for the investment of the proceeds
13 of municipal securities that are not municipal de-
14 rivatives, guaranteed investment contracts, and the
15 recommendation of and brokerage of municipal es-
16 crow investments;

17 “(4) the term ‘municipal advisor’—

18 “(A) means a person (who is not a munic-
19 ipal entity or an employee of a municipal enti-
20 ty) that—

21 “(i) provides advice to or on behalf of
22 a municipal entity or obligated person with
23 respect to municipal financial products or
24 the issuance of municipal securities, in-
25 cluding advice with respect to the struc-

1 ture, timing, terms, and other similar mat-
2 ters concerning such financial products or
3 issues; or

4 “(ii) undertakes a solicitation of a
5 municipal entity;

6 “(B) includes financial advisors, guaran-
7 teed investment contract brokers, third-party
8 marketers, placement agents, solicitors, finders,
9 and swap advisors, if such persons are de-
10 scribed in any of clauses (i) through (iii) of sub-
11 paragraph (A); and

12 “(C) does not include a broker, dealer, or
13 municipal securities dealer serving as an under-
14 writer (as defined in section 2(a)(11) of the Se-
15 curities Act of 1933) (15 U.S.C. 77b(a)(11)),
16 any investment adviser registered under the In-
17 vestment Advisers Act of 1940, or persons asso-
18 ciated with such investment advisers who are
19 providing investment advice, any commodity
20 trading advisor registered under the Commodity
21 Exchange Act or persons associated with a com-
22 modity trading advisor who are providing advice
23 related to swaps, attorneys offering legal advice
24 or providing services that are of a traditional

1 legal nature, or engineers providing engineering
2 advice;

3 “(5) the term ‘municipal financial product’
4 means municipal derivatives, guaranteed investment
5 contracts, and investment strategies;

6 “(6) the term ‘rules of the Board’ means the
7 rules proposed and adopted by the Board under sub-
8 section (b)(2);

9 “(7) the term ‘person associated with a munic-
10 ipal advisor’ or ‘associated person of an advisor’
11 means—

12 “(A) any partner, officer, director, or
13 branch manager of such municipal advisor (or
14 any person occupying a similar status or per-
15 forming similar functions);

16 “(B) any other employee of such municipal
17 advisor who is engaged in the management, di-
18 rection, supervision, or performance of any ac-
19 tivities relating to the provision of advice to or
20 on behalf of a municipal entity or obligated per-
21 son with respect to municipal financial products
22 or the issuance of municipal securities; and

23 “(C) any person directly or indirectly con-
24 trolling, controlled by, or under common control
25 with such municipal advisor;

1 “(8) the term ‘municipal entity’ means any
2 State, political subdivision of a State, or municipal
3 corporate instrumentality of a State, including—

4 “(A) any agency, authority, or instrumen-
5 tality of the State, political subdivision, or mu-
6 nicipal corporate instrumentality;

7 “(B) any plan, program, or pool of assets
8 sponsored or established by the State, political
9 subdivision, or municipal corporate instrumen-
10 tality or any agency, authority, or instrumen-
11 tality thereof; and

12 “(C) any other issuer of municipal securi-
13 ties;

14 “(9) the term ‘solicitation of a municipal entity
15 or obligated person’ means a direct or indirect com-
16 munication with a municipal entity or obligated per-
17 son made by a person, for direct or indirect com-
18 pensation, on behalf of a broker, dealer, municipal
19 securities dealer, municipal advisor, or investment
20 adviser (as defined in section 202 of the Investment
21 Advisers Act of 1940) that does not control, is not
22 controlled by, or is not under common control with
23 the person undertaking such solicitation for the pur-
24 pose of obtaining or retaining an engagement by a
25 municipal entity or obligated person of a broker,

1 dealer, municipal securities dealer, or municipal ad-
2 visor for or in connection with municipal financial
3 products, the issuance of municipal securities, or of
4 an investment adviser to provide investment advisory
5 services to or on behalf of a municipal entity; and

6 “(10) the term ‘obligated person’ means any
7 person, including an issuer of municipal securities,
8 who is either generally or through an enterprise,
9 fund, or account of such person, committed by con-
10 tract or other arrangement to support the payment
11 of all or part of the obligations on the municipal se-
12 curities to be sold in an offering of municipal securi-
13 ties.”.

14 (f) REGISTERED SECURITIES ASSOCIATION.—Section
15 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.
16 78o–3(b)) is amended by adding at the end the following:

17 “(15) The rules of the association provide that
18 the association shall—

19 “(A) request guidance from the Municipal
20 Securities Rulemaking Board in interpretation
21 of the rules of the Municipal Securities Rule-
22 making Board; and

23 “(B) provide information to the Municipal
24 Securities Rulemaking Board about the enforce-
25 ment actions and examinations of the associa-

1 tion under section 15B(b)(2)(E), so that the
2 Municipal Securities Rulemaking Board may—

3 “(i) assist in such enforcement actions
4 and examinations; and

5 “(ii) evaluate the ongoing effective-
6 ness of the rules of the Board.”.

7 (g) REGISTRATION AND REGULATION OF BROKERS
8 AND DEALERS.—Section 15 of the Securities Exchange
9 Act of 1934 is amended—

10 (1) in subsection (b)(4), by inserting “munic-
11 ipal advisor,” after “municipal securities dealer”
12 each place that term appears; and

13 (2) in subsection (c), by inserting “broker, deal-
14 er, or” before “municipal securities dealer” each
15 place that term appears.

16 (h) ACCOUNTS AND RECORDS, REPORTS, EXAMINA-
17 TIONS OF EXCHANGES, MEMBERS, AND OTHERS.—Sec-
18 tion 17(a)(1) of the Securities Exchange Act of 1934 is
19 amended by inserting “municipal advisor,” after “munic-
20 ipal securities dealer”.

21 (i) EFFECTIVE DATE.—This section, and the amend-
22 ments made by this section, shall take effect on October
23 1, 2010.

1 **SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
2 **OF INCREASED DISCLOSURE TO INVESTORS.**

3 (a) STUDY.—The Comptroller General of the United
4 States shall conduct a study and review of the disclosure
5 required to be made by issuers of municipal securities.

6 (b) SUBJECTS FOR EVALUATION.—In conducting the
7 study under subsection (a), the Comptroller General of the
8 United States shall—

9 (1) broadly describe—

10 (A) the size of the municipal securities
11 markets and the issuers and investors; and

12 (B) the disclosures provided by issuers to
13 investors;

14 (2) compare the amount, frequency, and quality
15 of disclosures that issuers of municipal securities are
16 required by law to provide for the benefit of munic-
17 ipal securities holders, including the amount of and
18 frequency of disclosures actually provided by issuers
19 of municipal securities, with the amount of and fre-
20 quency of disclosures that issuers of corporate secu-
21 rities provide for the benefit of corporate securities
22 holders, taking into account the differences between
23 issuers of municipal securities and issuers of cor-
24 porate securities;

25 (3) evaluate the costs and benefits to various
26 types of issuers of municipal securities of requiring

1 issuers of municipal bonds to provide additional fi-
2 nancial disclosures for the benefit of investors;

3 (4) evaluate the potential benefit to investors
4 from additional financial disclosures by issuers of
5 municipal bonds; and

6 (5) make recommendations relating to disclo-
7 sure requirements for municipal issuers, including
8 the advisability of the repeal or retention of section
9 15B(d) of the Securities Exchange Act of 1934 (15
10 U.S.C. 78o-4(d)) (commonly known as the “Tower
11 Amendment”).

12 (c) REPORT.—Not later than 24 months after the
13 date of enactment of this Act, the Comptroller General
14 of the United States shall submit a report to Congress
15 on the results of the study conducted under subsection (a),
16 including recommendations for how to improve disclosure
17 by issuers of municipal securities.

18 **SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
19 **ON THE MUNICIPAL SECURITIES MARKETS.**

20 (a) STUDY.—The Comptroller General of the United
21 States shall conduct a study of the municipal securities
22 markets.

23 (b) REPORT.—Not later than 18 months after the
24 date of enactment of this Act, the Comptroller General
25 of the United States shall submit a report to the Com-

1 mittee on Banking, Housing, and Urban Affairs of the
2 Senate, and the Committee on Financial Services of the
3 House of Representatives, with copies to the Special Com-
4 mittee on Aging of the Senate and the Commission, on
5 the results of the study conducted under subsection (a),
6 including—

7 (1) an analysis of the mechanisms for trading,
8 quality of trade executions, market transparency,
9 trade reporting, price discovery, settlement clearing,
10 and credit enhancements;

11 (2) the needs of the markets and investors and
12 the impact of recent innovations;

13 (3) recommendations for how to improve the
14 transparency, efficiency, fairness, and liquidity of
15 trading in the municipal securities markets, includ-
16 ing with reference to items listed in paragraph (1);
17 and

18 (4) potential uses of derivatives in the munic-
19 ipal securities markets.

20 (c) RESPONSES.—Not later than 180 days after re-
21 ceipt of the report required under subsection (b), the Com-
22 mission shall submit a response to the Committee on
23 Banking, Housing, and Urban Affairs of the Senate, and
24 the Committee on Financial Services of the House of Rep-
25 resentatives, with a copy to the Special Committee on

1 Aging of the Senate, stating the actions the Commission
2 has taken in response to the recommendations contained
3 in such report.

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) CONSULTATION.—In conducting the study re-
23 quired under subsection (a), the Commission shall consult
24 with State and local government financial officers.

1 (c) REPORT.—Not later than 270 days after the date
2 of enactment of this Act, the Commission shall submit to
3 the Committee on Banking, Housing, and Urban Affairs
4 of the Senate and the Committee on Financial Services
5 of the House of Representatives a report on the study re-
6 quired under subsection (a).

7 **SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.**

8 (a) IN GENERAL.—There shall be in the Commission
9 an Office of Municipal Securities, which shall—

10 (1) administer the rules of the Commission with
11 respect to the practices of municipal securities bro-
12 kers and dealers, municipal securities advisors, mu-
13 nicipal securities investors, and municipal securities
14 issuers; and

15 (2) coordinate with the Municipal Securities
16 Rulemaking Board for rulemaking and enforcement
17 actions as required by law.

18 (b) DIRECTOR OF THE OFFICE.—The head of the Of-
19 fice of Municipal Securities shall be the Director, who
20 shall report to the Chairman.

21 (c) STAFFING.—

22 (1) IN GENERAL.—The Office of Municipal Se-
23 curities shall be staffed sufficiently to carry out the
24 requirements of this section.

1 (2) REQUIREMENT.—The staff of the Office of
2 Municipal Securities shall include individuals with
3 knowledge of and expertise in municipal finance.

4 **Subtitle I—Public Company Ac-**
5 **counting Oversight Board, Port-**
6 **folio Margining, and Other Mat-**
7 **ters**

8 **SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION**
9 **WITH FOREIGN AUTHORITIES.**

10 (a) DEFINITION.—Section 2(a) of the Sarbanes-
11 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
12 adding at the end the following:

13 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
14 ITY.—The term ‘foreign auditor oversight authority’
15 means any governmental body or other entity em-
16 powered by a foreign government to conduct inspec-
17 tions of public accounting firms or otherwise to ad-
18 minister or enforce laws related to the regulation of
19 public accounting firms.”.

20 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
21 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15
22 U.S.C. 7215(b)(5)) is amended by adding at the end the
23 following:

24 “(C) AVAILABILITY TO FOREIGN OVER-
25 SIGHT AUTHORITIES.—Without the loss of its

1 status as confidential and privileged in the
2 hands of the Board, all information referred to
3 in subparagraph (A) that relates to a public ac-
4 counting firm that a foreign government has
5 empowered a foreign auditor oversight authority
6 to inspect or otherwise enforce laws with re-
7 spect to, may, at the discretion of the Board, be
8 made available to the foreign auditor oversight
9 authority, if—

10 “(i) the Board finds that it is nec-
11 essary to accomplish the purposes of this
12 Act or to protect investors;

13 “(ii) the foreign auditor oversight au-
14 thority provides—

15 “(I) such assurances of confiden-
16 tiality as the Board may request;

17 “(II) a description of the applica-
18 ble information systems and controls
19 of the foreign auditor oversight au-
20 thority; and

21 “(III) a description of the laws
22 and regulations of the foreign govern-
23 ment of the foreign auditor oversight
24 authority that are relevant to informa-
25 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

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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;”.

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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. 78fff3(a)(1)) is
22 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. 78ll) 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, including all property
14 collateralizing such positions, to the extent
15 that such property is not otherwise in-
16 cluded herein; minus”; and

17 (B) in the matter following subparagraph
18 (C), by striking “In determining” and inserting
19 the following: “A claim for a commodity futures
20 contract received, acquired, or held in a port-
21 folio margining account pursuant to a portfolio
22 margining program approved by the Commis-
23 sion or a claim for a security futures contract,
24 shall be deemed to be a claim with respect to
25 such contract as of the filing date, and such

1 claim shall be treated as a claim for cash. In
2 determining”.

3 **SEC. 984. LOAN OR BORROWING OF SECURITIES.**

4 (a) RULEMAKING AUTHORITY.—Section 10 of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78j) is amended
6 by adding at the end the following:

7 “(e)(1) To effect, accept, or facilitate a trans-
8 action involving the loan or borrowing of securities
9 in contravention of such rules and regulations as the
10 Commission may prescribe as necessary or appro-
11 priate in the public interest or for the protection of
12 investors.

13 “(2) Nothing in paragraph (1) may be con-
14 strued to limit the authority of the appropriate Fed-
15 eral banking agency (as defined in section 3(q) of
16 the Federal Deposit Insurance Act (12 U.S.C.
17 1813(q))), the National Credit Union Administra-
18 tion, or any other Federal department or agency
19 having a responsibility under Federal law to pre-
20 scribe rules or regulations restricting transactions
21 involving the loan or borrowing of securities in order
22 to protect the safety and soundness of a financial in-
23 stitution or to protect the financial system from sys-
24 temic risk.”.

1 (b) RULEMAKING REQUIRED.—Not later than 2
2 years after the date of enactment of this Act, the Commis-
3 sion shall promulgate rules that are designed to increase
4 the transparency of information available to brokers, deal-
5 ers, and investors, with respect to the loan or borrowing
6 of securities.

7 **SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURI-**
8 **TIES LAWS.**

9 (a) SECURITIES ACT OF 1933.—The Securities Act
10 of 1933 (15 U.S.C. 77a et seq.) is amended—

11 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
12 striking “individual;” and inserting “individual;”;

13 (2) in section 18 (15 U.S.C. 77r)—

14 (A) in subsection (b)(1)(C), by striking “is
15 a security” and inserting “a security”; and

16 (B) in subsection (c)(2)(B)(i), by striking
17 “State, or” and inserting “State or”;

18 (3) in section 19(d)(6)(A) (15 U.S.C.
19 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
20 and inserting “in paragraph (1) or (3)”; and

21 (4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z-
22 2(c)(1)(B)(ii)), by striking “business entity;” and in-
23 serting “business entity.”

1 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
3 is amended—

4 (1) in section 2 (15 U.S.C. 78b), by striking
5 “affected” and inserting “effected”;

6 (2) in section 3 (15 U.S.C. 78c)—

7 (A) in subsection (a)(55)(A), by striking
8 “section 3(a)(12) of the Securities Exchange
9 Act of 1934” and inserting “section 3(a)(12) of
10 this title”; and

11 (B) in subsection (g), by striking “com-
12 pany, account person, or entity” and inserting
13 “company, account, person, or entity”;

14 (3) in section 10A(i)(1)(B) (15 U.S.C. 78j-
15 1(i)(1)(B))—

16 (A) in the subparagraph heading, by strik-
17 ing “MINIMUS” and inserting “MINIMIS”; and

18 (B) in clause (i), by striking “nonaudit”
19 and inserting “non-audit”;

20 (4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
21 by striking “earning statement” and inserting
22 “earnings statement”;

23 (5) in section 15 (15 U.S.C. 78o)—

24 (A) in subsection (b)(1)—

1 (i) in subparagraph (B), by striking
2 “The order granting” and all that follows
3 through “from such membership.”; and

4 (ii) in the undesignated matter imme-
5 diately following subparagraph (B), by in-
6 serting after the first sentence the fol-
7 lowing: “The order granting registration
8 shall not be effective until such broker or
9 dealer has become a member of a reg-
10 istered securities association, or until such
11 broker or dealer has become a member of
12 a national securities exchange, if such
13 broker or dealer effects transactions solely
14 on that exchange, unless the Commission
15 has exempted such broker or dealer, by
16 rule or order, from such membership.”;

17 (6) in section 15C(a)(2) (15 U.S.C. 78o-
18 5(a)(2))—

19 (A) by redesignating clauses (i) and (ii) as
20 subparagraphs (A) and (B), respectively, and
21 adjusting the subparagraph margins accord-
22 ingly;

23 (B) in subparagraph (B), as so redesign-
24 ated, by striking “The order granting” and all

1 that follows through “from such membership.”;
2 and

3 (C) in the matter following subparagraph
4 (B), as so redesignated, by inserting after the
5 first sentence the following: “The order grant-
6 ing registration shall not be effective until such
7 government securities broker or government se-
8 curities dealer has become a member of a na-
9 tional securities exchange registered under sec-
10 tion 6 of this title, or a securities association
11 registered under section 15A of this title, unless
12 the Commission has exempted such government
13 securities broker or government securities deal-
14 er, by rule or order, from such membership.”;

15 (7) in section 17(b)(1)(B) (15 U.S.C.
16 78q(b)(1)(B)), by striking “15A(k) gives” and in-
17 serting “15A(k), give”; and

18 (8) in section 21C(c)(2) (15 U.S.C. 78u-
19 3(c)(2)), by striking “paragraph (1) subsection” and
20 inserting “Paragraph (1)”.

21 (c) TRUST INDENTURE ACT OF 1939.—The Trust
22 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
23 amended—

1 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
2 striking “section 2 of such Act” and inserting “sec-
3 tion 2(a) of such Act”; and

4 (2) in section 317(a)(1) (15 U.S.C.
5 77qqq(a)(1)), by striking “, in the” and inserting
6 “in the”.

7 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
8 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
9 is amended—

10 (1) in section 2(a)(19) (15 U.S.C. 80a–
11 2(a)(19)), in the matter following subparagraph
12 (B)(vii)—

13 (A) by striking “clause (vi)” each place
14 that term appears and inserting “clause (vii)”;
15 and

16 (B) in each of subparagraphs (A)(vi) and
17 (B)(vi), by adding “and” at the end of sub-
18 clause (III);

19 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
20 9(b)(4)(B)), by adding “or” after the semicolon at
21 the end;

22 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
23 12(d)(1)(J)), by striking “any provision of this sub-
24 section” and inserting “any provision of this para-
25 graph”;

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1 (4) in section 17(f) (15 U.S.C. 80a–17(f))—

2 (A) in paragraph (4), by striking “No such
3 member” and inserting “No member of a na-
4 tional securities exchange”; and

5 (B) in paragraph (6), by striking “com-
6 pany may serve” and inserting “company, may
7 serve”; and

8 (5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
9 60(a)(3)(B)(iii))—

10 (A) by striking “paragraph (1) of section
11 205” and inserting “section 205(a)(1)”; and

12 (B) by striking “clause (A) or (B) of that
13 section” and inserting “paragraph (1) or (2) of
14 section 205(b)”.

15 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
16 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
17 is amended—

18 (1) in section 203 (15 U.S.C. 80b–3)—

19 (A) in subsection (c)(1)(A), by striking
20 “principal business office and” and inserting
21 “principal office, principal place of business,
22 and”; and

23 (B) in subsection (k)(4)(B), in the matter
24 following clause (ii), by striking “principal place

1 of business” and inserting “principal office or
2 place of business”;

3 (2) in section 206(3) (15 U.S.C. 80b–6(3)), by
4 adding “or” after the semicolon at the end;

5 (3) in section 213(a) (15 U.S.C. 80b–13(a)), by
6 striking “principal place of business” and inserting
7 “principal office or place of business”; and

8 (4) in section 222 (15 U.S.C. 80b–18a), by
9 striking “principal place of business” each place that
10 term appears and inserting “principal office and
11 place of business”.

12 **SEC. 986. CONFORMING AMENDMENTS RELATING TO RE-**
13 **PEAL OF THE PUBLIC UTILITY HOLDING**
14 **COMPANY ACT OF 1935.**

15 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
16 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
17 amended—

18 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
19 by striking “the Public Utility Holding Company
20 Act of 1935 (15 U.S.C. 79a et seq.)”;

21 (2) in section 12(k) (15 U.S.C. 78l(k)), by
22 amending paragraph (7) to read as follows:

23 “(7) DEFINITION.—For purposes of this sub-
24 section, the term ‘emergency’ means—

1 “(A) a major market disturbance charac-
2 terized by or constituting—

3 “(i) sudden and excessive fluctuations
4 of securities prices generally, or a substan-
5 tial threat thereof, that threaten fair and
6 orderly markets; or

7 “(ii) a substantial disruption of the
8 safe or efficient operation of the national
9 system for clearance and settlement of
10 transactions in securities, or a substantial
11 threat thereof; or

12 “(B) a major disturbance that substan-
13 tially disrupts, or threatens to substantially dis-
14 rupt—

15 “(i) the functioning of securities mar-
16 kets, investment companies, or any other
17 significant portion or segment of the secu-
18 rities markets; or

19 “(ii) the transmission or processing of
20 securities transactions.”; and

21 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
22 by striking “section 18(c) of the Public Utility Hold-
23 ing Company Act of 1935,”.

1 (b) 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 303 (15 U.S.C. 77ccc), by strik-
5 ing paragraph (17) and inserting the following:

6 “(17) The terms ‘Securities Act of 1933’ and
7 ‘Securities Exchange Act of 1934’ shall be deemed
8 to refer, respectively, to such Acts, as amended,
9 whether amended prior to or after the enactment of
10 this title.”;

11 (2) in section 308 (15 U.S.C. 77hhh), by strik-
12 ing “Securities Act of 1933, the Securities Exchange
13 Act of 1934, or the Public Utility Holding Company
14 Act of 1935” each place that term appears and in-
15 serting “Securities Act of 1933 or the Securities Ex-
16 change Act of 1934”;

17 (3) in section 310 (15 U.S.C. 77jjj), by striking
18 subsection (c);

19 (4) in section 311 (15 U.S.C. 77kkk), by strik-
20 ing subsection (c);

21 (5) in section 323(b) (15 U.S.C. 77www(b)), by
22 striking “Securities Act of 1933, or the Securities
23 Exchange Act of 1934, or the Public Utility Holding
24 Company Act of 1935” and inserting “Securities Act

1 of 1933 or the Securities Exchange Act of 1934”;
2 and

3 (6) in section 326 (15 U.S.C. 77zzz), by strik-
4 ing “Securities Act of 1933, or the Securities Ex-
5 change Act of 1934, or the Public Utility Holding
6 Company Act of 1935,” and inserting “Securities
7 Act of 1933 or the Securities Exchange Act of
8 1934”.

9 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
10 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
11 is amended—

12 (1) in section 2(a)(44) (15 U.S.C. 80a–
13 2(a)(44)), by striking “‘Public Utility Holding Com-
14 pany Act of 1935’,”;

15 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
16 striking paragraph (8) and inserting the following:

17 “(8) [Repealed]”;

18 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
19 striking “the Public Utility Holding Company Act of
20 1935,”; and

21 (4) in section 50 (15 U.S.C. 80a–49), by strik-
22 ing “the Public Utility Holding Company Act of
23 1935,”.

24 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
25 202(a)(21) of the Investment Advisers Act of 1940 (15

1 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
2 Utility Holding Company Act of 1935’”.

3 **SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
4 **AND NONMATERIAL LOSSES TO THE DEPOSIT**
5 **INSURANCE FUND FOR PURPOSES OF IN-**
6 **SPECTOR GENERAL REVIEWS.**

7 (a) IN GENERAL.—Section 38(k) of the Federal De-
8 posit Insurance Act (U.S.C. 1831o(k)) is amended—

9 (1) in paragraph (2), by striking subparagraph
10 (B) and inserting the following:

11 “(B) MATERIAL LOSS DEFINED.—The
12 term ‘material loss’ means any estimated loss in
13 excess of—

14 “(i) \$100,000,000, if the loss occurs
15 during the period beginning on January 1,
16 2010, and ending on December 31, 2011;

17 “(ii) \$75,000,000, if the loss occurs
18 during the period beginning on January 1,
19 2012, and ending on December 31, 2013;
20 and

21 “(iii) \$50,000,000, if the loss occurs
22 on or after January 1, 2014.”;

23 (2) in paragraph (4)(A) by striking “the re-
24 port” and inserting “any report on losses required
25 under this subsection.”;

1 (3) by striking paragraph (6);

2 (4) by redesignating paragraph (5) as para-
3 graph (6); and

4 (5) by inserting after paragraph (4) the fol-
5 lowing:

6 “(5) LOSSES THAT ARE NOT MATERIAL.—

7 “(A) SEMIANNUAL REPORT.—For the 6-
8 month period ending on March 31, 2010, and
9 each 6-month period thereafter, the Inspector
10 General of each Federal banking agency shall—

11 “(i) identify losses that the Inspector
12 General estimates have been incurred by
13 the Deposit Insurance Fund during that 6-
14 month period, with respect to the insured
15 depository institutions supervised by the
16 Federal banking agency;

17 “(ii) for each loss incurred by the De-
18 posit Insurance Fund that is not a mate-
19 rial loss, determine—

20 “(I) the grounds identified by the
21 Federal banking agency or State bank
22 supervisor for appointing the Corpora-
23 tion as receiver under section
24 11(c)(5); and

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1 “(II) whether any unusual cir-
2 cumstances exist that might warrant
3 an in-depth review of the loss; and

4 “(iii) prepare and submit a written re-
5 port to the appropriate Federal banking
6 agency and to Congress on the results of
7 any determination by the Inspector Gen-
8 eral, including—

9 “(I) an identification of any loss
10 that warrants an in-depth review, to-
11 gether with the reasons why such re-
12 view is warranted, or, if the Inspector
13 General determines that no review is
14 warranted, an explanation of such de-
15 termination; and

16 “(II) for each loss identified
17 under subclause (I) that warrants an
18 in-depth review, the date by which
19 such review, and a report on such re-
20 view prepared in a manner consistent
21 with reports under paragraph (1)(A),
22 will be completed and submitted to
23 the Federal banking agency and Con-
24 gress.

1314

1 “(B) DEADLINE FOR SEMIANNUAL RE-
2 PORT.—The Inspector General of each Federal
3 banking agency shall—

4 “(i) submit each report required
5 under paragraph (A) expeditiously, and not
6 later than 90 days after the end of the 6-
7 month period covered by the report; and

8 “(ii) provide a copy of the report re-
9 quired under paragraph (A) to any Mem-
10 ber of Congress, upon request.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—
12 The heading for subsection (k) of section 38 of the Fed-
13 eral Deposit Insurance Act (U.S.C. 1831o(k)) is amended
14 to read as follows:

15 “(k) REVIEWS REQUIRED WHEN DEPOSIT INSUR-
16 ANCE FUND INCURS LOSSES.—”.

17 **SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS**
18 **AND NONMATERIAL LOSSES TO THE NA-**
19 **TIONAL CREDIT UNION SHARE INSURANCE**
20 **FUND FOR PURPOSES OF INSPECTOR GEN-**
21 **ERAL REVIEWS.**

22 (a) IN GENERAL.—Section 216(j) of the Federal
23 Credit Union Act (12 U.S.C. 1790d(j)) is amended to read
24 as follows:

1315

1 “(j) REVIEWS REQUIRED WHEN SHARE INSURANCE
2 FUND EXPERIENCES LOSSES.—

3 “(1) IN GENERAL.—If the Fund incurs a mate-
4 rial loss with respect to an insured credit union, the
5 Inspector General of the Board shall—

6 “(A) submit to the Board a written report
7 reviewing the supervision of the credit union by
8 the Administration (including the implementa-
9 tion of this section by the Administration),
10 which shall include—

11 “(i) a description of the reasons why
12 the problems of the credit union resulted
13 in a material loss to the Fund; and

14 “(ii) recommendations for preventing
15 any such loss in the future; and

16 “(B) submit a copy of the report under
17 subparagraph (A) to—

18 “(i) the Comptroller General of the
19 United States;

20 “(ii) the Corporation;

21 “(iii) in the case of a report relating
22 to a State credit union, the appropriate
23 State supervisor; and

24 “(iv) to any Member of Congress,
25 upon request.

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1 “(2) MATERIAL LOSS DEFINED.—For purposes
2 of determining whether the Fund has incurred a ma-
3 terial loss with respect to an insured credit union, a
4 loss is material if it exceeds the sum of—

5 “(A) \$25,000,000; and

6 “(B) an amount equal to 10 percent of the
7 total assets of the credit union on the date on
8 which the Board initiated assistance under sec-
9 tion 208 or was appointed liquidating agent.

10 “(3) PUBLIC DISCLOSURE REQUIRED.—

11 “(A) IN GENERAL.—The Board shall dis-
12 close a report under this subsection, upon re-
13 quest under section 552 of title 5, United
14 States Code, without excising—

15 “(i) any portion under section
16 552(b)(5) of title 5, United States Code; or

17 “(ii) any information about the in-
18 sured credit union (other than trade se-
19 crets) under section 552(b)(8) of title 5,
20 United States Code.

21 “(B) RULE OF CONSTRUCTION.—Subpara-
22 graph (A) may not be construed as requiring
23 the agency to disclose the name of any cus-
24 tomer of the insured credit union (other than
25 an institution-affiliated party), or information

1 from which the identity of such customer could
2 reasonably be ascertained.

3 “(4) LOSSES THAT ARE NOT MATERIAL.—

4 “(A) SEMIANNUAL REPORT.—For the 6-
5 month period ending on March 31, 2010, and
6 each 6-month period thereafter, the Inspector
7 General of the Board shall—

8 “(i) identify any losses that the In-
9 spector General estimates were incurred by
10 the Fund during such 6-month period,
11 with respect to insured credit unions;

12 “(ii) for each loss to the Fund that is
13 not a material loss, determine—

14 “(I) the grounds identified by the
15 Board or the State official having ju-
16 risdiction over a State credit union for
17 appointing the Board as the liqui-
18 dating agent for any Federal or State
19 credit union; and

20 “(II) whether any unusual cir-
21 cumstances exist that might warrant
22 an in-depth review of the loss; and

23 “(iii) prepare and submit a written re-
24 port to the Board and to Congress on the

1 results of the determinations of the Inspec-
2 tor General that includes—

3 “(I) an identification of any loss
4 that warrants an in-depth review, and
5 the reasons such review is warranted,
6 or if the Inspector General determines
7 that no review is warranted, an expla-
8 nation of such determination; and

9 “(II) for each loss identified in
10 subclause (I) that warrants an in-
11 depth review, the date by which such
12 review, and a report on the review
13 prepared in a manner consistent with
14 reports under paragraph (1)(A), will
15 be completed.

16 “(B) DEADLINE FOR SEMIANNUAL RE-
17 PORT.—The Inspector General of the Board
18 shall—

19 “(i) submit each report required
20 under subparagraph (A) expeditiously, and
21 not later than 90 days after the end of the
22 6-month period covered by the report; and

23 “(ii) provide a copy of the report re-
24 quired under subparagraph (A) to any
25 Member of Congress, upon request.

1 “(5) GAO REVIEW.—The Comptroller General
2 of the United States shall, under such conditions as
3 the Comptroller General determines to be appro-
4 priate—

5 “(A) review each report made under para-
6 graph (1), including the extent to which the In-
7 spector General of the Board complied with the
8 requirements under section 8L of the Inspector
9 General Act of 1978 (5 U.S.C. App.) with re-
10 spect to each such report; and

11 “(B) recommend improvements to the su-
12 pervision of insured credit unions (including im-
13 provements relating to the implementation of
14 this section).”.

15 **SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
16 **ON PROPRIETARY TRADING.**

17 (a) DEFINITIONS.—In this section—

18 (1) the term “covered entity” means—

19 (A) an insured depository institution, an
20 affiliate of an insured depository institution, a
21 bank holding company, a financial holding com-
22 pany, or a subsidiary of a bank holding com-
23 pany or a financial holding company, as those
24 terms are defined in the Bank Holding Com-
25 pany Act of 1956 (12 U.S.C. 1841 et seq.); and

1 (B) any other entity, as the Comptroller
2 General of the United States may determine;
3 and

4 (2) the term “proprietary trading” means the
5 act of a covered entity investing as a principal in se-
6 curities, commodities, derivatives, hedge funds, pri-
7 vate equity firms, or such other financial products or
8 entities as the Comptroller General may determine.

9 (b) STUDY.—

10 (1) IN GENERAL.—The Comptroller General of
11 the United States shall conduct a study regarding
12 the risks and conflicts associated with proprietary
13 trading by and within covered entities, including an
14 evaluation of—

15 (A) whether proprietary trading presents a
16 material systemic risk to the stability of the
17 United States financial system, and if so, the
18 costs and benefits of options for mitigating such
19 systemic risk;

20 (B) whether proprietary trading presents
21 material risks to the safety and soundness of
22 the covered entities that engage in such activi-
23 ties, and if so, the costs and benefits of options
24 for mitigating such risks;

1 (C) whether proprietary trading presents
2 material conflicts of interest between covered
3 entities that engage in proprietary trading and
4 the clients of the institutions who use the firm
5 to execute trades or who rely on the firm to
6 manage assets, and if so, the costs and benefits
7 of options for mitigating such conflicts of inter-
8 est;

9 (D) whether adequate disclosure regarding
10 the risks and conflicts of proprietary trading is
11 provided to the depositors, trading and asset
12 management clients, and investors of covered
13 entities that engage in proprietary trading, and
14 if not, the costs and benefits of options for the
15 improvement of such disclosure; and

16 (E) whether the banking, securities, and
17 commodities regulators of institutions that en-
18 gage in proprietary trading have in place ade-
19 quate systems and controls to monitor and con-
20 tain any risks and conflicts of interest related
21 to proprietary trading, and if not, the costs and
22 benefits of options for the improvement of such
23 systems and controls.

1 (2) CONSIDERATIONS.—In carrying out the
2 study required under paragraph (1), the Comptroller
3 General shall consider—

4 (A) current practice relating to proprietary
5 trading;

6 (B) the advisability of a complete ban on
7 proprietary trading;

8 (C) limitations on the scope of activities
9 that covered entities may engage in with respect
10 to proprietary trading;

11 (D) the advisability of additional capital
12 requirements for covered entities that engage in
13 proprietary trading;

14 (E) enhanced restrictions on transactions
15 between affiliates related to proprietary trading;

16 (F) enhanced accounting disclosures relat-
17 ing to proprietary trading;

18 (G) enhanced public disclosure relating to
19 proprietary trading; and

20 (H) any other options the Comptroller
21 General deems appropriate.

22 (c) REPORT TO CONGRESS.—Not later than 15
23 months after the date of enactment of this Act, the Comp-
24 troller General shall submit a report to Congress on the
25 results of the study conducted under subsection (b).

1 (d) ACCESS BY COMPTROLLER GENERAL.—For pur-
2 poses of conducting the study required under subsection
3 (b), the Comptroller General shall have access, upon re-
4 quest, to any information, data, schedules, books, ac-
5 counts, financial records, reports, files, electronic commu-
6 nications, or other papers, things, or property belonging
7 to or in use by a covered entity that engages in proprietary
8 trading, and to the officers, directors, employees, inde-
9 pendent public accountants, financial advisors, staff, and
10 agents and representatives of a covered entity (as related
11 to the activities of the agent or representative on behalf
12 of the covered entity), at such reasonable times as the
13 Comptroller General may request. The Comptroller Gen-
14 eral may make and retain copies of books, records, ac-
15 counts, and other records, as the Comptroller General
16 deems appropriate.

17 (e) CONFIDENTIALITY OF REPORTS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the Comptroller General may not disclose
20 information regarding—

21 (A) any proprietary trading activity of a
22 covered entity, unless such information is dis-
23 closed at a level of generality that does not re-
24 veal the investment or trading position or strat-
25 egy of the covered entity for any specific secu-

1 rity, commodity, derivative, or other investment
2 or financial product; or

3 (B) any individual interviewed by the
4 Comptroller General for purposes of the study
5 under subsection (b), unless such information is
6 disclosed at a level of generality that does not
7 reveal—

8 (i) the name of or identifying details
9 relating to such individual; or

10 (ii) in the case of an individual who is
11 an employee of a third party that provides
12 professional services to a covered entity be-
13 lieved to be engaged in proprietary trading,
14 the name of or any identifying details re-
15 lating to such third party.

16 (2) EXCEPTIONS.—The Comptroller General
17 may disclose the information described in paragraph
18 (1)—

19 (A) to a department, agency, or official of
20 the Federal Government, for official use, upon
21 request;

22 (B) to a committee of Congress, upon re-
23 quest; and

24 (C) to a court, upon an order of such
25 court.

1 **SEC. 989A. SENIOR INVESTOR PROTECTIONS.**

2 (a) DEFINITIONS.—As used in this section—

3 (1) the term “eligible entity” means—

4 (A) a securities commission (or any agency
5 or office performing like functions) of a State
6 that the Office determines has adopted rules on
7 the appropriate use of designations in the offer
8 or sale of securities or the provision of invest-
9 ment advice that meet or exceed the minimum
10 requirements of the NASAA Model Rule on the
11 Use of Senior-Specific Certifications and Pro-
12 fessional Designations (or any successor there-
13 to);

14 (B) the insurance commission (or any
15 agency or office performing like functions) of
16 any State that the Office determines has—

17 (i) adopted rules on the appropriate
18 use of designations in the sale of insurance
19 products that, to the extent practicable,
20 conform to the minimum requirements of
21 the National Association of Insurance
22 Commissioners Model Regulation on the
23 Use of Senior-Specific Certifications and
24 Professional Designations in the Sale of
25 Life Insurance and Annuities (or any suc-
26 cessor thereto); and

1 (ii) adopted rules with respect to fidu-
2 ciary or suitability requirements in the sale
3 of annuities that meet or exceed the min-
4 imum requirements established by the
5 Suitability in Annuity Transactions Model
6 Regulation of the National Association of
7 Insurance Commissioners (or any successor
8 thereto); or

9 (C) a consumer protection agency of any
10 State, if—

11 (i) the securities commission (or any
12 agency or office performing like functions)
13 of the State is eligible under subparagraph
14 (A); or

15 (ii) the insurance commission (or any
16 agency or office performing like functions)
17 of the State is eligible under subparagraph
18 (B);

19 (2) the term “financial product” means a secu-
20 rity, an insurance product (including an insurance
21 product that pays a return, whether fixed or vari-
22 able), a bank product, and a loan product;

23 (3) the term “misleading designation”—

24 (A) means a certification, professional des-
25 ignation, or other purported credential that in-

1 dicates or implies that a salesperson or adviser
2 has special certification or training in advising
3 or servicing seniors; and

4 (B) does not include a certification, profes-
5 sional designation, license, or other credential
6 that—

7 (i) was issued by or obtained from an
8 academic institution having regional ac-
9 creditation;

10 (ii) meets the standards for certifi-
11 cations and professional designations out-
12 lined by the NASAA Model Rule on the
13 Use of Senior-Specific Certifications and
14 Professional Designations (or any suc-
15 cessor thereto) or by the Model Regula-
16 tions on the Use of Senior-Specific Certifi-
17 cations and Professional Designations in
18 the Sale of Life Insurance and Annuities,
19 adopted by the National Association of In-
20 surance Commissioners (or any successor
21 thereto); or

22 (iii) was issued by or obtained from a
23 State;

24 (4) the term “misleading or fraudulent mar-
25 keting” means the use of a misleading designation

1 by a person that sells to or advises a senior in con-
2 nection with the sale of a financial product;

3 (5) the term “NASAA” means the North Amer-
4 ican Securities Administrators Association;

5 (6) the term “Office” means the Office of Fi-
6 nancial Literacy of the Bureau;

7 (7) the term “senior” means any individual who
8 has attained the age of 62 years or older; and

9 (8) the term “State” has the same meaning as
10 in section 3 of the Securities Exchange Act of 1934
11 (15 U.S.C. 78c(a)).

12 (b) GRANTS TO STATES FOR ENHANCED PROTEC-
13 TION OF SENIORS FROM BEING MISLED BY FALSE DES-
14 IGNATIONS.—The Office shall establish a program under
15 which the Office may make grants to States or eligible
16 entities—

17 (1) to hire staff to identify, investigate, and
18 prosecute (through civil, administrative, or criminal
19 enforcement actions) cases involving misleading or
20 fraudulent marketing;

21 (2) to fund technology, equipment, and training
22 for regulators, prosecutors, and law enforcement of-
23 ficers, in order to identify salespersons and advisers
24 who target seniors through the use of misleading
25 designations;

1 (3) to fund technology, equipment, and training
2 for prosecutors to increase the successful prosecution
3 of salespersons and advisers who target seniors with
4 the use of misleading designations;

5 (4) to provide educational materials and train-
6 ing to regulators on the appropriateness of the use
7 of designations by salespersons and advisers in con-
8 nection with the sale and marketing of financial
9 products;

10 (5) to provide educational materials and train-
11 ing to seniors to increase awareness and under-
12 standing of misleading or fraudulent marketing;

13 (6) to develop comprehensive plans to combat
14 misleading or fraudulent marketing of financial
15 products to seniors; and

16 (7) to enhance provisions of State law to pro-
17 vide protection for seniors against misleading or
18 fraudulent marketing.

19 (c) APPLICATIONS.—A State or eligible entity desir-
20 ing a grant under this section shall submit an application
21 to the Office, in such form and in such a manner as the
22 Office may determine, that includes—

23 (1) a proposal for activities to protect seniors
24 from misleading or fraudulent marketing that are

1 proposed to be funded using a grant under this sec-
2 tion, including—

3 (A) an identification of the scope of the
4 problem of misleading or fraudulent marketing
5 in the State;

6 (B) a description of how the proposed ac-
7 tivities would—

8 (i) protect seniors from misleading or
9 fraudulent marketing in the sale of finan-
10 cial products, including by proactively iden-
11 tifying victims of misleading and fraudu-
12 lent marketing who are seniors;

13 (ii) assist in the investigation and
14 prosecution of those using misleading or
15 fraudulent marketing; and

16 (iii) discourage and reduce cases of
17 misleading or fraudulent marketing; and

18 (C) a description of how the proposed ac-
19 tivities would be coordinated with other State
20 efforts; and

21 (2) any other information, as the Office deter-
22 mines is appropriate.

23 (d) PERFORMANCE OBJECTIVES AND REPORTING
24 REQUIREMENTS.—The Office may establish such perform-
25 ance objectives and reporting requirements for States and

1 eligible entities receiving a grant under this section as the
2 Office determines are necessary to carry out and assess
3 the effectiveness of the program under this section.

4 (e) MAXIMUM AMOUNT.—The amount of a grant
5 under this section may not exceed—

6 (1) \$500,000 for each of 3 consecutive fiscal
7 years, if the recipient is a State, or an eligible entity
8 of a State, that has adopted rules—

9 (A) on the appropriate use of designations
10 in the offer or sale of securities or investment
11 advice that meet or exceed the minimum re-
12 quirements of the NASAA Model Rule on the
13 Use of Senior-Specific Certifications and Pro-
14 fessional Designations (or any successor there-
15 to);

16 (B) on the appropriate use of designations
17 in the sale of insurance products that, to the
18 extent practicable, conform to the minimum re-
19 quirements of the National Association of In-
20 surance Commissioners Model Regulation on
21 the Use of Senior-Specific Certifications and
22 Professional Designations in the Sale of Life
23 Insurance and Annuities (or any successor
24 thereto); and

1 (C) with respect to fiduciary or suitability
2 requirements in the sale of annuities that meet
3 or exceed the minimum requirements estab-
4 lished by the Suitability in Annuity Trans-
5 actions Model Regulation of the National Asso-
6 ciation of Insurance Commissioners (or any
7 successor thereto); and

8 (2) \$100,000 for each of 3 consecutive fiscal
9 years, if the recipient is a State, or an eligible entity
10 of a State, that has adopted—

11 (A) rules on the appropriate use of des-
12 ignations in the offer or sale of securities or in-
13 vestment advice that meet or exceed the min-
14 imum requirements of the NASAA Model Rule
15 on the Use of Senior-Specific Certifications and
16 Professional Designations (or any successor
17 thereto); or

18 (B) rules—

19 (i) on the appropriate use of designa-
20 tions in the sale of insurance products
21 that, to the extent practicable, conform to
22 the minimum requirements of the National
23 Association of Insurance Commissioners
24 Model Regulation on the Use of Senior-
25 Specific Certifications and Professional

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1 Designations in the Sale of Life Insurance
2 and Annuities (or any successor thereto);
3 and

4 (ii) with respect to fiduciary or suit-
5 ability requirements in the sale of annu-
6 ities that meet or exceed the minimum re-
7 quirements established by the Suitability in
8 Annuity Transactions Model Regulation of
9 the National Association of Insurance
10 Commissioners (or any successor thereto).

11 (f) SUBGRANTS.—A State or eligible entity that re-
12 ceives a grant under this section may make a subgrant,
13 as the State or eligible entity determines is necessary to
14 carry out the activities funded using a grant under this
15 section.

16 (g) REAPPLICATION.—A State or eligible entity that
17 receives a grant under this section may reapply for a grant
18 under this section, notwithstanding the limitations on
19 grant amounts under subsection (e).

20 (h) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to carry out this section,
22 \$8,000,000 for each of fiscal years 2011 through 2015.

1 **SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS**
2 **GENERAL INDEPENDENCE.**

3 Section 8G of the Inspector General Act of 1978 (5
4 U.S.C. App.) is amended—

5 (1) in subsection (a)(4)—

6 (A) in the matter preceding subparagraph
7 (A), by inserting “the board or commission of
8 the designated Federal entity, or in the event
9 the designated Federal entity does not have a
10 board or commission,” after “means”;

11 (B) in subparagraph (A), by striking
12 “and” after the semicolon; and

13 (C) by adding after subparagraph (B) the
14 following:

15 “(C) with respect to the Federal Labor Re-
16 lations Authority, such term means the mem-
17 bers of the Authority (described under section
18 7104 of title 5, United States Code);

19 “(D) with respect to the National Archives
20 and Records Administration, such term means
21 the Archivist of the United States;

22 “(E) with respect to the National Credit
23 Union Administration, such term means the
24 National Credit Union Administration Board
25 (described under section 102 of the Federal
26 Credit Union Act (12 U.S.C. 1752a);

1 “(F) with respect to the National Endow-
2 ment of the Arts, such term means the Na-
3 tional Council on the Arts;

4 “(G) with respect to the National Endow-
5 ment for the Humanities, such term means the
6 National Council on the Humanities; and

7 “(H) with respect to the Peace Corps, such
8 term means the Director of the Peace Corps;”;
9 and

10 (2) in subsection (h), by inserting “if the des-
11 ignated Federal entity is not a board or commission,
12 include” after “designated Federal entities and”.

13 **SEC. 989C. STRENGTHENING INSPECTOR GENERAL AC-**
14 **COUNTABILITY.**

15 Section 5(a) of the Inspector General Act of 1978
16 (5 U.S.C. App.) is amended—

17 (1) in paragraph (12), by striking “and” after
18 the semicolon;

19 (2) in paragraph (13), by striking the period
20 and inserting a semicolon; and

21 (3) by adding at the end the following:

22 “(14)(A) an appendix containing the results of
23 any peer review conducted by another Office of In-
24 specter General during the reporting period; or

1 “(B) if no peer review was conducted within
2 that reporting period, a statement identifying the
3 date of the last peer review conducted by another
4 Office of Inspector General;

5 “(15) a list of any outstanding recommenda-
6 tions from any peer review conducted by another Of-
7 fice of Inspector General that have not been fully
8 implemented, including a statement describing the
9 status of the implementation and why implementa-
10 tion is not complete; and

11 “(16) a list of any peer reviews conducted by
12 the Inspector General of another Office of the In-
13 spector General during the reporting period, includ-
14 ing a list of any outstanding recommendations made
15 from any previous peer review (including any peer
16 review conducted before the reporting period) that
17 remain outstanding or have not been fully imple-
18 mented.”.

19 **SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DES-**
20 **IGNATED FEDERAL ENTITIES.**

21 Section 8G(e) of the Inspector General Act of 1978
22 (5 U.S.C. App.) is amended—

23 (1) by redesignating the sentences following
24 “(e)” as paragraph (2); and

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1 (2) by striking “(e)” and inserting the fol-
2 lowing:

3 “(e)(1) In the case of a designated Federal entity for
4 which a board or commission is the head of the designated
5 Federal entity, a removal under this subsection may only
6 be made upon the written concurrence of a $\frac{2}{3}$ majority
7 of the board or commission.”.

8 **SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGU-
9 LATORY SYSTEM.**

10 (a) COUNCIL OF INSPECTORS GENERAL ON FINAN-
11 CIAL OVERSIGHT.—

12 (1) ESTABLISHMENT AND MEMBERSHIP.—

13 There is established a Council of Inspectors General
14 on Financial Oversight (in this section referred to as
15 the “Council of Inspectors General”) chaired by the
16 Inspector General of the Department of the Treas-
17 ury and composed of the inspectors general of the
18 following:

19 (A) The Board of Governors of the Federal
20 Reserve System.

21 (B) The Commodity Futures Trading
22 Commission.

23 (C) The Department of Housing and
24 Urban Development.

25 (D) The Department of the Treasury.

1 (E) The Federal Deposit Insurance Cor-
2 poration.

3 (F) The Federal Housing Finance Agency.

4 (G) The National Credit Union Adminis-
5 tration.

6 (H) The Securities and Exchange Commis-
7 sion.

8 (I) The Troubled Asset Relief Program
9 (until the termination of the authority of the
10 Special Inspector General for such program
11 under section 121(k) of the Emergency Eco-
12 nomic Stabilization Act of 2008 (12 U.S.C.
13 5231(k))).

14 (2) DUTIES.—

15 (A) MEETINGS.—The Council of Inspec-
16 tors General shall meet not less than once each
17 quarter, or more frequently if the chair con-
18 siders it appropriate, to facilitate the sharing of
19 information among inspectors general and to
20 discuss the ongoing work of each inspector gen-
21 eral who is a member of the Council of Inspec-
22 tors General, with a focus on concerns that may
23 apply to the broader financial sector and ways
24 to improve financial oversight.

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1 (B) ANNUAL REPORT.—Each year the
2 Council of Inspectors General shall submit to
3 the Council and to Congress a report includ-
4 ing—

5 (i) for each inspector general who is a
6 member of the Council of Inspectors Gen-
7 eral, a section within the exclusive editorial
8 control of such inspector general that high-
9 lights the concerns and recommendations
10 of such inspector general in such inspector
11 general's ongoing and completed work,
12 with a focus on issues that may apply to
13 the broader financial sector; and

14 (ii) a summary of the general observa-
15 tions of the Council of Inspectors General
16 based on the views expressed by each in-
17 spector general as required by clause (i),
18 with a focus on measures that should be
19 taken to improve financial oversight.

20 (3) WORKING GROUPS TO EVALUATE COUN-
21 CIL.—

22 (A) CONVENING A WORKING GROUP.—The
23 Council of Inspectors General may, by majority
24 vote, convene a Council of Inspectors General

1 Working Group to evaluate the effectiveness
2 and internal operations of the Council.

3 (B) PERSONNEL AND RESOURCES.—The
4 inspectors general who are members of the
5 Council of Inspectors General may detail staff
6 and resources to a Council of Inspectors Gen-
7 eral Working Group established under this
8 paragraph to enable it to carry out its duties.

9 (C) REPORTS.—A Council of Inspectors
10 General Working Group established under this
11 paragraph shall submit regular reports to the
12 Council and to Congress on its evaluations pur-
13 suant to this paragraph.

14 (b) RESPONSE TO REPORT BY COUNCIL.—The Coun-
15 cil shall respond to the concerns raised in the report of
16 the Council of Inspectors General under subsection
17 (a)(2)(B) for such year.

18 **SEC. 989F. GAO STUDY OF PERSON TO PERSON LENDING.**

19 (a) STUDY.—

20 (1) IN GENERAL.—The Comptroller General of
21 the United States shall conduct a study of person to
22 person lending to determine the optimal Federal reg-
23 ulatory structure.

24 (2) CONSULTATION.—In conducting the study
25 required under paragraph (1), the Comptroller Gen-

1 eral shall consult with Federal banking agencies, the
2 Commission, consumer groups, outside experts, and
3 the person to person lending industry.

4 (3) CONTENT OF STUDY.—The study required
5 under paragraph (1) shall include an examination
6 of—

7 (A) the regulatory structure as it exists on
8 the date of enactment of this Act, as deter-
9 mined by the Commission, with particular at-
10 tention to—

11 (i) the application of the Securities
12 Act of 1933 to person to person lending
13 platforms;

14 (ii) the posting of consumer loan in-
15 formation on the EDGAR database of the
16 Commission; and

17 (iii) the treatment of privately held
18 person to person lending platforms as pub-
19 lic companies;

20 (B) the State and other Federal regulators
21 responsible for the oversight and regulation of
22 person to person lending markets;

23 (C) any Federal, State, or local govern-
24 ment or private studies of person to person

1 lending completed or in progress on the date of
2 enactment of this Act;

3 (D) consumer privacy and data protec-
4 tions, minimum credit standards, anti-money
5 laundering and risk management in the regu-
6 latory structure as it exists on the date of en-
7 actment of this Act, and whether additional or
8 alternative safeguards are needed; and

9 (E) the uses of person to person lending.

10 (b) REPORT.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of this Act, the Comptroller
13 General shall submit a report on the study required
14 under subsection (a) 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.

18 (2) CONTENT OF REPORT.—The report re-
19 quired under paragraph (1) shall include alternative
20 regulatory options, including—

21 (A) the involvement of other Federal agen-
22 cies; and

23 (B) alternative approaches by the Commis-
24 sion and recommendations on whether the alter-
25 native approaches are effective.

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 (i)(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 (i)(4)”;

18 (3) by adding at the end the following:

19 “(i) 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 transaction 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(i) 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) EFFECTIVE DATE AND TRANSITION PROVI-
10 SIONS.—

11 (1) IN GENERAL.—Except as provided in para-
12 graphs (2) and (3), the amendments made by this
13 section shall be effective on the first day of the fiscal
14 year following the fiscal year in which this Act is en-
15 acted.

16 (2) TRANSITION PERIOD.—For the fiscal year
17 following the fiscal year in which this Act is enacted,
18 the budget of the Commission shall be deemed to be
19 the budget submitted by the Chairman of the Com-
20 mission to the President for such fiscal year in ac-
21 cordance with the provisions of section 1108 of title
22 31, United States Code.

23 (3) OTHER PROVISIONS.—The amendments
24 made by this section to subsections (g) and (j)(1) of
25 section 31 of the Securities Exchange Act of 1934

1 (15 U.S.C. 78ee) shall be effective on the date of en-
2 actment of this Act, and shall require the Commis-
3 sion to make and publish an annual adjustment to
4 the fee rates applicable under subsections (b) and
5 (c) of section 31 of the Securities Exchange Act of
6 1934 (15 U.S.C. 78ee) for the fiscal year following
7 the fiscal year in which this Act is enacted. The ad-
8 justed rate described in the preceding sentence shall
9 supersede any previously published adjusted rate ap-
10 plicable under subsections (b) and (c) of section 31
11 of the Securities Exchange Act of 1934 for the fiscal
12 year following the fiscal year in which this Act is en-
13 acted and shall take effect on the first day of the fis-
14 cal year following the fiscal year in which this Act
15 is enacted, except that, if this Act is enacted on or
16 after August 31 and on or prior to September 30,
17 the adjusted rate described in the first sentence shall
18 be published not later than 15 days after the date
19 of enactment of this Act and take effect 30 days
20 thereafter, and the Commission shall continue to col-
21 lect fees under subsections (b) and (c) of section 31
22 of the Securities Exchange Act of 1934 at the rate
23 in effect during the preceding fiscal year until the
24 adjusted rate is effective.

1 **TITLE X—BUREAU OF CON-**
2 **SUMER FINANCIAL PROTEC-**
3 **TION**

4 **SEC. 1001. SHORT TITLE.**

5 This title may be cited as the “Consumer Financial
6 Protection Act of 2010”.

7 **SEC. 1002. DEFINITIONS.**

8 Except as otherwise provided in this title, for pur-
9 poses of this title, the following definitions shall apply:

10 (1) **AFFILIATE.**—The term “affiliate” means
11 any person that controls, is controlled by, or is
12 under common control with another person.

13 (2) **BUREAU.**—The term “Bureau” means the
14 Bureau of Consumer Financial Protection.

15 (3) **BUSINESS OF INSURANCE.**—The term
16 “business of insurance” means the writing of insur-
17 ance or the reinsuring of risks by an insurer, includ-
18 ing all acts necessary to such writing or reinsuring
19 and the activities relating to the writing of insurance
20 or the reinsuring of risks conducted by persons who
21 act as, or are, officers, directors, agents, or employ-
22 ees of insurers or who are other persons authorized
23 to act on behalf of such persons.

1 (4) CONSUMER.—The term “consumer” means
2 an individual or an agent, trustee, or representative
3 acting on behalf of an individual.

4 (5) CONSUMER FINANCIAL PRODUCT OR SERV-
5 ICE.—The term “consumer financial product or
6 service” means any financial product or service that
7 is described in one or more categories under—

8 (A) paragraph (13) and is offered or pro-
9 vided for use by consumers primarily for per-
10 sonal, family, or household purposes; or

11 (B) clause (i), (iii), (ix), or (x) of para-
12 graph (13)(A), and is delivered, offered, or pro-
13 vided in connection with a consumer financial
14 product or service referred to in subparagraph
15 (A).

16 (6) COVERED PERSON.—The term “covered
17 person” means—

18 (A) any person that engages in offering or
19 providing a consumer financial product or serv-
20 ice; and

21 (B) any affiliate of a person described in
22 subparagraph (A) if such affiliate acts as a
23 service provider to such person.

24 (7) CREDIT.—The term “credit” means the
25 right granted by a person to a consumer to defer

1 payment of a debt, incur debt and defer its payment,
2 or purchase property or services and defer payment
3 for such purchase.

4 (8) DEPOSIT-TAKING ACTIVITY.—The term “de-
5 posit-taking activity” means—

6 (A) the acceptance of deposits, mainte-
7 nance of deposit accounts, or the provision of
8 services related to the acceptance of deposits or
9 the maintenance of deposit accounts;

10 (B) the acceptance of funds, the provision
11 of other services related to the acceptance of
12 funds, or the maintenance of member share ac-
13 counts by a credit union; or

14 (C) the receipt of funds or the equivalent
15 thereof, as the Bureau may determine by rule
16 or order, received or held by a covered person
17 (or an agent for a covered person) for the pur-
18 pose of facilitating a payment or transferring
19 funds or value of funds between a consumer
20 and a third party.

21 (9) DESIGNATED TRANSFER DATE.—The term
22 “designated transfer date” means the date estab-
23 lished under section 1062.

24 (10) DIRECTOR.—The term “Director” means
25 the Director of the Bureau.

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1 (11) ELECTRONIC CONDUIT SERVICES.—The
2 term “electronic conduit services”—

3 (A) means the provision, by a person, of
4 electronic data transmission, routing, inter-
5 mediate or transient storage, or connections to
6 a telecommunications system or network; and

7 (B) does not include a person that provides
8 electronic conduit services if, when providing
9 such services, the person—

10 (i) selects or modifies the content of
11 the electronic data;

12 (ii) transmits, routes, stores, or pro-
13 vides connections for electronic data, in-
14 cluding financial data, in a manner that
15 such financial data is differentiated from
16 other types of data of the same form that
17 such person transmits, routes, or stores, or
18 with respect to which, provides connec-
19 tions; or

20 (iii) is a payee, payor, correspondent,
21 or similar party to a payment transaction
22 with a consumer.

23 (12) ENUMERATED CONSUMER LAWS.—The
24 term “enumerated consumer laws” means—

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1 (A) the Alternative Mortgage Transaction
2 Parity Act of 1982 (12 U.S.C. 3801 et seq.);

3 (B) the Consumer Leasing Act of 1976
4 (15 U.S.C. 1667 et seq.);

5 (C) the Electronic Fund Transfer Act (15
6 U.S.C. 1693 et seq.);

7 (D) the Equal Credit Opportunity Act (15
8 U.S.C. 1691 et seq.);

9 (E) the Fair Credit Billing Act (15 U.S.C.
10 1666 et seq.);

11 (F) the Fair Credit Reporting Act (15
12 U.S.C. 1681 et seq.), except with respect to sec-
13 tions 615(e) and 628 of that Act (15 U.S.C.
14 1681m(e), 1681w);

15 (G) the Home Owners Protection Act of
16 1998 (12 U.S.C. 4901 et seq.);

17 (H) the Fair Debt Collection Practices Act
18 (15 U.S.C. 1692 et seq.);

19 (I) subsections (b) through (f) of section
20 43 of the Federal Deposit Insurance Act (12
21 U.S.C. 1831t(c)–(f));

22 (J) sections 502 through 509 of the
23 Gramm-Leach-Bliley Act (15 U.S.C. 6802–
24 6809) except for section 505 as it applies to
25 section 501(b);

1 (K) the Home Mortgage Disclosure Act of
2 1975 (12 U.S.C. 2801 et seq.);

3 (L) the Home Ownership and Equity Pro-
4 tection Act of 1994 (15 U.S.C. 1601 note);

5 (M) the Real Estate Settlement Procedures
6 Act of 1974 (12 U.S.C. 2601 et seq.);

7 (N) the S.A.F.E. Mortgage Licensing Act
8 of 2008 (12 U.S.C. 5101 et seq.);

9 (O) the Truth in Lending Act (15 U.S.C.
10 1601 et seq.);

11 (P) the Truth in Savings Act (12 U.S.C.
12 4301 et seq.); and

13 (Q) section 626 of the Omnibus Appropria-
14 tions Act, 2009 (Public Law 111–8).

15 (13) FAIR LENDING.—Term “fair lending”
16 means fair, equitable, and nondiscriminatory access
17 to credit for consumers.

18 (14) FEDERAL CONSUMER FINANCIAL LAW.—
19 The term “Federal consumer financial law” means
20 the provisions of this title, the enumerated consumer
21 laws, the laws for which authorities are transferred
22 under subtitles F and H, and any rule or order pre-
23 scribed by the Bureau under this title, an enumer-
24 ated consumer law, or pursuant to the authorities

1 transferred under subtitles F and H. The term does
2 not include the Federal Trade Commission Act.

3 (15) FINANCIAL PRODUCT OR SERVICE.—The
4 term “financial product or service”—

5 (A) means—

6 (i) extending credit and servicing
7 loans, including acquiring, purchasing, sell-
8 ing, brokering, or other extensions of credit
9 (other than solely extending commercial
10 credit to a person who originates consumer
11 credit transactions);

12 (ii) extending or brokering leases of
13 personal or real property that are the func-
14 tional equivalent of purchase finance ar-
15 rangements, if—

16 (I) the lease is on a non-oper-
17 ating basis;

18 (II) the initial term of the lease
19 is at least 90 days; and

20 (III) in the case of a lease involv-
21 ing real property, at the inception of
22 the initial lease, the transaction is in-
23 tended to result in ownership of the
24 leased property to be transferred to

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1 the lessee, subject to standards pre-
2 scribed by the Bureau;

3 (iii) providing real estate settlement
4 services, except such services excluded
5 under subparagraph (B), or performing
6 appraisals of real estate or personal prop-
7 erty;

8 (iv) engaging in deposit-taking activi-
9 ties, transmitting or exchanging funds, or
10 otherwise acting as a custodian of funds or
11 any financial instrument for use by or on
12 behalf of a consumer;

13 (v) selling, providing, or issuing stored
14 value or payment instruments, except that,
15 in the case of a sale of, or transaction to
16 reload, stored value, only if the seller exer-
17 cises substantial control over the terms or
18 conditions of the stored value provided to
19 the consumer where, for purposes of this
20 clause—

21 (I) a seller shall not be found to
22 exercise substantial control over the
23 terms or conditions of the stored value
24 if the seller is not a party to the con-
25 tract with the consumer for the stored

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1 value product, and another person is
2 principally responsible for establishing
3 the terms or conditions of the stored
4 value; and

5 (II) advertising the nonfinancial
6 goods or services of the seller on the
7 stored value card or device is not in
8 itself an exercise of substantial control
9 over the terms or conditions;

10 (vi) providing check cashing, check
11 collection, or check guaranty services;

12 (vii) providing payments or other fi-
13 nancial data processing products or serv-
14 ices to a consumer by any technological
15 means, including processing or storing fi-
16 nancial or banking data for any payment
17 instrument, or through any payments sys-
18 tems or network used for processing pay-
19 ments data, including payments made
20 through an online banking system or mo-
21 bile telecommunications network, except
22 that a person shall not be deemed to be a
23 covered person with respect to financial
24 data processing solely because the per-
25 son—

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1 (I) is a merchant, retailer, or
2 seller of any nonfinancial good or
3 service who engages in financial data
4 processing by transmitting or storing
5 payments data about a consumer ex-
6 clusively for purpose of initiating pay-
7 ments instructions by the consumer to
8 pay such person for the purchase of,
9 or to complete a commercial trans-
10 action for, such nonfinancial good or
11 service sold directly by such person to
12 the consumer; or

13 (II) provides access to a host
14 server to a person for purposes of en-
15 abling that person to establish and
16 maintain a website;

17 (viii) providing financial advisory serv-
18 ices (other than services relating to securi-
19 ties provided by a person regulated by the
20 Commission or a person regulated by a
21 State securities Commission, but only to
22 the extent that such person acts in a regu-
23 lated capacity) to consumers on individual
24 financial matters or relating to proprietary
25 financial products or services (other than

1 by publishing any bona fide newspaper,
2 news magazine, or business or financial
3 publication of general and regular circula-
4 tion, including publishing market data,
5 news, or data analytics or investment in-
6 formation or recommendations that are not
7 tailored to the individual needs of a par-
8 ticular consumer), including—

9 (I) providing credit counseling to
10 any consumer; and

11 (II) providing services to assist a
12 consumer with debt management or
13 debt settlement, modifying the terms
14 of any extension of credit, or avoiding
15 foreclosure;

16 (ix) collecting, analyzing, maintaining,
17 or providing consumer report information
18 or other account information, including in-
19 formation relating to the credit history of
20 consumers, used or expected to be used in
21 connection with any decision regarding the
22 offering or provision of a consumer finan-
23 cial product or service, except to the extent
24 that—

25 (I) a person—

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1 (aa) collects, analyzes, or
2 maintains information that re-
3 lates solely to the transactions
4 between a consumer and such
5 person;

6 (bb) provides the informa-
7 tion described in item (aa) to an
8 affiliate of such person; or

9 (cc) provides information
10 that is used or expected to be
11 used solely in any decision re-
12 garding the offering or provision
13 of a product or service that is not
14 a consumer financial product or
15 service, including a decision for
16 employment, government licens-
17 ing, or a residential lease or ten-
18 ancy involving a consumer; and

19 (II) the information described in
20 subclause (I)(aa) is not used by such
21 person or affiliate in connection with
22 any decision regarding the offering or
23 provision of a consumer financial
24 product or service to the consumer,

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1 other than credit described in section
2 1027(a)(2)(A);

3 (x) collecting debt related to any con-
4 sumer financial product or service; and

5 (xi) such other financial product or
6 service as may be defined by the Bureau,
7 by regulation, for purposes of this title, if
8 the Bureau finds that such financial prod-
9 uct or service is—

10 (I) entered into or conducted as
11 a subterfuge or with a purpose to
12 evade any Federal consumer financial
13 law; or

14 (II) permissible for a bank or for
15 a financial holding company to offer
16 or to provide under any provision of a
17 Federal law or regulation applicable
18 to a bank or a financial holding com-
19 pany, and has, or likely will have, a
20 material impact on consumers; and

21 (B) does not include—

22 (i) the business of insurance; or

23 (ii) electronic conduit services.

24 (16) FOREIGN EXCHANGE.—The term “foreign
25 exchange” means the exchange, for compensation, of

1 currency of the United States or of a foreign govern-
2 ment for currency of another government.

3 (17) INSURED CREDIT UNION.—The term “in-
4 sured credit union” has the same meaning as in sec-
5 tion 101 of the Federal Credit Union Act (12 U.S.C.
6 1752).

7 (18) PAYMENT INSTRUMENT.—The term “pay-
8 ment instrument” means a check, draft, warrant,
9 money order, traveler’s check, electronic instrument,
10 or other instrument, payment of funds, or monetary
11 value (other than currency).

12 (19) PERSON.—The term “person” means an
13 individual, partnership, company, corporation, asso-
14 ciation (incorporated or unincorporated), trust, es-
15 tate, cooperative organization, or other entity.

16 (20) PERSON REGULATED BY THE COMMODITY
17 FUTURES TRADING COMMISSION.—The term “person
18 regulated by the Commodity Futures Trading Com-
19 mission” means any person that is registered, or re-
20 quired by statute or regulation to be registered, with
21 the Commodity Futures Trading Commission, but
22 only to the extent that the activities of such person
23 are subject to the jurisdiction of the Commodity Fu-
24 tures Trading Commission under the Commodity
25 Exchange Act.

1 (21) PERSON REGULATED BY THE COMMIS-
2 SION.—The term “person regulated by the Commis-
3 sion” means a person who is—

4 (A) a broker or dealer that is required to
5 be registered under the Securities Exchange Act
6 of 1934;

7 (B) an investment adviser that is reg-
8 istered under the Investment Advisers Act of
9 1940;

10 (C) an investment company that is re-
11 quired to be registered under the Investment
12 Company Act of 1940, and any company that
13 has elected to be regulated as a business devel-
14 opment company under that Act;

15 (D) a national securities exchange that is
16 required to be registered under the Securities
17 Exchange Act of 1934;

18 (E) a transfer agent that is required to be
19 registered under the Securities Exchange Act of
20 1934;

21 (F) a clearing corporation that is required
22 to be registered under the Securities Exchange
23 Act of 1934;

24 (G) any self-regulatory organization that is
25 required to be registered with the Commission;

1 (H) any nationally recognized statistical
2 rating organization that is required to be reg-
3 istered with the Commission;

4 (I) any securities information processor
5 that is required to be registered with the Com-
6 mission;

7 (J) any municipal securities dealer that is
8 required to be registered with the Commission;

9 (K) any other person that is required to be
10 registered with the Commission under the Secu-
11 rities Exchange Act of 1934; and

12 (L) any employee, agent, or contractor act-
13 ing on behalf of, registered with, or providing
14 services to, any person described in any of sub-
15 paragraphs (A) through (K), but only to the ex-
16 tent that any person described in any of sub-
17 paragraphs (A) through (K), or the employee,
18 agent, or contractor of such person, acts in a
19 regulated capacity.

20 (22) PERSON REGULATED BY A STATE INSUR-
21 ANCE REGULATOR.—The term “person regulated by
22 a State insurance regulator” means any person that
23 is engaged in the business of insurance and subject
24 to regulation by any State insurance regulator, but

1 only to the extent that such person acts in such ca-
2 pacity.

3 (23) PERSON THAT PERFORMS INCOME TAX
4 PREPARATION ACTIVITIES FOR CONSUMERS.—The
5 term “person that performs income tax preparation
6 activities for consumers” means—

7 (A) any tax return preparer (as defined in
8 section 7701(a)(36) of the Internal Revenue
9 Code of 1986), regardless of whether com-
10 pensated, but only to the extent that the person
11 acts in such capacity;

12 (B) any person regulated by the Secretary
13 under section 330 of title 31, United States
14 Code, but only to the extent that the person
15 acts in such capacity; and

16 (C) any authorized IRS e-file Providers (as
17 defined for purposes of section 7216 of the In-
18 ternal Revenue Code of 1986), but only to the
19 extent that the person acts in such capacity.

20 (24) PRUDENTIAL REGULATOR.—The term
21 “prudential regulator” means—

22 (A) in the case of an insured depository in-
23 stitution, the appropriate Federal banking
24 agency, as that term is defined in section 3 of
25 the Federal Deposit Insurance Act; and

1 (B) in the case of an insured credit union,
2 the National Credit Union Administration.

3 (25) RELATED PERSON.—The term “related
4 person”—

5 (A) shall apply only with respect to a cov-
6 ered person that is not a bank holding company
7 (as that term is defined in section 2 of the
8 Bank Holding Company Act of 1956), credit
9 union, or depository institution;

10 (B) shall be deemed to mean a covered
11 person for all purposes of any provision of Fed-
12 eral consumer financial law; and

13 (C) means—

14 (i) any director, officer, or employee
15 charged with managerial responsibility for,
16 or controlling shareholder of, or agent for,
17 such covered person;

18 (ii) any shareholder, consultant, joint
19 venture partner, or other person, as deter-
20 mined by the Bureau (by rule or on a case-
21 by-case basis) who materially participates
22 in the conduct of the affairs of such cov-
23 ered person; and

24 (iii) any independent contractor (in-
25 cluding any attorney, appraiser, or ac-

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1 countant) who knowingly or recklessly par-
2 ticipates in any—

3 (I) violation of any provision of
4 law or regulation; or

5 (II) breach of a fiduciary duty.

6 (26) SERVICE PROVIDER.—

7 (A) IN GENERAL.—The term “service pro-
8 vider” means any person that provides a mate-
9 rial service to a covered person in connection
10 with the offering or provision by such covered
11 person of a consumer financial product or serv-
12 ice, including a person that—

13 (i) participates in designing, oper-
14 ating, or maintaining the consumer finan-
15 cial product or service; or

16 (ii) processes transactions relating to
17 the consumer financial product or service
18 (other than unknowingly or incidentally
19 transmitting or processing financial data in
20 a manner that such data is undifferen-
21 tiated from other types of data of the same
22 form as the person transmits or processes).

23 (B) EXCEPTIONS.—The term “service pro-
24 vider” does not include a person solely by virtue

1 of such person offering or providing to a cov-
2 ered person—

3 (i) a support service of a type pro-
4 vided to businesses generally or a similar
5 ministerial service; or

6 (ii) time or space for an advertisement
7 for a consumer financial product or service
8 through print, newspaper, or electronic
9 media.

10 (C) RULE OF CONSTRUCTION.—A person
11 that is a service provider shall be deemed to be
12 a covered person to the extent that such person
13 engages in the offering or provision of its own
14 consumer financial product or service.

15 (27) STATE.—The term “State” means any
16 State, territory, or possession of the United States,
17 the District of Columbia, the Commonwealth of
18 Puerto Rico, the Commonwealth of the Northern
19 Mariana Islands, Guam, American Samoa, or the
20 United States Virgin Islands or any federally recog-
21 nized Indian tribe, as defined by the Secretary of the
22 Interior under section 104(a) of the Federally Rec-
23 ognized Indian Tribe List Act of 1994 (25 U.S.C.
24 479a–1(a)).

1 (28) STORED VALUE.—The term “stored value”
2 means funds or monetary value represented in any
3 electronic format, whether or not specially encrypted,
4 and stored or capable of storage on electronic media
5 in such a way as to be retrievable and transferred
6 electronically, and includes a prepaid debit card or
7 product, or any other similar product, regardless of
8 whether the amount of the funds or monetary value
9 may be increased or reloaded.

10 (29) TRANSMITTING OR EXCHANGING FUNDS.—
11 The term “transmitting or exchanging funds” means
12 receiving currency, monetary value, or payment in-
13 struments from a consumer for the purpose of ex-
14 changing or transmitting the same by any means,
15 including transmission by wire, facsimile, electronic
16 transfer, courier, the Internet, or through bill pay-
17 ment services or through other businesses that facili-
18 tate third-party transfers within the United States
19 or to or from the United States.

20 **Subtitle A—Bureau of Consumer**
21 **Financial Protection**

22 **SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CON-**
23 **SUMER FINANCIAL PROTECTION.**

24 (a) BUREAU ESTABLISHED.—There is established in
25 the Federal Reserve System, an independent bureau to be

1 known as the “Bureau of Consumer Financial Protec-
2 tion”, which shall regulate the offering and provision of
3 consumer financial products or services under the Federal
4 consumer financial laws.

5 (b) DIRECTOR AND DEPUTY DIRECTOR.—

6 (1) IN GENERAL.—There is established the po-
7 sition of the Director, who shall serve as the head
8 of the Bureau.

9 (2) APPOINTMENT.—Subject to paragraph (3),
10 the Director shall be appointed by the President, by
11 and with the advice and consent of the Senate.

12 (3) QUALIFICATION.—The President shall
13 nominate the Director from among individuals who
14 are citizens of the United States.

15 (4) COMPENSATION.—The Director shall be
16 compensated at the rate prescribed for level II of the
17 Executive Schedule under section 5313 of title 5,
18 United States Code.

19 (5) DEPUTY DIRECTOR.—There is established
20 the position of Deputy Director, who shall—

21 (A) be appointed by the Director; and

22 (B) serve as acting Director in the absence
23 or unavailability of the Director.

24 (c) TERM.—

1 (1) IN GENERAL.—The Director shall serve for
2 a term of 5 years.

3 (2) EXPIRATION OF TERM.—An individual may
4 serve as Director after the expiration of the term for
5 which appointed, until a successor has been ap-
6 pointed and qualified.

7 (3) REMOVAL FOR CAUSE.—The President may
8 remove the Director for inefficiency, neglect of duty,
9 or malfeasance in office.

10 (d) SERVICE RESTRICTION.—No Director or Deputy
11 Director may hold any office, position, or employment in
12 any Federal reserve bank, Federal home loan bank, cov-
13 ered person, or service provider during the period of serv-
14 ice of such person as Director or Deputy Director.

15 (e) OFFICES.—The principal office of the Bureau
16 shall be in the District of Columbia. The Director may
17 establish regional offices of the Bureau, including in cities
18 in which the Federal reserve banks, or branches of such
19 banks, are located, in order to carry out the responsibil-
20 ities assigned to the Bureau under the Federal consumer
21 financial laws.

22 **SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.**

23 (a) POWERS OF THE BUREAU.—The Bureau is au-
24 thorized to establish the general policies of the Bureau

1 with respect to all executive and administrative functions,
2 including—

3 (1) the establishment of rules for conducting
4 the general business of the Bureau, in a manner not
5 inconsistent with this title;

6 (2) to bind the Bureau and enter into con-
7 tracts;

8 (3) directing the establishment and mainte-
9 nance of divisions or other offices within the Bureau,
10 in order to carry out the responsibilities under the
11 Federal consumer financial laws, and to satisfy the
12 requirements of other applicable law;

13 (4) to coordinate and oversee the operation of
14 all administrative, enforcement, and research activi-
15 ties of the Bureau;

16 (5) to adopt and use a seal;

17 (6) to determine the character of and the neces-
18 sity for the obligations and expenditures of the Bu-
19 reau;

20 (7) the appointment and supervision of per-
21 sonnel employed by the Bureau;

22 (8) the distribution of business among per-
23 sonnel appointed and supervised by the Director and
24 among administrative units of the Bureau;

25 (9) the use and expenditure of funds;

1 (10) implementing the Federal consumer finan-
2 cial laws through rules, orders, guidance, interpreta-
3 tions, statements of policy, examinations, and en-
4 forcement actions; and

5 (11) performing such other functions as may be
6 authorized or required by law.

7 (b) DELEGATION OF AUTHORITY.—The Director of
8 the Bureau may delegate to any duly authorized employee,
9 representative, or agent any power vested in the Bureau
10 by law.

11 (c) AUTONOMY OF THE BUREAU.—

12 (1) COORDINATION WITH THE BOARD OF GOV-
13 ERNORS.—Notwithstanding section 18 of the Fed-
14 eral Trade Commission Act (15 U.S.C. 57a) and any
15 other provision of law applicable to the supervision
16 or examination of persons with respect to Federal
17 consumer financial laws, the Board of Governors
18 may delegate to the Bureau the authorities to exam-
19 ine persons subject to the jurisdiction of the Board
20 of Governors for compliance with the Federal con-
21 sumer financial laws.

22 (2) AUTONOMY.—Notwithstanding the authori-
23 ties granted to the Board of Governors under the
24 Federal Reserve Act, the Board of Governors may
25 not—

1 (A) intervene in any matter or proceeding
2 before the Director, including examinations or
3 enforcement actions, unless otherwise specifi-
4 cally provided by law;

5 (B) appoint, direct, or remove any officer
6 or employee of the Bureau; or

7 (C) merge or consolidate the Bureau, or
8 any of the functions or responsibilities of the
9 Bureau, with any division or office of the Board
10 of Governors or the Federal reserve banks.

11 (3) RULES AND ORDERS.—No rule or order of
12 the Bureau shall be subject to approval or review by
13 the Board of Governors. The Board of Governors
14 may not delay or prevent the issuance of any rule
15 or order of the Bureau.

16 (4) RECOMMENDATIONS AND TESTIMONY.—No
17 officer or agency of the United States shall have any
18 authority to require the Director or any other officer
19 of the Bureau to submit legislative recommenda-
20 tions, or testimony or comments on legislation, to
21 any officer or agency of the United States for ap-
22 proval, comments, or review prior to the submission
23 of such recommendations, testimony, or comments to
24 the Congress, if such recommendations, testimony,
25 or comments to the Congress include a statement in-

1 dicating that the views expressed therein are those
2 of the Director or such officer, and do not nec-
3 essarily reflect the views of the Board of Governors
4 or the President.

5 **SEC. 1013. ADMINISTRATION.**

6 (a) PERSONNEL.—

7 (1) APPOINTMENT.—

8 (A) IN GENERAL.—The Director may fix
9 the number of, and appoint and direct, all em-
10 ployees of the Bureau.

11 (B) EMPLOYEES OF THE BUREAU.—The
12 Director is authorized to employ attorneys,
13 compliance examiners, compliance supervision
14 analysts, economists, statisticians, and other
15 employees as may be deemed necessary to con-
16 duct the business of the Bureau. Notwith-
17 standing any other provision of law, all such
18 employees shall be appointed and compensated
19 on terms and conditions that are consistent
20 with the terms and conditions set forth in sec-
21 tion 11(l) of the Federal Reserve Act (12
22 U.S.C. 248(l)).

23 (2) COMPENSATION.—The Director shall at all
24 times provide compensation and benefits to each
25 class of employees that, at a minimum, are equiva-

1 lent to the compensation and benefits then being
2 provided by the Board of Governors for the cor-
3 responding class of employees, and without regard to
4 the provisions of other laws applicable to officers or
5 employees of the United States.

6 (3) LABOR-MANAGEMENT RELATIONS.—

7 (A) IN GENERAL.—Except as provided in
8 subparagraph (B), chapter 71 of title 5, United
9 States Code, shall apply to the Bureau and the
10 employees of the Bureau.

11 (B) RULE OF CONSTRUCTION.—Nothing in
12 subparagraph (A) shall be construed to modify,
13 limit, or supersede the authority granted to the
14 Director under paragraph (1)(B) or the re-
15 quirements set forth in paragraph (2).

16 (b) SPECIFIC FUNCTIONAL UNITS.—

17 (1) RESEARCH.—The Director shall establish a
18 unit whose functions shall include researching, ana-
19 lyzing, and reporting on—

20 (A) developments in markets for consumer
21 financial products or services, including market
22 areas of alternative consumer financial products
23 or services with high growth rates and areas of
24 risk to consumers;

1 (B) access to fair and affordable credit for
2 traditionally underserved communities;

3 (C) consumer awareness, understanding,
4 and use of disclosures and communications re-
5 garding consumer financial products or services;

6 (D) consumer awareness and under-
7 standing of costs, risks, and benefits of con-
8 sumer financial products or services;

9 (E) consumer behavior with respect to con-
10 sumer financial products or services, including
11 performance on mortgage loans; and

12 (F) experiences of traditionally under-
13 served consumers, including un-banked and
14 under-banked consumers.

15 (2) COMMUNITY AFFAIRS.—The Director shall
16 establish a unit whose functions shall include pro-
17 viding information, guidance, and technical assist-
18 ance regarding the offering and provision of con-
19 sumer financial products or services to traditionally
20 underserved consumers and communities.

21 (3) COLLECTING AND TRACKING COM-
22 PLAINTS.—

23 (A) IN GENERAL.—The Director shall es-
24 tablish a unit whose functions shall include es-
25 tablishing a single, toll-free telephone number, a

1 website, and a database or utilizing an existing
2 database to facilitate the centralized collection
3 of, monitoring of, and response to consumer
4 complaints regarding consumer financial prod-
5 ucts or services. The Director shall coordinate
6 with the Federal Trade Commission or other
7 Federal agencies to route complaints to such
8 agencies, where appropriate.

9 (B) ROUTING CALLS TO STATES.—To the
10 extent practicable, State agencies may receive
11 appropriate complaints from the systems estab-
12 lished under subparagraph (A), if—

13 (i) the State agency system has the
14 functional capacity to receive calls or elec-
15 tronic reports routed by the Bureau sys-
16 tems; and

17 (ii) the State agency has satisfied any
18 conditions of participation in the system
19 that the Bureau may establish, including
20 treatment of personally identifiable infor-
21 mation and sharing of information on com-
22 plaint resolution or related compliance pro-
23 cedures and resources.

24 (C) REPORTS TO THE CONGRESS.—The
25 Director shall present an annual report to Con-

1 gress not later than March 31 of each year on
2 the complaints received by the Bureau in the
3 prior year regarding consumer financial prod-
4 ucts and services. Such report shall include in-
5 formation and analysis about complaint num-
6 bers, complaint types, and, where applicable, in-
7 formation about resolution of complaints.

8 (D) DATA SHARING REQUIRED.—To facili-
9 tate preparation of the reports required under
10 subparagraph (C), supervision and enforcement
11 activities, and monitoring of the market for
12 consumer financial products and services, the
13 Bureau shall share consumer complaint infor-
14 mation with prudential regulators, the Federal
15 Trade Commission, other Federal agencies, and
16 State agencies, consistent with Federal law ap-
17 plicable to personally identifiable information.
18 The prudential regulators, the Federal Trade
19 Commission, and other Federal agencies shall
20 share data relating to consumer complaints re-
21 garding consumer financial products and serv-
22 ices with the Bureau, consistent with Federal
23 law applicable to personally identifiable infor-
24 mation.

1 (c) OFFICE OF FAIR LENDING AND EQUAL OPPOR-
2 TUNITY.—

3 (1) ESTABLISHMENT.—The Director shall es-
4 tablish within the Bureau the Office of Fair Lending
5 and Equal Opportunity.

6 (2) FUNCTIONS.—The Office of Fair Lending
7 and Equal Opportunity shall have such powers and
8 duties as the Director may delegate to the Office, in-
9 cluding—

10 (A) providing oversight and enforcement of
11 Federal laws intended to ensure the fair, equi-
12 table, and nondiscriminatory access to credit for
13 both individuals and communities that are en-
14 forced by the Bureau, including the Equal
15 Credit Opportunity Act and the Home Mort-
16 gage Disclosure Act;

17 (B) coordinating fair lending efforts of the
18 Bureau with other Federal agencies and State
19 regulators, as appropriate, to promote con-
20 sistent, efficient, and effective enforcement of
21 Federal fair lending laws;

22 (C) working with private industry, fair
23 lending, civil rights, consumer and community
24 advocates on the promotion of fair lending com-
25 pliance and education; and

1 (D) providing annual reports to Congress
2 on the efforts of the Bureau to fulfill its fair
3 lending mandate.

4 (3) ADMINISTRATION OF OFFICE.—There is es-
5 tablished the position of Assistant Director of the
6 Bureau for Fair Lending and Equal Opportunity,
7 who—

8 (A) shall be appointed by the Director; and

9 (B) shall carry out such duties as the Di-
10 rector may delegate to such Assistant Director.

11 (d) OFFICE OF FINANCIAL LITERACY.—

12 (1) ESTABLISHMENT.—The Director shall es-
13 tablish an Office of Financial Literacy, which shall
14 be responsible for developing and implementing ini-
15 tiatives intended to educate and empower consumers
16 to make better informed financial decisions.

17 (2) OTHER DUTIES.—The Office of Financial
18 Literacy shall develop and implement a strategy to
19 improve the financial literacy of consumers that in-
20 cludes measurable goals and objectives, in consulta-
21 tion with the Financial Literacy and Education
22 Commission, consistent with the National Strategy
23 for Financial Education, through activities including
24 providing opportunities for consumers to access—

25 (A) financial counseling;

1 (B) information to assist with the evalua-
2 tion of credit products and the understanding
3 of credit histories and scores;

4 (C) savings, borrowing, and other services
5 found at mainstream financial institutions;

6 (D) activities intended to—

7 (i) prepare the consumer for edu-
8 cational expenses and the submission of fi-
9 nancial aid applications, and other major
10 purchases;

11 (ii) reduce debt; and

12 (iii) improve the financial situation of
13 the consumer;

14 (E) assistance in developing long-term sav-
15 ings strategies; and

16 (F) wealth building and financial services
17 during the preparation process to claim earned
18 income tax credits and Federal benefits.

19 (3) COORDINATION.—The Office of Financial
20 Literacy shall coordinate with other units within the
21 Bureau in carrying out its functions, including—

22 (A) working with the Community Affairs
23 Office to implement the strategy to improve fi-
24 nancial literacy of consumers; and

1 (B) working with the research unit estab-
2 lished by the Director to conduct research re-
3 lated to consumer financial education and coun-
4 seling.

5 (4) REPORT.—Not later than 24 months after
6 the designated transfer date, and annually there-
7 after, the Director shall submit a report on its finan-
8 cial literacy activities and strategy to improve finan-
9 cial literacy of consumers to—

10 (A) the Committee on Banking, Housing,
11 and Urban Affairs of the Senate; and

12 (B) the Committee on Financial Services
13 of the House of Representatives.

14 (5) MEMBERSHIP IN FINANCIAL LITERACY AND
15 EDUCATION COMMISSION.—Section 513(c)(1) of the
16 Financial Literacy and Education Improvement Act
17 (20 U.S.C. 9702(c)(1)) is amended—

18 (A) in subparagraph (B), by striking
19 “and” at the end;

20 (B) by redesignating subparagraph (C) as
21 subparagraph (D); and

22 (C) by inserting after subparagraph (B)
23 the following new subparagraph:

24 “(C) the Director of the Bureau of Con-
25 sumer Financial Protection; and”.

1 (6) CONFORMING AMENDMENT.—Section
2 513(d) of the Financial Literacy and Education Im-
3 provement Act (20 U.S.C. 9702(d)) is amended by
4 adding at the end the following: “The Director of
5 the Bureau of Consumer Financial Protection shall
6 serve as the Vice Chairman.”.

7 (e) OFFICE OF SERVICE MEMBER AFFAIRS.—

8 (1) IN GENERAL.—The Director shall establish
9 an Office of Service Member Affairs, which shall be
10 responsible for developing and implementing initia-
11 tives for service members and their families intended
12 to—

13 (A) educate and empower service members
14 and their families to make better informed deci-
15 sions regarding consumer financial products
16 and services;

17 (B) coordinate with the unit of the Bureau
18 established under subsection (b)(3), in order to
19 monitor complaints by service members and
20 their families and responses to those complaints
21 by the Bureau or other appropriate Federal or
22 State agency; and

23 (C) coordinate efforts among Federal and
24 State agencies, as appropriate, regarding con-
25 sumer protection measures relating to consumer

1 financial products and services offered to, or
2 used by, service members and their families.

3 (2) COORDINATION.—

4 (A) REGIONAL SERVICES.—The Director is
5 authorized to assign employees of the Bureau
6 as may be deemed necessary to conduct the
7 business of the Office of Service Member Af-
8 fairs, including by establishing and maintaining
9 the functions of the Office in regional offices of
10 the Bureau located near military bases, military
11 treatment facilities, or other similar military fa-
12 cilities.

13 (B) AGREEMENTS.—The Director is au-
14 thorized to enter into memoranda of under-
15 standing and similar agreements with the De-
16 partment of Defense, including any branch or
17 agency as authorized by the department, in
18 order to carry out the business of the Office of
19 Service Member Affairs.

20 (3) DEFINITION.—As used in this subsection,
21 the term “service member” means any member of
22 the United States Armed Forces and any member of
23 the National Guard or Reserves.

24 (f) TIMING.—The Office of Fair Lending, the Office
25 of Financial Literacy, and the Office of Service Member

1 Affairs shall each be established not later than 1 year after
2 the designated transfer date.

3 **SEC. 1014. CONSUMER ADVISORY BOARD.**

4 (a) ESTABLISHMENT REQUIRED.—The Director shall
5 establish a Consumer Advisory Board to advise and con-
6 sult with the Bureau in the exercise of its functions under
7 the Federal consumer financial laws, and to provide infor-
8 mation on emerging practices in the consumer financial
9 products or services industry, including regional trends,
10 concerns, and other relevant information.

11 (b) MEMBERSHIP.—In appointing the members of
12 the Consumer Advisory Board, the Director shall seek to
13 assemble experts in consumer protection, financial serv-
14 ices, community development, fair lending, and consumer
15 financial products or services and representatives of depos-
16 itory institutions that primarily serve underserved commu-
17 nities, and representatives of communities that have been
18 significantly impacted by higher-priced mortgage loans,
19 and seek representation of the interests of covered persons
20 and consumers, without regard to party affiliation. Not
21 fewer than 6 members shall be appointed upon the rec-
22 ommendation of the regional Federal Reserve Bank Presi-
23 dents, on a rotating basis.

1 (c) MEETINGS.—The Consumer Advisory Board shall
2 meet from time to time at the call of the Director, but,
3 at 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 Director 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. 1015. COORDINATION.**

15 The Bureau shall coordinate with the Commission,
16 the Commodity Futures Trading Commission, the Federal
17 Trade Commission, and other Federal agencies and State
18 regulators, as appropriate, to promote consistent regu-
19 latory treatment of consumer financial and investment
20 products and services.

21 **SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CON-**
22 **GRESS.**

23 (a) APPEARANCES BEFORE CONGRESS.—The Direc-
24 tor of the Bureau shall appear before the Committee on
25 Banking, Housing, and Urban Affairs of the Senate and

1 the Committee on Financial Services of the House of Rep-
2 resentatives at semi-annual hearings regarding the reports
3 required under subsection (b).

4 (b) REPORTS REQUIRED.—The Bureau shall, concur-
5 rent with each semi-annual hearing referred to in sub-
6 section (a), prepare and submit to the President and to
7 the Committee on Banking, Housing, and Urban Affairs
8 of the Senate and the Committee on Financial Services
9 of the House of Representatives, a report, beginning with
10 the session following the designated transfer date.

11 (c) CONTENTS.—The reports required by subsection
12 (b) shall include—

13 (1) a discussion of the significant problems
14 faced by consumers in shopping for or obtaining
15 consumer financial products or services;

16 (2) a justification of the budget request of the
17 previous year;

18 (3) a list of the significant rules and orders
19 adopted by the Bureau, as well as other significant
20 initiatives conducted by the Bureau, during the pre-
21 ceding year and the plan of the Bureau for rules, or-
22 ders, or other initiatives to be undertaken during the
23 upcoming period;

24 (4) an analysis of complaints about consumer
25 financial products or services that the Bureau has

1 received and collected in its central database on
2 complaints during the preceding year;

3 (5) a list, with a brief statement of the issues,
4 of the public supervisory and enforcement actions to
5 which the Bureau was a party during the preceding
6 year;

7 (6) the actions taken regarding rules, orders,
8 and supervisory actions with respect to covered per-
9 sons which are not credit unions or depository insti-
10 tutions;

11 (7) an assessment of significant actions by
12 State attorneys general or State regulators relating
13 to Federal consumer financial law;

14 (8) an analysis of the efforts of the Bureau to
15 fulfill the fair lending mission of the Bureau; and

16 (9) an analysis of the efforts of the Bureau to
17 increase workforce and contracting diversity con-
18 sistent with the procedures established by the Office
19 of Minority and Women Inclusion.

20 **SEC. 1017. FUNDING; PENALTIES AND FINES.**

21 (a) TRANSFER OF FUNDS FROM BOARD OF GOV-
22 ERNORS.—

23 (1) IN GENERAL.—Each year (or quarter of
24 such year), beginning on the designated transfer
25 date, and each quarter thereafter, the Board of Gov-

1 errors shall transfer to the Bureau from the com-
2 bined earnings of the Federal Reserve System, the
3 amount determined by the Director to be reasonably
4 necessary to carry out the authorities of the Bureau
5 under Federal consumer financial law, taking into
6 account such other sums made available to the Bu-
7 reau from the preceding year (or quarter of such
8 year).

9 (2) FUNDING CAP.—

10 (A) IN GENERAL.—Notwithstanding para-
11 graph (1), and in accordance with this para-
12 graph, the amount that shall be transferred to
13 the Bureau in each fiscal year shall not exceed
14 a fixed percentage of the total operating ex-
15 penses of the Federal Reserve System, as re-
16 ported in the Annual Report, 2009, of the
17 Board of Governors, equal to—

18 (i) 10 percent of such expenses in fis-
19 cal year 2011;

20 (ii) 11 percent of such expenses in fis-
21 cal year 2012; and

22 (iii) 12 percent of such expenses in
23 fiscal year 2013, and in each year there-
24 after.

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1 (B) AMOUNT ADJUSTED FOR INFLA-
2 TION.—The dollar amount referred to in sub-
3 paragraph (A)(iii) shall be adjusted annually,
4 using the percent by which the average urban
5 consumer price index for the quarter preceding
6 the date of the payment differs from the aver-
7 age of that index for the same quarter in the
8 prior year.

9 (3) TRANSITION PERIOD.—Beginning on the
10 date of enactment of this Act and until the des-
11 ignated transfer date, the Board of Governors shall
12 transfer to the Bureau the amount estimated by the
13 Secretary needed to carry out the authorities grant-
14 ed to the Bureau under Federal consumer financial
15 law, from the date of enactment of this Act until the
16 designated transfer date.

17 (4) BUDGET AND FINANCIAL MANAGEMENT.—

18 (A) FINANCIAL OPERATING PLANS AND
19 FORECASTS.—The Director shall provide to the
20 Director of the Office of Management and
21 Budget copies of the financial operating plans
22 and forecasts of the Director, as prepared by
23 the Director in the ordinary course of the oper-
24 ations of the Bureau, and copies of the quar-
25 terly reports of the financial condition and re-

1 sults of operations of the Bureau, as prepared
2 by the Director in the ordinary course of the
3 operations of the Bureau.

4 (B) FINANCIAL STATEMENTS.—The Bu-
5 reau shall prepare annually a statement of—

6 (i) assets and liabilities and surplus or
7 deficit;

8 (ii) income and expenses; and

9 (iii) sources and application of funds.

10 (C) FINANCIAL MANAGEMENT SYSTEMS.—

11 The Bureau shall implement and maintain fi-
12 nancial management systems that comply sub-
13 stantially with Federal financial management
14 systems requirements and applicable Federal
15 accounting standards.

16 (D) ASSERTION OF INTERNAL CON-
17 TROLS.—The Director shall provide to the

18 Comptroller General of the United States an as-
19 sertion as to the effectiveness of the internal

20 controls that apply to financial reporting by the
21 Bureau, using the standards established in sec-

22 tion 3512(c) of title 31, United States Code.

23 (E) RULE OF CONSTRUCTION.—This sub-

24 section may not be construed as implying any
25 obligation on the part of the Director to consult

1 with or obtain the consent or approval of the
2 Director of the Office of Management and
3 Budget with respect to any report, plan, fore-
4 cast, or other information referred to in sub-
5 paragraph (A) or any jurisdiction or oversight
6 over the affairs or operations of the Bureau.

7 (5) AUDIT OF THE BUREAU.—

8 (A) IN GENERAL.—The Comptroller Gen-
9 eral shall annually audit the financial trans-
10 actions of the Bureau in accordance with the
11 United States generally accepted government
12 auditing standards, as may be prescribed by the
13 Comptroller General of the United States. The
14 audit shall be conducted at the place or places
15 where accounts of the Bureau are normally
16 kept. The representatives of the Government
17 Accountability Office shall have access to the
18 personnel and to all books, accounts, docu-
19 ments, papers, records (including electronic
20 records), reports, files, and all other papers,
21 automated data, things, or property belonging
22 to or under the control of or used or employed
23 by the Bureau pertaining to its financial trans-
24 actions and necessary to facilitate the audit,
25 and such representatives shall be afforded full

1 facilities for verifying transactions with the bal-
2 ances or securities held by depositories, fiscal
3 agents, and custodians. All such books, ac-
4 counts, documents, records, reports, files, pa-
5 pers, and property of the Bureau shall remain
6 in possession and custody of the Bureau. The
7 Comptroller General may obtain and duplicate
8 any such books, accounts, documents, records,
9 working papers, automated data and files, or
10 other information relevant to such audit with-
11 out cost to the Comptroller General, and the
12 right of access of the Comptroller General to
13 such information shall be enforceable pursuant
14 to section 716(e) of title 31, United States
15 Code.

16 (B) REPORT.—The Comptroller General
17 shall submit to the Congress a report of each
18 annual audit conducted under this subsection.
19 The report to the Congress shall set forth the
20 scope of the audit and shall include the state-
21 ment of assets and liabilities and surplus or
22 deficit, the statement of income and expenses,
23 the statement of sources and application of
24 funds, and such comments and information as
25 may be deemed necessary to inform Congress of

1 the financial operations and condition of the
2 Bureau, together with such recommendations
3 with respect thereto as the Comptroller General
4 may deem advisable. A copy of each report shall
5 be furnished to the President and to the Bu-
6 reau at the time submitted to the Congress.

7 (C) ASSISTANCE AND COSTS.—For the
8 purpose of conducting an audit under this sub-
9 section, the Comptroller General may, in the
10 discretion of the Comptroller General, employ
11 by contract, without regard to section 3709 of
12 the Revised Statutes of the United States (41
13 U.S.C. 5), professional services of firms and or-
14 ganizations of certified public accountants for
15 temporary periods or for special purposes. Upon
16 the request of the Comptroller General, the Di-
17 rector of the Bureau shall transfer to the Gov-
18 ernment Accountability Office from funds avail-
19 able, the amount requested by the Comptroller
20 General to cover the full costs of any audit and
21 report conducted by the Comptroller General.
22 The Comptroller General shall credit funds
23 transferred to the account established for sala-
24 ries and expenses of the Government Account-
25 ability Office, and such amount shall be avail-

1 able upon receipt and without fiscal year limita-
2 tion to cover the full costs of the audit and re-
3 port.

4 (b) CONSUMER FINANCIAL PROTECTION FUND.—

5 (1) SEPARATE FUND IN FEDERAL RESERVE
6 BOARD ESTABLISHED.—There is established in the
7 Federal Reserve Board a separate fund, to be known
8 as the “Consumer Financial Protection Fund” (re-
9 ferred to in this section as the “Bureau Fund”).

10 (2) FUND RECEIPTS.—All amounts transferred
11 to the Bureau under subsection (a) shall be depos-
12 ited into the Bureau Fund.

13 (3) INVESTMENT AUTHORITY.—

14 (A) AMOUNTS IN BUREAU FUND MAY BE
15 INVESTED.—The Bureau may request the
16 Board of Governors to invest the portion of the
17 Bureau Fund that is not, in the judgment of
18 the Bureau, required to meet the current needs
19 of the Bureau.

20 (B) ELIGIBLE INVESTMENTS.—Invest-
21 ments authorized by this paragraph shall be
22 made by the Board of Governors in obligations
23 of the United States or obligations that are
24 guaranteed as to principal and interest by the
25 United States, with maturities suitable to the

1 needs of the Bureau Fund, as determined by
2 the Bureau.

3 (C) INTEREST AND PROCEEDS CRED-
4 ITED.—The interest on, and the proceeds from
5 the sale or redemption of, any obligations held
6 in the Bureau Fund shall be credited to the
7 Bureau Fund.

8 (c) USE OF FUNDS.—

9 (1) IN GENERAL.—Funds obtained by, trans-
10 ferred to, or credited to the Bureau Fund shall be
11 immediately available to the Bureau and under the
12 control of the Director, and shall remain available
13 until expended, to pay the expenses of the Bureau
14 in carrying out its duties and responsibilities. The
15 compensation of the Director and other employees of
16 the Bureau and all other expenses thereof may be
17 paid from, obtained by, transferred to, or credited to
18 the Bureau Fund under this section.

19 (2) FUNDS THAT ARE NOT GOVERNMENT
20 FUNDS.—Funds obtained by or transferred to the
21 Bureau Fund shall not be construed to be Govern-
22 ment funds or appropriated monies.

23 (3) AMOUNTS NOT SUBJECT TO APPORTION-
24 MENT.—Notwithstanding any other provision of law,
25 amounts in the Bureau Fund and in the Civil Pen-

1 alty Fund established under subsection (d) shall not
2 be subject to apportionment for purposes of chapter
3 15 of title 31, United States Code, or under any
4 other authority.

5 (d) PENALTIES AND FINES.—

6 (1) ESTABLISHMENT OF VICTIMS RELIEF
7 FUND.—There is established in the Federal Reserve
8 Board a fund to be known as the “Consumer Finan-
9 cial Protection Civil Penalty Fund” (referred to in
10 this subsection as the “Civil Penalty Fund”). If the
11 Bureau obtains a civil penalty against any person in
12 any judicial or administrative action under Federal
13 consumer financial laws, the Bureau shall deposit
14 into the Civil Penalty Fund, the amount of the pen-
15 alty collected.

16 (2) PAYMENT TO VICTIMS.—Amounts in the
17 Civil Penalty Fund shall be available to the Bureau,
18 without fiscal year limitation, for payments to the
19 victims of activities for which civil penalties have
20 been imposed under the Federal consumer financial
21 laws. To the extent such victims cannot be located
22 or such payments are otherwise not practicable, the
23 Bureau may use such funds for the purpose of con-
24 sumer education and financial literacy programs.

1 **SEC. 1018. EFFECTIVE DATE.**

2 This subtitle shall become effective on the date of en-
3 actment of this Act.

4 **Subtitle B—General Powers of the**
5 **Bureau**

6 **SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.**

7 (a) **PURPOSE.**—The Bureau shall seek to implement
8 and, where applicable, enforce Federal consumer financial
9 law consistently for the purpose of ensuring that all con-
10 sumers have access to markets for consumer financial
11 products and services and that markets for consumer fi-
12 nancial products and services are fair, transparent, and
13 competitive.

14 (b) **OBJECTIVES.**—The Bureau is authorized to exer-
15 cise its authorities under Federal consumer financial law
16 for the purposes of ensuring that, with respect to con-
17 sumer financial products and services—

18 (1) consumers are provided with timely and un-
19 derstandable information to make responsible deci-
20 sions about financial transactions;

21 (2) consumers are protected from unfair, decep-
22 tive, or abusive acts and practices and from dis-
23 crimination;

24 (3) outdated, unnecessary, or unduly burden-
25 some regulations are regularly identified and ad-

1 dressed in order to reduce unwarranted regulatory
2 burdens;

3 (4) Federal consumer financial law is enforced
4 consistently, without regard to the status of a person
5 as a depository institution, in order to promote fair
6 competition; and

7 (5) markets for consumer financial products
8 and services operate transparently and efficiently to
9 facilitate access and innovation.

10 (c) FUNCTIONS.—The primary functions of the Bu-
11 reau are—

12 (1) conducting financial education programs;

13 (2) collecting, investigating, and responding to
14 consumer complaints;

15 (3) collecting, researching, monitoring, and
16 publishing information relevant to the functioning of
17 markets for consumer financial products and serv-
18 ices to identify risks to consumers and the proper
19 functioning of such markets;

20 (4) subject to sections 1024 through 1026, su-
21 pervising covered persons for compliance with Fed-
22 eral consumer financial law, and taking appropriate
23 enforcement action to address violations of Federal
24 consumer financial law;

1 (5) issuing rules, orders, and guidance imple-
2 menting Federal consumer financial law; and

3 (6) performing such support activities as may
4 be necessary or useful to facilitate the other func-
5 tions of the Bureau.

6 **SEC. 1022. RULEMAKING AUTHORITY.**

7 (a) IN GENERAL.—The Bureau is authorized to exer-
8 cise its authorities under Federal consumer financial law
9 to administer, enforce, and otherwise implement the provi-
10 sions of Federal consumer financial law.

11 (b) RULEMAKING, ORDERS, AND GUIDANCE.—

12 (1) GENERAL AUTHORITY.—The Director may
13 prescribe rules and issue orders and guidance, as
14 may be necessary or appropriate to enable the Bu-
15 reau to administer and carry out the purposes and
16 objectives of the Federal consumer financial laws,
17 and to prevent evasions thereof.

18 (2) STANDARDS FOR RULEMAKING.—In pre-
19 scribing a rule under the Federal consumer financial
20 laws—

21 (A) the Bureau shall consider the potential
22 benefits and costs to consumers and covered
23 persons, including the potential reduction of ac-
24 cess by consumers to consumer financial prod-
25 ucts or services resulting from such rule;

1 (B) the Bureau shall consult with the ap-
2 propriate prudential regulators or other Federal
3 agencies prior to proposing a rule and during
4 the comment process regarding consistency with
5 prudential, market, or systemic objectives ad-
6 ministered by such agencies; and

7 (C) if, during the consultation process de-
8 scribed in subparagraph (B), a prudential regu-
9 lator provides the Bureau with a written objec-
10 tion to the proposed rule of the Bureau or a
11 portion thereof, the Bureau shall include in the
12 adopting release a description of the objection
13 and the basis for the Bureau decision, if any,
14 regarding such objection, except that nothing in
15 this clause shall be construed as altering or lim-
16 iting the procedures under section 1023 that
17 may apply to any rule prescribed by the Bu-
18 reau.

19 (3) EXEMPTIONS.—

20 (A) IN GENERAL.—The Bureau, by rule,
21 may conditionally or unconditionally exempt
22 any class of covered persons, service providers,
23 or consumer financial products or services, from
24 any provision of this title, or from any rule
25 issued under this title, as the Bureau deter-

1 mines necessary or appropriate to carry out the
2 purposes and objectives of this title, taking into
3 consideration the factors in subparagraph (B).

4 (B) FACTORS.—In issuing an exemption,
5 as permitted under subparagraph (A), the Bu-
6 reau shall, as appropriate, take into consider-
7 ation—

8 (i) the total assets of the class of cov-
9 ered persons;

10 (ii) the volume of transactions involv-
11 ing consumer financial products or services
12 in which the class of covered persons en-
13 gages; and

14 (iii) existing provisions of law which
15 are applicable to the consumer financial
16 product or service and the extent to which
17 such provisions provide consumers with
18 adequate protections.

19 (4) EXCLUSIVE RULEMAKING AUTHORITY.—
20 Notwithstanding any other provisions of Federal law
21 and except as provided in section 1061(b)(5), to the
22 extent that a provision of Federal consumer finan-
23 cial law authorizes the Bureau and another Federal
24 agency to issue regulations under that provision of
25 law for purposes of assuring compliance with Fed-

1 eral consumer financial law and any regulations
2 thereunder, the Bureau shall have the exclusive au-
3 thority to prescribe rules subject to those provisions
4 of law.

5 (c) MONITORING.—

6 (1) IN GENERAL.—In order to support its rule-
7 making and other functions, the Bureau shall mon-
8 itor for risks to consumers in the offering or provi-
9 sion of consumer financial products or services, in-
10 cluding developments in markets for such products
11 or services.

12 (2) CONSIDERATIONS.—In allocating its re-
13 sources to perform the monitoring required by this
14 section, the Bureau may consider, among other fac-
15 tors—

16 (A) likely risks and costs to consumers as-
17 sociated with buying or using a type of con-
18 sumer financial product or service;

19 (B) understanding by consumers of the
20 risks of a type of consumer financial product or
21 service;

22 (C) the legal protections applicable to the
23 offering or provision of a consumer financial
24 product or service, including the extent to which

1 the law is likely to adequately protect con-
2 sumers;

3 (D) rates of growth in the offering or pro-
4 vision of a consumer financial product or serv-
5 ice;

6 (E) the extent, if any, to which the risks
7 of a consumer financial product or service may
8 disproportionately affect traditionally under-
9 served consumers; or

10 (F) the types, number, and other pertinent
11 characteristics of covered persons that offer or
12 provide the consumer financial product or serv-
13 ice.

14 (3) REPORTS.—The Bureau shall publish not
15 fewer than 1 report of significant findings of its
16 monitoring required by this subsection in each cal-
17 endar year, beginning with the first calendar year
18 that begins at least 1 year after the designated
19 transfer date.

20 (4) COLLECTION OF INFORMATION.—In con-
21 ducting research on the offering and provision of
22 consumer financial products or services, the Bureau
23 shall have the authority to gather information from
24 time to time regarding the organization, business
25 conduct, markets, and activities of persons operating

1 in consumer financial services markets. In order to
2 gather such information, the Bureau may—

3 (A) gather and compile information from
4 examination reports concerning covered persons
5 or service providers, assessment of consumer
6 complaints, surveys, and interviews of covered
7 persons and consumers, and review of available
8 databases;

9 (B) require persons to file with the Bu-
10 reau, under oath or otherwise, in such form and
11 within such reasonable period of time as the
12 Bureau may prescribe, by rule or order, annual
13 or special reports, or answers in writing to spe-
14 cific questions, furnishing such information as
15 the Bureau may require; and

16 (C) make public such information obtained
17 by the Bureau under this section, as is in the
18 public interest in reports or otherwise in the
19 manner best suited for public information and
20 use.

21 (5) CONFIDENTIALITY RULES.—The Bureau
22 shall prescribe rules regarding the confidential treat-
23 ment of information obtained from persons in con-
24 nection with the exercise of its authorities under
25 Federal consumer financial law.

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1 (A) ACCESS BY THE BUREAU TO REPORTS
2 OF OTHER REGULATORS.—

3 (i) EXAMINATION AND FINANCIAL
4 CONDITION REPORTS.—Upon providing
5 reasonable assurances of confidentiality,
6 the Bureau shall have access to any report
7 of examination or financial condition made
8 by a prudential regulator or other Federal
9 agency having jurisdiction over a covered
10 person or service provider, and to all revi-
11 sions made to any such report.

12 (ii) PROVISION OF OTHER REPORTS
13 TO THE BUREAU.—In addition to the re-
14 ports described in clause (i), a prudential
15 regulator or other Federal agency having
16 jurisdiction over a covered person or serv-
17 ice provider may, in its discretion, furnish
18 to the Bureau any other report or other
19 confidential supervisory information con-
20 cerning any insured depository institution,
21 credit union, or other entity examined by
22 such agency under authority of any provi-
23 sion of Federal law.

24 (B) ACCESS BY OTHER REGULATORS TO
25 REPORTS OF THE BUREAU.—

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1 (i) EXAMINATION REPORTS.—Upon
2 providing reasonable assurances of con-
3 fidentiality, a prudential regulator, a State
4 regulator, or any other Federal agency
5 having jurisdiction over a covered person
6 or service provider shall have access to any
7 report of examination made by the Bureau
8 with respect to such person, and to all re-
9 visions made to any such report.

10 (ii) PROVISION OF OTHER REPORTS
11 TO OTHER REGULATORS.—In addition to
12 the reports described in clause (i), the Bu-
13 reau may, in its discretion, furnish to a
14 prudential regulator or other agency hav-
15 ing jurisdiction over a covered person or
16 service provider any other report or other
17 confidential supervisory information con-
18 cerning such person examined by the Bu-
19 reau under the authority of any other pro-
20 vision of Federal law.

21 (6) PRIVACY CONSIDERATIONS.—In collecting
22 information from any person, publicly releasing in-
23 formation held by the Bureau, or requiring covered
24 persons to publicly report information, the Bureau
25 shall take steps to ensure that proprietary, personal,

1 or confidential consumer information that is pro-
2 tected from public disclosure under section 552(b) or
3 552a of title 5, United States Code, or any other
4 provision of law, is not made public under this title.

5 (d) ASSESSMENT OF SIGNIFICANT RULES.—

6 (1) IN GENERAL.—The Bureau shall conduct
7 an assessment of each significant rule or order
8 adopted by the Bureau under Federal consumer fi-
9 nancial law. The assessment shall address, among
10 other relevant factors, the effectiveness of the rule or
11 order in meeting the purposes and objectives of this
12 title and the specific goals stated by the Bureau.
13 The assessment shall reflect available evidence and
14 any data that the Bureau reasonably may collect.

15 (2) REPORTS.—The Bureau shall publish a re-
16 port of its assessment under this subsection not
17 later than 5 years after the effective date of the sub-
18 ject rule or order.

19 (3) PUBLIC COMMENT REQUIRED.—Before pub-
20 lishing a report of its assessment, the Bureau shall
21 invite public comment on recommendations for modi-
22 fying, expanding, or eliminating the newly adopted
23 significant rule or order.

24 (e) INFORMATION GATHERING.—In conducting any
25 monitoring or assessment required by this section, the Bu-

1 reau may gather information through a variety of meth-
2 ods, including by conducting surveys or interviews of con-
3 sumers.

4 **SEC. 1023. REVIEW OF BUREAU REGULATIONS.**

5 (a) REVIEW OF BUREAU REGULATIONS.—On the pe-
6 tition of a member agency of the Council, the Council may
7 set aside a final regulation prescribed by the Bureau, or
8 any provision thereof, if the Council decides, in accordance
9 with subsection (c), that the regulation or provision would
10 put the safety and soundness of the United States banking
11 system or the stability of the financial system of the
12 United States at risk.

13 (b) PETITION.—

14 (1) PROCEDURE.—An agency represented by a
15 member of the Council may petition the Council, in
16 writing, and in accordance with rules prescribed pur-
17 suant to subsection (f), to stay the effectiveness of,
18 or set aside, a regulation if the member agency filing
19 the petition—

20 (A) has in good faith attempted to work
21 with the Bureau to resolve concerns regarding
22 the effect of the rule on the safety and sound-
23 ness of the United States banking system or
24 the stability of the financial system of the
25 United States; and

1 (B) files the petition with the Council not
2 later than 10 days after the date on which the
3 regulation has been published in the Federal
4 Register.

5 (2) PUBLICATION.—Any petition filed with the
6 Council under this section shall be published in the
7 Federal Register and transmitted contemporaneously
8 with filing to the Committee on Banking, Housing,
9 and Urban Affairs of the Senate and the Committee
10 on Financial Services of the House of Representa-
11 tives.

12 (c) STAYS AND SET ASIDES.—

13 (1) STAY.—

14 (A) IN GENERAL.—Upon the request of
15 any member agency, the Chairperson of the
16 Council may stay the effectiveness of a regula-
17 tion for the purpose of allowing appropriate
18 consideration of the petition by the Council.

19 (B) EXPIRATION.—A stay issued under
20 this paragraph shall expire on the earlier of—

21 (i) 90 days after the date of filing of
22 the petition under subsection (b); or

23 (ii) the date on which the Council
24 makes a decision under paragraph (3).

1 (2) NO ADVERSE INFERENCE.—After the expi-
2 ration of any stay imposed under this section, no in-
3 ference shall be drawn regarding the validity or en-
4 forceability of a regulation which was the subject of
5 the petition.

6 (3) VOTE.—

7 (A) IN GENERAL.—The decision to issue a
8 stay of, or set aside, any regulation under this
9 section shall be made only with the affirmative
10 vote in accordance with subparagraph (B) of $\frac{2}{3}$
11 of the members of the Council then serving.

12 (B) AUTHORIZATION TO VOTE.—A member
13 of the Council may vote to stay the effectiveness
14 of, or set aside, a final regulation prescribed by
15 the Bureau only if the agency or department
16 represented by that member has—

17 (i) considered any relevant informa-
18 tion provided by the agency submitting the
19 petition and by the Bureau; and

20 (ii) made an official determination, at
21 a public meeting where applicable, that the
22 regulation which is the subject of the peti-
23 tion would put the safety and soundness of
24 the United States banking system or the

1 stability of the financial system of the
2 United States at risk.

3 (4) DECISIONS TO SET ASIDE.—

4 (A) EFFECT OF DECISION.—A decision by
5 the Council to set aside a regulation prescribed
6 by the Bureau, or provision thereof, shall
7 render such regulation, or provision thereof, un-
8 enforceable.

9 (B) TIMELY ACTION REQUIRED.—The
10 Council may not issue a decision to set aside a
11 regulation, or provision thereof, which is the
12 subject of a petition under this section after the
13 expiration of the later of—

14 (i) 45 days following the date of filing
15 of the petition, unless a stay is issued
16 under paragraph (1); or

17 (ii) the expiration of a stay issued by
18 the Council under this section.

19 (C) SEPARATE AUTHORITY.—The issuance
20 of a stay under this section does not affect the
21 authority of the Council to set aside a regula-
22 tion.

23 (5) DISMISSAL DUE TO INACTION.—A petition
24 under this section shall be deemed dismissed if the
25 Council has not issued a decision to set aside a regu-

1 lation, or provision thereof, within the period for
2 timely action under paragraph (4)(B).

3 (6) PUBLICATION OF DECISION.—Any decision
4 under this subsection to issue a stay of, or set aside,
5 a regulation or provision thereof shall be published
6 by the Council in the Federal Register as soon as
7 practicable after the decision is made, with an expla-
8 nation of the reasons for the decision.

9 (7) RULEMAKING PROCEDURES INAPPLI-
10 CABLE.—The notice and comment procedures under
11 section 553 of title 5, United States Code, shall not
12 apply to any decision under this section of the Coun-
13 cil to issue a stay of, or set aside, a regulation.

14 (8) JUDICIAL REVIEW OF DECISIONS BY THE
15 COUNCIL.—A decision by the Council to set aside a
16 regulation prescribed by the Bureau, or provision
17 thereof, shall be subject to review under chapter 7
18 of title 5, United States Code.

19 (d) APPLICATION OF OTHER LAW.—Nothing in this
20 section shall be construed as altering, limiting, or restrict-
21 ing the application of any other provision of law, except
22 as otherwise specifically provided in this section, including
23 chapter 5 and chapter 7 of title 5, United States Code,
24 to a regulation which is the subject of a petition filed
25 under this section.

1 (e) SAVINGS CLAUSE.—Nothing in this section shall
2 be construed as limiting or restricting the Bureau from
3 engaging in a rulemaking in accordance with applicable
4 law.

5 (f) IMPLEMENTING RULES.—The Council shall pre-
6 scribe procedural rules to implement this section.

7 **SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED**
8 **PERSONS.**

9 (a) SCOPE OF COVERAGE.—

10 (1) APPLICABILITY.—Notwithstanding any
11 other provision of this title, and except as provided
12 in paragraph (3), this section shall apply to any cov-
13 ered person who—

14 (A) offers or provides origination, broker-
15 age, or servicing of loans secured by real estate
16 for use by consumers primarily for personal,
17 family, or household purposes, or loan modifica-
18 tion or foreclosure relief services in connection
19 with such loans;

20 (B) is a larger participant of a market for
21 other consumer financial products or services,
22 as defined by rule in accordance with paragraph
23 (2); or

24 (C) the Bureau has reasonable cause to de-
25 termine, by order, after notice to the covered

1 person and a reasonable opportunity for such
2 covered person to respond, based on complaints
3 collected through the system under section
4 1013(b)(3) or information from other sources,
5 is engaging, or has engaged, in a pattern of
6 conduct that poses undue risks to consumers
7 with regard to the offering or provision of con-
8 sumer financial products or services.

9 (2) RULEMAKING TO DEFINE COVERED PER-
10 SONS SUBJECT TO THIS SECTION.—The Bureau
11 shall consult with the Federal Trade Commission
12 prior to issuing a rule, in accordance with paragraph
13 (1)(B), to define covered persons subject to this sec-
14 tion. The Bureau shall issue its initial rule not later
15 than 1 year after the designated transfer date.

16 (3) RULES OF CONSTRUCTION.—

17 (A) CERTAIN PERSONS EXCLUDED.—This
18 section shall not apply to persons described in
19 section 1025(a) or 1026(a).

20 (B) ACTIVITY LEVELS.—For purposes of
21 computing activity levels under paragraph (1)
22 or rules issued thereunder, activities of affili-
23 ated companies (other than insured depository
24 institutions or insured credit unions) shall be
25 aggregated.

1 (b) SUPERVISION.—

2 (1) IN GENERAL.—The Bureau shall require re-
3 ports and conduct examinations on a periodic basis
4 of persons described in subsection (a)(1) for pur-
5 poses of—

6 (A) assessing compliance with the require-
7 ments of Federal consumer financial law;

8 (B) obtaining information about the activi-
9 ties and compliance systems or procedures of
10 such person; and

11 (C) detecting and assessing risks to con-
12 sumers and to markets for consumer financial
13 products and services.

14 (2) RISK-BASED SUPERVISION PROGRAM.—The
15 Bureau shall exercise its authority under paragraph
16 (1) in a manner designed to ensure that such exer-
17 cise, with respect to persons described in subsection
18 (a)(1), is based on the assessment by the Bureau of
19 the risks posed to consumers in the relevant product
20 markets and geographic markets, and taking into
21 consideration, as applicable—

22 (A) the asset size of the covered person;

23 (B) the volume of transactions involving
24 consumer financial products or services in
25 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) the extent to which such institutions
5 are subject to oversight by State authorities for
6 consumer protection; and

7 (E) any other factors that the Bureau de-
8 termines to be relevant to a class of covered
9 persons.

10 (3) COORDINATION.—To minimize regulatory
11 burden, the Bureau shall coordinate its supervisory
12 activities with the supervisory activities conducted by
13 prudential regulators and the State bank regulatory
14 authorities, including establishing their respective
15 schedules for examining persons described in sub-
16 section (a)(1) and requirements regarding reports to
17 be submitted by such persons.

18 (4) USE OF EXISTING REPORTS.—The Bureau
19 shall, to the fullest extent possible, use—

20 (A) reports pertaining to persons described
21 in subsection (a)(1) that have been provided or
22 required to have been provided to a Federal or
23 State agency; and

24 (B) information that has been reported
25 publicly.

1 (5) PRESERVATION OF AUTHORITY.—Nothing
2 in this title may be construed as limiting the author-
3 ity of the Director to require reports from persons
4 described in subsection (a)(1), as permitted under
5 paragraph (1), regarding information owned or
6 under the control of such person, regardless of
7 whether such information is maintained, stored, or
8 processed by another person.

9 (6) REPORTS OF TAX LAW NONCOMPLIANCE.—
10 The Bureau shall provide the Commissioner of In-
11 ternal Revenue with any report of examination or re-
12 lated information identifying possible tax law non-
13 compliance.

14 (7) REGISTRATION, RECORDKEEPING, AND
15 OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

16 (A) IN GENERAL.—The Bureau shall pre-
17 scribe rules to facilitate supervision of persons
18 described in subsection (a)(1) and assessment
19 and detection of risks to consumers.

20 (B) REGISTRATION.—

21 (i) IN GENERAL.—The Bureau shall
22 prescribe rules regarding registration re-
23 quirements for persons described in sub-
24 section (a)(1).

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1 (ii) EXCEPTION FOR RELATED PER-
2 SONS.—The Bureau may not impose re-
3 quirements under this section regarding
4 the registration of a related person.

5 (iii) REGISTRATION INFORMATION.—
6 Subject to rules prescribed by the Bureau,
7 the Bureau shall publicly disclose the reg-
8 istration information about persons de-
9 scribed in subsection (a)(1) to facilitate the
10 ability of consumers to identify persons de-
11 scribed in subsection (a)(1) registered with
12 the Bureau.

13 (C) RECORDKEEPING.—The Bureau may
14 require a person described in subsection (a)(1),
15 to generate, provide, or retain records for the
16 purposes of facilitating supervision of such per-
17 sons and assessing and detecting risks to con-
18 sumers.

19 (D) REQUIREMENTS CONCERNING OBLIGA-
20 TIONS.—The Bureau may prescribe rules re-
21 garding a person described in subsection (a)(1),
22 to ensure that such persons are legitimate enti-
23 ties and are able to perform their obligations to
24 consumers. Such requirements may include
25 background checks for principals, officers, di-

1 rectors, or key personnel and bonding or other
2 appropriate financial requirements.

3 (E) CONSULTATION WITH STATE AGEN-
4 CIES.—In developing and implementing require-
5 ments under this paragraph, the Bureau shall
6 consult with State agencies regarding require-
7 ments or systems (including coordinated or
8 combined systems for registration), where ap-
9 propriate.

10 (c) ENFORCEMENT AUTHORITY.—

11 (1) THE BUREAU TO HAVE ENFORCEMENT AU-
12 THORITY.—Except as provided in paragraph (3) and
13 section 1061(b)(5), with respect to any person de-
14 scribed in subsection (a)(1), to the extent that Fed-
15 eral law authorizes the Bureau and another Federal
16 agency to enforce Federal consumer financial law,
17 the Bureau shall have exclusive authority to enforce
18 that Federal consumer financial law.

19 (2) REFERRAL.—Any Federal agency author-
20 ized to enforce a Federal consumer financial law de-
21 scribed in paragraph (1) may recommend in writing
22 to the Bureau that the Bureau initiate an enforce-
23 ment proceeding, as the Bureau is authorized by
24 that Federal law or by this title.

1 (3) COORDINATION WITH THE FEDERAL TRADE
2 COMMISSION.—

3 (A) IN GENERAL.—The Bureau and the
4 Federal Trade Commission shall negotiate an
5 agreement for coordinating with respect to en-
6 forcement actions by each agency regarding the
7 offering or provision of consumer financial
8 products or services by any covered person that
9 is described in subsection (a)(1), or service pro-
10 viders thereto. The agreement shall include pro-
11 cedures for notice to the other agency, where
12 feasible, prior to initiating a civil action to en-
13 force any Federal law regarding the offering or
14 provision of consumer financial products or
15 services.

16 (B) CIVIL ACTIONS.—Whenever a civil ac-
17 tion has been filed by, or on behalf of, the Bu-
18 reau or the Federal Trade Commission for any
19 violation of any provision of Federal law de-
20 scribed in subparagraph (A), or any regulation
21 prescribed under such provision of law—

22 (i) the other agency may not, during
23 the pendency of that action, institute a
24 civil action under such provision of law
25 against any defendant named in the com-

1 plaint in such pending action for any viola-
2 tion alleged in the complaint; and

3 (ii) the Bureau or the Federal Trade
4 Commission may intervene as a party in
5 any such action brought by the other agen-
6 cy, and, upon intervening—

7 (I) be heard on all matters aris-
8 ing in such enforcement action; and

9 (II) file petitions for appeal in
10 such actions.

11 (C) AGREEMENT TERMS.—The terms of
12 any agreement negotiated under subparagraph
13 (A) may modify or supersede the provisions of
14 subparagraph (B).

15 (D) DEADLINE.—The agencies shall reach
16 the agreement required under subparagraph (A)
17 not later than 6 months after the designated
18 transfer date.

19 (d) EXCLUSIVE RULEMAKING AND EXAMINATION
20 AUTHORITY.—Notwithstanding any other provision of
21 Federal law and except as provided in section 1061(b)(5),
22 to the extent that Federal law authorizes the Bureau and
23 another Federal agency to issue regulations or guidance,
24 conduct examinations, or require reports from a person
25 described in subsection (a)(1) under such law for purposes

1 of assuring compliance with Federal consumer financial
2 law and any regulations thereunder, the Bureau shall have
3 the exclusive authority to prescribe rules, issue guidance,
4 conduct examinations, require reports, or issue exemptions
5 with regard to a person described in subsection (a)(1),
6 subject to those provisions of law.

7 (e) SERVICE PROVIDERS.—A service provider to a
8 person described in subsection (a)(1) shall be subject to
9 the authority of the Bureau under this section, to the
10 same extent as if such service provider were engaged in
11 a service relationship with a bank, and the Bureau were
12 an appropriate Federal banking agency under section 7(c)
13 of the Bank Service Company Act (12 U.S.C. 1867(c)).
14 In conducting any examination or requiring any report
15 from a service provider subject to this subsection, the Bu-
16 reau shall coordinate with the appropriate prudential reg-
17 ulator, as applicable.

18 (f) PRESERVATION OF FARM CREDIT ADMINISTRA-
19 TION AUTHORITY.—No provision of this title may be con-
20 strued as modifying, limiting, or otherwise affecting the
21 authority of the Farm Credit Administration.

22 **SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS**
23 **ASSOCIATIONS, AND CREDIT UNIONS.**

24 (a) SCOPE OF COVERAGE.—

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1 (1) APPLICABILITY.—This section shall apply
2 to any covered person that is—

3 (A) an insured depository institution with
4 total assets of more than \$10,000,000,000 and
5 any affiliate thereof; or

6 (B) an insured credit union with total as-
7 sets of more than \$10,000,000,000 and any af-
8 filiate thereof.

9 (2) RULE OF CONSTRUCTION.—For purposes of
10 determining total assets under this section and sec-
11 tion 1026, the Bureau shall rely on the same regula-
12 tions and interim methodologies specified in section
13 605.

14 (b) SUPERVISION.—

15 (1) IN GENERAL.—The Bureau shall require re-
16 ports and conduct examinations on a periodic basis
17 of persons described in subsection (a) for purposes
18 of—

19 (A) assessing compliance with the require-
20 ments of Federal consumer financial laws;

21 (B) obtaining information about the activi-
22 ties and compliance systems or procedures of
23 such persons; and

1 (C) detecting and assessing risks to con-
2 sumers and to markets for consumer financial
3 products and services.

4 (2) COORDINATION.—To minimize regulatory
5 burden, the Bureau shall coordinate its supervisory
6 activities with the supervisory activities conducted by
7 prudential regulators and the State bank regulatory
8 authorities, including establishing their respective
9 schedules for examining such persons described in
10 subsection (a) and requirements regarding reports to
11 be submitted by such persons.

12 (3) USE OF EXISTING REPORTS.—The Bureau
13 shall, to the fullest extent possible, use—

14 (A) reports pertaining to a person de-
15 scribed in subsection (a) that have been pro-
16 vided or required to have been provided to a
17 Federal or State agency; and

18 (B) information that has been reported
19 publicly.

20 (4) PRESERVATION OF AUTHORITY.—Nothing
21 in this title may be construed as limiting the author-
22 ity of the Director to require reports from a person
23 described in subsection (a), as permitted under para-
24 graph (1), regarding information owned or under the
25 control of such person, regardless of whether such

1 information is maintained, stored, or processed by
2 another person.

3 (5) REPORTS OF TAX LAW NONCOMPLIANCE.—

4 The Bureau shall provide the Commissioner of In-
5 ternal Revenue with any report of examination or re-
6 lated information identifying possible tax law non-
7 compliance.

8 (c) PRIMARY ENFORCEMENT AUTHORITY.—

9 (1) THE BUREAU TO HAVE PRIMARY ENFORCE-
10 MENT AUTHORITY.—To the extent that the Bureau
11 and another Federal agency are authorized to en-
12 force a Federal consumer financial law, the Bureau
13 shall have primary authority to enforce that Federal
14 consumer financial law with respect to any person
15 described in subsection (a).

16 (2) REFERRAL.—Any Federal agency, other
17 than the Federal Trade Commission, that is author-
18 ized to enforce a Federal consumer financial law
19 may recommend, in writing, to the Bureau that the
20 Bureau initiate an enforcement proceeding with re-
21 spect to a person described in subsection (a), as the
22 Bureau is authorized to do by that Federal con-
23 sumer financial law.

24 (3) BACKUP ENFORCEMENT AUTHORITY OF
25 OTHER FEDERAL AGENCY.—If the Bureau does not,

1 before the end of the 120-day period beginning on
2 the date on which the Bureau receives a rec-
3 ommendation under paragraph (2), initiate an en-
4 forcement proceeding, the other agency referred to
5 in paragraph (2) may initiate an enforcement pro-
6 ceeding.

7 (d) SERVICE PROVIDERS.—A service provider to a
8 person described in subsection (a) shall be subject to the
9 authority of the Bureau under this section, to the same
10 extent as if the Bureau were an appropriate Federal bank-
11 ing agency under section 7(c) of the Bank Service Com-
12 pany Act 12 U.S.C. 1867(c). In conducting any examina-
13 tion or requiring any report from a service provider sub-
14 ject to this subsection, the Bureau shall coordinate with
15 the appropriate prudential regulator.

16 (e) SIMULTANEOUS AND COORDINATED SUPER-
17 VISORY ACTION.—

18 (1) EXAMINATIONS.—A prudential regulator
19 and the Bureau shall, with respect to each insured
20 depository institution, insured credit union, or other
21 covered person described in subsection (a) that is su-
22 pervised by the prudential regulator and the Bureau,
23 respectively—

24 (A) coordinate the scheduling of examina-
25 tions of the insured depository institution, in-

1 sured credit union, or other covered person de-
2 scribed in subsection (a);

3 (B) conduct simultaneous examinations of
4 each insured depository institution, insured
5 credit union, or other covered person described
6 in subsection (a), unless such institution re-
7 quests examinations to be conducted separately;

8 (C) share each draft report of examination
9 with the other agency and permit the receiving
10 agency a reasonable opportunity (which shall
11 not be less than a period of 30 days after the
12 date of receipt) to comment on the draft report
13 before such report is made final; and

14 (D) prior to issuing a final report of exam-
15 ination or taking supervisory action, take into
16 consideration concerns, if any, raised in the
17 comments made by the other agency.

18 (2) COORDINATION WITH STATE BANK SUPER-
19 VISORS.—The Bureau shall pursue arrangements
20 and agreements with State bank supervisors to co-
21 ordinate examinations, consistent with paragraph
22 (1).

23 (3) AVOIDANCE OF CONFLICT IN SUPER-
24 VISION.—

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1 (A) REQUEST.—If the proposed super-
2 visory determinations of the Bureau and a pru-
3 dential regulator (in this section referred to col-
4 lectively as the “agencies”) are conflicting, an
5 insured depository institution, insured credit
6 union, or other covered person described in sub-
7 section (a) may request the agencies to coordi-
8 nate and present a joint statement of coordi-
9 nated supervisory action.

10 (B) JOINT STATEMENT.—The agencies
11 shall provide a joint statement under subpara-
12 graph (A), not later than 30 days after the date
13 of receipt of the request of the insured deposi-
14 tory institution, credit union, or covered person
15 described in subsection (a).

16 (4) APPEALS TO GOVERNING PANEL.—

17 (A) IN GENERAL.—If the agencies do not
18 resolve the conflict or issue a joint statement
19 required by subparagraph (B), or if either of
20 the agencies takes or attempts to take any su-
21 pervisory action relating to the request for the
22 joint statement without the consent of the other
23 agency, an insured depository institution, in-
24 sured credit union, or other covered person de-
25 scribed in subsection (a) may institute an ap-

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1 (C) CONDUCT OF APPEAL.—In an appeal
2 under this paragraph—

3 (i) the insured depository institution,
4 insured credit union, or other covered per-
5 son described in subsection (a)—

6 (I) shall include in its appeal all
7 the facts and legal arguments per-
8 taining to the matter; and

9 (II) may, through counsel, em-
10 ployees, or representatives, appear be-
11 fore the governing panel in person or
12 by telephone; and

13 (ii) the governing panel—

14 (I) may request the insured de-
15 pository institution, insured credit
16 union, or other covered person de-
17 scribed in subsection (a), the Bureau,
18 or the prudential regulator to produce
19 additional information relevant to the
20 appeal; and

21 (II) by a majority vote of its
22 members, shall provide a final deter-
23 mination, in writing, not later than 30
24 days after the date of filing of an
25 informationally complete appeal, or

1 such longer period as the panel and
2 the insured depository institution, in-
3 sured credit union, or other covered
4 person described in subsection (a)
5 may jointly agree.

6 (D) PUBLIC AVAILABILITY OF DETERMINA-
7 TIONS.—A governing panel shall publish all in-
8 formation contained in a determination by the
9 governing panel, with appropriate redactions of
10 information that would be subject to an exemp-
11 tion from disclosure under section 552 of title
12 5, United States Code.

13 (E) PROHIBITION AGAINST RETALIA-
14 TION.—The Bureau and the prudential regu-
15 lators shall prescribe rules to provide safe-
16 guards from retaliation against the insured de-
17 pository institution, insured credit union, or
18 other covered person described in subsection (a)
19 instituting an appeal under this paragraph, as
20 well as their officers and employees.

21 (F) LIMITATION.—The process provided in
22 this paragraph shall not apply to a determina-
23 tion by a prudential regulator to appoint a con-
24 servator or receiver for an insured depository
25 institution or a liquidating agent for an insured

1 credit union, as the case may be, or a decision
2 to take action pursuant to section 38 of the
3 Federal Deposit Insurance Act (12 U.S.C.
4 1831o) or section 212 of the Federal Credit
5 Union Act (112 U.S.C. 1790a), as applicable.

6 (G) EFFECT ON OTHER AUTHORITY.—
7 Nothing in this section shall modify or limit the
8 authority of the Bureau to interpret, or take
9 enforcement action under, any Federal con-
10 sumer financial law.

11 **SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND**
12 **CREDIT UNIONS.**

13 (a) SCOPE OF COVERAGE.—This section shall apply
14 to any covered person that is—

15 (1) an insured depository institution with total
16 assets of \$10,000,000,000 or less; or

17 (2) an insured credit union with total assets of
18 \$10,000,000,000 or less.

19 (b) REPORTS.—The Director may require reports
20 from a person described in subsection (a), as necessary
21 to support the role of the Bureau in implementing Federal
22 consumer financial law, to support its examination activi-
23 ties under subsection (c), and to assess and detect risks
24 to consumers and consumer financial markets.

1 (1) USE OF EXISTING REPORTS.—The Bureau
2 shall, to the fullest extent possible, use—

3 (A) reports pertaining to a person de-
4 scribed in subsection (a) that have been pro-
5 vided or required to have been provided to a
6 Federal or State agency; and

7 (B) information that has been reported
8 publicly.

9 (2) PRESERVATION OF AUTHORITY.—Nothing
10 in this subsection may be construed as limiting the
11 authority of the Director from requiring from a per-
12 son described in subsection (a), as permitted under
13 paragraph (1), information owned or under the con-
14 trol of such person, regardless of whether such infor-
15 mation is maintained, stored, or processed by an-
16 other person.

17 (3) REPORTS OF TAX LAW NONCOMPLIANCE.—
18 The Bureau shall provide the Commissioner of In-
19 ternal Revenue with any report of examination or re-
20 lated information identifying possible tax law non-
21 compliance.

22 (c) EXAMINATIONS.—

23 (1) IN GENERAL.—The Bureau may, at its dis-
24 cretion, include examiners on a sampling basis of the

1 examinations performed by the prudential regulator
2 of persons described in subsection (a).

3 (2) AGENCY COORDINATION.—The prudential
4 regulator shall—

5 (A) provide all reports, records, and docu-
6 mentation related to the examination process
7 for any institution included in the sample re-
8 ferred to in paragraph (1) to the Bureau on a
9 timely and continual basis;

10 (B) involve such Bureau examiner in the
11 entire examination process for such person; and

12 (C) consider input of the Bureau con-
13 cerning the scope of an examination, conduct of
14 the examination, the contents of the examina-
15 tion report, the designation of matters requiring
16 attention, and examination ratings.

17 (d) ENFORCEMENT.—

18 (1) IN GENERAL.—Except for requiring reports
19 under subsection (b), the prudential regulator is au-
20 thorized to enforce the requirements of Federal con-
21 sumer financial laws and, with respect to a covered
22 person described in subsection (a), shall have exclu-
23 sive authority to enforce such laws.

24 (2) COORDINATION WITH PRUDENTIAL REGU-
25 LATOR.—

1 (A) REFERRAL.—When the Bureau has
2 reason to believe that a person described in sub-
3 section (a) has engaged in a material violation
4 of a Federal consumer financial law, the Bu-
5 reau shall notify the prudential regulator in
6 writing and recommend appropriate action to
7 respond.

8 (B) RESPONSE.—Upon receiving a rec-
9 ommendation under subparagraph (A), the pru-
10 dential regulator shall provide a written re-
11 sponse to the Bureau not later than 60 days
12 thereafter.

13 (e) SERVICE PROVIDERS.—A service provider to a
14 substantial number of persons described in subsection (a)
15 shall be subject to the authority of the Bureau under sec-
16 tion 1025 to the same extent as if the Bureau were an
17 appropriate Federal bank agency under section 7(c) of the
18 Bank Service Company Act (12 U.S.C. 1867(c)). When
19 conducting any examination or requiring any report from
20 a service provider subject to this subsection, the Bureau
21 shall coordinate with the appropriate prudential regulator.

1 **SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU;**
2 **PRESERVATION OF AUTHORITIES.**

3 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
4 OTHER SELLERS OF NONFINANCIAL GOODS OR SERV-
5 ICES.—

6 (1) SALE OR BROKERAGE OF NONFINANCIAL
7 GOOD OR SERVICE.—The Bureau may not exercise
8 any rulemaking, supervisory, enforcement or other
9 authority under this title with respect to a person
10 who is a merchant, retailer, or seller of any non-
11 financial good or service and is engaged in the sale
12 or brokerage of such nonfinancial good or service,
13 except to the extent that such person is engaged in
14 offering or providing any consumer financial product
15 or service, or is otherwise subject to any enumerated
16 consumer law or any law for which authorities are
17 transferred under subtitle F or H.

18 (2) OFFERING OR PROVISION OF CERTAIN CON-
19 SUMER FINANCIAL PRODUCTS OR SERVICES IN CON-
20 NECTION WITH THE SALE OR BROKERAGE OF NON-
21 FINANCIAL GOOD OR SERVICE.—

22 (A) IN GENERAL.—Except as provided in
23 subparagraph (B), and subject to subparagraph
24 (C), the Bureau may not exercise any rule-
25 making, supervisory, enforcement, or other au-
26 thority under this title with respect to a mer-

1 chant, retailer, or seller of nonfinancial goods or
2 services, but only to the extent that such per-
3 son—

4 (i) extends credit directly to a con-
5 sumer, in a case in which the good or serv-
6 ice being provided is not itself a consumer
7 financial product or service (other than
8 credit described in this subparagraph), ex-
9 clusively for the purpose of enabling that
10 consumer to purchase such nonfinancial
11 good or service directly from the merchant,
12 retailer, or seller;

13 (ii) directly, or through an agreement
14 with another person, collects debt arising
15 from credit extended as described in clause
16 (i); or

17 (iii) sells or conveys debt described in
18 clause (i) that is delinquent or otherwise in
19 default.

20 (B) APPLICABILITY.—Subparagraph (A)
21 does not apply to any credit transaction or col-
22 lection of debt, other than as described in sub-
23 paragraph (C)(i), arising from a transaction de-
24 scribed in subparagraph (A)—

1 (i) in which the merchant, retailer, or
2 seller of nonfinancial goods or services as-
3 signs, sells or otherwise conveys to another
4 person such debt owed by the consumer
5 (except for a sale of debt that is delinquent
6 or otherwise in default, as described in
7 subparagraph (A)(iii));

8 (ii) in which the credit extended ex-
9 ceeds the market value of the nonfinancial
10 good or service provided, or the Bureau
11 otherwise finds that the sale of the non-
12 financial good or service is done as a sub-
13 terfuge, so as to evade or circumvent the
14 provisions of this title; or

15 (iii) in which the merchant, retailer,
16 or seller of nonfinancial goods or services
17 regularly extends credit and the credit is
18 subject to a finance charge.

19 (C) LIMITATIONS.—

20 (i) IN GENERAL.—Notwithstanding
21 subparagraph (B), subparagraph (A) shall
22 apply with respect to a merchant, retailer,
23 or seller of nonfinancial goods or services
24 that is not engaged significantly in offering

1 or providing consumer financial products
2 or services.

3 (ii) EXCEPTION.—Subparagraph (A)
4 and clause (i) of this subparagraph do not
5 apply to any merchant, retailer, or seller of
6 nonfinancial goods or services, to the ex-
7 tent that such person is subject to any
8 enumerated consumer law or any law for
9 which authorities are transferred under
10 subtitle F or H.

11 (D) RULES.—

12 (i) AUTHORITY OF OTHER AGEN-
13 CIES.—No provision of this title shall be
14 construed as modifying, limiting, or super-
15 seding the supervisory or enforcement au-
16 thority of the Federal Trade Commission
17 or any other agency (other than the Bu-
18 reau) with respect to credit extended, or
19 the collection of debt arising from such ex-
20 tension, directly by a merchant or retailer
21 to a consumer exclusively for the purpose
22 of enabling that consumer to purchase
23 nonfinancial goods or services directly from
24 the merchant or retailer.

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1 (ii) SMALL BUSINESSES.—A mer-
2 chant, retailer, or seller of nonfinancial
3 goods or services that would otherwise be
4 subject to the authority of the Bureau sole-
5 ly by virtue of the application of subpara-
6 graph (B)(iii) shall be deemed not to be
7 engaged significantly in offering or pro-
8 viding consumer financial products or serv-
9 ices under subparagraph (C)(i), if such
10 person—

11 (I) only extends credit for the
12 sale of nonfinancial goods or services,
13 as described in subparagraph (A)(i);

14 (II) retains such credit on its
15 own accounts (except to sell or convey
16 such debt that is delinquent or other-
17 wise in default); and

18 (III) meets the relevant industry
19 size threshold to be a small business
20 concern, based on annual receipts,
21 pursuant to section 3 of the Small
22 Business Act (15 U.S.C. 632) and the
23 implementing rules thereunder.

24 (iii) INITIAL YEAR.—A merchant, re-
25 tailer, or seller of nonfinancial goods or

1 services shall be deemed to meet the rel-
2 evant industry size threshold described in
3 clause (ii)(III) during the first year of op-
4 erations of that business concern if, during
5 that year, the receipts of that business
6 concern reasonably are expected to meet
7 that size threshold.

8 (E) EXCEPTION FROM STATE ENFORCE-
9 MENT.—To the extent that the Bureau may not
10 exercise authority under this subsection with re-
11 spect to a merchant, retailer, or seller of non-
12 financial goods or services, no action by a State
13 attorney general or State regulator with respect
14 to a claim made under this title may be brought
15 under subsection 1042(a), with respect to an
16 activity described in any of clauses (i) through
17 (iii) of subparagraph (A) by such merchant, re-
18 tailer, or seller of nonfinancial goods or serv-
19 ices.

20 (b) EXCLUSION FOR REAL ESTATE BROKERAGE AC-
21 TIVITIES.—

22 (1) REAL ESTATE BROKERAGE ACTIVITIES EX-
23 CLUDED.—Without limiting subsection (a), and ex-
24 cept as permitted in paragraph (2), the Bureau may
25 not exercise any rulemaking, supervisory, enforce-

1 ment, or other authority under this title with respect
2 to a person that is licensed or registered as a real
3 estate broker or real estate agent, in accordance
4 with State law, to the extent that such person—

5 (A) acts as a real estate agent or broker
6 for a buyer, seller, lessor, or lessee of real prop-
7 erty;

8 (B) brings together parties interested in
9 the sale, purchase, lease, rental, or exchange of
10 real property;

11 (C) negotiates, on behalf of any party, any
12 portion of a contract relating to the sale, pur-
13 chase, lease, rental, or exchange of real prop-
14 erty (other than in connection with the provi-
15 sion of financing with respect to any such
16 transaction); or

17 (D) offers to engage in any activity, or act
18 in any capacity, described in subparagraph (A),
19 (B), or (C).

20 (2) DESCRIPTION OF ACTIVITIES.—The Bureau
21 may exercise rulemaking, supervisory, enforcement,
22 or other authority under this title with respect to a
23 person described in paragraph (1) when such person
24 is—

1 (A) engaged in an activity of offering or
2 providing any consumer financial product or
3 service, except that the Bureau may exercise
4 such authority only with respect to that activ-
5 ity; or

6 (B) otherwise subject to any enumerated
7 consumer law or any law for which authorities
8 are transferred under subtitle F or H, except
9 that the Bureau may exercise such authority
10 only with respect to that law.

11 (c) EXCLUSION FOR MANUFACTURED HOME RETAIL-
12 ERS AND MODULAR HOME RETAILERS.—

13 (1) IN GENERAL.—The Director may not exer-
14 cise any rulemaking, supervisory, enforcement, or
15 other authority over a person to the extent that—

16 (A) such person is not described in para-
17 graph (2); and

18 (B) such person—

19 (i) acts as an agent or broker for a
20 buyer or seller of a manufactured home or
21 a modular home;

22 (ii) facilitates the purchase by a con-
23 sumer of a manufactured home or modular
24 home, by negotiating the purchase price or
25 terms of the sales contract (other than

1 providing financing with respect to such
2 transaction); or

3 (iii) offers to engage in any activity
4 described in clause (i) or (ii).

5 (2) DESCRIPTION OF ACTIVITIES.—A person is
6 described in this paragraph to the extent that such
7 person is engaged in the offering or provision of any
8 consumer financial product or service or is otherwise
9 subject to any enumerated consumer law or any law
10 for which authorities are transferred under subtitle
11 F or H.

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

14 (A) MANUFACTURED HOME.—The term
15 “manufactured home” has the same meaning as
16 in section 603 of the National Manufactured
17 Housing Construction and Safety Standards
18 Act of 1974 (42 U.S.C. 5402).

19 (B) MODULAR HOME.—The term “mod-
20 ular home” means a house built in a factory in
21 2 or more modules that meet the State or local
22 building codes where the house will be located,
23 and where such modules are transported to the
24 building site, installed on foundations, and com-
25 pleted.

1 (d) EXCLUSION FOR ACCOUNTANTS AND TAX PRE-
2 PARERS.—

3 (1) IN GENERAL.—Except as permitted in para-
4 graph (2), the Bureau may not exercise any rule-
5 making, supervisory, enforcement, or other authority
6 over—

7 (A) any person that is a certified public ac-
8 countant, permitted to practice as a certified
9 public accounting firm, or certified or licensed
10 for such purpose by a State, or any individual
11 who is employed by or holds an ownership inter-
12 est with respect to a person described in this
13 subparagraph, when such person is performing
14 or offering to perform—

15 (i) customary and usual accounting
16 activities, including the provision of ac-
17 counting, tax, advisory, or other services
18 that are subject to the regulatory authority
19 of a State board of accountancy or a Fed-
20 eral authority; or

21 (ii) other services that are incidental
22 to such customary and usual accounting
23 activities, to the extent that such incidental
24 services are not offered or provided—

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1 (I) by the person separate and
2 apart from such customary and usual
3 accounting activities; or

4 (II) to consumers who are not re-
5 ceiving such customary and usual ac-
6 counting activities; or

7 (B) any person, other than a person de-
8 scribed in subparagraph (A) that performs in-
9 come tax preparation activities for consumers.

10 (2) DESCRIPTION OF ACTIVITIES.—

11 (A) IN GENERAL.—Paragraph (1) shall not
12 apply to any person described in paragraph
13 (1)(A) or (1)(B) to the extent that such person
14 is engaged in any activity which is not a cus-
15 tomary and usual accounting activity described
16 in paragraph (1)(A) or incidental thereto but
17 which is the offering or provision of any con-
18 sumer financial product or service, except to the
19 extent that a person described in paragraph
20 (1)(A) is engaged in an activity which is a cus-
21 tomary and usual accounting activity described
22 in paragraph (1)(A), or incidental thereto.

23 (B) NOT A CUSTOMARY AND USUAL AC-
24 COUNTING ACTIVITY.—For purposes of this
25 subsection, extending or brokering credit is not

1 a customary and usual accounting activity, or
2 incidental thereto.

3 (C) RULE OF CONSTRUCTION.—For pur-
4 poses of subparagraphs (A) and (B), a person
5 described in paragraph (1)(A) shall not be
6 deemed to be extending credit, if such person is
7 only extending credit directly to a consumer, ex-
8 clusively for the purpose of enabling such con-
9 sumer to purchase services described in clause
10 (i) or (ii) of paragraph (1)(A) directly from
11 such person, and such credit is—

- 12 (i) not subject to a finance charge;
13 and
14 (ii) not payable by written agreement
15 in more than 4 installments.

16 (D) OTHER LIMITATIONS.—Paragraph (1)
17 does not apply to any person described in para-
18 graph (1)(A) or (1)(B) that is otherwise subject
19 to any enumerated consumer law or any law for
20 which authorities are transferred under subtitle
21 F or H.

22 (e) EXCLUSION FOR ATTORNEYS.—

23 (1) IN GENERAL.—The Bureau may not exer-
24 cise any authority to conduct examinations of an at-
25 torney licensed by a State, to the extent that the at-

1 torney is engaged in the practice of law under the
2 laws of such State.

3 (2) EXCEPTION FOR ENUMERATED CONSUMER
4 LAWS AND TRANSFERRED AUTHORITIES.—Para-
5 graph (1) shall not apply to an attorney who is en-
6 gaged in the offering or provision of any consumer
7 financial product or service, or is otherwise subject
8 to any enumerated consumer law or any law for
9 which authorities are transferred under subtitle F or
10 H.

11 (f) EXCLUSION FOR PERSONS REGULATED BY A
12 STATE INSURANCE REGULATOR.—

13 (1) IN GENERAL.—No provision of this title
14 shall be construed as altering, amending, or affect-
15 ing the authority of any State insurance regulator to
16 adopt rules, initiate enforcement proceedings, or
17 take any other action with respect to a person regu-
18 lated by a State insurance regulator. Except as pro-
19 vided in paragraph (2), the Bureau shall have no au-
20 thority to exercise any power to enforce this title
21 with respect to a person regulated by a State insur-
22 ance regulator.

23 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
24 (1) does not apply to any person described in such
25 paragraph to the extent that such person is engaged

1 in the offering or provision of any consumer finan-
2 cial product or service or is otherwise subject to any
3 enumerated consumer law or any law for which au-
4 thorities are transferred under subtitle F or H.

5 (g) EXCLUSION FOR EMPLOYEE BENEFIT AND COM-
6 PENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS
7 UNDER THE INTERNAL REVENUE CODE OF 1986.—

8 (1) PRESERVATION OF AUTHORITY OF OTHER
9 AGENCIES.—No provision of this title shall be con-
10 strued as altering, amending, or affecting the au-
11 thority of the Secretary of the Treasury, the Sec-
12 retary of Labor, or the Commissioner of Internal
13 Revenue to adopt regulations, initiate enforcement
14 proceedings, or take any actions with respect to any
15 specified plan or arrangement.

16 (2) ACTIVITIES NOT CONSTITUTING THE OF-
17 FERING OR PROVISION OF ANY CONSUMER FINAN-
18 CIAL PRODUCT OR SERVICE.—For purposes of this
19 title, a person shall not be treated as having engaged
20 in the offering or provision of any consumer finan-
21 cial product or service solely because such person
22 is—

23 (A) a specified plan or arrangement;

24 (B) engaged in the activity of establishing
25 or maintaining, for the benefit of employees of

1 such person (or for members of an employee or-
2 ganization), any specified plan or arrangement;
3 or

4 (C) engaged in the activity of establishing
5 or maintaining a qualified tuition program
6 under section 529(b)(1) of the Internal Revenue
7 Code of 1986, offered by a State.

8 (3) LIMITATION ON BUREAU AUTHORITY.—

9 (A) IN GENERAL.—Except as provided
10 under subparagraphs (B) and (C), the Bureau
11 may not exercise any rulemaking or enforce-
12 ment authority with respect to products or serv-
13 ices that relate to any specified plan or arrange-
14 ment.

15 (B) BUREAU ACTION ONLY PURSUANT TO
16 AGENCY REQUEST.—The Secretary and the Sec-
17 retary of Labor may jointly issue a written re-
18 quest to the Bureau regarding implementation
19 of appropriate consumer protection standards
20 under this title with respect to the provision of
21 services relating to any specified plan or ar-
22 rangement. Subject to a request made under
23 this subparagraph, the Bureau may exercise
24 rulemaking authority, and may act to enforce a
25 rule prescribed pursuant to such request, in ac-

1 cordance with the provisions of this title. A re-
2 quest made by the Secretary and the Secretary
3 of Labor under this subparagraph shall describe
4 the basis for, and scope of, appropriate con-
5 sumer protection standards to be implemented
6 under this title with respect to the provision of
7 services relating to any specified plan or ar-
8 rangement.

9 (C) DESCRIPTION OF PRODUCTS OR SERV-
10 ICES.—To the extent that a person engaged in
11 providing products or services relating to any
12 specified plan or arrangement is subject to any
13 enumerated consumer law or any law for which
14 authorities are transferred under subtitle F or
15 H, subparagraph (A) shall not apply with re-
16 spect to that law.

17 (4) SPECIFIED PLAN OR ARRANGEMENT.—For
18 purposes of this subsection, the term “specified plan
19 or arrangement” means any plan, account, or ar-
20 rangement described in section 220, 223, 401(a),
21 403(a), 403(b), 408, 408A, 529, or 530 of the Inter-
22 nal Revenue Code of 1986, or any employee benefit
23 or compensation plan or arrangement, including a
24 plan that is subject to title I of the Employee Retirement
25 Income Security Act of 1974.

1 (h) PERSONS REGULATED BY A STATE SECURITIES
2 COMMISSION.—

3 (1) IN GENERAL.—No provision of this title
4 shall be construed as altering, amending, or affect-
5 ing the authority of any securities commission (or
6 any agency or office performing like functions) of
7 any State to adopt rules, initiate enforcement pro-
8 ceedings, or take any other action with respect to a
9 person regulated by any securities commission (or
10 any agency or office performing like functions) of
11 any State. Except as permitted in paragraph (2) and
12 subsection (f), the Bureau shall have no authority to
13 exercise any power to enforce this title with respect
14 to a person regulated by any securities commission
15 (or any agency or office performing like functions)
16 of any State, but only to the extent that the person
17 acts in such regulated capacity.

18 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
19 (1) shall not apply to any person to the extent such
20 person is engaged in the offering or provision of any
21 consumer financial product or service, or is other-
22 wise subject to any enumerated consumer law or any
23 law for which authorities are transferred under sub-
24 title F or H.

1 (i) EXCLUSION FOR PERSONS REGULATED BY THE
2 COMMISSION.—

3 (1) IN GENERAL.—No provision of this title
4 may be construed as altering, amending, or affecting
5 the authority of the Commission to adopt rules, ini-
6 tiate enforcement proceedings, or take any other ac-
7 tion with respect to a person regulated by the Com-
8 mission. The Bureau shall have no authority to exer-
9 cise any power to enforce this title with respect to
10 a person regulated by the Commission.

11 (2) CONSULTATION AND COORDINATION.—Not-
12 withstanding paragraph (1), the Commission shall
13 consult and coordinate, where feasible, with the Bu-
14 reau with respect to any rule (including any advance
15 notice of proposed rulemaking) regarding an invest-
16 ment product or service that is the same type of
17 product as, or that competes directly with, a con-
18 sumer financial product or service that is subject to
19 the jurisdiction of the Bureau under this title or
20 under any other law. In carrying out this paragraph,
21 the agencies shall negotiate an agreement to estab-
22 lish procedures for such coordination, including pro-
23 cedures for providing advance notice to the Bureau
24 when the Commission is initiating a rulemaking.

1 (j) EXCLUSION FOR PERSONS REGULATED BY THE
2 COMMODITY FUTURES TRADING COMMISSION.—

3 (1) IN GENERAL.—No provision of this title
4 shall be construed as altering, amending, or affect-
5 ing the authority of the Commodity Futures Trading
6 Commission to adopt rules, initiate enforcement pro-
7 ceedings, or take any other action with respect to a
8 person regulated by the Commodity Futures Trading
9 Commission. The Bureau shall have no authority to
10 exercise any power to enforce this title with respect
11 to a person regulated by the Commodity Futures
12 Trading Commission.

13 (2) CONSULTATION AND COORDINATION.—Not-
14 withstanding paragraph (1), the Commodity Futures
15 Trading Commission shall consult and coordinate
16 with the Bureau with respect to any rule (including
17 any advance notice of proposed rulemaking) regard-
18 ing a product or service that is the same type of
19 product as, or that competes directly with, a con-
20 sumer financial product or service that is subject to
21 the jurisdiction of the Bureau under this title or
22 under any other law.

23 (k) EXCLUSION FOR PERSONS REGULATED BY THE
24 FARM CREDIT ADMINISTRATION.—

1 (1) IN GENERAL.—No provision of this title
2 shall be construed as altering, amending, or affect-
3 ing the authority of the Farm Credit Administration
4 to adopt rules, initiate enforcement proceedings, or
5 take any other action with respect to a person regu-
6 lated by the Farm Credit Administration. The Bu-
7 reau shall have no authority to exercise any power
8 to enforce this title with respect to a person regu-
9 lated by the Farm Credit Administration.

10 (2) DEFINITION.—For purposes of this sub-
11 section, the term “person regulated by the Farm
12 Credit Administration” means any Farm Credit Sys-
13 tem institution that is chartered and subject to the
14 provisions of the Farm Credit Act of 1971 (12
15 U.S.C. 2001 et seq.).

16 (1) EXCLUSION FOR ACTIVITIES RELATING TO CHAR-
17 ITABLE CONTRIBUTIONS.—

18 (1) IN GENERAL.—The Director and the Bu-
19 reau may not exercise any rulemaking, supervisory,
20 enforcement, or other authority, including authority
21 to order penalties, over any activities related to the
22 solicitation or making of voluntary contributions to
23 a tax-exempt organization as recognized by the In-
24 ternal Revenue Service, by any agent, volunteer, or
25 representative of such organizations to the extent

1 the organization, agent, volunteer, or representative
2 thereof is soliciting or providing advice, information,
3 education, or instruction to any donor or potential
4 donor relating to a contribution to the organization.

5 (2) LIMITATION.—The exclusion in paragraph
6 (1) does not apply to other activities not described
7 in paragraph (1) that are the offering or provision
8 of any consumer financial product or service, or are
9 otherwise subject to any enumerated consumer law
10 or any law for which authorities are transferred
11 under subtitle F or H.

12 (m) INSURANCE.—The Bureau may not define as a
13 financial product or service, by regulation or otherwise,
14 engaging in the business of insurance.

15 (n) LIMITED AUTHORITY OF THE BUREAU.—Not-
16 withstanding subsections (a) through (h) and (l), a person
17 subject to or described in one or more of such sub-
18 sections—

19 (1) may be a service provider; and

20 (2) may be subject to requests from, or require-
21 ments imposed by, the Bureau regarding informa-
22 tion in order to carry out the responsibilities and
23 functions of the Bureau and in accordance with sec-
24 tion 1022, 1052, or 1053.

1 (o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No
2 provision of this title shall be construed as conferring au-
3 thority on the Bureau to establish a usury limit applicable
4 to an extension of credit offered or made by a covered per-
5 son to a consumer, unless explicitly authorized by law.

6 (p) ATTORNEY GENERAL.—No provision of this title,
7 including section 1024(c)(1), shall affect the authorities
8 of the Attorney General under otherwise applicable provi-
9 sions of law.

10 (q) SECRETARY OF THE TREASURY.—No provision of
11 this title shall affect the authorities of the Secretary, in-
12 cluding with respect to prescribing rules, initiating en-
13 forcement proceedings, or taking other actions with re-
14 spect to a person that performs income tax preparation
15 activities for consumers.

16 (r) DEPOSIT INSURANCE AND SHARE INSURANCE.—
17 Nothing in this title shall affect the authority of the Cor-
18 poration under the Federal Deposit Insurance Act or the
19 National Credit Union Administration Board under the
20 Federal Credit Union Act as to matters related to deposit
21 insurance and share insurance, respectively.

22 (s) FAIR HOUSING ACT.—No provision of this title
23 shall be construed as affecting any authority arising under
24 the Fair Housing Act.

1 **SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
2 **PUTE ARBITRATION.**

3 (a) **STUDY AND REPORT.**—The Bureau shall conduct
4 a study of, and shall provide a report to Congress con-
5 cerning, the use of agreements providing for arbitration
6 of any future dispute between covered persons and con-
7 sumers in connection with the offering or providing of con-
8 sumer financial products or services.

9 (b) **FURTHER AUTHORITY.**—The Bureau, by regula-
10 tion, may prohibit or impose conditions or limitations on
11 the use of an agreement between a covered person and
12 a consumer for a consumer financial product or service
13 providing for arbitration of any future dispute between the
14 parties, if the Bureau finds that such a prohibition or im-
15 position of conditions or limitations is in the public inter-
16 est and for the protection of consumers. The findings in
17 such rule shall be consistent with the study conducted
18 under subsection (a).

19 (c) **LIMITATION.**—The authority described in sub-
20 section (b) may not be construed to prohibit or restrict
21 a consumer from entering into a voluntary arbitration
22 agreement with a covered person after a dispute has aris-
23 en.

24 (d) **EFFECTIVE DATE.**—Notwithstanding any other
25 provision of law, any regulation prescribed by the Bureau
26 under subsection (b) shall apply, consistent with the terms

1 of the regulation, to any agreement between a consumer
2 and a covered person entered into after the end of the
3 180-day period beginning on the effective date of the regu-
4 lation, as established by the Bureau.

5 **SEC. 1029. EFFECTIVE DATE.**

6 This subtitle shall become effective on the designated
7 transfer date.

8 **Subtitle C—Specific Bureau**
9 **Authorities**

10 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
11 **ACTS OR PRACTICES.**

12 (a) IN GENERAL.—The Bureau may take any action
13 authorized under subtitle E to prevent a covered person
14 or service provider from committing or engaging in an un-
15 fair, deceptive, or abusive act or practice under Federal
16 law in connection with any transaction with a consumer
17 for a consumer financial product or service, or the offering
18 of a consumer financial product or service.

19 (b) RULEMAKING.—The Bureau may prescribe rules
20 applicable to a covered person or service provider identi-
21 fying as unlawful unfair, deceptive, or abusive acts or
22 practices in connection with any transaction with a con-
23 sumer for a consumer financial product or service, or the
24 offering of a consumer financial product or service. Rules

1 under this section may include requirements for the pur-
2 pose of preventing such acts or practices.

3 (c) UNFAIRNESS.—

4 (1) IN GENERAL.—The Bureau shall have no
5 authority under this section to declare an act or
6 practice in connection with a transaction with a con-
7 sumer for a consumer financial product or service,
8 or the offering of a consumer financial product or
9 service, to be unlawful on the grounds that such act
10 or practice is unfair, unless the Bureau has a rea-
11 sonable basis to conclude that—

12 (A) the act or practice causes or is likely
13 to cause substantial injury to consumers which
14 is not reasonably avoidable by consumers; and

15 (B) such substantial injury is not out-
16 weighed by countervailing benefits to consumers
17 or to competition.

18 (2) CONSIDERATION OF PUBLIC POLICIES.—In
19 determining whether an act or practice is unfair, the
20 Bureau may consider established public policies as
21 evidence to be considered with all other evidence.
22 Such public policy considerations may not serve as
23 a primary basis for such determination.

24 (d) ABUSIVE.—The Bureau shall have no authority
25 under this section to declare an act or practice abusive

1 in connection with the provision of a consumer financial
2 product or service, unless the act or practice—

3 (1) materially interferes with the ability of a
4 consumer to understand a term or condition of a
5 consumer financial product or service; or

6 (2) takes unreasonable advantage of—

7 (A) a lack of understanding on the part of
8 the consumer of the material risks, costs, or
9 conditions of the product or service;

10 (B) the inability of the consumer to protect
11 the interests of the consumer in selecting or
12 using a consumer financial product or service;
13 or

14 (C) the reasonable reliance by the con-
15 sumer on a covered person to act in the inter-
16 ests of the consumer.

17 (e) CONSULTATION.—In prescribing rules under this
18 section, the Bureau shall consult with the Federal banking
19 agencies, or other Federal agencies, as appropriate, con-
20 cerning the consistency of the proposed rule with pruden-
21 tial, market, or systemic objectives administered by such
22 agencies.

23 (f) CONSIDERATION OF SEASONAL INCOME.—The
24 rules of the Bureau under this section shall provide, with
25 respect to an extension of credit secured by residential real

1 estate or a dwelling, if documented income of the bor-
2 rower, including income from a small business, is a repay-
3 ment source for an extension of credit secured by residen-
4 tial real estate or a dwelling, the creditor may consider
5 the seasonality and irregularity of such income in the un-
6 derwriting of and scheduling of payments for such credit.

7 **SEC. 1032. DISCLOSURES.**

8 (a) IN GENERAL.—The Bureau may prescribe rules
9 to ensure that the features of any consumer financial
10 product or service, both initially and over the term of the
11 product or service, are fully, accurately, and effectively
12 disclosed to consumers in a manner that permits con-
13 sumers to understand the costs, benefits, and risks associ-
14 ated with the product or service, in light of the facts and
15 circumstances.

16 (b) MODEL DISCLOSURES.—

17 (1) IN GENERAL.—Any final rule prescribed by
18 the Bureau under this section requiring disclosures
19 may include a model form that may be used at the
20 option of the covered person for provision of the re-
21 quired disclosures.

22 (2) FORMAT.—A model form issued pursuant to
23 paragraph (1) shall contain a clear and conspicuous
24 disclosure that, at a minimum—

1 (A) uses plain language comprehensible to
2 consumers;

3 (B) contains a clear format and design,
4 such as an easily readable type font; and

5 (C) succinctly explains the information
6 that must be communicated to the consumer.

7 (3) CONSUMER TESTING.—Any model form
8 issued pursuant to this subsection shall be validated
9 through consumer testing.

10 (c) BASIS FOR RULEMAKING.—In prescribing rules
11 under this section, the Bureau shall consider available evi-
12 dence about consumer awareness, understanding of, and
13 responses to disclosures or communications about the
14 risks, costs, and benefits of consumer financial products
15 or services.

16 (d) SAFE HARBOR.—Any covered person that uses a
17 model form included with a rule issued under this section
18 shall be deemed to be in compliance with the disclosure
19 requirements of this section with respect to such model
20 form.

21 (e) TRIAL DISCLOSURE PROGRAMS.—

22 (1) IN GENERAL.—The Bureau may permit a
23 covered person to conduct a trial program that is
24 limited in time and scope, subject to specified stand-
25 ards and procedures, for the purpose of providing

1 trial disclosures to consumers that are designed to
2 improve upon any model form issued pursuant to
3 subsection (b)(1), or any other model form issued to
4 implement an enumerated statute, as applicable.

5 (2) SAFE HARBOR.—The standards and proce-
6 dures issued by the Bureau shall be designed to en-
7 courage covered persons to conduct trial disclosure
8 programs. For the purposes of administering this
9 subsection, the Bureau may establish a limited pe-
10 riod during which a covered person conducting a
11 trial disclosure program shall be deemed to be in
12 compliance with, or may be exempted from, a re-
13 quirement of a rule or an enumerated consumer law.

14 (3) PUBLIC DISCLOSURE.—The rules of the Bu-
15 reau shall provide for public disclosure of trial dis-
16 closure programs, which public disclosure may be
17 limited, to the extent necessary to encourage covered
18 persons to conduct effective trials.

19 (f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not
20 later than 1 year after the designated transfer date, the
21 Bureau shall propose for public comment rules and model
22 disclosures that combine the disclosures required under
23 the Truth in Lending Act and the Real Estate Settlement
24 Procedures Act of 1974, into a single, integrated dislo-
25 sure for mortgage loan transactions covered by those laws,

1 unless the Bureau determines that any proposal issued by
2 the Board of Governors and the Secretary of Housing and
3 Urban Development carries out the same purpose.

4 **SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.**

5 (a) IN GENERAL.—Subject to rules prescribed by the
6 Bureau, a covered person shall make available to a con-
7 sumer, upon request, information in the control or posses-
8 sion of the covered person concerning the consumer finan-
9 cial product or service that the consumer obtained from
10 such covered person, including information relating to any
11 transaction, series of transactions, or to the account in-
12 cluding costs, charges and usage data. The information
13 shall be made available in an electronic form usable by
14 consumers.

15 (b) EXCEPTIONS.—A covered person may not be re-
16 quired by this section to make available to the consumer—

17 (1) any confidential commercial information, in-
18 cluding an algorithm used to derive credit scores or
19 other risk scores or predictors;

20 (2) any information collected by the covered
21 person for the purpose of preventing fraud or money
22 laundering, or detecting, or making any report re-
23 garding other unlawful or potentially unlawful con-
24 duct;

1 (3) any information required to be kept con-
2 fidential by any other provision of law; or

3 (4) any information that the covered person
4 cannot retrieve in the ordinary course of its business
5 with respect to that information.

6 (c) NO DUTY TO MAINTAIN RECORDS.—Nothing in
7 this section shall be construed to impose any duty on a
8 covered person to maintain or keep any information about
9 a consumer.

10 (d) STANDARDIZED FORMATS FOR DATA.—The Bu-
11 reau, by rule, shall prescribe standards applicable to cov-
12 ered persons to promote the development and use of stand-
13 ardized formats for information, including through the use
14 of machine readable files, to be made available to con-
15 sumers under this section.

16 (e) CONSULTATION.—The Bureau shall, when pre-
17 scribing any rule under this section, consult with the Fed-
18 eral banking agencies and the Federal Trade Commission
19 to ensure, to the extent appropriate, that the rules—

20 (1) impose substantively similar requirements
21 on covered persons;

22 (2) take into account conditions under which
23 covered persons do business both in the United
24 States and in other countries; and

1 (3) do not require or promote the use of any
2 particular technology in order to develop systems for
3 compliance.

4 **SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND IN-**
5 **QUIRIES.**

6 (a) **TIMELY REGULATOR RESPONSE TO CON-**
7 **SUMERS.**—The Bureau shall establish, in consultation
8 with the appropriate Federal regulatory agencies, reason-
9 able procedures to provide a timely response to consumers,
10 in writing where appropriate, to complaints against, or in-
11 quiries concerning, a covered person, including—

12 (1) steps that have been taken by the regulator
13 in response to the complaint or inquiry of the con-
14 sumer;

15 (2) any responses received by the regulator
16 from the covered person; and

17 (3) any follow-up actions or planned follow-up
18 actions by the regulator in response to the complaint
19 or inquiry of the consumer.

20 (b) **TIMELY RESPONSE TO REGULATOR BY COVERED**
21 **PERSON.**—A covered person subject to supervision and
22 primary enforcement by the Bureau pursuant to section
23 1025 shall provide a timely response, in writing where ap-
24 propriate, to the Bureau, the prudential regulators, and
25 any other agency having jurisdiction over such covered

1 person concerning a consumer complaint or inquiry, in-
2 cluding—

3 (1) steps that have been taken by the covered
4 person to respond to the complaint or inquiry of the
5 consumer;

6 (2) responses received by the covered person
7 from the consumer; and

8 (3) follow-up actions or planned follow-up ac-
9 tions by the covered person to respond to the com-
10 plaint or inquiry of the consumer.

11 (c) PROVISION OF INFORMATION TO CONSUMERS.—

12 (1) IN GENERAL.—A covered person subject to
13 supervision and primary enforcement by the Bureau
14 pursuant to section 1025 shall, in a timely manner,
15 comply with a consumer request for information in
16 the control or possession of such covered person con-
17 cerning the consumer financial product or service
18 that the consumer obtained from such covered per-
19 son, including supporting written documentation,
20 concerning the account of the consumer.

21 (2) EXCEPTIONS.—A covered person subject to
22 supervision and primary enforcement by the Bureau
23 pursuant to section 1025, a prudential regulator,
24 and any other agency having jurisdiction over a cov-
25 ered person subject to supervision and primary en-

1 forcement by the Bureau pursuant to section 1025
2 may not be required by this section to make avail-
3 able to the consumer—

4 (A) any confidential commercial informa-
5 tion, including an algorithm used to derive cred-
6 it scores or other risk scores or predictors;

7 (B) any information collected by the cov-
8 ered person for the purpose of preventing fraud
9 or money laundering, or detecting or making
10 any report regarding other unlawful or poten-
11 tially unlawful conduct;

12 (C) any information required to be kept
13 confidential by any other provision of law; or

14 (D) any nonpublic or confidential informa-
15 tion, including confidential supervisory informa-
16 tion.

17 (d) AGREEMENTS WITH OTHER AGENCIES.—The
18 Bureau shall enter into a memorandum of understanding
19 with any affected Federal regulatory agency regarding
20 procedures by which any covered person, and the pruden-
21 tial regulators, and any other agency having jurisdiction
22 over a covered person, including the Secretary of the De-
23 partment of Housing and Urban Development and the
24 Secretary of Education, shall comply with this section.

1 **SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.**

2 (a) ESTABLISHMENT.—The Secretary, in consulta-
3 tion with the Director, shall designate a Private Education
4 Loan Ombudsman (in this section referred to as the “Om-
5 budsman”) within the Bureau, to provide timely assist-
6 ance to borrowers of private education loans.

7 (b) PUBLIC INFORMATION.—The Secretary and the
8 Director shall disseminate information about the avail-
9 ability and functions of the Ombudsman to borrowers and
10 potential borrowers, as well as institutions of higher edu-
11 cation, lenders, guaranty agencies, loan servicers, and
12 other participants in private education student loan pro-
13 grams.

14 (c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman
15 designated under this subsection shall—

16 (1) in accordance with regulations of the Direc-
17 tor, receive, review, and attempt to resolve infor-
18 mally complaints from borrowers of loans described
19 in subsection (a), including, as appropriate, attempts
20 to resolve such complaints in collaboration with the
21 Department of Education and with institutions of
22 higher education, lenders, guaranty agencies, loan
23 servicers, and other participants in private education
24 loan programs;

25 (2) not later than 90 days after the designated
26 transfer date, establish a memorandum of under-

1 standing with the student loan ombudsman estab-
2 lished under section 141(f) of the Higher Education
3 Act of 1965 (20 U.S.C. 1018(f)), to ensure coordi-
4 nation in providing assistance to and serving bor-
5 rowers seeking to resolve complaints related to their
6 private education or Federal student loans;

7 (3) compile and analyze data on borrower com-
8 plaints regarding private education loans; and

9 (4) make appropriate recommendations to the
10 Director, the Secretary, the Secretary of Education,
11 the Committee on Banking, Housing, and Urban Af-
12 fairs and the Committee on Health, Education,
13 Labor, and Pensions of the Senate and the Com-
14 mittee on Financial Services and the Committee on
15 Education and Labor of the House of Representa-
16 tives.

17 (d) ANNUAL REPORTS.—

18 (1) IN GENERAL.—The Ombudsman shall pre-
19 pare an annual report that describes the activities,
20 and evaluates the effectiveness of the Ombudsman
21 during the preceding year.

22 (2) SUBMISSION.—The report required by para-
23 graph (1) shall be submitted on the same date annu-
24 ally to the Secretary, the Secretary of Education,
25 the Committee on Banking, Housing, and Urban Af-

1 fairs and the Committee on Health, Education,
2 Labor, and Pensions of the Senate and the Com-
3 mittee on Financial Services and the Committee on
4 Education and Labor of the House of Representa-
5 tives.

6 (e) DEFINITIONS.—For purposes of this section, the
7 terms “private education loan” and “institution of higher
8 education” have the same meanings as in section 140 of
9 the Truth in Lending Act (15 U.S.C. 1650).

10 **SEC. 1036. PROHIBITED ACTS.**

11 (a) IN GENERAL.—It shall be unlawful for—

12 (1) any covered person or service provider—

13 (A) to offer or provide to a consumer any
14 financial product or service not in conformity
15 with Federal consumer financial law, or other-
16 wise commit any act or omission in violation of
17 a Federal consumer financial law; or

18 (B) to engage in any unfair, deceptive, or
19 abusive act or practice;

20 (2) any covered person or service provider to
21 fail or refuse, as required by Federal consumer fi-
22 nancial law, or any rule or order issued by the Bu-
23 reau thereunder—

24 (A) to permit access to or copying of
25 records;

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1 (B) to establish or maintain records; or

2 (C) to make reports or provide information

3 to the Bureau; or

4 (3) any person to knowingly or recklessly pro-

5 vide substantial assistance to a covered person or

6 service provider in violation of the provisions of sec-

7 tion 1031, or any rule or order issued thereunder,

8 and notwithstanding any provision of this title, the

9 provider of such substantial assistance shall be

10 deemed to be in violation of that section to the same

11 extent as the person to whom such assistance is pro-

12 vided.

13 (b) EXCEPTION.—No person shall be held to have

14 violated subsection (a)(1) solely by virtue of providing or

15 selling time or space to a covered person or service pro-

16 vider placing an advertisement.

17 **SEC. 1037. EFFECTIVE DATE.**

18 This subtitle shall take effect on the designated

19 transfer date.

20 **Subtitle D—Preservation of State** 21 **Law**

22 **SEC. 1041. RELATION TO STATE LAW.**

23 (a) IN GENERAL.—

24 (1) RULE OF CONSTRUCTION.—This title, other

25 than sections 1044 through 1048, may not be con-

1 strued as annulling, altering, or affecting, or ex-
2 empting any person subject to the provisions of this
3 title from complying with, the statutes, regulations,
4 orders, or interpretations in effect in any State, ex-
5 cept to the extent that any such provision of law is
6 inconsistent with the provisions of this title, and
7 then only to the extent of the inconsistency.

8 (2) GREATER PROTECTION UNDER STATE
9 LAW.—For purposes of this subsection, a statute,
10 regulation, order, or interpretation in effect in any
11 State is not inconsistent with the provisions of this
12 title if the protection that such statute, regulation,
13 order, or interpretation affords to consumers is
14 greater than the protection provided under this title.
15 A determination regarding whether a statute, regu-
16 lation, order, or interpretation in effect in any State
17 is inconsistent with the provisions of this title may
18 be made by the Bureau on its own motion or in re-
19 sponse to a nonfrivolous petition initiated by any in-
20 terested person.

21 (b) RELATION TO OTHER PROVISIONS OF ENUMER-
22 ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—
23 No provision of this title, except as provided in section
24 1083, shall be construed as modifying, limiting, or super-
25 seding the operation of any provision of an enumerated

1 consumer law that relates to the application of a law in
2 effect in any State with respect to such Federal law.

3 (c) ADDITIONAL CONSUMER PROTECTION REGULA-
4 TIONS IN RESPONSE TO STATE ACTION.—

5 (1) NOTICE OF PROPOSED RULE REQUIRED.—

6 The Bureau shall issue a notice of proposed rule-
7 making whenever a majority of the States has en-
8 acted a resolution in support of the establishment or
9 modification of a consumer protection regulation by
10 the Bureau.

11 (2) BUREAU CONSIDERATIONS REQUIRED FOR
12 ISSUANCE OF FINAL REGULATION.—Before pre-
13 scribing a final regulation based upon a notice
14 issued pursuant to paragraph (1), the Bureau shall
15 take into account whether—

16 (A) the proposed regulation would afford
17 greater protection to consumers than any exist-
18 ing regulation;

19 (B) the intended benefits of the proposed
20 regulation for consumers would outweigh any
21 increased costs or inconveniences for con-
22 sumers, and would not discriminate unfairly
23 against any category or class of consumers; and

24 (C) a Federal banking agency has advised
25 that the proposed regulation is likely to present

1 an unacceptable safety and soundness risk to
2 insured depository institutions.

3 (3) EXPLANATION OF CONSIDERATIONS.—The
4 Bureau—

5 (A) shall include a discussion of the con-
6 siderations required in paragraph (2) in the
7 Federal Register notice of a final regulation
8 prescribed pursuant to this subsection; and

9 (B) whenever the Bureau determines not
10 to prescribe a final regulation, shall publish an
11 explanation of such determination in the Fed-
12 eral Register, and provide a copy of such expla-
13 nation to each State that enacted a resolution
14 in support of the proposed regulation, the Com-
15 mittee on Banking, Housing, and Urban Affairs
16 of the Senate, and the Committee on Financial
17 Services of the House of Representatives.

18 (4) RESERVATION OF AUTHORITY.—No provi-
19 sion of this subsection shall be construed as limiting
20 or restricting the authority of the Bureau to enhance
21 consumer protection standards established pursuant
22 to this title in response to its own motion or in re-
23 sponse to a request by any other interested person.

24 (5) RULE OF CONSTRUCTION.—No provision of
25 this subsection shall be construed as exempting the

1 Bureau from complying with subchapter II of chap-
2 ter 5 of title 5, United States Code.

3 (6) DEFINITION.—For purposes of this sub-
4 section, the term “consumer protection regulation”
5 means a regulation that the Bureau is authorized to
6 prescribe under the Federal consumer financial laws.

7 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF**
8 **STATES.**

9 (a) IN GENERAL.—

10 (1) ACTION BY STATE.—Except as provided in
11 paragraph (2), the attorney general (or the equiva-
12 lent thereof) of any State may bring a civil action
13 in the name of such State in any district court of
14 the United States in that State or in State court
15 that is located in that State and that has jurisdic-
16 tion over the defendant, to enforce provisions of this
17 title or regulations issued under this title, and to se-
18 cure remedies under provisions of this title or rem-
19 edies otherwise provided under other law. A State
20 regulator may bring a civil action or other appro-
21 priate proceeding to enforce the provisions of this
22 title or regulations issued under this title with re-
23 spect to any entity that is State-chartered, incor-
24 porated, licensed, or otherwise authorized to do busi-
25 ness under State law (except as provided in para-

1 graph (2)), and to secure remedies under provisions
2 of this title or remedies otherwise provided under
3 other provisions of law with respect to such an enti-
4 ty.

5 (2) ACTION BY STATE AGAINST NATIONAL
6 BANK OR FEDERAL SAVINGS ASSOCIATION TO EN-
7 FORCE RULES.—

8 (A) IN GENERAL.—Except as permitted
9 under subparagraph (B), the attorney general
10 (or equivalent thereof) of any State may not
11 bring a civil action in the name of such State
12 against a national bank or Federal savings as-
13 sociation with respect to an act or omission that
14 would be a violation of a provision of this title.

15 (B) ENFORCEMENT OF RULES PER-
16 MITTED.—The attorney general (or the equiva-
17 lent thereof) of any State may bring a civil ac-
18 tion in the name of such State against a na-
19 tional bank or Federal savings association in
20 any district court of the United States in the
21 State or in State court that is located in that
22 State and that has jurisdiction over the defend-
23 ant to enforce a regulation prescribed by the
24 Bureau under a provision of this title and to se-

1 cure remedies under provisions of this title or
2 remedies otherwise provided under other law.

3 (3) RULE OF CONSTRUCTION.—No provision of
4 this title shall be construed as modifying, limiting,
5 or superseding the operation of any provision of an
6 enumerated consumer law that relates to the author-
7 ity of a State attorney general or State regulator to
8 enforce such Federal law.

9 (b) CONSULTATION REQUIRED.—

10 (1) NOTICE.—

11 (A) IN GENERAL.—Before initiating any
12 action in a court or other administrative or reg-
13 ulatory proceeding against any covered person
14 as authorized by subsection (a) to enforce any
15 provision of this title, including any regulation
16 prescribed by the Bureau under this title, a
17 State attorney general or State regulator shall
18 timely provide a copy of the complete complaint
19 to be filed and written notice describing such
20 action or proceeding to the Bureau and the pru-
21 dential regulator, if any, or the designee there-
22 of.

23 (B) EMERGENCY ACTION.—If prior notice
24 is not practicable, the State attorney general or
25 State regulator shall provide a copy of the com-

1 plete complaint and the notice to the Bureau
2 and the prudential regulator, if any, imme-
3 diately upon instituting the action or pro-
4 ceeding.

5 (C) CONTENTS OF NOTICE.—The notifica-
6 tion required under this paragraph shall, at a
7 minimum, describe—

8 (i) the identity of the parties;

9 (ii) the alleged facts underlying the
10 proceeding; and

11 (iii) whether there may be a need to
12 coordinate the prosecution of the pro-
13 ceeding so as not to interfere with any ac-
14 tion, including any rulemaking, undertaken
15 by the Bureau, a prudential regulator, or
16 another Federal agency.

17 (2) BUREAU RESPONSE.—In any action de-
18 scribed in paragraph (1), the Bureau may—

19 (A) intervene in the action as a party;

20 (B) upon intervening—

21 (i) remove the action to the appro-
22 priate United States district court, if the
23 action was not originally brought there;
24 and

1 (ii) be heard on all matters arising in
2 the action; and

3 (C) appeal any order or judgment, to the
4 same extent as any other party in the pro-
5 ceeding may.

6 (c) REGULATIONS.—The Bureau shall prescribe reg-
7 ulations to implement the requirements of this section
8 and, from time to time, provide guidance in order to fur-
9 ther coordinate actions with the State attorneys general
10 and other regulators.

11 (d) PRESERVATION OF STATE AUTHORITY.—

12 (1) STATE CLAIMS.—No provision of this sec-
13 tion shall be construed as altering, limiting, or af-
14 fecting the authority of a State attorney general or
15 any other regulatory or enforcement agency or au-
16 thority to bring an action or other regulatory pro-
17 ceeding arising solely under the law in effect in that
18 State.

19 (2) STATE SECURITIES REGULATORS.—No pro-
20 vision of this title shall be construed as altering, lim-
21 iting, or affecting the authority of a State securities
22 commission (or any agency or office performing like
23 functions) under State law to adopt rules, initiate
24 enforcement proceedings, or take any other action

1 with respect to a person regulated by such commis-
2 sion or authority.

3 (3) STATE INSURANCE REGULATORS.—No pro-
4 vision of this title shall be construed as altering, lim-
5 iting, or affecting the authority of a State insurance
6 commission or State insurance regulator under State
7 law to adopt rules, initiate enforcement proceedings,
8 or take any other action with respect to a person
9 regulated by such commission or regulator.

10 **SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.**

11 This title, and regulations, orders, guidance, and in-
12 terpretations prescribed, issued, or established by the Bu-
13 reau, shall not be construed to alter or affect the applica-
14 bility of any regulation, order, guidance, or interpretation
15 prescribed, issued, and established by the Comptroller of
16 the Currency or the Director of the Office of Thrift Super-
17 vision regarding the applicability of State law under Fed-
18 eral banking law to any contract entered into on or before
19 the date of enactment of this Act, by national banks, Fed-
20 eral savings associations, or subsidiaries thereof that are
21 regulated and supervised by the Comptroller of the Cur-
22 rency or the Director of the Office of Thrift Supervision,
23 respectively.

1 **SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NA-**
2 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
3 **FIED.**

4 (a) IN GENERAL.—Chapter one of title LXII of the
5 Revised Statutes of the United States (12 U.S.C. 21 et
6 seq.) is amended by inserting after section 5136B the fol-
7 lowing new section:

8 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
9 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
10 **FIED.**

11 “(a) DEFINITIONS.—For purposes of this section, the
12 following definitions shall apply:

13 “(1) NATIONAL BANK.—The term ‘national
14 bank’ includes—

15 “(A) any bank organized under the laws of
16 the United States; and

17 “(B) any Federal branch established in ac-
18 cordance with the International Banking Act of
19 1978.

20 “(2) STATE CONSUMER FINANCIAL LAWS.—The
21 term ‘State consumer financial law’ means a State
22 law that does not directly or indirectly discriminate
23 against national banks and that directly and specifi-
24 cally regulates the manner, content, or terms and
25 conditions of any financial transaction (as may be

1 authorized for national banks to engage in), or any
2 account related thereto, with respect to a consumer.

3 “(3) OTHER DEFINITIONS.—The terms ‘affil-
4 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
5 same meanings as in section 3 of the Federal De-
6 posit Insurance Act.

7 “(b) PREEMPTION STANDARD.—

8 “(1) IN GENERAL.—State consumer financial
9 laws are preempted, only if—

10 “(A) application of a State consumer fi-
11 nancial law would have a discriminatory effect
12 on national banks, in comparison with the effect
13 of the law on a bank chartered by that State;

14 “(B) the State consumer financial law is
15 preempted in accordance with the legal stand-
16 ard of the decision of the Supreme Court of the
17 United States in *Barnett Bank of Marion
18 County, N.A. v. Nelson, Florida Insurance
19 Commissioner, et al.*, 517 U.S. 25 (1996), and
20 any preemption determination under this sub-
21 paragraph may be made by a court, or by regu-
22 lation or order of the Comptroller of the Cur-
23 rency on a case-by-case basis, in accordance
24 with applicable law; or

1 “(C) the State consumer financial law is
2 preempted by a provision of Federal law other
3 than this title.

4 “(2) SAVINGS CLAUSE.—This title and section
5 24 of the Federal Reserve Act (12 U.S.C. 371) do
6 not preempt, annul, or affect the applicability of any
7 State law to any subsidiary or affiliate of a national
8 bank (other than a subsidiary or affiliate that is
9 chartered as a national bank).

10 “(3) CASE-BY-CASE BASIS.—

11 “(A) DEFINITION.—As used in this section
12 the term ‘case-by-case basis’ refers to a deter-
13 mination pursuant to this section made by the
14 Comptroller concerning the impact of a par-
15 ticular State consumer financial law on any na-
16 tional bank that is subject to that law, or the
17 law of any other State with substantively equiv-
18 alent terms.

19 “(B) CONSULTATION.—When making a
20 determination on a case-by-case basis that a
21 State consumer financial law of another State
22 has substantively equivalent terms as one that
23 the Comptroller is preempting, the Comptroller
24 shall first consult with the Bureau of Consumer
25 Financial Protection and shall take the views of

1 the Bureau into account when making the de-
2 termination.

3 “(4) RULE OF CONSTRUCTION.—This title does
4 not occupy the field in any area of State law.

5 “(5) STANDARDS OF REVIEW.—

6 “(A) PREEMPTION.—A court reviewing
7 any determinations made by the Comptroller re-
8 garding preemption of a State law by this title
9 or section 24 of the Federal Reserve Act (12
10 U.S.C. 371) shall assess the validity of such de-
11 terminations, depending upon the thoroughness
12 evident in the consideration of the agency, the
13 validity of the reasoning of the agency, the con-
14 sistency with other valid determinations made
15 by the agency, and other factors which the
16 court finds persuasive and relevant to its deci-
17 sion.

18 “(B) SAVINGS CLAUSE.—Except as pro-
19 vided in subparagraph (A), nothing in this sec-
20 tion shall affect the deference that a court may
21 afford to the Comptroller in making determina-
22 tions regarding the meaning or interpretation of
23 title LXII of the Revised Statutes of the United
24 States or other Federal laws.

1 “(6) COMPTROLLER DETERMINATION NOT DEL-
2 EGABLE.—Any regulation, order, or determination
3 made by the Comptroller of the Currency under
4 paragraph (1)(B) shall be made by the Comptroller,
5 and shall not be delegable to another officer or em-
6 ployee of the Comptroller of the Currency.

7 “(c) SUBSTANTIAL EVIDENCE.—No regulation or
8 order of the Comptroller of the Currency prescribed under
9 subsection (b)(1)(B), shall be interpreted or applied so as
10 to invalidate, or otherwise declare inapplicable to a na-
11 tional bank, the provision of the State consumer financial
12 law, unless substantial evidence, made on the record of
13 the proceeding, supports the specific finding regarding the
14 preemption of such provision in accordance with the legal
15 standard of the decision of the Supreme Court of the
16 United States in *Barnett Bank of Marion County, N.A.*
17 *v. Nelson*, Florida Insurance Commissioner, et al., 517
18 U.S. 25 (1996).

19 “(d) PERIODIC REVIEW OF PREEMPTION DETER-
20 MINATIONS.—

21 “(1) IN GENERAL.—The Comptroller of the
22 Currency shall periodically conduct a review,
23 through notice and public comment, of each deter-
24 mination that a provision of Federal law preempts a
25 State consumer financial law. The agency shall con-

1 duct such review within the 5-year period after pre-
2 scribing or otherwise issuing such determination,
3 and at least once during each 5-year period there-
4 after. After conducting the review of, and inspecting
5 the comments made on, the determination, the agen-
6 cy shall publish a notice in the Federal Register an-
7 nouncing the decision to continue or rescind the de-
8 termination or a proposal to amend the determina-
9 tion. Any such notice of a proposal to amend a de-
10 termination and the subsequent resolution of such
11 proposal shall comply with the procedures set forth
12 in subsections (a) and (b) of section 5244 of the Re-
13 vised Statutes of the United States (12 U.S.C. 43
14 (a), (b)).

15 “(2) REPORTS TO CONGRESS.—At the time of
16 issuing a review conducted under paragraph (1), the
17 Comptroller of the Currency shall submit a report
18 regarding such review to the Committee on Finan-
19 cial Services of the House of Representatives and
20 the Committee on Banking, Housing, and Urban Af-
21 fairs of the Senate. The report submitted to the re-
22 spective committees shall address whether the agen-
23 cy intends to continue, rescind, or propose to amend
24 any determination that a provision of Federal law

1 preempts a State consumer financial law, and the
2 reasons therefor.

3 “(e) APPLICATION OF STATE CONSUMER FINANCIAL
4 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
5 standing any provision of this title or section 24 of Federal
6 Reserve Act (12 U.S.C. 371), a State consumer financial
7 law shall apply to a subsidiary or affiliate of a national
8 bank (other than a subsidiary or affiliate that is chartered
9 as a national bank) to the same extent that the State con-
10 sumer financial law applies to any person, corporation, or
11 other entity subject to such State law.

12 “(f) PRESERVATION OF POWERS RELATED TO
13 CHARGING INTEREST.—No provision of this title shall be
14 construed as altering or otherwise affecting the authority
15 conferred by section 5197 of the Revised Statutes of the
16 United States (12 U.S.C. 85) for the charging of interest
17 by a national bank at the rate allowed by the laws of the
18 State, territory, or district where the bank is located, in-
19 cluding with respect to the meaning of ‘interest’ under
20 such provision.

21 “(g) TRANSPARENCY OF OCC PREEMPTION DETER-
22 MINATIONS.—The Comptroller of the Currency shall pub-
23 lish and update no less frequently than quarterly, a list
24 of preemption determinations by the Comptroller of the
25 Currency then in effect that identifies the activities and

1 practices covered by each determination and the require-
2 ments and constraints determined to be preempted.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter one of title LXII of the Revised Statutes of
5 the United States is amended by inserting after the item
6 relating to section 5136B the following new item:

“Sec. 5136C. State law preemption standards for national banks and subsidi-
aries clarified.”.

7 **SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NON-**
8 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

9 Section 5136C of the Revised Statutes of the United
10 States (as added by this subtitle) is amended by adding
11 at the end the following:

12 “(h) CLARIFICATION OF LAW APPLICABLE TO NON-
13 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
14 ATES OF NATIONAL BANKS.—

15 “(1) DEFINITIONS.—For purposes of this sub-
16 section, the terms ‘depository institution’, ‘sub-
17 sidiary’, and ‘affiliate’ have the same meanings as in
18 section 3 of the Federal Deposit Insurance Act.

19 “(2) RULE OF CONSTRUCTION.—No provision
20 of this title or section 24 of the Federal Reserve Act
21 (12 U.S.C. 371) shall be construed as preempting,
22 annulling, or affecting the applicability of State law
23 to any subsidiary, affiliate, or agent of a national

1 bank (other than a subsidiary, affiliate, or agent
2 that is chartered as a national bank).”.

3 **SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FED-**
4 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
5 **ARIES CLARIFIED.**

6 (a) IN GENERAL.—The Home Owners’ Loan Act (12
7 U.S.C. 1461 et seq.) is amended by inserting after section
8 5 the following new section:

9 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
10 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

11 “(a) IN GENERAL.—Any determination by a court or
12 by the Director or any successor officer or agency regard-
13 ing the relation of State law to a provision of this Act
14 or any regulation or order prescribed under this Act shall
15 be made in accordance with the laws and legal standards
16 applicable to national banks regarding the preemption of
17 State law.

18 “(b) PRINCIPLES OF CONFLICT PREEMPTION APPLI-
19 CABLE.—Notwithstanding the authorities granted under
20 sections 4 and 5, this Act does not occupy the field in
21 any area of State law.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)
24 is amended by striking the item relating to section 6 and
25 inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.”.

1 **SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS**
2 **AND SAVINGS ASSOCIATIONS.**

3 (a) NATIONAL BANKS.—Section 5136C of the Re-
4 vised Statutes of the United States (as added by this sub-
5 title) is amended by adding at the end the following:

6 “(i) VISITORIAL POWERS.—

7 “(1) IN GENERAL.—In accordance with the de-
8 cision of the Supreme Court of the United States in
9 *Cuomo v. Clearing House Assn., L. L. C.* (129 S.
10 Ct. 2710 (2009)), no provision of this title which re-
11 lates to visitorial powers or otherwise limits or re-
12 stricts the visitorial authority to which any national
13 bank is subject shall be construed as limiting or re-
14 stricting the authority of any attorney general (or
15 other chief law enforcement officer) of any State to
16 bring an action against a national bank in a court
17 of appropriate jurisdiction to enforce an applicable
18 law and to seek relief as authorized by such law.

19 “(j) ENFORCEMENT ACTIONS.—The ability of the
20 Comptroller of the Currency to bring an enforcement ac-
21 tion under this title or section 5 of the Federal Trade
22 Commission Act does not preclude any private party from
23 enforcing rights granted under Federal or State law in the
24 courts.”.

1 (b) SAVINGS ASSOCIATIONS.—Section 6 of the Home
2 Owners’ Loan Act (as added by this title) is amended by
3 adding at the end the following:

4 “(c) VISITORIAL POWERS.—The provisions of sec-
5 tions 5136C(i) of the Revised Statutes of the United
6 States shall apply to Federal savings associations, and any
7 subsidiary thereof, to the same extent and in the same
8 manner as if such savings associations, or subsidiaries
9 thereof, were national banks or subsidiaries of national
10 banks, respectively.”

11 “(d) ENFORCEMENT ACTIONS.—The ability of the
12 Comptroller of the Currency to bring an enforcement ac-
13 tion under this Act or section 5 of the Federal Trade Com-
14 mission Act does not preclude any private party from en-
15 forcing rights granted under Federal or State law in the
16 courts.”.

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:

24 (1) BUREAU INVESTIGATION.—The term “Bu-
25 reau investigation” means any inquiry conducted by

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1 a Bureau investigator for the purpose of
2 ascertaining whether any person is or has been en-
3 gaged in any conduct that is a violation, as defined
4 in this section.

5 (2) BUREAU INVESTIGATOR.—The term “Bu-
6 reau investigator” means any attorney or investi-
7 gator employed by the Bureau who is charged with
8 the duty of enforcing or carrying into effect any
9 Federal consumer financial law.

10 (3) CIVIL INVESTIGATIVE DEMAND AND DE-
11 MAND.—The terms “civil investigative demand” and
12 “demand” mean any demand issued by the Bureau.

13 (4) CUSTODIAN.—The term “custodian” means
14 the custodian or any deputy custodian designated by
15 the Bureau.

16 (5) DOCUMENTARY MATERIAL.—The term
17 “documentary material” includes the original or any
18 copy of any book, document, record, report, memo-
19 randum, paper, communication, tabulation, chart,
20 logs, electronic files, or other data or data compila-
21 tions stored in any medium.

22 (6) VIOLATION.—The term “violation” means
23 any act or omission that, if proved, would constitute
24 a violation of any provision of Federal consumer fi-
25 nancial law.

1 **SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DIS-**
2 **COVERY.**

3 (a) JOINT INVESTIGATIONS.—

4 (1) IN GENERAL.—The Bureau or, where ap-
5 propriate, a Bureau investigator, may engage in
6 joint investigations and requests for information, as
7 authorized under this title.

8 (2) FAIR LENDING.—The authority under para-
9 graph (1) includes matters relating to fair lending,
10 and where appropriate, joint investigations with, and
11 requests for information from, the Secretary of
12 Housing and Urban Development, the Attorney Gen-
13 eral of the United States, or both.

14 (b) SUBPOENAS.—

15 (1) IN GENERAL.—The Bureau or a Bureau in-
16 vestigator may issue subpoenas for the attendance
17 and testimony of witnesses and the production of
18 relevant papers, books, documents, or other material
19 in connection with hearings under this title.

20 (2) FAILURE TO OBEY.—In the case of contu-
21 macy or refusal to obey a subpoena issued pursuant
22 to this paragraph and served upon any person, the
23 district court of the United States for any district in
24 which such person is found, resides, or transacts
25 business, upon application by the Bureau or a Bu-
26 reau investigator and after notice to such person,

1 may issue an order requiring such person to appear
2 and give testimony or to appear and produce docu-
3 ments or other material.

4 (3) CONTEMPT.—Any failure to obey an order
5 of the court under this subsection may be punished
6 by the court as a contempt thereof.

7 (c) DEMANDS.—

8 (1) IN GENERAL.—Whenever the Bureau has
9 reason to believe that any person may be in posses-
10 sion, custody, or control of any documentary mate-
11 rial or tangible things, or may have any information,
12 relevant to a violation, the Bureau may, before the
13 institution of any proceedings under the Federal
14 consumer financial law, issue in writing, and cause
15 to be served upon such person, a civil investigative
16 demand requiring such person to—

17 (A) produce such documentary material for
18 inspection and copying or reproduction in the
19 form or medium requested by the Bureau;

20 (B) submit such tangible things;

21 (C) file written reports or answers to ques-
22 tions;

23 (D) give oral testimony concerning docu-
24 mentary material, tangible things, or other in-
25 formation; or

1 (E) furnish any combination of such mate-
2 rial, answers, or testimony.

3 (2) REQUIREMENTS.—Each civil investigative
4 demand shall state the nature of the conduct consti-
5 tuting the alleged violation which is under investiga-
6 tion and the provision of law applicable to such vio-
7 lation.

8 (3) PRODUCTION OF DOCUMENTS.—Each civil
9 investigative demand for the production of documen-
10 tary material shall—

11 (A) describe each class of documentary
12 material to be produced under the demand with
13 such definiteness and certainty as to permit
14 such material to be fairly identified;

15 (B) prescribe a return date or dates which
16 will provide a reasonable period of time within
17 which the material so demanded may be assem-
18 bled and made available for inspection and
19 copying or reproduction; and

20 (C) identify the custodian to whom such
21 material shall be made available.

22 (4) PRODUCTION OF THINGS.—Each civil inves-
23 tigative demand for the submission of tangible
24 things shall—

1 (A) describe each class of tangible things
2 to be submitted under the demand with such
3 definiteness and certainty as to permit such
4 things to be fairly identified;

5 (B) prescribe a return date or dates which
6 will provide a reasonable period of time within
7 which the things so demanded may be assem-
8 bled and submitted; and

9 (C) identify the custodian to whom such
10 things shall be submitted.

11 (5) DEMAND FOR WRITTEN REPORTS OR AN-
12 SWERS.—Each civil investigative demand for written
13 reports or answers to questions shall—

14 (A) propound with definiteness and cer-
15 tainty the reports to be produced or the ques-
16 tions to be answered;

17 (B) prescribe a date or dates at which time
18 written reports or answers to questions shall be
19 submitted; and

20 (C) identify the custodian to whom such
21 reports or answers shall be submitted.

22 (6) ORAL TESTIMONY.—Each civil investigative
23 demand for the giving of oral testimony shall—

24 (A) prescribe a date, time, and place at
25 which oral testimony shall be commenced; and

1 (B) identify a Bureau investigator who
2 shall conduct the investigation and the custo-
3 dian to whom the transcript of such investiga-
4 tion shall be submitted.

5 (7) SERVICE.—Any civil investigative demand
6 and any enforcement petition filed under this section
7 may be served—

8 (A) by any Bureau investigator at any
9 place within the territorial jurisdiction of any
10 court of the United States; and

11 (B) upon any person who is not found
12 within the territorial jurisdiction of any court of
13 the United States—

14 (i) in such manner as the Federal
15 Rules of Civil Procedure prescribe for serv-
16 ice in a foreign nation; and

17 (ii) to the extent that the courts of
18 the United States have authority to assert
19 jurisdiction over such person, consistent
20 with due process, the United States Dis-
21 trict Court for the District of Columbia
22 shall have the same jurisdiction to take
23 any action respecting compliance with this
24 section by such person that such district
25 court would have if such person were per-

1 sonally within the jurisdiction of such dis-
2 trict court.

3 (8) METHOD OF SERVICE.—Service of any civil
4 investigative demand or any enforcement petition
5 filed under this section may be made upon a person,
6 including any legal entity, by—

7 (A) delivering a duly executed copy of such
8 demand or petition to the individual or to any
9 partner, executive officer, managing agent, or
10 general agent of such person, or to any agent
11 of such person authorized by appointment or by
12 law to receive service of process on behalf of
13 such person;

14 (B) delivering a duly executed copy of such
15 demand or petition to the principal office or
16 place of business of the person to be served; or

17 (C) depositing a duly executed copy in the
18 United States mails, by registered or certified
19 mail, return receipt requested, duly addressed
20 to such person at the principal office or place
21 of business of such person.

22 (9) PROOF OF SERVICE.—

23 (A) IN GENERAL.—A verified return by the
24 individual serving any civil investigative demand
25 or any enforcement petition filed under this sec-

1 tion setting forth the manner of such service
2 shall be proof of such service.

3 (B) RETURN RECEIPTS.—In the case of
4 service by registered or certified mail, such re-
5 turn shall be accompanied by the return post
6 office receipt of delivery of such demand or en-
7 forcement petition.

8 (10) PRODUCTION OF DOCUMENTARY MATE-
9 RIAL.—The production of documentary material in
10 response to a civil investigative demand shall be
11 made under a sworn certificate, in such form as the
12 demand designates, by the person, if a natural per-
13 son, to whom the demand is directed or, if not a
14 natural person, by any person having knowledge of
15 the facts and circumstances relating to such produc-
16 tion, to the effect that all of the documentary mate-
17 rial required by the demand and in the possession,
18 custody, or control of the person to whom the de-
19 mand is directed has been produced and made avail-
20 able to the custodian.

21 (11) SUBMISSION OF TANGIBLE THINGS.—The
22 submission of tangible things in response to a civil
23 investigative demand shall be made under a sworn
24 certificate, in such form as the demand designates,
25 by the person to whom the demand is directed or,

1 if not a natural person, by any person having knowl-
2 edge of the facts and circumstances relating to such
3 production, to the effect that all of the tangible
4 things required by the demand and in the posses-
5 sion, custody, or control of the person to whom the
6 demand is directed have been submitted to the cus-
7 todian.

8 (12) SEPARATE ANSWERS.—Each reporting re-
9 quirement or question in a civil investigative demand
10 shall be answered separately and fully in writing
11 under oath, unless it is objected to, in which event
12 the reasons for the objection shall be stated in lieu
13 of an answer, and it shall be submitted under a
14 sworn certificate, in such form as the demand des-
15 ignates, by the person, if a natural person, to whom
16 the demand is directed or, if not a natural person,
17 by any person responsible for answering each report-
18 ing requirement or question, to the effect that all in-
19 formation required by the demand and in the posses-
20 sion, custody, control, or knowledge of the person to
21 whom the demand is directed has been submitted.

22 (13) TESTIMONY.—

23 (A) IN GENERAL.—

24 (i) OATH OR AFFIRMATION.—Any Bu-
25 reau investigator before whom oral testi-

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1 mony is to be taken shall put the witness
2 under oath or affirmation, and shall per-
3 sonally, or by any individual acting under
4 the direction of and in the presence of the
5 Bureau investigator, record the testimony
6 of the witness.

7 (ii) TRANSCRIPTION.—The testimony
8 shall be taken stenographically and tran-
9 scribed.

10 (iii) TRANSMISSION TO CUSTODIAN.—
11 After the testimony is fully transcribed,
12 the Bureau investigator before whom the
13 testimony is taken shall promptly transmit
14 a copy of the transcript of the testimony to
15 the custodian.

16 (B) PARTIES PRESENT.—Any Bureau in-
17 vestigator before whom oral testimony is to be
18 taken shall exclude from the place where the
19 testimony is to be taken all other persons, ex-
20 cept the person giving the testimony, the attor-
21 ney of that person, the officer before whom the
22 testimony is to be taken, an investigator or rep-
23 resentative of an agency with which the Bureau
24 is engaged in a joint investigation, and any ste-
25 nographer taking such testimony.

1516

1 (C) LOCATION.—The oral testimony of any
2 person taken pursuant to a civil investigative
3 demand shall be taken in the judicial district of
4 the United States in which such person resides,
5 is found, or transacts business, or in such other
6 place as may be agreed upon by the Bureau in-
7 vestigator before whom the oral testimony of
8 such person is to be taken and such person.

9 (D) ATTORNEY REPRESENTATION.—

10 (i) IN GENERAL.—Any person com-
11 pelled to appear under a civil investigative
12 demand for oral testimony pursuant to this
13 section may be accompanied, represented,
14 and advised by an attorney.

15 (ii) AUTHORITY.—The attorney may
16 advise a person described in clause (i), in
17 confidence, either upon the request of such
18 person or upon the initiative of the attor-
19 ney, with respect to any question asked of
20 such person.

21 (iii) OBJECTIONS.—A person de-
22 scribed in clause (i), or the attorney for
23 that person, may object on the record to
24 any question, in whole or in part, and such
25 person shall briefly state for the record the

1 reason for the objection. An objection may
2 properly be made, received, and entered
3 upon the record when it is claimed that
4 such person is entitled to refuse to answer
5 the question on grounds of any constitu-
6 tional or other legal right or privilege, in-
7 cluding the privilege against self-incrimina-
8 tion, but such person shall not otherwise
9 object to or refuse to answer any question,
10 and such person or attorney shall not oth-
11 erwise interrupt the oral examination.

12 (iv) REFUSAL TO ANSWER.—If a per-
13 son described in clause (i) refuses to an-
14 swer any question—

15 (I) the Bureau may petition the
16 district court of the United States
17 pursuant to this section for an order
18 compelling such person to answer
19 such question; and

20 (II) on grounds of the privilege
21 against self-incrimination, the testi-
22 mony of such person may be com-
23 pelled in accordance with the provi-
24 sions of section 6004 of title 18,
25 United States Code.

1 (E) TRANSCRIPTS.—For purposes of this
2 subsection—

3 (i) after the testimony of any witness
4 is fully transcribed, the Bureau investi-
5 gator shall afford the witness (who may be
6 accompanied by an attorney) a reasonable
7 opportunity to examine the transcript;

8 (ii) the transcript shall be read to or
9 by the witness, unless such examination
10 and reading are waived by the witness;

11 (iii) any changes in form or substance
12 which the witness desires to make shall be
13 entered and identified upon the transcript
14 by the Bureau investigator, with a state-
15 ment of the reasons given by the witness
16 for making such changes;

17 (iv) the transcript shall be signed by
18 the witness, unless the witness in writing
19 waives the signing, is ill, cannot be found,
20 or refuses to sign; and

21 (v) if the transcript is not signed by
22 the witness during the 30-day period fol-
23 lowing the date on which the witness is
24 first afforded a reasonable opportunity to
25 examine the transcript, the Bureau investi-

1 gator shall sign the transcript and state on
2 the record the fact of the waiver, illness,
3 absence of the witness, or the refusal to
4 sign, together with any reasons given for
5 the failure to sign.

6 (F) CERTIFICATION BY INVESTIGATOR.—

7 The Bureau investigator shall certify on the
8 transcript that the witness was duly sworn by
9 him or her and that the transcript is a true
10 record of the testimony given by the witness,
11 and the Bureau investigator shall promptly de-
12 liver the transcript or send it by registered or
13 certified mail to the custodian.

14 (G) COPY OF TRANSCRIPT.—The Bureau
15 investigator shall furnish a copy of the tran-
16 script (upon payment of reasonable charges for
17 the transcript) to the witness only, except that
18 the Bureau may for good cause limit such wit-
19 ness to inspection of the official transcript of
20 his testimony.

21 (H) WITNESS FEES.—Any witness appear-
22 ing for the taking of oral testimony pursuant to
23 a civil investigative demand shall be entitled to
24 the same fees and mileage which are paid to

1 witnesses in the district courts of the United
2 States.

3 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-
4 RIAL.—

5 (1) IN GENERAL.—Documentary materials and
6 tangible things received as a result of a civil inves-
7 tigative demand shall be subject to requirements and
8 procedures regarding confidentiality, in accordance
9 with rules established by the Bureau.

10 (2) DISCLOSURE TO CONGRESS.—No rule es-
11 tablished by the Bureau regarding the confidentiality
12 of materials submitted to, or otherwise obtained by,
13 the Bureau shall be intended to prevent disclosure to
14 either House of Congress or to an appropriate com-
15 mittee of the Congress, except that the Bureau is
16 permitted to adopt rules allowing prior notice to any
17 party that owns or otherwise provided the material
18 to the Bureau and had designated such material as
19 confidential.

20 (e) PETITION FOR ENFORCEMENT.—

21 (1) IN GENERAL.—Whenever any person fails
22 to comply with any civil investigative demand duly
23 served upon him under this section, or whenever sat-
24 isfactory copying or reproduction of material re-
25 quested pursuant to the demand cannot be accom-

1 plished and such person refuses to surrender such
2 material, the Bureau, through such officers or attor-
3 neys as it may designate, may file, in the district
4 court of the United States for any judicial district
5 in which such person resides, is found, or transacts
6 business, and serve upon such person, a petition for
7 an order of such court for the enforcement of this
8 section.

9 (2) SERVICE OF PROCESS.—All process of any
10 court to which application may be made as provided
11 in this subsection may be served in any judicial dis-
12 trict.

13 (f) PETITION FOR ORDER MODIFYING OR SETTING
14 ASIDE DEMAND.—

15 (1) IN GENERAL.—Not later than 20 days after
16 the service of any civil investigative demand upon
17 any person under subsection (b), or at any time be-
18 fore the return date specified in the demand, which-
19 ever period is shorter, or within such period exceed-
20 ing 20 days after service or in excess of such return
21 date as may be prescribed in writing, subsequent to
22 service, by any Bureau investigator named in the de-
23 mand, such person may file with the Bureau a peti-
24 tion for an order by the Bureau modifying or setting
25 aside the demand.

1 (2) COMPLIANCE DURING PENDENCY.—The
2 time permitted for compliance with the demand in
3 whole or in part, as determined proper and ordered
4 by the Bureau, shall not run during the pendency of
5 a petition under paragraph (1) at the Bureau, ex-
6 cept that such person shall comply with any portions
7 of the demand not sought to be modified or set
8 aside.

9 (3) SPECIFIC GROUNDS.—A petition under
10 paragraph (1) shall specify each ground upon which
11 the petitioner relies in seeking relief, and may be
12 based upon any failure of the demand to comply
13 with the provisions of this section, or upon any con-
14 stitutional or other legal right or privilege of such
15 person.

16 (g) CUSTODIAL CONTROL.—At any time during
17 which any custodian is in custody or control of any docu-
18 mentary material, tangible things, reports, answers to
19 questions, or transcripts of oral testimony given by any
20 person in compliance with any civil investigative demand,
21 such person may file, in the district court of the United
22 States for the judicial district within which the office of
23 such custodian is situated, and serve upon such custodian,
24 a petition for an order of such court requiring the per-

1 formance by such custodian of any duty imposed upon him
2 by this section or rule promulgated by the Bureau.

3 (h) JURISDICTION OF COURT.—

4 (1) IN GENERAL.—Whenever any petition is
5 filed in any district court of the United States under
6 this section, such court shall have jurisdiction to
7 hear and determine the matter so presented, and to
8 enter such order or orders as may be required to
9 carry out the provisions of this section.

10 (2) APPEAL.—Any final order entered as de-
11 scribed in paragraph (1) shall be subject to appeal
12 pursuant to section 1291 of title 28, United States
13 Code.

14 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

15 (a) IN GENERAL.—The Bureau is authorized to con-
16 duct hearings and adjudication proceedings with respect
17 to any person in the manner prescribed by chapter 5 of
18 title 5, United States Code in order to ensure or enforce
19 compliance with—

20 (1) the provisions of this title, including any
21 rules prescribed by the Bureau under this title; and

22 (2) any other Federal law that the Bureau is
23 authorized to enforce, including an enumerated con-
24 sumer law, and any regulations or order prescribed
25 thereunder, unless such Federal law specifically lim-

1 its the Bureau from conducting a hearing or adju-
2 dication proceeding and only to the extent of such
3 limitation.

4 (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-
5 CEEDINGS.—

6 (1) ORDERS AUTHORIZED.—

7 (A) IN GENERAL.—If, in the opinion of the
8 Bureau, any covered person or service provider
9 is engaging or has engaged in an activity that
10 violates a law, rule, or any condition imposed in
11 writing on the person by the Bureau, the Bu-
12 reau may, subject to sections 1024, 1025, and
13 1026, issue and serve upon the covered person
14 or service provider a notice of charges in re-
15 spect thereof.

16 (B) CONTENT OF NOTICE.—The notice
17 under subparagraph (A) shall contain a state-
18 ment of the facts constituting the alleged viola-
19 tion or violations, and shall fix a time and place
20 at which a hearing will be held to determine
21 whether an order to cease and desist should
22 issue against the covered person or service pro-
23 vider, such hearing to be held not earlier than
24 30 days nor later than 60 days after the date
25 of service of such notice, unless an earlier or a

1 later date is set by the Bureau, at the request
2 of any party so served.

3 (C) CONSENT.—Unless the party or par-
4 ties served under subparagraph (B) appear at
5 the hearing personally or by a duly authorized
6 representative, such person shall be deemed to
7 have consented to the issuance of the cease-and-
8 desist order.

9 (D) PROCEDURE.—In the event of consent
10 under subparagraph (C), or if, upon the record,
11 made at any such hearing, the Bureau finds
12 that any violation specified in the notice of
13 charges has been established, the Bureau may
14 issue and serve upon the covered person or
15 service provider an order to cease and desist
16 from the violation or practice. Such order may,
17 by provisions which may be mandatory or other-
18 wise, require the covered person or service pro-
19 vider to cease and desist from the subject activ-
20 ity, and to take affirmative action to correct the
21 conditions resulting from any such violation.

22 (2) EFFECTIVENESS OF ORDER.—A cease-and-
23 desist order shall become effective at the expiration
24 of 30 days after the date of service of an order
25 under paragraph (1) upon the covered person or

1 service provider concerned (except in the case of a
2 cease-and-desist order issued upon consent, which
3 shall become effective at the time specified therein),
4 and shall remain effective and enforceable as pro-
5 vided therein, except to such extent as the order is
6 stayed, modified, terminated, or set aside by action
7 of the Bureau or a reviewing court.

8 (3) DECISION AND APPEAL.—Any hearing pro-
9 vided for in this subsection shall be held in the Fed-
10 eral judicial district or in the territory in which the
11 residence or principal office or place of business of
12 the person is located unless the person consents to
13 another place, and shall be conducted in accordance
14 with the provisions of chapter 5 of title 5 of the
15 United States Code. After such hearing, and within
16 90 days after the Bureau has notified the parties
17 that the case has been submitted to the Bureau for
18 final decision, the Bureau shall render its decision
19 (which shall include findings of fact upon which its
20 decision is predicated) and shall issue and serve
21 upon each party to the proceeding an order or or-
22 ders consistent with the provisions of this section.
23 Judicial review of any such order shall be exclusively
24 as provided in this subsection. Unless a petition for
25 review is timely filed in a court of appeals of the

1 United States, as provided in paragraph (4), and
2 thereafter until the record in the proceeding has
3 been filed as provided in paragraph (4), the Bureau
4 may at any time, upon such notice and in such man-
5 ner as the Bureau shall determine proper, modify,
6 terminate, or set aside any such order. Upon filing
7 of the record as provided, the Bureau may modify,
8 terminate, or set aside any such order with permis-
9 sion of the court.

10 (4) APPEAL TO COURT OF APPEALS.—Any
11 party to any proceeding under this subsection may
12 obtain a review of any order served pursuant to this
13 subsection (other than an order issued with the con-
14 sent of the person concerned) by the filing in the
15 court of appeals of the United States for the circuit
16 in which the principal office of the covered person is
17 located, or in the United States Court of Appeals for
18 the District of Columbia Circuit, within 30 days
19 after the date of service of such order, a written pe-
20 tition praying that the order of the Bureau be modi-
21 fied, terminated, or set aside. A copy of such peti-
22 tion shall be forthwith transmitted by the clerk of
23 the court to the Bureau, and thereupon the Bureau
24 shall file in the court the record in the proceeding,
25 as provided in section 2112 of title 28 of the United

1 States Code. Upon the filing of such petition, such
2 court shall have jurisdiction, which upon the filing of
3 the record shall except as provided in the last sen-
4 tence of paragraph (3) be exclusive, to affirm, mod-
5 ify, terminate, or set aside, in whole or in part, the
6 order of the Bureau. Review of such proceedings
7 shall be had as provided in chapter 7 of title 5 of
8 the United States Code. The judgment and decree of
9 the court shall be final, except that the same shall
10 be subject to review by the Supreme Court of the
11 United States, upon certiorari, as provided in section
12 1254 of title 28 of the United States Code.

13 (5) NO STAY.—The commencement of pro-
14 ceedings for judicial review under paragraph (4)
15 shall not, unless specifically ordered by the court,
16 operate as a stay of any order issued by the Bureau.

17 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-
18 DESIST PROCEEDINGS.—

19 (1) IN GENERAL.—Whenever the Bureau deter-
20 mines that the violation specified in the notice of
21 charges served upon a person, including a service
22 provider, pursuant to subsection (b), or the continu-
23 ation thereof, is likely to cause the person to be in-
24 solvent or otherwise prejudice the interests of con-
25 sumers before the completion of the proceedings con-

1 ducted pursuant to subsection (b), the Bureau may
2 issue a temporary order requiring the person to
3 cease and desist from any such violation or practice
4 and to take affirmative action to prevent or remedy
5 such insolvency or other condition pending comple-
6 tion of such proceedings. Such order may include
7 any requirement authorized under this subtitle. Such
8 order shall become effective upon service upon the
9 person and, unless set aside, limited, or suspended
10 by a court in proceedings authorized by paragraph
11 (2), shall remain effective and enforceable pending
12 the completion of the administrative proceedings
13 pursuant to such notice and until such time as the
14 Bureau shall dismiss the charges specified in such
15 notice, or if a cease-and-desist order is issued
16 against the person, until the effective date of such
17 order.

18 (2) APPEAL.—Not later than 10 days after the
19 covered person or service provider concerned has
20 been served with a temporary cease-and-desist order,
21 the person may apply to the United States district
22 court for the judicial district in which the residence
23 or principal office or place of business of the person
24 is located, or the United States District Court for
25 the District of Columbia, for an injunction setting

1 aside, limiting, or suspending the enforcement, oper-
2 ation, or effectiveness of such order pending the
3 completion of the administrative proceedings pursu-
4 ant to the notice of charges served upon the person
5 under subsection (b), and such court shall have ju-
6 risdiction to issue such injunction.

7 (3) INCOMPLETE OR INACCURATE RECORDS.—

8 (A) TEMPORARY ORDER.—If a notice of
9 charges served under subsection (b) specifies,
10 on the basis of particular facts and cir-
11 cumstances, that the books and records of a
12 covered person or service provider are so incom-
13 plete or inaccurate that the Bureau is unable to
14 determine the financial condition of that person
15 or the details or purpose of any transaction or
16 transactions that may have a material effect on
17 the financial condition of that person, the Bu-
18 reau may issue a temporary order requiring—

19 (i) the cessation of any activity or
20 practice which gave rise, whether in whole
21 or in part, to the incomplete or inaccurate
22 state of the books or records; or

23 (ii) affirmative action to restore such
24 books or records to a complete and accu-

1 rate state, until the completion of the pro-
2 ceedings under subsection (b)(1).

3 (B) EFFECTIVE PERIOD.—Any temporary
4 order issued under subparagraph (A)—

5 (i) shall become effective upon service;

6 and

7 (ii) unless set aside, limited, or sus-
8 pended by a court in proceedings under
9 paragraph (2), shall remain in effect and
10 enforceable until the earlier of—

11 (I) the completion of the pro-
12 ceeding initiated under subsection (b)
13 in connection with the notice of
14 charges; or

15 (II) the date the Bureau deter-
16 mines, by examination or otherwise,
17 that the books and records of the cov-
18 ered person or service provider are ac-
19 curate and reflect the financial condi-
20 tion thereof.

21 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-
22 DERS.—

23 (1) IN GENERAL.—The Bureau may in its dis-
24 cretion apply to the United States district court
25 within the jurisdiction of which the principal office

1 or place of business of the person is located, for the
2 enforcement of any effective and outstanding notice
3 or order issued under this section, and such court
4 shall have jurisdiction and power to order and re-
5 quire compliance herewith.

6 (2) EXCEPTION.—Except as otherwise provided
7 in this subsection, no court shall have jurisdiction to
8 affect by injunction or otherwise the issuance or en-
9 forcement of any notice or order or to review, mod-
10 ify, suspend, terminate, or set aside any such notice
11 or order.

12 (e) RULES.—The Bureau shall prescribe rules estab-
13 lishing such procedures as may be necessary to carry out
14 this section.

15 **SEC. 1054. LITIGATION AUTHORITY.**

16 (a) IN GENERAL.—If any person violates a Federal
17 consumer financial law, the Bureau may, subject to sec-
18 tions 1024, 1025, and 1026, commence a civil action
19 against such person to impose a civil penalty or to seek
20 all appropriate legal and equitable relief including a per-
21 manent or temporary injunction as permitted by law.

22 (b) REPRESENTATION.—The Bureau may act in its
23 own name and through its own attorneys in enforcing any
24 provision of this title, rules thereunder, or any other law

1 or regulation, or in any action, suit, or proceeding to which
2 the Bureau is a party.

3 (c) COMPROMISE OF ACTIONS.—The Bureau may
4 compromise or settle any action if such compromise is ap-
5 proved by the court.

6 (d) NOTICE TO THE ATTORNEY GENERAL.—When
7 commencing a civil action under Federal consumer finan-
8 cial law, or any rule thereunder, the Bureau shall notify
9 the Attorney General and, with respect to a civil action
10 against an insured depository institution or insured credit
11 union, the appropriate prudential regulator.

12 (e) APPEARANCE BEFORE THE SUPREME COURT.—
13 The Bureau may represent itself in its own name before
14 the Supreme Court of the United States, provided that
15 the Bureau makes a written request to the Attorney Gen-
16 eral within the 10-day period which begins on the date
17 of entry of the judgment which would permit any party
18 to file a petition for writ of certiorari, and the Attorney
19 General concurs with such request or fails to take action
20 within 60 days of the request of the Bureau.

21 (f) FORUM.—Any civil action brought under this title
22 may be brought in a United States district court or in
23 any court of competent jurisdiction of a state in a district
24 in which the defendant is located or resides or is doing
25 business, and such court shall have jurisdiction to enjoin

1 such person and to require compliance with any Federal
2 consumer financial law.

3 (g) TIME FOR BRINGING ACTION.—

4 (1) IN GENERAL.—Except as otherwise per-
5 mitted by law or equity, no action may be brought
6 under this title more than 3 years after the date of
7 discovery of the violation to which an action relates.

8 (2) LIMITATIONS UNDER OTHER FEDERAL
9 LAWS.—

10 (A) IN GENERAL.—For purposes of this
11 subsection, an action arising under this title
12 does not include claims arising solely under
13 enumerated consumer laws.

14 (B) BUREAU AUTHORITY.—In any action
15 arising solely under an enumerated consumer
16 law, the Bureau may commence, defend, or in-
17 tervene in the action in accordance with the re-
18 quirements of that provision of law, as applica-
19 ble.

20 (C) TRANSFERRED AUTHORITY.—In any
21 action arising solely under laws for which au-
22 thorities were transferred under subtitles F and
23 H, the Bureau may commence, defend, or inter-
24 vene in the action in accordance with the re-

1 requirements of that provision of law, as applica-
2 ble.

3 **SEC. 1055. RELIEF AVAILABLE.**

4 (a) ADMINISTRATIVE PROCEEDINGS OR COURT AC-
5 TIONS.—

6 (1) JURISDICTION.—The court (or the Bureau,
7 as the case may be) in an action or adjudication pro-
8 ceeding brought under Federal consumer financial
9 law, shall have jurisdiction to grant any appropriate
10 legal or equitable relief with respect to a violation of
11 Federal consumer financial law, including a violation
12 of a rule or order prescribed under a Federal con-
13 sumer financial law.

14 (2) RELIEF.—Relief under this section may in-
15 clude, without limitation—

16 (A) rescission or reformation of contracts;

17 (B) refund of moneys or return of real
18 property;

19 (C) restitution;

20 (D) disgorgement or compensation for un-
21 just enrichment;

22 (E) payment of damages or other mone-
23 tary relief;

24 (F) public notification regarding the viola-
25 tion, including the costs of notification;

1 (G) limits on the activities or functions of
2 the person; and

3 (H) civil money penalties, as set forth
4 more fully in subsection (c).

5 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—

6 Nothing in this subsection shall be construed as au-
7 thorizing the imposition of exemplary or punitive
8 damages.

9 (b) RECOVERY OF COSTS.—In any action brought by
10 the Bureau, a State attorney general, or any State regu-
11 lator to enforce any Federal consumer financial law, the
12 Bureau, the State attorney general, or the State regulator
13 may recover its costs in connection with prosecuting such
14 action if the Bureau, the State attorney general, or the
15 State regulator is the prevailing party in the action.

16 (c) CIVIL MONEY PENALTY IN COURT AND ADMINIS-
17 TRATIVE ACTIONS.—

18 (1) IN GENERAL.—Any person that violates,
19 through any act or omission, any provision of Fed-
20 eral consumer financial law shall forfeit and pay a
21 civil penalty pursuant to this subsection.

22 (2) PENALTY AMOUNTS.—

23 (A) FIRST TIER.—For any violation of a
24 law, rule, or final order or condition imposed in
25 writing by the Bureau, a civil penalty may not

1 exceed \$5,000 for each day during which such
2 violation or failure to pay continues.

3 (B) SECOND TIER.—Notwithstanding
4 paragraph (A), for any person that recklessly
5 engages in a violation of a Federal consumer fi-
6 nancial law, a civil penalty may not exceed
7 \$25,000 for each day during which such viola-
8 tion continues.

9 (C) THIRD TIER.—Notwithstanding sub-
10 paragraphs (A) and (B), for any person that
11 knowingly violates a Federal consumer financial
12 law, a civil penalty may not exceed \$1,000,000
13 for each day during which such violation con-
14 tinues.

15 (3) MITIGATING FACTORS.—In determining the
16 amount of any penalty assessed under paragraph
17 (2), the Bureau or the court shall take into account
18 the appropriateness of the penalty with respect to—

19 (A) the size of financial resources and good
20 faith of the person charged;

21 (B) the gravity of the violation or failure
22 to pay;

23 (C) the severity of the risks to or losses of
24 the consumer, which may take into account the
25 number of products or services sold or provided;

1 (D) the history of previous violations; and

2 (E) such other matters as justice may re-

3 quire.

4 (4) AUTHORITY TO MODIFY OR REMIT PEN-
5 ALTY.—The Bureau may compromise, modify, or
6 remit any penalty which may be assessed or had al-
7 ready been assessed under paragraph (2). The
8 amount of such penalty, when finally determined,
9 shall be exclusive of any sums owed by the person
10 to the United States in connection with the costs of
11 the proceeding, and may be deducted from any sums
12 owing by the United States to the person charged.

13 (5) NOTICE AND HEARING.—No civil penalty
14 may be assessed under this subsection with respect
15 to a violation of any Federal consumer financial law,
16 unless—

17 (A) the Bureau gives notice and an oppor-
18 tunity for a hearing to the person accused of
19 the violation; or

20 (B) the appropriate court has ordered such
21 assessment and entered judgment in favor of
22 the Bureau.

23 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

24 If the Bureau obtains evidence that any person, do-
25 mestic or foreign, has engaged in conduct that may con-

1 stitute a violation of Federal criminal law, the Bureau
2 shall have the power to transmit such evidence to the At-
3 torney General of the United States, who may institute
4 criminal proceedings under appropriate law. Nothing in
5 this section affects any other authority of the Bureau to
6 disclose information.

7 **SEC. 1057. EMPLOYEE PROTECTION.**

8 (a) IN GENERAL.—No covered person or service pro-
9 vider shall terminate or in any other way discriminate
10 against, or cause to be terminated or discriminated
11 against, any covered employee or any authorized rep-
12 resentative of covered employees by reason of the fact that
13 such employee or representative, whether at the initiative
14 of the employee or in the ordinary course of the duties
15 of the employee (or any person acting pursuant to a re-
16 quest of the employee), has—

17 (1) provided, caused to be provided, or is about
18 to provide or cause to be provided, information to
19 the employer, the Bureau, or any other State, local,
20 or Federal, government authority or law enforce-
21 ment agency relating to any violation of, or any act
22 or omission that the employee reasonably believes to
23 be a violation of, any provision of this title or any
24 other provision of law that is subject to the jurisdic-

1 tion of the Bureau, or any rule, order, standard, or
2 prohibition prescribed by the Bureau;

3 (2) testified or will testify in any proceeding re-
4 sulting from the administration or enforcement of
5 any provision of this title or any other provision of
6 law that is subject to the jurisdiction of the Bureau,
7 or any rule, order, standard, or prohibition pre-
8 scribed by the Bureau;

9 (3) filed, instituted, or caused to be filed or in-
10 stituted any proceeding under any Federal consumer
11 financial law; or

12 (4) objected to, or refused to participate in, any
13 activity, policy, practice, or assigned task that the
14 employee (or other such person) reasonably believed
15 to be in violation of any law, rule, order, standard,
16 or prohibition, subject to the jurisdiction of, or en-
17 forceable by, the Bureau.

18 (b) DEFINITION OF COVERED EMPLOYEE.—For the
19 purposes of this section, the term “covered employee”
20 means any individual performing tasks related to the of-
21 fering or provision of a consumer financial product or
22 service.

23 (c) PROCEDURES AND TIMETABLES.—

24 (1) COMPLAINT.—

1 (A) IN GENERAL.—A person who believes
2 that he or she has been discharged or otherwise
3 discriminated against by any person in violation
4 of subsection (a) may, not later than 180 days
5 after the date on which such alleged violation
6 occurs, file (or have any person file on his or
7 her behalf) a complaint with the Secretary of
8 Labor alleging such discharge or discrimination
9 and identifying the person responsible for such
10 act.

11 (B) ACTIONS OF SECRETARY OF LABOR.—
12 Upon receipt of such a complaint, the Secretary
13 of Labor shall notify, in writing, the person
14 named in the complaint who is alleged to have
15 committed the violation, of—

- 16 (i) the filing of the complaint;
17 (ii) the allegations contained in the
18 complaint;
19 (iii) the substance of evidence sup-
20 porting the complaint; and
21 (iv) opportunities that will be afforded
22 to such person under paragraph (2).

23 (2) INVESTIGATION BY SECRETARY OF
24 LABOR.—

1 (A) IN GENERAL.—Not later than 60 days
2 after the date of receipt of a complaint filed
3 under paragraph (1), and after affording the
4 complainant and the person named in the com-
5 plaint who is alleged to have committed the vio-
6 lation that is the basis for the complaint an op-
7 portunity to submit to the Secretary of Labor
8 a written response to the complaint and an op-
9 portunity to meet with a representative of the
10 Secretary of Labor to present statements from
11 witnesses, the Secretary of Labor shall—

12 (i) initiate an investigation and deter-
13 mine whether there is reasonable cause to
14 believe that the complaint has merit; and

15 (ii) notify the complainant and the
16 person alleged to have committed the viola-
17 tion of subsection (a), in writing, of such
18 determination.

19 (B) NOTICE OF RELIEF AVAILABLE.—If
20 the Secretary of Labor concludes that there is
21 reasonable cause to believe that a violation of
22 subsection (a) has occurred, the Secretary of
23 Labor shall, together with the notice under sub-
24 paragraph (A)(ii), issue a preliminary order

1 providing the relief prescribed by paragraph
2 (4)(B).

3 (C) REQUEST FOR HEARING.—Not later
4 than 30 days after the date of receipt of notifi-
5 cation of a determination of the Secretary of
6 Labor under this paragraph, either the person
7 alleged to have committed the violation or the
8 complainant may file objections to the findings
9 or preliminary order, or both, and request a
10 hearing on the record. The filing of such objec-
11 tions shall not operate to stay any reinstatement
12 remedy contained in the preliminary
13 order. Any such hearing shall be conducted ex-
14 peditiously, and if a hearing is not requested in
15 such 30-day period, the preliminary order shall
16 be deemed a final order that is not subject to
17 judicial review.

18 (3) GROUNDS FOR DETERMINATION OF COM-
19 PLAINTS.—

20 (A) IN GENERAL.—The Secretary of Labor
21 shall dismiss a complaint filed under this sub-
22 section, and shall not conduct an investigation
23 otherwise required under paragraph (2), unless
24 the complainant makes a prima facie showing
25 that any behavior described in paragraphs (1)

1 through (4) of subsection (a) was a contrib-
2 uting factor in the unfavorable personnel action
3 alleged in the complaint.

4 (B) REBUTTAL EVIDENCE.—Notwith-
5 standing a finding by the Secretary of Labor
6 that the complainant has made the showing re-
7 quired under subparagraph (A), no investiga-
8 tion otherwise required under paragraph (2)
9 shall be conducted, if the employer dem-
10 onstrates, by clear and convincing evidence,
11 that the employer would have taken the same
12 unfavorable personnel action in the absence of
13 that behavior.

14 (C) EVIDENTIARY STANDARDS.—The Sec-
15 retary of Labor may determine that a violation
16 of subsection (a) has occurred only if the com-
17 plainant demonstrates that any behavior de-
18 scribed in paragraphs (1) through (4) of sub-
19 section (a) was a contributing factor in the un-
20 favorable personnel action alleged in the com-
21 plaint. Relief may not be ordered under sub-
22 subparagraph (A) if the employer demonstrates by
23 clear and convincing evidence that the employer
24 would have taken the same unfavorable per-
25 sonnel action in the absence of that behavior.

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1 with compensation (including back
2 pay) and restore the terms, condi-
3 tions, and privileges associated with
4 his or her employment; and

5 (III) to provide compensatory
6 damages to the complainant.

7 (ii) PENALTY.—If an order is issued
8 under clause (i), the Secretary of Labor, at
9 the request of the complainant, shall assess
10 against the person against whom the order
11 is issued, a sum equal to the aggregate
12 amount of all costs and expenses (includ-
13 ing attorney fees and expert witness fees)
14 reasonably incurred, as determined by the
15 Secretary of Labor, by the complainant
16 for, or in connection with, the bringing of
17 the complaint upon which the order was
18 issued.

19 (C) PENALTY FOR FRIVOLOUS CLAIMS.—If
20 the Secretary of Labor finds that a complaint
21 under paragraph (1) is frivolous or has been
22 brought in bad faith, the Secretary of Labor
23 may award to the prevailing employer a reason-
24 able attorney fee, not exceeding \$1,000, to be
25 paid by the complainant.

1 (D) DE NOVO REVIEW.—

2 (i) FAILURE OF THE SECRETARY TO
3 ACT.—If the Secretary of Labor has not
4 issued a final order within 210 days after
5 the date of filing of a complaint under this
6 subsection, or within 90 days after the
7 date of receipt of a written determination,
8 the complainant may bring an action at
9 law or equity for de novo review in the ap-
10 propriate district court of the United
11 States having jurisdiction, which shall have
12 jurisdiction over such an action without re-
13 gard to the amount in controversy, and
14 which action shall, at the request of either
15 party to such action, be tried by the court
16 with a jury.

17 (ii) PROCEDURES.—A proceeding
18 under clause (i) shall be governed by the
19 same legal burdens of proof specified in
20 paragraph (3). The court shall have juris-
21 diction to grant all relief necessary to
22 make the employee whole, including injunc-
23 tive relief and compensatory damages, in-
24 cluding—

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1 (I) reinstatement with the same
2 seniority status that the employee
3 would have had, but for the discharge
4 or discrimination;

5 (II) the amount of back pay, with
6 interest; and

7 (III) compensation for any spe-
8 cial damages sustained as a result of
9 the discharge or discrimination, in-
10 cluding litigation costs, expert witness
11 fees, and reasonable attorney fees.

12 (E) OTHER APPEALS.—Unless the com-
13 plainant brings an action under subparagraph
14 (D), any person adversely affected or aggrieved
15 by a final order issued under subparagraph (A)
16 may file a petition for review of the order in the
17 United States Court of Appeals for the circuit
18 in which the violation with respect to which the
19 order was issued, allegedly occurred or the cir-
20 cuit in which the complainant resided on the
21 date of such violation, not later than 60 days
22 after the date of the issuance of the final order
23 of the Secretary of Labor under subparagraph
24 (A). Review shall conform to chapter 7 of title
25 5, United States Code. The commencement of

1 proceedings under this subparagraph shall not,
2 unless ordered by the court, operate as a stay
3 of the order. An order of the Secretary of
4 Labor with respect to which review could have
5 been obtained under this subparagraph shall
6 not be subject to judicial review in any criminal
7 or other civil proceeding.

8 (5) FAILURE TO COMPLY WITH ORDER.—

9 (A) ACTIONS BY THE SECRETARY.—If any
10 person has failed to comply with a final order
11 issued under paragraph (4), the Secretary of
12 Labor may file a civil action in the United
13 States district court for the district in which
14 the violation was found to have occurred, or in
15 the United States district court for the District
16 of Columbia, to enforce such order. In actions
17 brought under this paragraph, the district
18 courts shall have jurisdiction to grant all appro-
19 priate relief including injunctive relief and com-
20 pensatory damages.

21 (B) CIVIL ACTIONS TO COMPEL COMPLI-
22 ANCE.—A person on whose behalf an order was
23 issued under paragraph (4) may commence a
24 civil action against the person to whom such
25 order was issued to require compliance with

1 such order. The appropriate United States dis-
2 trict court shall have jurisdiction, without re-
3 gard to the amount in controversy or the citi-
4 zenship of the parties, to enforce such order.

5 (C) AWARD OF COSTS AUTHORIZED.—The
6 court, in issuing any final order under this
7 paragraph, may award costs of litigation (in-
8 cluding reasonable attorney and expert witness
9 fees) to any party, whenever the court deter-
10 mines such award is appropriate.

11 (D) MANDAMUS PROCEEDINGS.—Any non-
12 discretionary duty imposed by this section shall
13 be enforceable in a mandamus proceeding
14 brought under section 1361 of title 28, United
15 States Code.

16 (d) UNENFORCEABILITY OF CERTAIN AGREE-
17 MENTS.—

18 (1) NO WAIVER OF RIGHTS AND REMEDIES.—
19 Except as provided under paragraph (3), and not-
20 withstanding any other provision of law, the rights
21 and remedies provided for in this section may not be
22 waived by any agreement, policy, form, or condition
23 of employment, including by any predispute arbitra-
24 tion agreement.

1 (2) NO PREDISPUTE ARBITRATION AGREE-
2 MENTS.—Except as provided under paragraph (3),
3 and notwithstanding any other provision of law, no
4 predispute arbitration agreement shall be valid or
5 enforceable to the extent that it requires arbitration
6 of a dispute arising under this section.

7 (3) EXCEPTION.—Notwithstanding paragraphs
8 (1) and (2), an arbitration provision in a collective
9 bargaining agreement shall be enforceable as to dis-
10 putes arising under subsection (a)(4), unless the Bu-
11 reau determines, by rule, that such provision is in-
12 consistent with the purposes of this title.

13 **SEC. 1058. EFFECTIVE DATE.**

14 This subtitle shall become effective on the designated
15 transfer date.

16 **Subtitle F—Transfer of Functions**
17 **and Personnel; Transitional**
18 **Provisions**

19 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
20 **TION FUNCTIONS.**

21 (a) DEFINED TERMS.—For purposes of this sub-
22 title—

23 (1) the term “consumer financial protection
24 functions” means research, rulemaking, issuance of
25 orders or guidance, supervision, examination, and

1 enforcement activities, powers, and duties relating to
2 the offering or provision of consumer financial prod-
3 ucts or services; and

4 (2) the terms “transferor agency” and “trans-
5 feror agencies” mean, respectively—

6 (A) the Board of Governors (and any Fed-
7 eral reserve bank, as the context requires), the
8 Federal Deposit Insurance Corporation, the
9 Federal Trade Commission, the National Credit
10 Union Administration, the Office of the Comp-
11 troller of the Currency, the Office of Thrift Su-
12 pervision, and the Department of Housing and
13 Urban Development, and the heads of those
14 agencies; and

15 (B) the agencies listed in subparagraph
16 (A), collectively.

17 (b) IN GENERAL.—Except as provided in subsection
18 (c), consumer financial protection functions are trans-
19 ferred as follows:

20 (1) BOARD OF GOVERNORS.—

21 (A) TRANSFER OF FUNCTIONS.—All con-
22 sumer financial protection functions of the
23 Board of Governors are transferred to the Bu-
24 reau.

1 (B) BOARD OF GOVERNORS AUTHORITY.—

2 The Bureau shall have all powers and duties
3 that were vested in the Board of Governors, re-
4 lating to consumer financial protection func-
5 tions, on the day before the designated transfer
6 date.

7 (2) COMPTROLLER OF THE CURRENCY.—

8 (A) TRANSFER OF FUNCTIONS.—All con-
9 sumer financial protection functions of the
10 Comptroller of the Currency are transferred to
11 the Bureau.

12 (B) COMPTROLLER AUTHORITY.—The Bu-
13 reau shall have all powers and duties that were
14 vested in the Comptroller of the Currency, re-
15 lating to consumer financial protection func-
16 tions, on the day before the designated transfer
17 date.

18 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-
19 PERVISION.—

20 (A) TRANSFER OF FUNCTIONS.—All con-
21 sumer financial protection functions of the Di-
22 rector of the Office of Thrift Supervision are
23 transferred to the Bureau.

24 (B) DIRECTOR AUTHORITY.—The Bureau
25 shall have all powers and duties that were vest-

1 ed in the Director of the Office of Thrift Super-
2 vision, relating to consumer financial protection
3 functions, on the day before the designated
4 transfer date.

5 (4) FEDERAL DEPOSIT INSURANCE CORPORA-
6 TION.—

7 (A) TRANSFER OF FUNCTIONS.—All con-
8 sumer financial protection functions of the Fed-
9 eral Deposit Insurance Corporation are trans-
10 ferred to the Bureau.

11 (B) CORPORATION AUTHORITY.—The Bu-
12 reau shall have all powers and duties that were
13 vested in the Federal Deposit Insurance Cor-
14 poration, relating to consumer financial protec-
15 tion functions, on the day before the designated
16 transfer date.

17 (5) FEDERAL TRADE COMMISSION.—

18 (A) TRANSFER OF FUNCTIONS.—The au-
19 thority of the Federal Trade Commission under
20 an enumerated consumer law to prescribe rules,
21 issue guidelines, or conduct a study or issue a
22 report mandated under such law shall be trans-
23 ferred to the Bureau on the designated transfer
24 date. Nothing in this title shall be construed to

1 require a mandatory transfer of any employee
2 of the Federal Trade Commission.

3 (B) BUREAU AUTHORITY.—

4 (i) IN GENERAL.—The Bureau shall
5 have all powers and duties under the enu-
6 merated consumer laws to prescribe rules,
7 issue guidelines, or to conduct studies or
8 issue reports mandated by such laws, that
9 were vested in the Federal Trade Commis-
10 sion on the day before the designated
11 transfer date.

12 (ii) FEDERAL TRADE COMMISSION
13 ACT.—Subject to subtitle B, the Bureau
14 may enforce a rule prescribed under the
15 Federal Trade Commission Act by the
16 Federal Trade Commission with respect to
17 an unfair or deceptive act or practice to
18 the extent that such rule applies to a cov-
19 ered person or service provider with re-
20 spect to the offering or provision of a con-
21 sumer financial product or service as if it
22 were a rule prescribed under section 1031
23 of this title.

24 (C) AUTHORITY OF THE FEDERAL TRADE
25 COMMISSION.—

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1 (i) IN GENERAL.—No provision of this
2 title shall be construed as modifying, lim-
3 iting, or otherwise affecting the authority
4 of the Federal Trade Commission under
5 the Federal Trade Commission Act or any
6 other law, other than the authority under
7 an enumerated consumer law to prescribe
8 rules, issue official guidelines, or conduct a
9 study or issue a report mandated under
10 such law.

11 (ii) COMMISSION AUTHORITY RELAT-
12 ING TO RULES PRESCRIBED BY THE BU-
13 REAU.—Subject to subtitle B, the Federal
14 Trade Commission shall have authority to
15 enforce under the Federal Trade Commis-
16 sion Act (15 U.S.C. 41 et seq.) a rule pre-
17 scribed by the Bureau under this title with
18 respect to a covered person subject to the
19 jurisdiction of the Federal Trade Commis-
20 sion under that Act, and a violation of
21 such a rule by such a person shall be treat-
22 ed as a violation of a rule issued under sec-
23 tion 18 of that Act (15 U.S.C. 57a) with
24 respect to unfair or deceptive acts or prac-
25 tices.

1 (D) COORDINATION.—To avoid duplication
2 of or conflict between rules prescribed by the
3 Bureau under section 1031 of this title and the
4 Federal Trade Commission under section
5 18(a)(1)(B) of the Federal Trade Commission
6 Act that apply to a covered person or service
7 provider with respect to the offering or provi-
8 sion of consumer financial products or services,
9 the agencies shall negotiate an agreement with
10 respect to rulemaking by each agency, including
11 consultation with the other agency prior to pro-
12 posing a rule and during the comment period.

13 (E) DEFERENCE.—No provision of this
14 title shall be construed as altering, limiting, ex-
15 panding, or otherwise affecting the deference
16 that a court affords to the—

17 (i) Federal Trade Commission in
18 making determinations regarding the
19 meaning or interpretation of any provision
20 of the Federal Trade Commission Act, or
21 of any other Federal law for which the
22 Commission has authority to prescribe
23 rules; or

24 (ii) Bureau in making determinations
25 regarding the meaning or interpretation of

1 any provision of a Federal consumer finan-
2 cial law (other than any law described in
3 clause (i)).

4 (6) NATIONAL CREDIT UNION ADMINISTRA-
5 TION.—

6 (A) TRANSFER OF FUNCTIONS.—All con-
7 sumer financial protection functions of the Na-
8 tional Credit Union Administration are trans-
9 ferred to the Bureau.

10 (B) NATIONAL CREDIT UNION ADMINIS-
11 TRATION AUTHORITY.—The Bureau shall have
12 all powers and duties that were vested in the
13 National Credit Union Administration, relating
14 to consumer financial protection functions, on
15 the day before the designated transfer date.

16 (7) DEPARTMENT OF HOUSING AND URBAN DE-
17 VELOPMENT.—

18 (A) TRANSFER OF FUNCTIONS.—All con-
19 sumer protection functions of the Secretary of
20 the Department of Housing and Urban Devel-
21 opment relating to the Real Estate Settlement
22 Procedures Act of 1974 (12 U.S.C. 2601 et
23 seq.) and the Secure and Fair Enforcement for
24 Mortgage Licensing Act of 2008 (12 U.S.C.
25 5102 et seq.) are transferred to the Bureau.

1 (B) AUTHORITY OF THE DEPARTMENT OF
2 HOUSING AND URBAN DEVELOPMENT.—The
3 Bureau shall have all powers and duties that
4 were vested in the Secretary of the Department
5 of Housing and Urban Development relating to
6 the Real Estate Settlement Procedures Act of
7 1974 (12 U.S.C. 2601 et seq.), and the Secure
8 and Fair Enforcement for Mortgage Licensing
9 Act of 2008 (12 U.S.C. 5101 et seq.), on the
10 day before the designated transfer date.

11 (c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAM-
12 INATION AND ENFORCEMENT AUTHORITY REMAINING
13 WITH TRANSFEROR AGENCIES.—The transfers of func-
14 tions in subsection (b) do not affect the authority of the
15 agencies identified in subsection (b) from conducting ex-
16 aminations or initiating and maintaining enforcement pro-
17 ceedings, including performing appropriate supervisory
18 and support functions relating thereto, in accordance with
19 sections 1024, 1025, and 1026.

20 (d) EFFECTIVE DATE.—Subsections (b) and (c) shall
21 become effective on the designated transfer date.

22 **SEC. 1062. DESIGNATED TRANSFER DATE.**

23 (a) IN GENERAL.—Not later than 60 days after the
24 date of enactment of this Act, the Secretary shall—

1 (1) in consultation with the Chairman of the
2 Board of Governors, the Chairperson of the Cor-
3 poration, the Chairman of the Federal Trade Com-
4 mission, the Chairman of the National Credit Union
5 Administration Board, the Comptroller of the Cur-
6 rency, the Director of the Office of Thrift Super-
7 vision, the Secretary of the Department of Housing
8 and Urban Development, and the Director of the Of-
9 fice of Management and Budget, designate a single
10 calendar date for the transfer of functions to the
11 Bureau under section 1061; and

12 (2) publish notice of that designated date in the
13 Federal Register.

14 (b) CHANGING DESIGNATION.—The Secretary—

15 (1) may, in consultation with the Chairman of
16 the Board of Governors, the Chairperson of the Fed-
17 eral Deposit Insurance Corporation, the Chairman
18 of the Federal Trade Commission, the Chairman of
19 the National Credit Union Administration Board,
20 the Comptroller of the Currency, the Director of the
21 Office of Thrift Supervision, the Secretary of the
22 Department of Housing and Urban Development,
23 and the Director of the Office of Management and
24 Budget, change the date designated under sub-
25 section (a); and

1 (2) shall publish notice of any changed des-
2 ignated date in the Federal Register.

3 (c) PERMISSIBLE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), any date designated under this section
6 shall be not earlier than 180 days, nor later than 12
7 months, after the date of enactment of this Act.

8 (2) EXTENSION OF TIME.—The Secretary may
9 designate a date that is later than 12 months after
10 the date of enactment of this Act if the Secretary
11 transmits to appropriate committees of Congress—

12 (A) a written determination that orderly
13 implementation of this title is not feasible be-
14 fore the date that is 12 months after the date
15 of enactment of this Act;

16 (B) an explanation of why an extension is
17 necessary for the orderly implementation of this
18 title; and

19 (C) a description of the steps that will be
20 taken to effect an orderly and timely implemen-
21 tation of this title within the extended time pe-
22 riod.

23 (3) EXTENSION LIMITED.—In no case may any
24 date designated under this section be later than 18
25 months after the date of enactment of this Act.

1 **SEC. 1063. SAVINGS PROVISIONS.**

2 (a) BOARD OF GOVERNORS.—

3 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
4 TIONS NOT AFFECTED.—Section 1061(b)(1) does
5 not affect the validity of any right, duty, or obliga-
6 tion of the United States, the Board of Governors
7 (or any Federal reserve bank), or any other person
8 that—

9 (A) arises under any provision of law relat-
10 ing to any consumer financial protection func-
11 tion of the Board of Governors transferred to
12 the Bureau by this title; and

13 (B) existed on the day before the des-
14 ignated transfer date.

15 (2) CONTINUATION OF SUITS.—No provision of
16 this Act shall abate any proceeding commenced by
17 or against the Board of Governors (or any Federal
18 reserve bank) before the designated transfer date
19 with respect to any consumer financial protection
20 function of the Board of Governors (or any Federal
21 reserve bank) transferred to the Bureau by this title,
22 except that the Bureau, subject to sections 1024,
23 1025, and 1026, shall be substituted for the Board
24 of Governors (or Federal reserve bank) as a party
25 to any such proceeding as of the designated transfer
26 date.

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1 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

2 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
3 TIONS NOT AFFECTED.—Section 1061(b)(4) does
4 not affect the validity of any right, duty, or obliga-
5 tion of the United States, the Federal Deposit In-
6 surance Corporation, the Board of Directors of that
7 Corporation, or any other person, that—

8 (A) arises under any provision of law relat-
9 ing to any consumer financial protection func-
10 tion of the Federal Deposit Insurance Corpora-
11 tion transferred to the Bureau by this title; and

12 (B) existed on the day before the des-
13 igned transfer date.

14 (2) CONTINUATION OF SUITS.—No provision of
15 this Act shall abate any proceeding commenced by
16 or against the Federal Deposit Insurance Corpora-
17 tion (or the Board of Directors of that Corporation)
18 before the designated transfer date with respect to
19 any consumer financial protection function of the
20 Federal Deposit Insurance Corporation transferred
21 to the Bureau by this title, except that the Bureau,
22 subject to sections 1024, 1025, and 1026, shall be
23 substituted for the Federal Deposit Insurance Cor-
24 poration (or Board of Directors) as a party to any
25 such proceeding as of the designated transfer date.

1 (c) FEDERAL TRADE COMMISSION.—Section
2 1061(b)(5) does not affect the validity of any right, duty,
3 or obligation of the United States, the Federal Trade
4 Commission, or any other person, that—

5 (1) arises under any provision of law relating to
6 any consumer financial protection function of the
7 Federal Trade Commission transferred to the Bu-
8 reau by this title; and

9 (2) existed on the day before the designated
10 transfer date.

11 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

12 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
13 TIONS NOT AFFECTED.—Section 1061(b)(6) does
14 not affect the validity of any right, duty, or obliga-
15 tion of the United States, the National Credit Union
16 Administration, the National Credit Union Adminis-
17 tration Board, or any other person, that—

18 (A) arises under any provision of law relat-
19 ing to any consumer financial protection func-
20 tion of the National Credit Union Administra-
21 tion transferred to the Bureau by this title; and

22 (B) existed on the day before the des-
23 igned transfer date.

24 (2) CONTINUATION OF SUITS.—No provision of
25 this Act shall abate any proceeding commenced by

1 or against the National Credit Union Administration
2 (or the National Credit Union Administration
3 Board) before the designated transfer date with re-
4 spect to any consumer financial protection function
5 of the National Credit Union Administration trans-
6 ferred to the Bureau by this title, except that the
7 Bureau, subject to sections 1024, 1025, and 1026,
8 shall be substituted for the National Credit Union
9 Administration (or National Credit Union Adminis-
10 tration Board) as a party to any such proceeding as
11 of the designated transfer date.

12 (e) OFFICE OF THE COMPTROLLER OF THE CUR-
13 RENCY.—

14 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
15 TIONS NOT AFFECTED.—Section 1061(b)(2) does
16 not affect the validity of any right, duty, or obliga-
17 tion of the United States, the Comptroller of the
18 Currency, the Office of the Comptroller of the Cur-
19 rency, or any other person, that—

20 (A) arises under any provision of law relat-
21 ing to any consumer financial protection func-
22 tion of the Comptroller of the Currency trans-
23 ferred to the Bureau by this title; and

24 (B) existed on the day before the des-
25 ignated transfer date.

1 (2) CONTINUATION OF SUITS.—No provision of
2 this Act shall abate any proceeding commenced by
3 or against the Comptroller of the Currency (or the
4 Office of the Comptroller of the Currency) with re-
5 spect to any consumer financial protection function
6 of the Comptroller of the Currency transferred to
7 the Bureau by this title before the designated trans-
8 fer date, except that the Bureau, subject to sections
9 1024, 1025, and 1026, shall be substituted for the
10 Comptroller of the Currency (or the Office of the
11 Comptroller of the Currency) as a party to any such
12 proceeding as of the designated transfer date.

13 (f) OFFICE OF THRIFT SUPERVISION.—

14 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
15 TIONS NOT AFFECTED.—Section 1061(b)(3) does
16 not affect the validity of any right, duty, or obliga-
17 tion of the United States, the Director of the Office
18 of Thrift Supervision, the Office of Thrift Super-
19 vision, or any other person, that—

20 (A) arises under any provision of law relat-
21 ing to any consumer financial protection func-
22 tion of the Director of the Office of Thrift Su-
23 pervision transferred to the Bureau by this
24 title; and

1 (B) that existed on the day before the des-
2 igned transfer date.

3 (2) CONTINUATION OF SUITS.—No provision of
4 this Act shall abate any proceeding commenced by
5 or against the Director of the Office of Thrift Su-
6 pervision (or the Office of Thrift Supervision) with
7 respect to any consumer financial protection func-
8 tion of the Director of the Office of Thrift Super-
9 vision transferred to the Bureau by this title before
10 the designated transfer date, except that the Bu-
11 reau, subject to sections 1024, 1025, and 1026,
12 shall be substituted for the Director (or the Office
13 of Thrift Supervision) as a party to any such pro-
14 ceeding as of the designated transfer date.

15 (g) DEPARTMENT OF HOUSING AND URBAN DEVEL-
16 OPMENT.—

17 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
18 TIONS NOT AFFECTED.—Section 1061(b)(7) shall
19 not affect the validity of any right, duty, or obliga-
20 tion of the United States, the Secretary of the De-
21 partment of Housing and Urban Development (or
22 the Department of Housing and Urban Develop-
23 ment), or any other person, that—

24 (A) arises under any provision of law relat-
25 ing to any function of the Secretary of the De-

1 partment of Housing and Urban Development
2 with respect to the Real Estate Settlement Pro-
3 cedures Act of 1974 (12 U.S.C. 2601 et seq.)
4 or the Secure and Fair Enforcement for Mort-
5 gage Licensing Act of 2008 (12 U.S.C. 5102 et
6 seq.) transferred to the Bureau by this title;
7 and

8 (B) existed on the day before the des-
9 ignated transfer date.

10 (2) CONTINUATION OF SUITS.—This title shall
11 not abate any proceeding commenced by or against
12 the Secretary of the Department of Housing and
13 Urban Development (or the Department of Housing
14 and Urban Development) with respect to any con-
15 sumer financial protection function of the Secretary
16 of the Department of Housing and Urban Develop-
17 ment transferred to the Bureau by this title before
18 the designated transfer date, except that the Bu-
19 reau, subject to sections 1024, 1025, and 1026,
20 shall be substituted for the Secretary of the Depart-
21 ment of Housing and Urban Development (or the
22 Department of Housing and Urban Development) as
23 a party to any such proceeding as of the designated
24 transfer date.

1 (h) CONTINUATION OF EXISTING ORDERS, RULES,
2 DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—

3 All orders, resolutions, determinations, agreements, and
4 rules that have been issued, made, prescribed, or allowed
5 to become effective by any transferor agency or by a court
6 of competent jurisdiction, in the performance of consumer
7 financial protection functions that are transferred by this
8 title and that are in effect on the day before the designated
9 transfer date, shall continue in effect according to the
10 terms of those orders, resolutions, determinations, agree-
11 ments, and rules, and shall not be enforceable by or
12 against the Bureau.

13 (i) IDENTIFICATION OF RULES CONTINUED.—Not
14 later than the designated transfer date, the Bureau—

15 (1) shall, after consultation with the head of
16 each transferor agency, identify the rules continued
17 under subsection (h) that will be enforced by the
18 Bureau; and

19 (2) shall publish a list of such rules in the Fed-
20 eral Register.

21 (j) STATUS OF RULES PROPOSED OR NOT YET EF-
22 FECTIVE.—

23 (1) PROPOSED RULES.—Any proposed rule of a
24 transferor agency which that agency, in performing
25 consumer financial protection functions transferred

1 by this title, has proposed before the designated
2 transfer date, but has not been published as a final
3 rule before that date, shall be deemed to be a pro-
4 posed rule of the Bureau.

5 (2) RULES NOT YET EFFECTIVE.—Any interim
6 or final rule of a transferor agency which that agen-
7 cy, in performing consumer financial protection
8 functions transferred by this title, has published be-
9 fore the designated transfer date, but which has not
10 become effective before that date, shall become effec-
11 tive as a rule of the Bureau according to its terms.

12 **SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**

13 (a) IN GENERAL.—

14 (1) CERTAIN FEDERAL RESERVE SYSTEM EM-
15 PLOYEES TRANSFERRED.—

16 (A) IDENTIFYING EMPLOYEES FOR TRANS-
17 FER.—The Bureau and the Board of Governors
18 shall—

19 (i) jointly determine the number of
20 employees of the Board of Governors nec-
21 essary to perform or support the consumer
22 financial protection functions of the Board
23 of Governors that are transferred to the
24 Bureau by this title; and

1 (ii) consistent with the number deter-
2 mined under clause (i), jointly identify em-
3 ployees of the Board of Governors for
4 transfer to the Bureau, in a manner that
5 the Bureau and the Board of Governors, in
6 their sole discretion, determine equitable.

7 (B) IDENTIFIED EMPLOYEES TRANS-
8 FERRED.—All employees of the Board of Gov-
9 ernors identified under subparagraph (A)(ii)
10 shall be transferred to the Bureau for employ-
11 ment.

12 (C) FEDERAL RESERVE BANK EMPLOY-
13 EES.—Employees of any Federal reserve bank
14 who, on the day before the designated transfer
15 date, are performing consumer financial protec-
16 tion functions on behalf of the Board of Gov-
17 ernors shall be treated as employees of the
18 Board of Governors for purposes of subpara-
19 graphs (A) and (B).

20 (2) CERTAIN FDIC EMPLOYEES TRANS-
21 FERRED.—

22 (A) IDENTIFYING EMPLOYEES FOR TRANS-
23 FER.—The Bureau and the Board of Directors
24 of the Federal Deposit Insurance Corporation
25 shall—

1 (i) jointly determine the number of
2 employees of that Corporation necessary to
3 perform or support the consumer financial
4 protection functions of the Corporation
5 that are transferred to the Bureau by this
6 title; and

7 (ii) consistent with the number deter-
8 mined under clause (i), jointly identify em-
9 ployees of the Corporation for transfer to
10 the Bureau, in a manner that the Bureau
11 and the Board of Directors of the Corpora-
12 tion, in their sole discretion, determine eq-
13 uitable.

14 (B) IDENTIFIED EMPLOYEES TRANS-
15 FERRED.—All employees of the Corporation
16 identified under subparagraph (A)(ii) shall be
17 transferred to the Bureau for employment.

18 (3) CERTAIN NCUA EMPLOYEES TRANS-
19 FERRED.—

20 (A) IDENTIFYING EMPLOYEES FOR TRANS-
21 FER.—The Bureau and the National Credit
22 Union Administration Board shall—

23 (i) jointly determine the number of
24 employees of the National Credit Union
25 Administration necessary to perform or

1 support the consumer financial protection
2 functions of the National Credit Union Ad-
3 ministration that are transferred to the
4 Bureau by this title; and

5 (ii) consistent with the number deter-
6 mined under clause (i), jointly identify em-
7 ployees of the National Credit Union Ad-
8 ministration for transfer to the Bureau, in
9 a manner that the Bureau and the Na-
10 tional Credit Union Administration Board,
11 in their sole discretion, determine equi-
12 table.

13 (B) IDENTIFIED EMPLOYEES TRANS-
14 FERRED.—All employees of the National Credit
15 Union Administration identified under subpara-
16 graph (A)(ii) shall be transferred to the Bureau
17 for employment.

18 (4) CERTAIN OFFICE OF THE COMPTROLLER OF
19 THE CURRENCY EMPLOYEES TRANSFERRED.—

20 (A) IDENTIFYING EMPLOYEES FOR TRANS-
21 FER.—The Bureau and the Comptroller of the
22 Currency shall—

23 (i) jointly determine the number of
24 employees of the Office of the Comptroller
25 of the Currency necessary to perform or

1 support the consumer financial protection
2 functions of the Office of the Comptroller
3 of the Currency that are transferred to the
4 Bureau by this title; and

5 (ii) consistent with the number deter-
6 mined under clause (i), jointly identify em-
7 ployees of the Office of the Comptroller of
8 the Currency for transfer to the Bureau, in
9 a manner that the Bureau and the Office
10 of the Comptroller of the Currency, in
11 their sole discretion, determine equitable.

12 (B) IDENTIFIED EMPLOYEES TRANS-
13 FERRED.—All employees of the Office of the
14 Comptroller of the Currency identified under
15 subparagraph (A)(ii) shall be transferred to the
16 Bureau for employment.

17 (5) CERTAIN OFFICE OF THRIFT SUPERVISION
18 EMPLOYEES TRANSFERRED.—

19 (A) IDENTIFYING EMPLOYEES FOR TRANS-
20 FER.—The Bureau and the Director of the Of-
21 fice of Thrift Supervision shall—

22 (i) jointly determine the number of
23 employees of the Office of Thrift Super-
24 vision necessary to perform or support the
25 consumer financial protection functions of

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1 the Office of Thrift Supervision that are
2 transferred to the Bureau by this title; and

3 (ii) consistent with the number deter-
4 mined under clause (i), jointly identify em-
5 ployees of the Office of Thrift Supervision
6 for transfer to the Bureau, in a manner
7 that the Bureau and the Office of Thrift
8 Supervision, in their sole discretion, deter-
9 mine equitable.

10 (B) IDENTIFIED EMPLOYEES TRANS-
11 FERRED.—All employees of the Office of Thrift
12 Supervision identified under subparagraph
13 (A)(ii) shall be transferred to the Bureau for
14 employment.

15 (6) CERTAIN EMPLOYEES OF DEPARTMENT OF
16 HOUSING AND URBAN DEVELOPMENT TRANS-
17 FERRED.—

18 (A) IDENTIFYING EMPLOYEES FOR TRANS-
19 FER.—The Bureau and the Secretary of the
20 Department of Housing and Urban Develop-
21 ment shall—

22 (i) jointly determine the number of
23 employees of the Department of Housing
24 and Urban Development necessary to per-
25 form or support the consumer protection

1 functions of the Department that are
2 transferred to the Bureau by this title; and

3 (ii) consistent with the number deter-
4 mined under clause (i), jointly identify em-
5 ployees of the Department of Housing and
6 Urban Development for transfer to the Bu-
7 reau in a manner that the Bureau and the
8 Secretary of the Department of Housing
9 and Urban Development, in their sole dis-
10 cretion, deem equitable.

11 (B) IDENTIFIED EMPLOYEES TRANS-
12 FERRED.—All employees of the Department of
13 Housing and Urban Development identified
14 under subparagraph (A)(ii) shall be transferred
15 to the Bureau for employment.

16 (7) APPOINTMENT AUTHORITY FOR EXCEPTED
17 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-
18 FERRED.—

19 (A) IN GENERAL.—In the case of an em-
20 ployee occupying a position in the excepted
21 service or the Senior Executive Service, any ap-
22 pointment authority established pursuant to law
23 or regulations of the Office of Personnel Man-
24 agement for filling such positions shall be
25 transferred, subject to subparagraph (B).

1 (B) DECLINING TRANSFERS ALLOWED.—

2 An agency or entity may decline to make a
3 transfer of authority under subparagraph (A)
4 (and the employees appointed pursuant thereto)
5 to the extent that such authority relates to posi-
6 tions excepted from the competitive service be-
7 cause of their confidential, policy-making, pol-
8 icy-determining, or policy-advocating character,
9 and non-career positions in the Senior Execu-
10 tive Service (within the meaning of section
11 3132(a)(7) of title 5, United States Code).

12 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
13 MENTS.—Each employee to be transferred under this sec-
14 tion shall—

15 (1) be transferred not later than 90 days after
16 the designated transfer date; and

17 (2) receive notice of a position assignment not
18 later than 120 days after the effective date of his or
19 her transfer.

20 (c) TRANSFER OF FUNCTION.—

21 (1) IN GENERAL.—Notwithstanding any other
22 provision of law, the transfer of employees shall be
23 deemed a transfer of functions for the purpose of
24 section 3503 of title 5, United States Code.

1 (2) PRIORITY OF THIS TITLE.—If any provi-
2 sions of this title conflict with any protection pro-
3 vided to transferred employees under section 3503 of
4 title 5, United States Code, the provisions of this
5 title shall control.

6 (d) EQUAL STATUS AND TENURE POSITIONS.—

7 (1) EMPLOYEES TRANSFERRED FROM FDIC,
8 HUD, NCUA, OCC, AND OTS.—Each employee trans-
9 ferred from the Federal Deposit Insurance Corpora-
10 tion, the National Credit Union Administration, the
11 Office of the Comptroller of the Currency, the Office
12 of Thrift Supervision, or the Department of Housing
13 and Urban Development shall be placed in a position
14 at the Bureau with the same status and tenure as
15 that employee held on the day before the designated
16 transfer date.

17 (2) EMPLOYEES TRANSFERRED FROM THE
18 FEDERAL RESERVE SYSTEM.—

19 (A) COMPARABILITY.—Each employee
20 transferred from the Board of Governors or
21 from a Federal reserve bank shall be placed in
22 a position with the same status and tenure as
23 that of an employee transferring to the Bureau
24 from the Office of the Comptroller of the Cur-

1 rency who perform similar functions and have
2 similar periods of service.

3 (B) SERVICE PERIODS CREDITED.—For
4 purposes of this paragraph, periods of service
5 with the Board of Governors or a Federal re-
6 serve bank shall be credited as periods of serv-
7 ice with a Federal agency.

8 (e) ADDITIONAL CERTIFICATION REQUIREMENTS
9 LIMITED.—Examiners transferred to the Bureau are not
10 subject to any additional certification requirements before
11 being placed in a comparable examiner position at the Bu-
12 reau examining the same types of institutions as they ex-
13 amined before they were transferred.

14 (f) PERSONNEL ACTIONS LIMITED.—

15 (1) 2-YEAR PROTECTION.—Except as provided
16 in paragraph (2), each transferred employee holding
17 a permanent position on the day before the des-
18 ignated transfer date may not, during the 2-year pe-
19 riod beginning on the designated transfer date, be
20 involuntarily separated, or involuntarily reassigned
21 outside his or her locality pay area, as defined by
22 the Office of Personnel Management.

23 (2) EXCEPTIONS.—Paragraph (1) does not
24 limit the right of the Bureau—

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1 (A) to separate an employee for cause or
2 for unacceptable performance;

3 (B) to terminate an appointment to a posi-
4 tion excepted from the competitive service be-
5 cause of its confidential policy-making, policy-
6 determining, or policy-advocating character; or

7 (C) to reassign a supervisory employee out-
8 side his or her locality pay area, as defined by
9 the Office of Personnel Management, when the
10 Bureau determines that the reassignment is
11 necessary for the efficient operation of the Bu-
12 reau.

13 (g) PAY.—

14 (1) 2-YEAR PROTECTION.—Except as provided
15 in paragraph (2), each transferred employee shall,
16 during the 2-year period beginning on the des-
17 ignated transfer date, receive pay at a rate equal to
18 not less than the basic rate of pay (including any ge-
19 ographic differential) that the employee received
20 during the pay period immediately preceding the
21 date of transfer.

22 (2) EXCEPTIONS.—Paragraph (1) does not
23 limit the right of the Bureau to reduce the rate of
24 basic pay of a transferred employee—

25 (A) for cause;

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1 (B) for unacceptable performance; or

2 (C) with the consent of the employee.

3 (3) PROTECTION ONLY WHILE EMPLOYED.—

4 Paragraph (1) applies to a transferred employee
5 only while that employee remains employed by the
6 Bureau.

7 (4) PAY INCREASES PERMITTED.—Paragraph
8 (1) does not limit the authority of the Bureau to in-
9 crease the pay of a transferred employee.

10 (h) REORGANIZATION.—

11 (1) BETWEEN 1ST AND 3RD YEAR.—

12 (A) IN GENERAL.—If the Bureau deter-
13 mines, during the 2-year period beginning 1
14 year after the designated transfer date, that a
15 reorganization of the staff of the Bureau is re-
16 quired—

17 (i) that reorganization shall be
18 deemed a “major reorganization” for pur-
19 poses of affording affected employees re-
20 tirement under section 8336(d)(2) or
21 8414(b)(1)(B) of title 5, United States
22 Code;

23 (ii) before the reorganization occurs,
24 all employees in the same locality pay area
25 as defined by the Office of Personnel Man-

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1 agement shall be placed in a uniform posi-
2 tion classification system; and

3 (iii) any resulting reduction in force
4 shall be governed by the provisions of
5 chapter 35 of title 5, United States Code,
6 except that the Bureau shall—

7 (I) establish competitive areas
8 (as that term is defined in regulations
9 issued by the Office of Personnel
10 Management) to include at a min-
11 imum all employees in the same local-
12 ity pay area as defined by the Office
13 of Personnel Management;

14 (II) establish competitive levels
15 (as that term is defined in regulations
16 issued by the Office of Personnel
17 Management) without regard to
18 whether the particular employees have
19 been appointed to positions in the
20 competitive service or the excepted
21 service; and

22 (III) afford employees appointed
23 to positions in the excepted service
24 (other than to a position excepted
25 from the competitive service because

1 of its confidential policy-making, pol-
2 icy-determining, or policy-advocating
3 character) the same assignment rights
4 to positions within the Bureau as em-
5 ployees appointed to positions in the
6 competitive service.

7 (B) SERVICE CREDIT FOR REDUCTIONS IN
8 FORCE.—For purposes of this paragraph, peri-
9 ods of service with a Federal home loan bank,
10 a joint office of the Federal home loan banks,
11 the Board of Governors, a Federal reserve
12 bank, the Federal Deposit Insurance Corpora-
13 tion, or the National Credit Union Administra-
14 tion shall be credited as periods of service with
15 a Federal agency.

16 (2) AFTER 3RD YEAR.—

17 (A) IN GENERAL.—If the Bureau deter-
18 mines, at any time after the 3-year period be-
19 ginning on the designated transfer date, that a
20 reorganization of the staff of the Bureau is re-
21 quired, any resulting reduction in force shall be
22 governed by the provisions of chapter 35 of title
23 5, United States Code, except that the Bureau
24 shall establish competitive levels (as that term
25 is defined in regulations issued by the Office of

1 Personnel Management) without regard to
2 types of appointment held by particular employ-
3 ees transferred under this section.

4 (B) SERVICE CREDIT FOR REDUCTIONS IN
5 FORCE.—For purposes of this paragraph, peri-
6 ods of service with a Federal home loan bank,
7 a joint office of the Federal home loan banks,
8 the Board of Governors, a Federal reserve
9 bank, the Federal Deposit Insurance Corpora-
10 tion, or the National Credit Union Administra-
11 tion shall be credited as periods of service with
12 a Federal agency.

13 (i) BENEFITS.—

14 (1) RETIREMENT BENEFITS FOR TRANSFERRED
15 EMPLOYEES.—

16 (A) IN GENERAL.—

17 (i) CONTINUATION OF EXISTING RE-
18 TIREMENT PLAN.—Except as provided in
19 subparagraph (B), each transferred em-
20 ployee shall remain enrolled in his or her
21 existing retirement plan, through any pe-
22 riod of continuous employment with the
23 Bureau.

24 (ii) EMPLOYER CONTRIBUTION.—The
25 Bureau shall pay any employer contribu-

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1 tions to the existing retirement plan of
2 each transferred employee, as required
3 under that plan.

4 (B) OPTION FOR EMPLOYEES TRANS-
5 FERRED FROM FEDERAL RESERVE SYSTEM TO
6 BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
7 MENT PROGRAM.—

8 (i) ELECTION.—Any transferred em-
9 ployee who was enrolled in a Federal Re-
10 serve System retirement plan on the day
11 before his or her transfer to the Bureau
12 may, during the 1-year period beginning 6
13 months after the designated transfer date,
14 elect to be subject to the Federal employee
15 retirement program.

16 (ii) EFFECTIVE DATE OF COV-
17 ERAGE.—For any employee making an
18 election under clause (i), coverage by the
19 Federal employee retirement program shall
20 begin 1 year after the designated transfer
21 date.

22 (C) BUREAU PARTICIPATION IN FEDERAL
23 RESERVE SYSTEM RETIREMENT PLAN.—

24 (i) SEPARATE ACCOUNT IN FEDERAL
25 RESERVE SYSTEM RETIREMENT PLAN ES-

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1 not make the election under subparagraph
2 (B).

3 (iv) ACCOUNT ADMINISTRATION.—The
4 Bureau shall administer the account estab-
5 lished under clause (i) as a participating
6 employer in the Federal Reserve System
7 retirement plan.

8 (D) DEFINITIONS.—For purposes of this
9 paragraph—

10 (i) the term “existing retirement
11 plan” means, with respect to any employee
12 transferred under this section, the par-
13 ticular retirement plan (including the Fi-
14 nancial Institutions Retirement Fund) and
15 any associated thrift savings plan of the
16 agency or Federal reserve bank from which
17 the employee was transferred, in which the
18 employee was enrolled on the day before
19 the designated transfer date; and

20 (ii) the term “Federal employee re-
21 tirement program” means the retirement
22 program for Federal employees established
23 by chapter 84 of title 5, United States
24 Code.

1 (2) BENEFITS OTHER THAN RETIREMENT BEN-
2 EFITS FOR TRANSFERRED EMPLOYEES.—

3 (A) DURING 1ST YEAR.—

4 (i) EXISTING PLANS CONTINUE.—

5 Each transferred employee may, for 1 year
6 after the designated transfer date, retain
7 membership in any other employee benefit
8 program of the agency or bank from which
9 the employee transferred, including a den-
10 tal, vision, long term care, or life insurance
11 program, to which the employee belonged
12 on the day before the designated transfer
13 date.

14 (ii) EMPLOYER CONTRIBUTION.—The
15 Bureau shall reimburse the agency or bank
16 from which an employee was transferred
17 for any cost incurred by that agency or
18 bank in continuing to extend coverage in
19 the benefit program to the employee, as re-
20 quired under that program or negotiated
21 agreements.

22 (B) DENTAL, VISION, OR LIFE INSURANCE
23 AFTER 1ST YEAR.—If, after the 1-year period
24 beginning on the designated transfer date, the
25 Bureau decides not to continue participation in

1 any dental, vision, or life insurance program of
2 an agency or bank from which an employee
3 transferred, a transferred employee who is a
4 member of such a program may, before the de-
5 cision of the Bureau takes effect, elect to enroll,
6 without regard to any regularly scheduled open
7 season, in—

8 (i) the enhanced dental benefits estab-
9 lished by chapter 89A of title 5, United
10 States Code;

11 (ii) the enhanced vision benefits estab-
12 lished by chapter 89B of title 5, United
13 States Code; or

14 (iii) the Federal Employees Group
15 Life Insurance Program established by
16 chapter 87 of title 5, United States Code,
17 without regard to any requirement of in-
18 surability.

19 (C) LONG TERM CARE INSURANCE AFTER
20 1ST YEAR.—If, after the 1-year period begin-
21 ning on the designated transfer date, the Bu-
22 reau decides not to continue participation in
23 any long term care insurance program of an
24 agency or bank from which an employee trans-
25 ferred, a transferred employee who is a member

1 of such a program may, before the decision of
2 the Bureau takes effect, elect to apply for cov-
3 erage under the Federal Long Term Care In-
4 surance Program established by chapter 90 of
5 title 5, United States Code, under the under-
6 writing requirements applicable to a new active
7 workforce member (as defined in part 875, title
8 5, Code of Federal Regulations).

9 (D) EMPLOYEE CONTRIBUTION.—An indi-
10 vidual enrolled in the Federal Employees
11 Health Benefits program shall pay any em-
12 ployee contribution required by the plan.

13 (E) ADDITIONAL FUNDING.—The Bureau
14 shall transfer to the Federal Employees Health
15 Benefits Fund established under section 8909
16 of title 5, United States Code, an amount deter-
17 mined by the Director of the Office of Per-
18 sonnel Management, after consultation with the
19 Bureau and the Office of Management and
20 Budget, to be necessary to reimburse the Fund
21 for the cost to the Fund of providing benefits
22 under this paragraph.

23 (F) CREDIT FOR TIME ENROLLED IN
24 OTHER PLANS.—For employees transferred
25 under this title, enrollment in a health benefits

1 plan administered by a transferor agency or a
2 Federal reserve bank, as the case may be, im-
3 mediately before enrollment in a health benefits
4 plan under chapter 89 of title 5, United States
5 Code, shall be considered as enrollment in a
6 health benefits plan under that chapter for pur-
7 poses of section 8905(b)(1)(A) of title 5, United
8 States Code.

9 (G) SPECIAL PROVISIONS TO ENSURE CON-
10 TINUATION OF LIFE INSURANCE BENEFITS.—

11 (i) IN GENERAL.—An annuitant (as
12 defined in section 8901(3) of title 5,
13 United States Code) who is enrolled in a
14 life insurance plan administered by a
15 transferor agency on the day before the
16 designated transfer date shall be eligible
17 for coverage by a life insurance plan under
18 sections 8706(b), 8714a, 8714b, and
19 8714c of title 5, United States Code, or in
20 a life insurance plan established by the
21 Bureau, without regard to any regularly
22 scheduled open season and requirement of
23 insurability.

24 (ii) EMPLOYEE CONTRIBUTION.—An
25 individual enrolled in a life insurance plan

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1 under this subparagraph shall pay any em-
2 ployee contribution required by the plan.

3 (iii) ADDITIONAL FUNDING.—The Bu-
4 reau shall transfer to the Employees' Life
5 Insurance Fund established under section
6 8714 of title 5, United States Code, an
7 amount determined by the Director of the
8 Office of Personnel Management, after
9 consultation with the Bureau and the Of-
10 fice of Management and Budget, to be nec-
11 essary to reimburse the Fund for the cost
12 to the Fund of providing benefits under
13 this subparagraph not otherwise paid for
14 by the employee under clause (ii).

15 (iv) CREDIT FOR TIME ENROLLED IN
16 OTHER PLANS.—For employees transferred
17 under this title, enrollment in a life insur-
18 ance plan administered by a transferor
19 agency immediately before enrollment in a
20 life insurance plan under chapter 87 of
21 title 5, United States Code, shall be con-
22 sidered as enrollment in a life insurance
23 plan under that chapter for purposes of
24 section 8706(b)(1)(A) of title 5, United
25 States Code.

1 (3) OPM RULES.—The Office of Personnel
2 Management shall issue such rules as are necessary
3 to carry out this subsection.

4 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
5 FICATION SYSTEM.—Not later than 2 years after the des-
6 ignated transfer date, the Bureau shall implement a uni-
7 form pay and classification system for all employees trans-
8 ferred under this title.

9 (k) EQUITABLE TREATMENT.—In administering the
10 provisions of this section, the Bureau—

11 (1) shall take no action that would unfairly dis-
12 advantage transferred employees relative to each
13 other based on their prior employment by the Board
14 of Governors, the Federal Deposit Insurance Cor-
15 poration, the Federal Trade Commission, the Na-
16 tional Credit Union Administration, the Office of the
17 Comptroller of the Currency, the Office of Thrift
18 Supervision, a Federal reserve bank, a Federal home
19 loan bank, or a joint office of the Federal home loan
20 banks; and

21 (2) may take such action as is appropriate in
22 individual cases so that employees transferred under
23 this section receive equitable treatment, with respect
24 to the status, tenure, pay, benefits (other than bene-
25 fits under programs administered by the Office of

1 Personnel Management), and accrued leave or vaca-
2 tion time of those employees, for prior periods of
3 service with any Federal agency, including the
4 Board of Governors, the Corporation, the Federal
5 Trade Commission, the National Credit Union Ad-
6 ministration, the Office of the Comptroller of the
7 Currency, the Office of Thrift Supervision, a Federal
8 reserve bank, a Federal home loan bank, or a joint
9 office of the Federal home loan banks.

10 (l) IMPLEMENTATION.—In implementing the provi-
11 sions of this section, the Bureau shall coordinate with the
12 Office of Personnel Management and other entities having
13 expertise in matters related to employment to ensure a
14 fair and orderly transition for affected employees.

15 **SEC. 1065. INCIDENTAL TRANSFERS.**

16 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-
17 rector of the Office of Management and Budget, in con-
18 sultation with the Secretary, shall make such additional
19 incidental transfers and dispositions of assets and liabil-
20 ities held, used, arising from, available, or to be made
21 available, in connection with the functions transferred by
22 this title, as the Director may determine necessary to ac-
23 complish the purposes of this title.

1 (b) SUNSET.—The authority provided in this section
2 shall terminate 5 years after the date of enactment of this
3 Act.

4 **SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

5 (a) IN GENERAL.—The Secretary is authorized to
6 perform the functions of the Bureau under this subtitle
7 until the Director of the Bureau is confirmed by the Sen-
8 ate in accordance with section 1011.

9 (b) INTERIM ADMINISTRATIVE SERVICES BY THE
10 DEPARTMENT OF THE TREASURY.—The Department of
11 the Treasury may provide administrative services nec-
12 essary to support the Bureau before the designated trans-
13 fer date.

14 **SEC. 1067. TRANSITION OVERSIGHT.**

15 (a) PURPOSE.—The purpose of this section is to en-
16 sure that the Bureau—

- 17 (1) has an orderly and organized startup;
- 18 (2) attracts and retains a qualified workforce;
- 19 and
- 20 (3) establishes comprehensive employee training
21 and benefits programs.

22 (b) REPORTING REQUIREMENT.—

23 (1) IN GENERAL.—The Bureau shall submit an
24 annual report to the Committee on Banking, Hous-
25 ing, and Urban Affairs of the Senate and the Com-

1 mittee on Financial Services of the House of Rep-
2 resentatives that includes the plans described in
3 paragraph (2).

4 (2) PLANS.—The plans described in this para-
5 graph are as follows:

6 (A) TRAINING AND WORKFORCE DEVELOP-
7 MENT PLAN.—The Bureau shall submit a train-
8 ing and workforce development plan that in-
9 cludes, to the extent practicable—

10 (i) identification of skill and technical
11 expertise needs and actions taken to meet
12 those requirements;

13 (ii) steps taken to foster innovation
14 and creativity;

15 (iii) leadership development and suc-
16 cession planning; and

17 (iv) effective use of technology by em-
18 ployees.

19 (B) WORKPLACE FLEXIBILITIES PLAN.—
20 The Bureau shall submit a workforce flexibility
21 plan that includes, to the extent practicable—

22 (i) telework;

23 (ii) flexible work schedules;

24 (iii) phased retirement;

25 (iv) reemployed annuitants;

- 1 (v) part-time work;
- 2 (vi) job sharing;
- 3 (vii) parental leave benefits and
- 4 childcare assistance;
- 5 (viii) domestic partner benefits;
- 6 (ix) other workplace flexibilities; or
- 7 (x) any combination of the items de-
- 8 scribed in clauses (i) through (ix).

9 (C) RECRUITMENT AND RETENTION

10 PLAN.—The Bureau shall submit a recruitment

11 and retention plan that includes, to the extent

12 practicable, provisions relating to—

- 13 (i) the steps necessary to target highly
- 14 qualified applicant pools with diverse back-
- 15 grounds;
- 16 (ii) streamlined employment applica-
- 17 tion processes;
- 18 (iii) the provision of timely notifica-
- 19 tion of the status of employment applica-
- 20 tions to applicants; and
- 21 (iv) the collection of information to
- 22 measure indicators of hiring effectiveness.

23 (c) EXPIRATION.—The reporting requirement under

24 subsection (b) shall terminate 5 years after the date of

25 enactment of this Act.

1 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion may be construed to affect—

3 (1) a collective bargaining agreement, as that
4 term is defined in section 7103(a)(8) of title 5,
5 United States Code, that is in effect on the date of
6 enactment of this Act; or

7 (2) the rights of employees under chapter 71 of
8 title 5, United States Code.

9 **Subtitle G—Regulatory**
10 **Improvements**

11 **SEC. 1071. SMALL BUSINESS DATA COLLECTION.**

12 (a) IN GENERAL.—The Equal Credit Opportunity
13 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
14 section 704A the following:

15 **“SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.**

16 “(a) PURPOSE.—The purpose of this section is to fa-
17 cilitate enforcement of fair lending laws and enable com-
18 munities, governmental entities, and creditors to identify
19 business and community development needs and opportu-
20 nities of women-owned, minority-owned, and small busi-
21 nesses.

22 “(b) INFORMATION GATHERING.—Subject to the re-
23 quirements of this section, in the case of any application
24 to a financial institution for credit for a small business,
25 the financial institution shall—

1 “(1) inquire whether the small business is a
2 women- or minority-owned small business, without
3 regard to whether such application is received in
4 person, by mail, by telephone, by electronic mail or
5 other form of electronic transmission, or by any
6 other means, and whether or not such application is
7 in response to a solicitation by the financial institu-
8 tion; and

9 “(2) maintain a record of the responses to such
10 inquiry, separate from the application and accom-
11 panying information.

12 “(c) RIGHT TO REFUSE.—Any applicant for credit
13 may refuse to provide any information requested pursuant
14 to subsection (b) in connection with any application for
15 credit.

16 “(d) NO ACCESS BY UNDERWRITERS.—

17 “(1) LIMITATION.—Where feasible, no loan un-
18 derwriter or other officer or employee of a financial
19 institution, or any affiliate of a financial institution,
20 involved in making any determination concerning an
21 application for credit shall have access to any infor-
22 mation provided by the applicant pursuant to a re-
23 quest under subsection (b) in connection with such
24 application.

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1 “(2) LIMITED ACCESS.—If a financial institu-
2 tion determines that a loan underwriter or other of-
3 ficer or employee of a financial institution, or any
4 affiliate of a financial institution, involved in making
5 any determination concerning an application for
6 credit should have access to any information pro-
7 vided by the applicant pursuant to a request under
8 subsection (b), the financial institution shall provide
9 notice to the applicant of the access of the under-
10 writer to such information, along with notice that
11 the financial institution may not discriminate on the
12 basis of such information.

13 “(e) FORM AND MANNER OF INFORMATION.—

14 “(1) IN GENERAL.—Each financial institution
15 shall compile and maintain, in accordance with regu-
16 lations of the Bureau, a record of the information
17 provided by any loan applicant pursuant to a request
18 under subsection (b).

19 “(2) ITEMIZATION.—Information compiled and
20 maintained under paragraph (1) shall be itemized in
21 order to clearly and conspicuously disclose—

22 “(A) the number of the application and the
23 date on which the application was received;

24 “(B) the type and purpose of the loan or
25 other credit being applied for;

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1 “(C) the amount of the credit or credit
2 limit applied for, and the amount of the credit
3 transaction or the credit limit approved for such
4 applicant;

5 “(D) the type of action taken with respect
6 to such application, and the date of such action;

7 “(E) the census tract in which is located
8 the principal place of business of the small busi-
9 ness loan applicant;

10 “(F) the gross annual revenue of the busi-
11 ness in the last fiscal year of the small business
12 loan applicant preceding the date of the appli-
13 cation;

14 “(G) the race, sex, and ethnicity of the
15 principal owners of the business; and

16 “(H) any additional data that the Bureau
17 determines would aid in fulfilling the purposes
18 of this section.

19 “(3) NO PERSONALLY IDENTIFIABLE INFORMA-
20 TION.—In compiling and maintaining any record of
21 information under this section, a financial institution
22 may not include in such record the name, specific
23 address (other than the census tract required under
24 paragraph (1)(E)), telephone number, electronic
25 mail address, or any other personally identifiable in-

1 formation concerning any individual who is, or is
2 connected with, the small business loan applicant.

3 “(4) DISCRETION TO DELETE OR MODIFY PUB-
4 LICLY AVAILABLE DATA.—The Bureau may, at its
5 discretion, delete or modify data collected under this
6 section which is or will be available to the public, if
7 the Bureau determines that the deletion or modifica-
8 tion of the data would advance a compelling privacy
9 interest.

10 “(f) AVAILABILITY OF INFORMATION.—

11 “(1) SUBMISSION TO BUREAU.—The data re-
12 quired to be compiled and maintained under this
13 section by any financial institution shall be sub-
14 mitted annually to the Bureau.

15 “(2) AVAILABILITY OF INFORMATION.—Infor-
16 mation compiled and maintained under this section
17 shall be—

18 “(A) retained for not less than 3 years
19 after the date of preparation;

20 “(B) made available to any member of the
21 public, upon request, in the form required
22 under regulations prescribed by the Bureau;

23 “(C) annually made available to the public
24 generally by the Bureau, in such form and in

1 such manner as is determined by the Bureau,
2 by regulation.

3 “(3) COMPILATION OF AGGREGATE DATA.—The
4 Bureau may, at its discretion—

5 “(A) compile and aggregate data collected
6 under this section for its own use; and

7 “(B) make public such compilations of ag-
8 gregate data.

9 “(g) BUREAU ACTION.—

10 “(1) IN GENERAL.—The Bureau shall prescribe
11 such rules and issue such guidance as may be nec-
12 essary to carry out, enforce, and compile data pursu-
13 ant to this section.

14 “(2) EXCEPTIONS.—The Bureau, by rule or
15 order, may adopt exceptions to any requirement of
16 this section and may, conditionally or uncondition-
17 ally, exempt any financial institution or class of fi-
18 nancial institutions from the requirements of this
19 section, as the Bureau deems necessary or appro-
20 priate to carry out the purposes of this section.

21 “(3) GUIDANCE.—The Bureau shall issue guid-
22 ance designed to facilitate compliance with the re-
23 quirements of this section, including assisting finan-
24 cial institutions in working with applicants to deter-

1 mine whether the applicants are women- or minor-
2 ity-owned for purposes of this section.

3 “(h) DEFINITIONS.—For purposes of this section, the
4 following definitions shall apply:

5 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
6 nancial institution’ means any partnership, com-
7 pany, corporation, association (incorporated or unin-
8 corporated), trust, estate, cooperative organization,
9 or other entity that engages in any financial activity.

10 “(2) MINORITY.—The term ‘minority’ has the
11 same meaning as in section 1204(c)(3) of the Finan-
12 cial Institutions Reform, Recovery, and Enforcement
13 Act of 1989.

14 “(3) MINORITY-OWNED BUSINESS.—The term
15 ‘minority-owned business’ means a business—

16 “(A) more than 50 percent of the owner-
17 ship or control of which is held by 1 or more
18 minority individuals; and

19 “(B) more than 50 percent of the net prof-
20 it or loss of which accrues to 1 or more minor-
21 ity individuals.

22 “(4) SMALL BUSINESS LOAN.—The term ‘small
23 business loan’ shall be defined by the Bureau, which
24 may take into account—

25 “(A) the gross revenues of the borrower;

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1 “(B) the total number of employees of the
2 borrower;

3 “(C) the industry in which the borrower
4 has its primary operations; and

5 “(D) the size of the loan.

6 “(5) WOMEN-OWNED BUSINESS.—The term
7 ‘women-owned business’ means a business—

8 “(A) more than 50 percent of the owner-
9 ship or control of which is held by 1 or more
10 women; and

11 “(B) more than 50 percent of the net prof-
12 it or loss of which accrues to 1 or more
13 women.”.

14 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
15 Section 701(b) of the Equal Credit Opportunity Act (15
16 U.S.C. 1691(b)) is amended—

17 (1) in paragraph (3), by striking “or” at the
18 end;

19 (2) in paragraph (4), by striking the period at
20 the end and inserting “; or”; and

21 (3) by inserting after paragraph (4), the fol-
22 lowing:

23 “(5) to make an inquiry under section 704B, in
24 accordance with the requirements of that section.”.

1 (c) CLERICAL AMENDMENT.—The table of sections
2 for title VII of the Consumer Credit Protection Act is
3 amended by inserting after the item relating to section
4 704A the following new item:

“704B. Small business loan data collection.”.

5 (d) EFFECTIVE DATE.—This section shall become ef-
6 fective on the designated transfer date.

7 **SEC. 1072. GAO STUDY ON THE EFFECTIVENESS AND IM-**
8 **PACT OF VARIOUS APPRAISAL METHODS.**

9 (a) IN GENERAL.—The Government Accountability
10 Office shall conduct a study on the effectiveness and im-
11 pact of—

12 (1) various appraisal methods, including the
13 cost approach, the comparative sales approach, the
14 income approach, and other methods that may be
15 available; and

16 (2) the Home Valuation Code of Conduct (re-
17 ferred to in this section as the “HVCC”).

18 (b) STUDY.—Not later than—

19 (1) 1 year after the date of enactment of this
20 Act, the Government Accountability Office shall sub-
21 mit a study to the Committee on Banking, Housing,
22 and Urban Affairs of the Senate and the Committee
23 on Financial Services of the House of Representa-
24 tives;

1 (2) 90 days after the date of enactment of this
2 Act, the Government Accountability Office shall pro-
3 vide a report on the status of the study and any pre-
4 liminary findings to the Committee on Banking,
5 Housing, and Urban Affairs of the Senate and the
6 Committee on Financial Services of the House of
7 Representatives.

8 (c) CONTENT OF STUDY.—The study required by this
9 section shall include an examination of—

10 (1) the prevalence, alone or in combination, of
11 such appraisal approaches in purchase-money and
12 refinance mortgage transactions;

13 (2) the accuracy of the various approaches in
14 assessing the property as collateral;

15 (3) whether and how the approaches contrib-
16 uted to price speculation in the previous cycle;

17 (4) the costs to consumers of these approaches;

18 (5) the disclosure of fees to consumers in the
19 appraisal process;

20 (6) to what extent such approaches may be in-
21 fluenced by a conflict of interest between the mort-
22 gage lender and the appraiser and the mechanism by
23 which the lender selects and compensates the ap-
24 praiser;

1 (7) the suitability of appraisal approaches in
2 rural versus urban areas;

3 (8) how the HVCC affects the selection of ap-
4 praisers by mortgage lenders; and

5 (9) how the HVCC affects the performance of
6 appraisers.

7 (d) CONFORMING AMENDMENTS.—Section 129(c) of
8 the Truth in Lending Act (15 U.S.C. 1639(c)) is amend-
9 ed—

10 (1) by striking paragraph (2);

11 (2) by striking “(1) IN GENERAL.—”; and

12 (3) by redesignating subparagraphs (A) and
13 (B) as paragraphs (1) and (2), respectively.

14 **SEC. 1073. ASSISTANCE FOR ECONOMICALLY VULNERABLE**
15 **INDIVIDUALS AND FAMILIES.**

16 (a) HERA AMENDMENTS.—Section 1132 of the
17 Housing and Economic Recovery Act of 2008 (12 U.S.C.
18 1701x note) is amended—

19 (1) in subsection (a), by inserting in each of
20 paragraphs (1), (2), (3), and (4) “or economically
21 vulnerable individuals and families” after “home-
22 buyers” each place that term appears;

23 (2) in subsection (b)(1), by inserting “or eco-
24 nomically vulnerable individuals and families” after
25 “homebuyers”;

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1 (3) in subsection (c)(1)—

2 (A) in subparagraph (A), by striking “or”
3 at the end;

4 (B) in subparagraph (B), by striking the
5 period at the end and inserting “; or”; and

6 (C) by adding at the end the following:

7 “(C) a nonprofit corporation that—

8 “(i) is exempt from taxation under
9 section 501(c)(3) of the Internal Revenue
10 Code of 1986; and

11 “(ii) specializes or has expertise in
12 working with economically vulnerable indi-
13 viduals and families, but whose primary
14 purpose is not provision of credit coun-
15 seling services.”; and

16 (4) in subsection (d)(1), by striking “not more
17 than 5”.

18 (b) APPLICABILITY.—Amendments made by sub-
19 section (a) shall not apply to programs authorized by sec-
20 tion 1132 of the Housing and Economic Recovery Act of
21 2008 (12 U.S.C. 1701x note) that are funded with appro-
22 priations prior to fiscal year 2011.

1 **SEC. 1074. REMITTANCE TRANSFERS.**

2 (a) TREATMENT OF REMITTANCE TRANSFERS.—The
3 Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.)
4 is amended—

5 (1) in section 902(b) (15 U.S.C. 1693(b)), by
6 inserting “and remittance” after “electronic fund”;

7 (2) in section 904(e) (15 U.S.C. 1693b(e)), in
8 the first sentence, by inserting “or remittance trans-
9 fers” after “electronic fund transfers”;

10 (3) by redesignating sections 919, 920, 921,
11 and 922 as sections 920, 921, 922, and 923, respec-
12 tively; and

13 (4) by inserting after section 918 the following:

14 **“SEC. 919. REMITTANCE TRANSFERS.**

15 “(a) DISCLOSURES REQUIRED FOR REMITTANCE
16 TRANSFERS.—

17 “(1) IN GENERAL.—Each remittance transfer
18 provider shall make disclosures as required under
19 this section and in accordance with rules prescribed
20 by the Board. Disclosures required under this sec-
21 tion shall be in addition to any other disclosures ap-
22 plicable under this title.

23 “(2) DISCLOSURES.—Subject to rules pre-
24 scribed by the Board, each a remittance transfer
25 provider shall provide, in writing and in a form that

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1 the sender may keep, to each sender requesting a re-
2 mittance transfer, as applicable to the transaction—

3 “(A) at the time at which the sender re-
4 quests a remittance transfer to be initiated, and
5 prior to the sender making any payment in con-
6 nection with the remittance transfer, a disclo-
7 sure describing the amount of currency that will
8 be received by the designated recipient, using
9 the values of the currency into which the funds
10 will be exchanged; and

11 “(B) at the time at which the sender
12 makes payment in connection with the remit-
13 tance transfer—

14 “(i) a receipt showing—

15 “(I) the information described in
16 subparagraph (A);

17 “(II) the promised date of deliv-
18 ery to the designated recipient; and

19 “(III) the name and either the
20 telephone number or the address of
21 the designated recipient; and

22 “(ii) a statement containing—

23 “(I) information about the rights
24 of the sender under this section re-
25 garding the resolution of errors; and

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1 “(II) appropriate contact infor-
2 mation for—

3 “(aa) the remittance trans-
4 fer provider; and

5 “(bb) the State agency that
6 regulates the remittance transfer
7 provider and the Board, includ-
8 ing the toll-free telephone num-
9 ber established under section
10 1013 of the Consumer Financial
11 Protection Act of 2010.

12 “(3) REQUIREMENTS RELATING TO DISCLO-
13 SURES.—With respect to each disclosure required to
14 be provided under paragraph (2) a remittance trans-
15 fer provider shall—

16 “(A) provide an initial notice and receipt,
17 as required by subparagraphs (A) and (B) of
18 paragraph (2), and an error resolution state-
19 ment, as required by subsection (d), that clearly
20 and conspicuously describe the information re-
21 quired to be disclosed therein; and

22 “(B) with respect to any transaction that
23 a sender conducts electronically, comply with
24 the Electronic Signatures in Global and Na-
25 tional Commerce Act (15 U.S.C. 7001 et seq.).

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1 “(4) EXCEPTION FOR DISCLOSURES OF
2 AMOUNT RECEIVED.—

3 “(A) IN GENERAL.—Subject to the rules
4 prescribed by the Board, and except as provided
5 under subparagraph (B), the disclosures re-
6 quired regarding the amount of currency that
7 will be received by the designated recipient shall
8 be deemed to be accurate, so long as the disclo-
9 sures provide a reasonably accurate estimate of
10 the foreign currency to be received. This para-
11 graph shall apply only to a remittance transfer
12 provider who is an insured depository institu-
13 tion, as defined in section 3 of the Federal De-
14 posit Insurance Act (12 U.S.C. 1813), or an in-
15 sured credit union, as defined in section 101 of
16 the Federal Credit Union Act (12 U.S.C.
17 1752), and if—

18 “(i) a remittance transfer is con-
19 ducted through a demand deposit, savings
20 deposit, or other asset account that the
21 sender holds with such remittance transfer
22 provider; and

23 “(ii) at the time at which the sender
24 requests the transaction, the remittance
25 transfer provider is unable to know, for

1 reasons beyond its control, the amount of
2 currency that will be made available to the
3 designated recipient.

4 “(B) DEADLINE.—The application of sub-
5 paragraph (A) shall terminate 5 years after the
6 date of enactment of the Consumer Financial
7 Protection Act of 2010, unless the Board deter-
8 mines that termination of such provision would
9 negatively affect the ability of remittance trans-
10 fer providers described in subparagraph (A)(i)
11 to send remittances to locations in foreign coun-
12 tries, in which case, the Board may, by rule, ex-
13 tend the application of subparagraph (A) to not
14 longer than 10 years after the date of enact-
15 ment of the Consumer Financial Protection Act
16 of 2010.

17 “(5) EXEMPTION AUTHORITY.—The Board
18 may, by rule, permit a remittance transfer provider
19 to satisfy the requirements of—

20 “(A) paragraph (2)(A) orally, if the trans-
21 action is conducted entirely by telephone;

22 “(B) paragraph (2)(B), in the case of a
23 transaction conducted entirely by telephone, by
24 mailing the disclosures required under such
25 subparagraph to the sender, not later than 1

1 business day after the date on which the trans-
2 action is conducted, or by including such docu-
3 ments in the next periodic statement, if the
4 telephone transaction is conducted through a
5 demand deposit, savings deposit, or other asset
6 account that the sender holds with the remit-
7 tance transfer provider;

8 “(C) subparagraphs (A) and (B) of para-
9 graph (2) together in one written disclosure,
10 but only to the extent that the information pro-
11 vided in accordance with paragraph (3)(A) is
12 accurate at the time at which payment is made
13 in connection with the subject remittance trans-
14 fer; and

15 “(D) paragraph (2)(A), without compliance
16 with section 101(c) of the Electronic Signatures
17 in Global Commerce Act, if a sender initiates
18 the transaction electronically and the informa-
19 tion is displayed electronically in a manner that
20 the sender can keep.

21 “(6) STOREFRONT AND INTERNET NOTICES.—

22 “(A) IN GENERAL.—

23 “(i) PROMINENT POSTING.—Subject
24 to subparagraph (B), the Board may pre-
25 scribe rules to require a remittance trans-

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1 fer provider to prominently post, and time-
2 ly update, a notice describing a model re-
3 mittance transfer for one or more
4 amounts, as the Board may determine,
5 which notice shall show the amount of cur-
6 rency that will be received by the des-
7 ignated recipient, using the values of the
8 currency into which the funds will be ex-
9 changed.

10 “(ii) ONSITE DISPLAYS.—The Board
11 may require the notice prescribed under
12 this subparagraph to be displayed in every
13 physical storefront location owned or con-
14 trolled by the remittance transfer provider.

15 “(iii) INTERNET NOTICES.—Subject to
16 paragraph (3), the Board may prescribe
17 rules to require a remittance transfer pro-
18 vider that providers remittance transfers
19 via the Internet to provide a notice, com-
20 parable to a storefront notice described in
21 this subparagraph, located on the home
22 page or landing page (with respect to such
23 remittance transfer services) owned or con-
24 trolled by the remittance transfer provider.

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1 “(iv) RULEMAKING AUTHORITY.—In
2 prescribing rules under this subparagraph,
3 the Board may impose standards or re-
4 quirements regarding the provision of the
5 storefront and Internet notices required
6 under this subparagraph and the provision
7 of the disclosures required under para-
8 graphs (2) and (3).

9 “(B) STUDY AND ANALYSIS.—Prior to pro-
10 posing rules under subparagraph (A), the
11 Board shall undertake appropriate studies and
12 analyses, which shall be consistent with section
13 904(a)(2), and may include an advanced notice
14 of proposed rulemaking, to determine whether a
15 storefront notice or Internet notice facilitates
16 the ability of a consumer—

17 “(i) to compare prices for remittance
18 transfers; and

19 “(ii) to understand the types and
20 amounts of any fees or costs imposed on
21 remittance transfers.

22 “(b) FOREIGN LANGUAGE DISCLOSURES.—The dis-
23 losures required under this section shall be made in
24 English and in each of the same foreign languages prin-
25 cipally used by the remittance transfer provider, or any

1 of its agents, to advertise, solicit, or market, either orally
2 or in writing, at that office.

3 “(c) REGULATIONS REGARDING TRANSFERS TO CER-
4 TAIN NATIONS.—If the Board determines that a recipient
5 nation does not legally allow a remittance transfer pro-
6 vider to know the amount of currency that will be received
7 by the designated recipient, the Board may prescribe rules
8 (not later than 18 months after the date of enactment of
9 the Consumer Financial Protection Act of 2010) to ad-
10 dress the issue, which rules shall include standards for a
11 remittance transfer provider to provide—

12 “(1) a receipt that is consistent with sub-
13 sections (a) and (b); and

14 “(2) a reasonably accurate estimate of the for-
15 eign currency to be received, based on the rate pro-
16 vided to the sender by the remittance transfer pro-
17 vider at the time at which the transaction was initi-
18 ated by the sender.

19 “(d) REMITTANCE TRANSFER ERRORS.—

20 “(1) ERROR RESOLUTION.—

21 “(A) IN GENERAL.—If a remittance trans-
22 fer provider receives oral or written notice from
23 the sender within 180 days of the promised
24 date of delivery that an error occurred with re-
25 spect to a remittance transfer, including the

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1 amount of currency designated in subsection
2 (a)(3)(A) that was to be sent to the designated
3 recipient of the remittance transfer, using the
4 values of the currency into which the funds
5 should have been exchanged, but was not made
6 available to the designated recipient in the for-
7 eign country, the remittance transfer provider
8 shall resolve the error pursuant to this sub-
9 section and investigate the reason for the error.

10 “(B) REMEDIES.—Not later than 90 days
11 after the date of receipt of a notice from the
12 sender pursuant to subparagraph (A), the re-
13 mittance transfer provider shall, as applicable
14 to the error and as designated by the sender—

15 “(i) refund to the sender the total
16 amount of funds tendered by the sender in
17 connection with the remittance transfer
18 which was not properly transmitted;

19 “(ii) make available to the designated
20 recipient, without additional cost to the
21 designated recipient or to the sender, the
22 amount appropriate to resolve the error;

23 “(iii) provide such other remedy, as
24 determined appropriate by rule of the
25 Board for the protection of senders; or

1 “(iv) provide written notice to the
2 sender that there was no error with an ex-
3 planation responding to the specific com-
4 plaint of the sender.

5 “(2) RULES.—The Board shall establish, by
6 rule issued not later than 18 months after the date
7 of enactment of the Consumer Financial Protection
8 Act of 2010, clear and appropriate standards for re-
9 mittance transfer providers with respect to error res-
10 olution relating to remittance transfers, to protect
11 senders from such errors. Standards prescribed
12 under this paragraph shall include appropriate
13 standards regarding record keeping, as required, in-
14 cluding documentation—

15 “(A) of the complaint of the sender;

16 “(B) that the sender provides the remit-
17 tance transfer provider with respect to the al-
18 leged error; and

19 “(C) of the findings of the remittance
20 transfer provider regarding the investigation of
21 the alleged error that the sender brought to
22 their attention.

23 “(3) CANCELLATION AND REFUND POLICY
24 RULES.—Not later than 18 months after the date of
25 enactment of the Consumer Financial Protection Act

1 of 2010, the Board shall issue final rules regarding
2 appropriate remittance transfer cancellation and re-
3 fund policies for consumers.

4 “(e) APPLICABILITY OF THIS TITLE.—

5 “(1) IN GENERAL.—A remittance transfer that
6 is not an electronic fund transfer, as defined in sec-
7 tion 903, shall not be subject to any of the provi-
8 sions of sections 905 through 913. A remittance
9 transfer that is an electronic fund transfer, as de-
10 fined in section 903, shall be subject to all provisions
11 of this title, except for section 908, that are other-
12 wise applicable to electronic fund transfers under
13 this title.

14 “(2) RULE OF CONSTRUCTION.—Nothing in
15 this section shall be construed—

16 “(A) to affect the application to any trans-
17 action, to any remittance provider, or to any
18 other person of any of the provisions of sub-
19 chapter II of chapter 53 of title 31, United
20 States Code, section 21 of the Federal Deposit
21 Insurance Act (12 U.S.C. 1829b), or chapter 2
22 of title I of Public Law 91–508 (12 U.S.C.
23 1951–1959), or any regulations promulgated
24 thereunder; or

1 “(B) to cause any fund transfer that would
2 not otherwise be treated as such under para-
3 graph (1) to be treated as an electronic fund
4 transfer, or as otherwise subject to this title, for
5 the purposes of any of the provisions referred to
6 in subparagraph (A) or any regulations promul-
7 gated thereunder.

8 “(f) ACTS OF AGENTS.—

9 “(1) IN GENERAL.—A remittance transfer pro-
10 vider shall be liable for any violation of this section
11 by any agent, authorized delegate, or person affili-
12 ated with such provider, when such agent, author-
13 ized delegate, or affiliate acts for that remittance
14 transfer provider.

15 “(2) OBLIGATIONS OF REMITTANCE TRANSFER
16 PROVIDERS.—The Bureau may prescribe rules to
17 implement appropriate standards or conditions of, li-
18 ability of a remittance transfer provider, including a
19 provider who acts through an agent or authorized
20 delegate. An agency charged with enforcing the re-
21 quirements of this section, or rules prescribed by the
22 Bureau under this section, may consider, in any ac-
23 tion or other proceeding against a remittance trans-
24 fer provider, the extent to which the provider had es-
25 tablished and maintained policies or procedures for

1 compliance, including policies, procedures, or other
2 appropriate oversight measures designed to assure
3 compliance by an agent or authorized delegate act-
4 ing for such provider.

5 “(g) DEFINITIONS.—As used in this section—

6 “(1) the term ‘designated recipient’ means any
7 person located in a foreign country and identified by
8 the sender as the authorized recipient of a remit-
9 tance transfer to be made by a remittance transfer
10 provider, except that a designated recipient shall not
11 be deemed to be a consumer for purposes of this
12 Act;

13 “(2) the term ‘remittance transfer’—

14 “(A) means the electronic (as defined in
15 section 106(2) of the Electronic Signatures in
16 Global and National Commerce Act (15 U.S.C.
17 7006(2))) transfer of funds requested by a
18 sender located in any State to a designated re-
19 cipient that is initiated by a remittance transfer
20 provider, whether or not the sender holds an ac-
21 count with the remittance transfer provider or
22 whether or not the remittance transfer is also
23 an electronic fund transfer, as defined in sec-
24 tion 903; and

1 “(B) does not include a transfer described
2 in subparagraph (A) in an amount that is equal
3 to or lesser than the amount of a small-value
4 transaction determined, by rule, to be excluded
5 from the requirements under section 906(a);

6 “(3) the term ‘remittance transfer provider’
7 means any person or financial institution that pro-
8 vides remittance transfers for a consumer in the nor-
9 mal course of its business, whether or not the con-
10 sumer holds an account with such person or finan-
11 cial institution; and

12 “(4) the term ‘sender’ means a consumer who
13 requests a remittance provider to send a remittance
14 transfer for the consumer to a designated recipi-
15 ent.”.

16 (b) AUTOMATED CLEARINGHOUSE SYSTEM.—

17 (1) EXPANSION OF SYSTEM.—The Board of
18 Governors shall work with the Federal reserve banks
19 and the Department of the Treasury to expand the
20 use of the automated clearinghouse system and
21 other payment mechanisms for remittance transfers
22 to foreign countries, with a focus on countries that
23 receive significant remittance transfers from the
24 United States, based on—

1 (A) the number, volume, and size of such
2 transfers;

3 (B) the significance of the volume of such
4 transfers relative to the external financial flows
5 of the receiving country, including—

6 (i) the total amount transferred; and

7 (ii) the total volume of payments
8 made by United States Government agen-
9 cies to beneficiaries and retirees living
10 abroad;

11 (C) the feasibility of such an expansion;

12 and

13 (D) the ability of the Federal Reserve Sys-
14 tem to establish payment gateways in different
15 geographic regions and currency zones to re-
16 ceive remittance transfers and route them
17 through the payments systems in the destina-
18 tion countries.

19 (2) REPORT TO CONGRESS.—Not later than one
20 calendar year after the date of enactment of this
21 Act, and on April 30 biennially thereafter during the
22 10-year period beginning on that date of enactment,
23 the Board of Governors shall submit a report to the
24 Committee on Banking, Housing, and Urban Affairs
25 of the Senate and the Committee on Financial Serv-

1 ices of the House of Representatives on the status
2 of the automated clearinghouse system and its
3 progress in complying with the requirements of this
4 subsection. The report shall include an analysis of
5 adoption rates of International ACH Transactions
6 rules and formats, the efficacy of increasing adop-
7 tion rates, and potential recommendations to in-
8 crease adoption.

9 (c) EXPANSION OF FINANCIAL INSTITUTION PROVI-
10 SION OF REMITTANCE TRANSFERS.—

11 (1) PROVISION OF GUIDELINES TO INSTITU-
12 TIONS.—Each of the Federal banking agencies and
13 the National Credit Union Administration shall pro-
14 vide guidelines to financial institutions under the ju-
15 risdiction of the agency regarding the offering of
16 low-cost remittance transfers and no-cost or low-cost
17 basic consumer accounts, as well as agency services
18 to remittance transfer providers.

19 (2) ASSISTANCE TO FINANCIAL LITERACY COM-
20 MISSION.—As part of its duties as members of the
21 Financial Literacy and Education Commission, the
22 Bureau, the Federal banking agencies, and the Na-
23 tional Credit Union Administration shall assist the
24 Financial Literacy and Education Commission in
25 executing the Strategy for Assuring Financial Em-

1 powerment (or the “SAFE Strategy”), as it relates
2 to remittances.

3 (d) FEDERAL CREDIT UNION ACT CONFORMING
4 AMENDMENT.—Paragraph (12) of section 107 of the Fed-
5 eral Credit Union Act (12 U.S.C. 1757) is amended to
6 read as follows:

7 “(12) in accordance with regulations prescribed
8 by the Board—

9 “(A) to sell, to persons in the field of
10 membership, negotiable checks (including trav-
11 elers checks), money orders, and other similar
12 money transfer instruments (including inter-
13 national and domestic electronic fund transfers
14 and remittance transfers, as defined in section
15 919 of the Electronic Fund Transfer Act); and

16 “(B) to cash checks and money orders for
17 persons in the field of membership for a fee;”.

18 (e) REPORT ON FEASIBILITY OF AND IMPEDIMENTS
19 TO USE OF REMITTANCE HISTORY IN CALCULATION OF
20 CREDIT SCORE.—Before the end of the 365-day period
21 beginning on the date of enactment of this Act, the Direc-
22 tor shall submit a report to the President, the Committee
23 on Banking, Housing, and Urban Affairs of the Senate,
24 and the Committee on Financial Services of the House of
25 Representatives regarding—

1 (1) the manner in which the remittance history
2 of a consumer could be used to enhance the credit
3 score of the consumer;

4 (2) the current legal and business model bar-
5 riers and impediments that impede the use of the re-
6 mittance history of the consumer to enhance the
7 credit score of the consumer; and

8 (3) recommendations on the manner in which
9 maximum transparency and disclosure to consumers
10 of exchange rates for remittance transfers subject to
11 this title and the amendments made by this title
12 may be accomplished, whether or not such exchange
13 rates are known at the time of origination or pay-
14 ment by the consumer for the remittance transfer,
15 including disclosure to the sender of the actual ex-
16 change rate used and the amount of currency that
17 the recipient of the remittance transfer received,
18 using the values of the currency into which the
19 funds were exchanged, as contained in sections
20 919(a)(2)(D) and 919(a)(3) of the Electronic Fund
21 Transfer Act (as amended by this section).

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1 **SEC. 1075. DEPARTMENT OF THE TREASURY STUDY ON**
2 **ENDING THE CONSERVATORSHIP OF FANNIE**
3 **MAE, FREDDIE MAC, AND REFORMING THE**
4 **HOUSING FINANCE SYSTEM.**

5 (a) STUDY REQUIRED.—

6 (1) IN GENERAL.—The Secretary of the Treas-
7 ury shall conduct a study of and develop rec-
8 ommendations regarding the options for ending the
9 conservatorship of the Federal National Mortgage
10 Association (in this section referred to as “Fannie
11 Mae”) and the Federal Home Loan Mortgage Cor-
12 poration (in this section referred to as “Freddie
13 Mac”), while minimizing the cost to taxpayers, in-
14 cluding such options as—

15 (A) the gradual wind-down and liquidation
16 of such entities;

17 (B) the privatization of such entities;

18 (C) the incorporation of the functions of
19 such entities into a Federal agency;

20 (D) the dissolution of Fannie Mae and
21 Freddie Mac into smaller companies; or

22 (E) any other measures the Secretary de-
23 termines appropriate.

24 (2) ANALYSES.—The study required under
25 paragraph (1) shall include an analysis of—

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1 (A) the role of the Federal Government in
2 supporting a stable, well-functioning housing fi-
3 nance system, and whether and to what extent
4 the Federal Government should bear risks in
5 meeting Federal housing finance objectives;

6 (B) how the current structure of the hous-
7 ing finance system can be improved;

8 (C) how the housing finance system should
9 support the continued availability of mortgage
10 credit to all segments of the market;

11 (D) how the housing finance system should
12 be structured to ensure that consumers con-
13 tinue to have access to 30-year, fixed rate, pre-
14 payable mortgages and other mortgage products
15 that have simple terms that can be easily un-
16 derstood;

17 (E) the role of the Federal Housing Ad-
18 ministration and the Department of Veterans
19 Affairs in a future housing system;

20 (F) the impact of reforms of the housing
21 finance system on the financing of rental hous-
22 ing;

23 (G) the impact of reforms of the housing
24 finance system on secondary market liquidity;

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1 (H) the role of standardization in the
2 housing finance system;

3 (I) how housing finance systems in other
4 countries offer insights that can help inform op-
5 tions for reform in the United States; and

6 (J) the options for transition to a reformed
7 housing finance system.

8 (b) REPORT AND RECOMMENDATIONS.—Not later
9 than January 31, 2011, the Secretary of the Treasury
10 shall submit the report and recommendations required
11 under subsection (a) to the Committee on Banking, Hous-
12 ing, and Urban Affairs of the Senate and the Committee
13 on Financial Services of the House of Representatives.

14 **SEC. 1076. REASONABLE FEES AND RULES FOR PAYMENT**
15 **CARD TRANSACTIONS.**

16 The Electronic Fund Transfer Act (15 U.S.C. 1693
17 et seq.) is amended—

18 (1) by redesignating sections 920 and 921 as
19 sections 921 and 922, respectively; and

20 (2) by inserting after section 919 the following:

21 **“SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT**
22 **CARD TRANSACTIONS.**

23 **“(a) REASONABLE INTERCHANGE TRANSACTION**
24 **FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—**

1 “(1) REGULATORY AUTHORITY.—The Board
2 shall have authority to establish rules, pursuant to
3 section 553 of title 5, United States Code, regarding
4 any interchange transaction fee that an issuer or
5 payment card network may charge with respect to
6 an electronic debit transaction.

7 “(2) REASONABLE FEES.—The amount of any
8 interchange transaction fee that an issuer or pay-
9 ment card network may charge with respect to an
10 electronic debit transaction shall be reasonable and
11 proportional to the actual cost incurred by the issuer
12 or payment card network with respect to the trans-
13 action.

14 “(3) RULEMAKING REQUIRED.—The Board
15 shall issue final rules, not later than 9 months after
16 the date of enactment of the Consumer Financial
17 Protection Act of 2010, to establish standards for
18 assessing whether the amount of any interchange
19 transaction fee described in paragraph (2) is reason-
20 able and proportional to the actual cost incurred by
21 the issuer or payment card network with respect to
22 the transaction.

23 “(4) CONSIDERATIONS.—In issuing rules re-
24 quired by this section, the Board shall—

1 “(A) consider the functional similarity be-
2 tween—

3 “(i) electronic debit transactions; and

4 “(ii) checking transactions that are
5 required within the Federal Reserve bank
6 system to clear at par;

7 “(B) distinguish between—

8 “(i) the actual incremental cost in-
9 curred by an issuer or payment card net-
10 work for the role of the issuer or the pay-
11 ment card network in the authorization,
12 clearance, or settlement of a particular
13 electronic debit transaction, which cost
14 shall be considered under paragraph (2);
15 and

16 “(ii) other costs incurred by an issuer
17 or payment card network which are not
18 specific to a particular electronic debit
19 transaction, which costs shall not be con-
20 sidered under paragraph (2); and

21 “(C) consult, as appropriate, with the
22 Comptroller of the Currency, the Board of Di-
23 rectors of the Federal Deposit Insurance Cor-
24 poration, the Director of the Office of Thrift
25 Supervision, the National Credit Union Admin-

1 istration Board, the Administrator of the Small
2 Business Administration, and the Director of
3 the Bureau of Consumer Financial Protection.

4 “(5) EXEMPTION FOR SMALL ISSUERS.—This
5 subsection shall not apply to issuers that, together
6 with affiliates, have assets of less than
7 \$10,000,000,000, and the Board shall exempt such
8 issuers from rules issued under paragraph (3).

9 “(6) EFFECTIVE DATE.—Paragraph (2) shall
10 become effective 12 months after the date of enact-
11 ment of the Consumer Financial Protection Act of
12 2010.

13 “(b) LIMITATION ON ANTI-COMPETITIVE PAYMENT
14 CARD NETWORK RESTRICTIONS.—

15 “(1) NO RESTRICTIONS ON OFFERING DIS-
16 COUNTS FOR USE OF A COMPETING PAYMENT CARD
17 NETWORK.—A payment card network shall not, di-
18 rectly or through any agent, processor, or licensed
19 member of the network, by contract, requirement,
20 condition, penalty, or otherwise, inhibit the ability of
21 any person to provide a discount or in-kind incentive
22 for payment through the use of a card or device of
23 another payment card network, provided that the
24 discount or in-kind incentive only differentiates be-

1 tween payment card networks and not between other
2 issuers.

3 “(2) NO RESTRICTIONS ON OFFERING DIS-
4 COUNTS FOR USE OF A FORM OF PAYMENT.—A pay-
5 ment card network shall not, directly or through any
6 agent, processor, or licensed member of the network,
7 by contract, requirement, condition, penalty, or oth-
8 erwise, inhibit the ability of any person to provide a
9 discount or in-kind incentive for payment by the use
10 of cash, check, debit card, or credit card.

11 “(3) NO RESTRICTIONS ON SETTING TRANS-
12 ACTION MINIMUMS OR MAXIMUMS.—A payment card
13 network shall not, directly or through any agent,
14 processor, or licensed member of the network, by
15 contract, requirement, condition, penalty, or other-
16 wise, inhibit the ability of any person to set a min-
17 imum or maximum dollar value for the acceptance
18 by that person of credit cards, provided that such
19 minimum or maximum dollar value does not dif-
20 ferentiate between issuers or between payment card
21 networks.

22 “(c) DEFINITIONS.—For purposes of this section, the
23 following definitions shall apply:

24 “(1) DEBIT CARD.—The term ‘debit card’—

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1 “(A) means any card, or other payment
2 code or device, issued or approved for use
3 through a payment card network to debit an
4 asset account for the purpose of transferring
5 money between accounts or obtaining goods or
6 services, whether authorization is based on sig-
7 nature, PIN, or other means;

8 “(B) includes general use prepaid cards, as
9 that term is defined in section 915(a)(2)(A) (15
10 U.S.C. 1693l-1(a)(2)(A)); and

11 “(C) does not include paper checks.

12 “(2) CREDIT CARD.—The term ‘credit card’ has
13 the same meaning as in section 103 of the Truth in
14 Lending Act (15 U.S.C. 1602).

15 “(3) DISCOUNT.—The term ‘discount’—

16 “(A) means a reduction made from the
17 price that customers are informed is the regular
18 price; and

19 “(B) does not include any means of in-
20 creasing the price that customers are informed
21 is the regular price.

22 “(4) ELECTRONIC DEBIT TRANSACTION.—The
23 term ‘electronic debit transaction’ means a trans-
24 action in which a person uses a debit card to debit
25 an asset account.

1 “(5) INTERCHANGE TRANSACTION FEE.—The
2 term ‘interchange transaction fee’ means any fee es-
3 tablished by a payment card network that has been
4 established for the purpose of compensating an
5 issuer or payment card network for its involvement
6 in an electronic debit transaction.

7 “(6) ISSUER.—The term ‘issuer’ means any
8 person who issues a debit card, or credit card, or the
9 agent of such person with respect to such card.

10 “(7) PAYMENT CARD NETWORK.—The term
11 ‘payment card network’ means an entity that di-
12 rectly, or through licensed members, processors, or
13 agents, provides the proprietary services, infrastruc-
14 ture, and software that route information and data
15 to conduct transaction authorization, clearance, and
16 settlement, and that a person uses in order to accept
17 as a form of payment a brand of debit card, credit
18 card or other device that may be used to carry out
19 debit or credit transactions.”.

20 **SEC. 1077. USE OF CONSUMER REPORTS.**

21 Section 615 of the Fair Credit Reporting Act (15
22 U.S.C. 1681m) is amended—

23 (1) in subsection (a)—

24 (A) by redesignating paragraphs (2) and

25 (3) as paragraphs (3) and (4), respectively;

1 (B) by inserting after paragraph (1) the
2 following:

3 “(2) provide to the consumer written or elec-
4 tronic disclosure—

5 “(A) of a numerical credit score as defined
6 in section 609(f)(2)(A) used by such person in
7 taking any adverse action based in whole or in
8 part on any information in a consumer report;
9 and

10 “(B) of the information set forth in sub-
11 paragraphs (B) through (E) of section
12 609(f)(1);” and

13 (C) in paragraph (4) (as so redesignated),
14 by striking “paragraph (2)” and inserting
15 “paragraph (3);” and
16 (2) in subsection (h)(5)—

17 (A) in subparagraph (C), by striking “;
18 and” and inserting a semicolon;

19 (B) in subparagraph (D), by striking the
20 period and inserting “; and”; and

21 (C) by inserting at the end the following:

22 “(E) include a statement informing the
23 consumer of—

24 “(i) a numerical credit score as de-
25 fined in section 609(f)(2)(A), used by such

1 person in making the credit decision de-
2 scribed in paragraph (1) based in whole or
3 in part on any information in a consumer
4 report; and

5 “(ii) the information set forth in sub-
6 paragraphs (B) through (E) of section
7 609(f)(1).”.

8 **SEC. 1078. REPORT ON PRIVATE EDUCATION LOANS AND**
9 **PRIVATE EDUCATIONAL LENDERS.**

10 (a) REPORT.—Not later than 2 years after the date
11 of enactment of this Act, the Director and the Secretary
12 of Education, in consultation with the Commissioners of
13 the Federal Trade Commission, and the Attorney General
14 of the United States, shall submit a report to the Com-
15 mittee on Banking, Housing, and Urban Affairs and the
16 Committee on Health, Education, Labor, and Pensions of
17 the Senate and the Committee on Financial Services and
18 the Committee on Education and Labor of the House of
19 Representatives, on private education loans (as that term
20 is defined in section 140 of the Truth in Lending Act (15
21 U.S.C. 1650)) and private educational lenders (as that
22 term is defined in such section).

23 (b) CONTENT.—The report required by this section
24 shall examine, at a minimum—

1 (1) the growth and changes of the private edu-
2 cation loan market in the United States;

3 (2) factors influencing such growth and
4 changes;

5 (3) the extent to which students and parents of
6 students rely on private education loans to finance
7 postsecondary education and the private education
8 loan indebtedness of borrowers;

9 (4) the characteristics of private education loan
10 borrowers, including—

11 (A) the types of institutions of higher edu-
12 cation that they attend;

13 (B) socioeconomic characteristics (includ-
14 ing income and education levels, racial charac-
15 teristics, geographical background, age, and
16 gender);

17 (C) what other forms of financing bor-
18 rowers use to pay for education;

19 (D) whether they exhaust their Federal
20 loan options before taking out a private loan;

21 (E) whether such borrowers are dependent
22 or independent students (as determined under
23 part F of title IV of the Higher Education Act
24 of 1965) or parents of such students;

1 (F) whether such borrowers are students
2 enrolled in a program leading to a certificate, li-
3 cense, or credential other than a degree, an as-
4 sociates degree, a baccalaureate degree, or a
5 graduate or professional degree; and

6 (G) if practicable, employment and repay-
7 ment behaviors;

8 (5) the characteristics of private educational
9 lenders, including whether such creditors are for-
10 profit, non-profit, or institutions of higher education;

11 (6) the underwriting criteria used by private
12 educational lenders, including the use of cohort de-
13 fault rate (as such term is defined in section 435(m)
14 of the Higher Education Act of 1965);

15 (7) the terms, conditions, and pricing of private
16 education loans;

17 (8) the consumer protections available to pri-
18 vate education loan borrowers, including the effec-
19 tiveness of existing disclosures and requirements and
20 borrowers' awareness and understanding about
21 terms and conditions of various financial products;

22 (9) whether Federal regulators and the public
23 have access to information sufficient to provide them
24 with assurances that private education loans are
25 provided in accord with the Nation's fair lending

1 laws and that allows public officials to determine
2 lender compliance with fair lending laws; and

3 (10) any statutory or legislative recommenda-
4 tions necessary to improve consumer protections for
5 private education loan borrowers and to better en-
6 able Federal regulators and the public to ascertain
7 private educational lender compliance with fair lend-
8 ing laws.

9 **SEC. 1079. STUDY AND REPORT ON CREDIT SCORES.**

10 (a) **STUDY.**—The Bureau shall conduct a study on
11 the nature, range, and size of variations between the credit
12 scores sold to creditors and those sold to consumers by
13 consumer reporting agencies that compile and maintain
14 files on consumers on a nationwide basis (as defined in
15 section 603(p) of the Fair Credit Reporting Act; 15
16 U.S.C. 1681a(p)), and whether such variations disadvan-
17 tage consumers.

18 (b) **REPORT TO CONGRESS.**—The Bureau shall sub-
19 mit a report to Congress on the results of the study con-
20 ducted under subsection (a) not later than 1 year after
21 the date of enactment of this Act.

1 **Subtitle H—Conforming**
2 **Amendments**

3 **SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL**
4 **ACT.**

5 Effective on the date of enactment of this Act, the
6 Inspector General Act of 1978 (5 U.S.C. App. 3) is
7 amended—

8 (1) in section 8G(a)(2), by inserting “and the
9 Bureau of Consumer Financial Protection” after
10 “Board of Governors of the Federal Reserve Sys-
11 tem”;

12 (2) in section 8G(e), by adding at the end the
13 following: “For purposes of implementing this sec-
14 tion, the Chairman of the Board of Governors of the
15 Federal Reserve System shall appoint the Inspector
16 General of the Board of Governors of the Federal
17 Reserve System and the Bureau of Consumer Finan-
18 cial Protection. The Inspector General of the Board
19 of Governors of the Federal Reserve System and the
20 Bureau of Consumer Financial Protection shall have
21 all of the authorities and responsibilities provided by
22 this Act with respect to the Bureau of Consumer Fi-
23 nancial Protection, as if the Bureau were part of the
24 Board of Governors of the Federal Reserve Sys-
25 tem.”; and

1 (3) in section 8G(g)(3), by inserting “and the
2 Bureau of Consumer Financial Protection” after
3 “Board of Governors of the Federal Reserve Sys-
4 tem” the first place that term appears.

5 **SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

6 Effective on the date of enactment of this Act, section
7 552a of title 5, United States Code, is amended by adding
8 at the end the following:

9 “(w) APPLICABILITY TO BUREAU OF CONSUMER FI-
10 NANCIAL PROTECTION.—Except as provided in the Con-
11 sumer Financial Protection Act of 2010, this section shall
12 apply with respect to the Bureau of Consumer Financial
13 Protection.”.

14 **SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORT-
15 GAGE TRANSACTION PARITY ACT OF 1982.**

16 (a) IN GENERAL.—The Alternative Mortgage Trans-
17 action Parity Act of 1982 (12 U.S.C. 3801 et seq.) is
18 amended—

19 (1) in section 803 (12 U.S.C. 3802(1)), by
20 striking “1974” and all that follows through “de-
21 scribed and defined” and inserting the following:
22 “1974), in which the interest rate or finance charge
23 may be adjusted or renegotiated, described and de-
24 fined”; and

25 (2) in section 804 (12 U.S.C. 3803)—

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1 (A) in subsection (a)—

2 (i) in each of paragraphs (1), (2), and
3 (3), by inserting after “transactions made”
4 each place that term appears “on or before
5 the designated transfer date, as deter-
6 mined under section 1062 of the Consumer
7 Financial Protection Act of 2010,”;

8 (ii) in paragraph (2), by striking
9 “and” at the end;

10 (iii) in paragraph (3), by striking the
11 period at the end and inserting “; and”;
12 and

13 (iv) by adding at the end the following
14 new paragraph:

15 “(4) with respect to transactions made after the
16 designated transfer date, only in accordance with
17 regulations governing alternative mortgage trans-
18 actions, as issued by the Bureau of Consumer Fi-
19 nancial Protection for federally chartered housing
20 creditors, in accordance with the rulemaking author-
21 ity granted to the Bureau of Consumer Financial
22 Protection with regard to federally chartered hous-
23 ing creditors under provisions of law other than this
24 section.”;

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1 (B) by striking subsection (c) and insert-
2 ing the following:

3 “(c) PREEMPTION OF STATE LAW.—An alternative
4 mortgage transaction may be made by a housing creditor
5 in accordance with this section, notwithstanding any State
6 constitution, law, or regulation that prohibits an alter-
7 native mortgage transaction. For purposes of this sub-
8 section, a State constitution, law, or regulation that pro-
9 hibits an alternative mortgage transaction does not in-
10 clude any State constitution, law, or regulation that regu-
11 lates mortgage transactions generally, including any re-
12 striction on prepayment penalties or late charges.”; and

13 (C) by adding at the end the following:

14 “(d) BUREAU ACTIONS.—The Bureau of Consumer
15 Financial Protection shall—

16 “(1) review the regulations identified by the
17 Comptroller of the Currency and the National Credit
18 Union Administration, (as those rules exist on the
19 designated transfer date), as applicable under para-
20 graphs (1) through (3) of subsection (a);

21 “(2) determine whether such regulations are
22 fair and not deceptive and otherwise meet the objec-
23 tives of the Consumer Financial Protection Act of
24 2010; and

1 “(3) promulgate regulations under subsection
2 (a)(4) after the designated transfer date.

3 “(e) DESIGNATED TRANSFER DATE.—As used in
4 this section, the term ‘designated transfer date’ means the
5 date determined under section 1062 of the Consumer Fi-
6 nancial Protection Act of 2010.”.

7 (b) EFFECTIVE DATE.—This section and the amend-
8 ments made by this section shall become effective on the
9 designated transfer date.

10 (c) RULE OF CONSTRUCTION.—The amendments
11 made by subsection (a) shall not affect any transaction
12 covered by the Alternative Mortgage Transaction Parity
13 Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on
14 or before the designated transfer date.

15 **SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND**
16 **TRANSFER ACT.**

17 The Electronic Fund Transfer Act (15 U.S.C. 1693
18 et seq.) is amended—

19 (1) by striking “Board” each place that term
20 appears and inserting “Bureau”, except in section
21 918 (as so designated by the Credit Card Act of
22 2009) (15 U.S.C. 1693o);

23 (2) in section 903 (15 U.S.C. 1693a)—

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1 (A) by redesignating paragraphs (3)
2 through (11) as paragraphs (4) through (12),
3 respectively; and

4 (B) by inserting after paragraph (3) the
5 following:

6 “(4) the term ‘Bureau’ means the Bureau of
7 Consumer Financial Protection;”;

8 (3) in section 904(a) (15 U.S.C. 1693b(a)), in
9 subsection (a), by striking “(a) PRESCRIPTION BY
10 BOARD.—The Board shall prescribe regulations to
11 carry out the purposes of this title.” and inserting
12 the following:

13 “(a) PRESCRIPTION BY THE BUREAU.—The Bureau
14 shall prescribe regulations to carry out the purposes of
15 this title.”;

16 (4) in section 916(d) (as so designated by the
17 Credit CARD Act of 2009) (15 U.S.C. 1693m)—

18 (A) in the subsection heading, by striking
19 “OF BOARD OR APPROVAL OF DULY AUTHOR-
20 IZED OFFICIAL OR EMPLOYEE OF FEDERAL
21 RESERVE SYSTEM”;

22 (B) by inserting “Bureau or the” before
23 “Board” each place that term appears; and

1 (C) by inserting “Bureau of Consumer Fi-
2 nancial Protection or the” before “Federal Re-
3 serve System”; and

4 (5) 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 subtitle B of the Con-
9 sumer Financial Protection Act of 2010,
10 compliance”;

11 (ii) by striking paragraphs (1) and
12 (2), and inserting the following:

13 “(1) section 8 of the Federal Deposit Insurance
14 Act, by the appropriate Federal banking agency, as
15 defined in section 3(q) of the Federal Deposit Insur-
16 ance Act (12 U.S.C. 1813(q)), with respect to—

17 “(A) national banks, Federal savings asso-
18 ciations, and Federal branches and Federal
19 agencies of foreign banks;

20 “(B) member banks of the Federal Reserve
21 System (other than national banks), branches
22 and agencies of foreign banks (other than Fed-
23 eral branches, Federal agencies, and insured
24 State branches of foreign banks), commercial
25 lending companies owned or controlled by for-

1 eign banks, and organizations operating under
2 section 25 or 25A of the Federal Reserve Act;
3 and

4 “(C) banks and State savings associations
5 insured by the Federal Deposit Insurance Cor-
6 poration (other than members of the Federal
7 Reserve System), and insured State branches of
8 foreign banks;”;

9 (iii) by redesignating paragraphs (3)
10 through (5) as paragraphs (2) through (4),
11 respectively;

12 (iv) in paragraph (2) (as so redesign-
13 ated), by striking the period at the end
14 and inserting a semicolon;

15 (v) in paragraph (3) (as so redesign-
16 ated), by striking “and” at the end;

17 (vi) in paragraph (4) (as so redesign-
18 ated), by striking the period at the end
19 and inserting “and”; and

20 (vii) by adding at the end the fol-
21 lowing:

22 “(5) subtitle E of the Consumer Financial Pro-
23 tection Act of 2010, by the Bureau, with respect to
24 any person subject to that subtitle E.”;

1 (B) in subsection (b), by inserting “any of
2 paragraphs (1) through (5) of” before “sub-
3 section (a)” each place that term appears; and

4 (C) by striking subsection (c) and inserting
5 the following:

6 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
7 FEDERAL TRADE COMMISSION.—Except to the extent
8 that enforcement of the requirements imposed under this
9 title is specifically committed to some other Government
10 agency under any of paragraphs (1) through (5) of sub-
11 section (a), and subject to subtitle B of the Consumer Fi-
12 nancial Protection Act of 2010, the Federal Trade Com-
13 mission shall be authorized to enforce such requirements.
14 For the purpose of the exercise by the Federal Trade
15 Commission of its functions and powers under the Federal
16 Trade Commission Act, a violation of any requirement im-
17 posed under this title shall be deemed a violation of a re-
18 quirement imposed under that Act. All of the functions
19 and powers of the Federal Trade Commission under the
20 Federal Trade Commission Act are available to the Fed-
21 eral Trade Commission to enforce compliance by any per-
22 son subject to the jurisdiction of the Federal Trade Com-
23 mission with the requirements imposed under this title,
24 irrespective of whether that person is engaged in com-

1 merce or meets any other jurisdictional tests under the
2 Federal Trade Commission Act.”.

3 **SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
4 **TUNITY ACT.**

5 The Equal Credit Opportunity Act (15 U.S.C. 1691
6 et seq.) is amended—

7 (1) by striking “Board” each place that term
8 appears, other than in section 704(a)(4) (15 U.S.C.
9 1691c(a)(4)), and inserting “Bureau”;

10 (2) in section 702 (15 U.S.C. 1691a), by strik-
11 ing subsection (c) and inserting the following:

12 “(c) The term ‘Bureau’ means the Bureau of Con-
13 sumer Financial Protection.”;

14 (3) in section 703 (15 U.S.C. 1691b)—

15 (A) by striking the section heading and in-
16 serting the following:

17 **“SEC. 703. PROMULGATION OF REGULATIONS BY THE BU-**
18 **REAU.”;**

19 (B) by striking “(a) REGULATIONS.—”;

20 (C) by striking subsection (b);

21 (D) by redesignating paragraphs (1)
22 through (5) as subsections (a) through (e), re-
23 spectively; and

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1 (E) in subsection (e), as so redesignated,
2 by striking “paragraph (2)” and inserting “sub-
3 section (b)”;

4 (4) in section 704 (15 U.S.C. 1691e)—

5 (A) in subsection (a)—

6 (i) by striking “Compliance” and in-
7 serting “Subject to subtitle B of the Con-
8 sumer Protection Financial Protection Act
9 of 2010”;

10 (ii) by striking paragraphs (1) and (2)
11 and inserting the following:

12 “(1) section 8 of the Federal Deposit Insurance
13 Act, by the appropriate Federal banking agency, as
14 defined in section 3(q) of the Federal Deposit Insur-
15 ance Act (12 U.S.C. 1813(q)), with respect to—

16 “(A) national banks, Federal savings asso-
17 ciations, and Federal branches and Federal
18 agencies of foreign banks;

19 “(B) member banks of the Federal Reserve
20 System (other than national banks), branches
21 and agencies of foreign banks (other than Fed-
22 eral branches, Federal agencies, and insured
23 State branches of foreign banks), commercial
24 lending companies owned or controlled by for-
25 eign banks, and organizations operating under

1 section 25 or 25A of the Federal Reserve Act;
2 and

3 “(C) banks and State savings associations
4 insured by the Federal Deposit Insurance Cor-
5 poration (other than members of the Federal
6 Reserve System), and insured State branches of
7 foreign banks;”;

8 (iii) by redesignating paragraphs (3)
9 through (9) as paragraphs (2) through (8),
10 respectively;

11 (iv) in paragraph (7) (as so redesi-
12 gnated), by striking “and” at the end;

13 (v) in paragraph (8) (as so redesi-
14 gnated), by striking the period at the end,
15 and inserting “; and”; and

16 (vi) by adding at the end the fol-
17 lowing:

18 “(9) Subtitle E of the Consumer Financial Pro-
19 tection Act of 2010, by the Bureau.”;

20 (B) by striking subsection (c) and insert-
21 ing the following:

22 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
23 ERAL TRADE COMMISSION.—Except to the extent that en-
24 forcement of the requirements imposed under this title is
25 specifically committed to some other Government agency

1 under any of paragraphs (1) through (9) of subsection (a),
2 and subject to subtitle B of the Consumer Financial Pro-
3 tection Act of 2010, the Federal Trade Commission shall
4 be authorized to enforce such requirements. For the pur-
5 pose of the exercise by the Federal Trade Commission of
6 its functions and powers under the Federal Trade Com-
7 mission Act (15 U.S.C. 41 et seq.), a violation of any re-
8 quirement imposed under this subchapter shall be deemed
9 a violation of a requirement imposed under that Act. All
10 of the functions and powers of the Federal Trade Commis-
11 sion under the Federal Trade Commission Act are avail-
12 able to the Federal Trade Commission to enforce compli-
13 ance by any person with the requirements imposed under
14 this title, irrespective of whether that person is engaged
15 in commerce or meets any other jurisdictional tests under
16 the Federal Trade Commission Act, including the power
17 to enforce any rule prescribed by the Bureau under this
18 title in the same manner as if the violation had been a
19 violation of a Federal Trade Commission trade regulation
20 rule.”; and

21 (C) in subsection (d), by striking “Board”
22 and inserting “Bureau”;

23 (5) in section 706(e) (15 U.S.C. 1691e(e))—

24 (A) in the subsection heading—

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1 (i) by striking “BOARD” each place
2 that term appears and inserting “BU-
3 REAU”; and

4 (ii) by striking “FEDERAL RESERVE
5 SYSTEM” and inserting “BUREAU OF CON-
6 SUMER FINANCIAL PROTECTION”; and

7 (B) by striking “Federal Reserve System”
8 and inserting “Bureau of Consumer Financial
9 Protection”;

10 (6) in section 706(g) (15 U.S.C. 1691e(g)), by
11 striking “(3)” and inserting “(9)”; and

12 (7) in section 706(f) (15 U.S.C. 1691e(f)), by
13 striking “two years from” each place that term ap-
14 pears and inserting “5 years after”.

15 **SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS**
16 **AVAILABILITY ACT.**

17 (a) AMENDMENT TO SECTION 603.—Section
18 603(d)(1) of the Expedited Funds Availability Act (12
19 U.S.C. 4002) is amended by inserting after “Board” the
20 following “, jointly with the Director of the Bureau of
21 Consumer Financial Protection,”.

22 (b) AMENDMENTS TO SECTION 604.—Section 604 of
23 the Expedited Funds Availability Act (12 U.S.C. 4003)
24 is amended—

1 (1) by inserting after “Board” each place that
2 term appears, other than in subsection (f), the fol-
3 lowing: “, jointly with the Director of the Bureau of
4 Consumer Financial Protection,”; and

5 (2) in subsection (f), by striking “Board.” each
6 place that term appears and inserting the following:
7 “Board, jointly with the Director of the Bureau of
8 Consumer Financial Protection.”.

9 (c) AMENDMENTS TO SECTION 605.—Section 605 of
10 the Expedited Funds Availability Act (12 U.S.C. 4004)
11 is amended—

12 (1) by inserting after “Board” each place that
13 term appears, other than in the heading for section
14 605(f)(1), the following: “, jointly with the Director
15 of the Bureau of Consumer Financial Protection,”;
16 and

17 (2) in subsection (f)(1), in the paragraph head-
18 ing, by inserting “AND BUREAU” after “BOARD”.

19 (d) AMENDMENTS TO SECTION 609.—Section 609 of
20 the Expedited Funds Availability Act (12 U.S.C. 4008)
21 is amended:

22 (1) in subsection (a), by inserting after
23 “Board” the following “, jointly with the Director of
24 the Bureau of Consumer Financial Protection,”; and

1 (2) by striking subsection (e) and inserting the
2 following:

3 “(e) CONSULTATIONS.—In prescribing regulations
4 under subsections (a) and (b), the Board and the Director
5 of the Bureau of Consumer Financial Protection, in the
6 case of subsection (a), and the Board, in the case of sub-
7 section (b), shall consult with the Comptroller of the Cur-
8 rency, the Board of Directors of the Federal Deposit In-
9 surance Corporation, and the National Credit Union Ad-
10 ministration Board.”.

11 (e) EXPEDITED FUNDS AVAILABILITY IMPROVE-
12 MENTS.—Section 603 of the Expedited Funds Availability
13 Act (12 U.S.C. 4002) is amended—

14 (1) in subsection (a)(2)(D), by striking “\$100”
15 and inserting “\$200”; and

16 (2) in subsection (b)(3)(C), in the subpara-
17 graph heading, by striking “\$100” and inserting
18 “\$200”; and

19 (3) in subsection (c)(1)(B)(iii), in the clause
20 heading, by striking “\$100” and inserting “\$200”.

21 (f) REGULAR ADJUSTMENTS FOR INFLATION.—Sec-
22 tion 607 of the Expedited Funds Availability Act (12
23 U.S.C. 4006) is amended by adding at the end the fol-
24 lowing:

1 “(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR IN-
2 FLATION.—The dollar amounts under this title shall be
3 adjusted every 5 years after December 31, 2011, by the
4 annual percentage increase in the Consumer Price Index
5 for Urban Wage Earners and Clerical Workers, as pub-
6 lished by the Bureau of Labor Statistics, rounded to the
7 nearest multiple of \$25.”.

8 **SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING**
9 **ACT.**

10 The Fair Credit Billing Act (15 U.S.C. 1666–1666j)
11 is amended by striking “Board” each place that term ap-
12 pears and inserting “Bureau”.

13 **SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING**
14 **ACT AND THE FAIR AND ACCURATE CREDIT**
15 **TRANSACTIONS ACT OF 2003.**

16 (a) FAIR CREDIT REPORTING ACT.—The Fair Credit
17 Reporting Act (15 U.S.C. 1681 et seq.) is amended—

18 (1) in section 603 (15 U.S.C. 1681a)—

19 (A) by redesignating subsections (w) and
20 (x) as subsections (x) and (y), respectively; and

21 (B) by inserting after subsection (v) the
22 following:

23 “(w) The term ‘Bureau’ means the Bureau of Con-
24 sumer Financial Protection.”; and

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1 (2) except as otherwise specifically provided in
2 this subsection—

3 (A) by striking “Federal Trade Commis-
4 sion” each place that term appears and insert-
5 ing “Bureau”;

6 (B) by striking “FTC” each place that
7 term appears and inserting “Bureau”;

8 (C) by striking “the Commission” each
9 place that term appears, other than sections
10 615(e) (15 U.S.C. 1681m(e)) and 628(a)(1)
11 (15 U.S.C. 1681w(a)(1)), and inserting “the
12 Bureau”; and

13 (D) by striking “The Federal banking
14 agencies, the National Credit Union Adminis-
15 tration, and the Commission shall jointly” each
16 place that term appears, other than section
17 615(e)(1) (15 U.S.C. 1681m(e)) and section
18 628(a)(1) (15 U.S.C. 1681w(a)(1)), and insert-
19 ing “The Bureau shall”;

20 (3) in section 603(k)(2) (15 U.S.C.
21 1681a(k)(2)), by striking “Board of Governors of
22 the Federal Reserve System” and inserting “Bu-
23 reau”;

24 (4) in section 604(g) (15 U.S.C. 1681b(g))—

1 (A) in paragraph (3), by striking subpara-
2 graph (C) and inserting the following:

3 “(C) as otherwise determined to be nec-
4 essary and appropriate, by regulation or order,
5 by the Bureau (consistent with the enforcement
6 authorities prescribed under section 621(b)), or
7 the applicable State insurance authority (with
8 respect to any person engaged in providing in-
9 surance or annuities).”; and

10 (B) by striking paragraph (5) and insert-
11 ing the following:

12 “(5) REGULATIONS AND EFFECTIVE DATE FOR
13 PARAGRAPH (2).—

14 “(A) REGULATIONS REQUIRED.—The Bu-
15 reau may, after notice and opportunity for com-
16 ment, prescribe regulations that permit trans-
17 actions under paragraph (2) that are deter-
18 mined to be necessary and appropriate to pro-
19 tect legitimate operational, transactional, risk,
20 consumer, and other needs (and which shall in-
21 clude permitting actions necessary for adminis-
22 trative verification purposes), consistent with
23 the intent of paragraph (2) to restrict the use
24 of medical information for inappropriate pur-
25 poses.”;

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1 (5) in section 605(h)(2)(A) (15 U.S.C.
2 1681c(h)(2)(A)), by striking “with respect to the en-
3 tities that are subject to their respective enforcement
4 authority under section 621” and inserting “, in
5 consultation with the Federal banking agencies, the
6 National Credit Union Administration, and the Fed-
7 eral Trade Commission,”.

8 (6) in section 611(e)(2) (15 U.S.C. 1681i(e)),
9 by striking paragraph (2) and inserting the fol-
10 lowing:

11 “(2) EXCLUSION.—Complaints received or ob-
12 tained by the Bureau pursuant to its investigative
13 authority under the Consumer Financial Protection
14 Act of 2010 shall not be subject to paragraph (1).”;

15 (7) in section 615(d)(2)(B) (15 U.S.C.
16 1681m(d)(2)(B)), by striking “the Federal banking
17 agencies” and inserting “the Federal Trade Com-
18 mission, the Federal banking agencies,”;

19 (8) in section 615(e)(1) (15 U.S.C.
20 1681m(e)(1)), by striking “and the Commission”
21 and inserting “the Federal Trade Commission, the
22 Commodity Futures Trading Commission, and the
23 Securities and Exchange Commission”;

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1 (9) in section 615(h)(6) (15 U.S.C.
2 1681m(h)(6)), by striking subparagraph (A) and in-
3 serting the following:

4 “(A) RULES REQUIRED.—The Bureau
5 shall prescribe rules to carry out this sub-
6 section.”;

7 (10) in section 621 (15 U.S.C. 1681s)—

8 (A) by striking subsection (a) and insert-
9 ing the following:

10 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
11 SION.—

12 “(1) IN GENERAL.—The Federal Trade Com-
13 mission shall be authorized to enforce compliance
14 with the requirements imposed by this title under
15 the Federal Trade Commission Act (15 U.S.C. 41 et
16 seq.), with respect to consumer reporting agencies
17 and all other persons subject thereto, except to the
18 extent that enforcement of the requirements imposed
19 under this title is specifically committed to some
20 other Government agency under any of subpara-
21 graphs (A) through (G) of subsection (b)(1), and
22 subject to subtitle B of the Consumer Financial Pro-
23 tection Act of 2010, subsection (b). For the purpose
24 of the exercise by the Federal Trade Commission of
25 its functions and powers under the Federal Trade

1 Commission Act, a violation of any requirement or
2 prohibition imposed under this title shall constitute
3 an unfair or deceptive act or practice in commerce,
4 in violation of section 5(a) of the Federal Trade
5 Commission Act (15 U.S.C. 45(a)), and shall be
6 subject to enforcement by the Federal Trade Com-
7 mission under section 5(b) of that Act with respect
8 to any consumer reporting agency or person that is
9 subject to enforcement by the Federal Trade Com-
10 mission pursuant to this subsection, irrespective of
11 whether that person is engaged in commerce or
12 meets any other jurisdictional tests under the Fed-
13 eral Trade Commission Act. The Federal Trade
14 Commission shall have such procedural, investiga-
15 tive, and enforcement powers, including the power to
16 issue procedural rules in enforcing compliance with
17 the requirements imposed under this title and to re-
18 quire the filing of reports, the production of docu-
19 ments, and the appearance of witnesses, as though
20 the applicable terms and conditions of the Federal
21 Trade Commission Act were part of this title. Any
22 person violating any of the provisions of this title
23 shall be subject to the penalties and entitled to the
24 privileges and immunities provided in the Federal
25 Trade Commission Act as though the applicable

1 terms and provisions of such Act are part of this
2 title.

3 “(2) PENALTIES.—

4 “(A) KNOWING VIOLATIONS.—Except as
5 otherwise provided by subtitle B of the Con-
6 sumer Financial Protection Act of 2010, in the
7 event of a knowing violation, which constitutes
8 a pattern or practice of violations of this title,
9 the Federal Trade Commission may commence
10 a civil action to recover a civil penalty in a dis-
11 trict court of the United States against any
12 person that violates this title. In such action,
13 such person shall be liable for a civil penalty of
14 not more than \$2,500 per violation.

15 “(B) DETERMINING PENALTY AMOUNT.—

16 In determining the amount of a civil penalty
17 under subparagraph (A), the court shall take
18 into account the degree of culpability, any his-
19 tory of such prior conduct, ability to pay, effect
20 on ability to continue to do business, and such
21 other matters as justice may require.

22 “(C) LIMITATION.—Notwithstanding para-
23 graph (2), a court may not impose any civil
24 penalty on a person for a violation of section
25 623(a)(1), unless the person has been enjoined

1 from committing the violation, or ordered not to
2 commit the violation, in an action or proceeding
3 brought by or on behalf of the Federal Trade
4 Commission, and has violated the injunction or
5 order, and the court may not impose any civil
6 penalty for any violation occurring before the
7 date of the violation of the injunction or
8 order.”;

9 (B) by striking subsection (b) and insert-
10 ing the following:

11 “(b) ENFORCEMENT BY OTHER AGENCIES.—

12 “(1) IN GENERAL.—Subject to subtitle B of the
13 Consumer Financial Protection Act of 2010, compli-
14 ance with the requirements imposed under this title
15 with respect to consumer reporting agencies, persons
16 who use consumer reports from such agencies, per-
17 sons who furnish information to such agencies, and
18 users of information that are subject to section
19 615(d) shall be enforced under—

20 “(A) section 8 of the Federal Deposit In-
21 surance Act (12 U.S.C. 1818), by the appro-
22 priate Federal banking agency, as defined in
23 section 3(q) of the Federal Deposit Insurance
24 Act (12 U.S.C. 1813(q)), with respect to—

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1 “(i) any national bank or State sav-
2 ings association, and any Federal branch
3 or Federal agency of a foreign bank;

4 “(ii) any member bank of the Federal
5 Reserve System (other than a national
6 bank), a branch or agency of a foreign
7 bank (other than a Federal branch, Fed-
8 eral agency, or insured State branch of a
9 foreign bank), a commercial lending com-
10 pany owned or controlled by a foreign
11 bank, and any organization operating
12 under section 25 or 25A of the Federal
13 Reserve Act; and

14 “(iii) any bank or Federal savings as-
15 sociation insured by the Federal Deposit
16 Insurance Corporation (other than a mem-
17 ber of the Federal Reserve System) and
18 any insured State branch of a foreign
19 bank;

20 “(B) the Federal Credit Union Act (12
21 U.S.C. 1751 et seq.), by the Administrator of
22 the National Credit Union Administration with
23 respect to any Federal credit union;

24 “(C) subtitle IV of title 49, United States
25 Code, by the Secretary of Transportation, with

1 respect to all carriers subject to the jurisdiction
2 of the Surface Transportation Board;

3 “(D) the Federal Aviation Act of 1958 (49
4 U.S.C. App. 1301 et seq.), by the Secretary of
5 Transportation, with respect to any air carrier
6 or foreign air carrier subject to that Act;

7 “(E) the Packers and Stockyards Act,
8 1921 (7 U.S.C. 181 et seq.) (except as provided
9 in section 406 of that Act), by the Secretary of
10 Agriculture, with respect to any activities sub-
11 ject to that Act;

12 “(F) the Commodity Exchange Act, with
13 respect to a person subject to the jurisdiction of
14 the Commodity Futures Trading Commission;

15 “(G) the Federal securities laws, and any
16 other laws that are subject to the jurisdiction of
17 the Securities and Exchange Commission, with
18 respect to a person that is subject to the juris-
19 diction of the Securities and Exchange Commis-
20 sion; and

21 “(H) subtitle E of the Consumer Financial
22 Protection Act of 2010, by the Bureau.

23 “(2) INCORPORATED DEFINITIONS.—The terms
24 used in paragraph (1) that are not defined in this
25 title or otherwise defined in section 3(s) of the Fed-

1 eral Deposit Insurance Act (12 U.S.C. 1813(s)) have
2 the same meanings as in section 1(b) of the Inter-
3 national Banking Act of 1978 (12 U.S.C. 3101).”;

4 (C) in subsection (c)(2)—

5 (i) by inserting “and the Federal
6 Trade Commission” before “or the appro-
7 priate”; and

8 (ii) by inserting “and the Federal
9 Trade Commission” before “or appro-
10 priate” each place that term appears;

11 (D) by inserting “, the Federal Trade
12 Commission,” before “or the appropriate” each
13 place that term appears;

14 (E) by striking subsection (e) and insert-
15 ing the following:

16 “(e) REGULATORY AUTHORITY.—The Bureau shall
17 prescribe such regulations as are necessary to carry out
18 the purposes of this title, except with respect to sections
19 615(e) and 628. The regulations prescribed by the Bureau
20 under this title shall apply to any person that is subject
21 to this title, notwithstanding the enforcement authorities
22 granted to other agencies under this section.”; and

23 (F) in subsection (f)(2), by striking “the
24 Federal banking agencies” and insert “the Fed-

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1 eral Trade Commission, the Federal banking
2 agencies,”;

3 (11) in section 623 (15 U.S.C. 1681s-2)—

4 (A) in subsection (a)(7), by striking sub-
5 paragraph (D) and inserting the following:

6 “(D) MODEL DISCLOSURE.—

7 “(i) DUTY OF BUREAU.—The Bureau
8 shall prescribe a brief model disclosure
9 that a financial institution may use to
10 comply with subparagraph (A), which shall
11 not exceed 30 words.

12 “(ii) USE OF MODEL NOT RE-
13 QUIRED.—No provision of this paragraph
14 may be construed to require a financial in-
15 stitution to use any such model form pre-
16 scribed by the Bureau.

17 “(iii) COMPLIANCE USING MODEL.—A
18 financial institution shall be deemed to be
19 in compliance with subparagraph (A) if the
20 financial institution uses any model form
21 prescribed by the Bureau under this sub-
22 paragraph, or the financial institution uses
23 any such model form and rearranges its
24 format.”;

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1 (B) in subsection (a)(8), by inserting “, in
2 consultation with the Federal Trade Commis-
3 sion, the Federal banking agencies, and the Na-
4 tional Credit Union Administration,” before
5 “shall jointly”; and

6 (C) by striking subsection (e) and inserting
7 the following:

8 “(e) ACCURACY GUIDELINES AND REGULATIONS RE-
9 QUIRED.—

10 “(1) GUIDELINES.—The Bureau shall, with re-
11 spect to persons or entities that are subject to the
12 enforcement authority of the Bureau under section
13 621—

14 “(A) establish and maintain guidelines for
15 use by each person that furnishes information
16 to a consumer reporting agency regarding the
17 accuracy and integrity of the information relat-
18 ing to consumers that such entities furnish to
19 consumer reporting agencies, and update such
20 guidelines as often as necessary; and

21 “(B) prescribe regulations requiring each
22 person that furnishes information to a con-
23 sumer reporting agency to establish reasonable
24 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 Bureau 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 (12) in section 628(a)(1) (15 U.S.C.
25 1681w(a)(1)), by striking “Not later than” and all

1 that follows through “Exchange Commission,” and
2 inserting “The Federal Trade Commission, the Se-
3 curities and Exchange Commission, the Commodity
4 Futures Trading Commission, the Federal banking
5 agencies, and the National Credit Union Administra-
6 tion, with respect to the entities that are subject to
7 their respective enforcement authority under section
8 621,”; and

9 (13) in section 628(a)(3) (15 U.S.C.
10 1681w(a)(3)), by striking “the Federal banking
11 agencies, the National Credit Union Administration,
12 the Commission, and the Securities and Exchange
13 Commission” and inserting “the agencies identified
14 in paragraph (1)”.

15 (b) FAIR AND ACCURATE CREDIT TRANSACTIONS
16 ACT OF 2003.—Section 214(b)(1) of the Fair and Accu-
17 rate Credit Transactions Act of 2003 (15 U.S.C. 1681s–
18 3 note) is amended by striking paragraph (1) and insert-
19 ing the following:

20 “(1) IN GENERAL.—Regulations to carry out
21 section 624 of the Fair Credit Reporting Act (15
22 U.S.C. 1681s–3), shall be prescribed, as described in
23 paragraph (2), by—

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1 “(A) the Commodity Futures Trading
2 Commission, with respect to entities subject to
3 its enforcement authorities;

4 “(B) the Securities and Exchange Commis-
5 sion, with respect to entities subject to its en-
6 forcement authorities; and

7 “(C) the Bureau, with respect to other en-
8 tities subject to this Act.”.

9 **SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION**
10 **PRACTICES ACT.**

11 The Fair Debt Collection Practices Act (15 U.S.C.
12 1692 et seq.) is amended—

13 (1) by striking “Commission” each place that
14 term appears and inserting “Bureau”;

15 (2) in section 803 (15 U.S.C. 1692a)—

16 (A) by striking paragraph (1) and insert-
17 ing the following:

18 “(1) The term ‘Bureau’ means the Bureau of
19 Consumer Financial Protection.”;

20 (3) in section 814 (15 U.S.C. 1692l)—

21 (A) by striking subsection (a) and insert-
22 ing the following:

23 “(a) FEDERAL TRADE COMMISSION.—The Federal
24 Trade Commission shall be authorized to enforce compli-
25 ance with this title, except to the extent that enforcement

1 of the requirements imposed under this title is specifically
2 committed to another Government agency under any of
3 paragraphs (1) through (6) of subsection (b). For purpose
4 of the exercise by the Federal Trade Commission of its
5 functions and powers under the Federal Trade Commis-
6 sion Act (15 U.S.C. 41 et seq.), a violation of this title
7 shall be deemed an unfair or deceptive act or practice in
8 violation of that Act. All of the functions and powers of
9 the Federal Trade Commission under the Federal Trade
10 Commission Act are available to the Federal Trade Com-
11 mission to enforce compliance by any person with this
12 title, irrespective of whether that person is engaged in
13 commerce or meets any other jurisdictional tests under the
14 Federal Trade Commission Act, including the power to en-
15 force the provisions of this title, in the same manner as
16 if the violation had been a violation of a Federal Trade
17 Commission trade regulation rule.”; and

18 (B) in subsection (b)—

19 (i) by striking “Compliance” and in-
20 sserting “Subject to subtitle B of the Con-
21 sumer Financial Protection Act of 2010,
22 compliance”;

23 (ii) by striking paragraphs (1) and (2)
24 and inserting the following:

1 “(1) section 8 of the Federal Deposit Insurance
2 Act, by the appropriate Federal banking agency, as
3 defined in section 3(q) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1813(q)), with respect to—

5 “(A) national banks, Federal savings asso-
6 ciations, and Federal branches and Federal
7 agencies of foreign banks;

8 “(B) member banks of the Federal Reserve
9 System (other than national banks), branches
10 and agencies of foreign banks (other than Fed-
11 eral branches, Federal agencies, and insured
12 State branches of foreign banks), commercial
13 lending companies owned or controlled by for-
14 eign banks, and organizations operating under
15 section 25 or 25A of the Federal Reserve Act;
16 and

17 “(C) banks and State savings associations
18 insured by the Federal Deposit Insurance Cor-
19 poration (other than members of the Federal
20 Reserve System), and insured State branches of
21 foreign banks;”;

22 (iii) by redesignating paragraphs (3)
23 through (6), as paragraphs (2) through
24 (5), respectively;

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1 (iv) in paragraph (4) (as so redesignated), by striking “and” at the end;

2
3 (v) in paragraph (5) (as so redesignated), by striking the period at the end
4 and inserting “; and”; and

5
6 (vi) by inserting before the undesignated matter at the end the following:

7
8 “(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to
9 any person subject to that subtitle E.”.

10
11 (4) in subsection (d), by striking “Neither the
12 Commission” and all that follows through the end of
13 the subsection and inserting the following: “The Bureau may prescribe rules with respect to the collection
14 of debts by debt collectors, as defined in this
15 Act.”.

16
17 **SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.**
18

19 The Federal Deposit Insurance Act (12 U.S.C. 1811
20 et seq.) is amended—

21 (1) in section 8(t) (12 U.S.C. 1818(t)), by adding at the end the following:

22
23 “(6) REFERRAL TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the
24 Consumer Financial Protection Act of 2010, each
25

1 appropriate Federal banking agency shall make a re-
2 ferral to the Bureau of Consumer Financial Protec-
3 tion when the Federal banking agency has a reason-
4 able belief that a violation of an enumerated con-
5 sumer law, as defined in the Consumer Financial
6 Protection Act of 2010, has been committed by any
7 insured depository institution or institution-affiliated
8 party within the jurisdiction of that appropriate
9 Federal banking agency.”; and

10 (2) in section 43 (12 U.S.C. 1831t)—

11 (A) in subsection (c), by striking “Federal
12 Trade Commission” and inserting “Bureau”;

13 (B) in subsection (d), by striking “Federal
14 Trade Commission” and inserting “Bureau”;

15 (C) in subsection (e)—

16 (i) in paragraph (2), by striking
17 “Federal Trade Commission” and insert-
18 ing “Bureau”; and

19 (ii) by adding at the end the following
20 new paragraph:

21 “(5) BUREAU.—The term ‘Bureau’ means the
22 Bureau of Consumer Financial Protection.”; and

23 (D) in subsection (f)—

24 (i) by striking paragraph (1) and in-
25 serting the following:

1 “(1) LIMITED ENFORCEMENT AUTHORITY.—
2 Compliance with the requirements of subsections (b),
3 (c), and (e), and any regulation prescribed or order
4 issued under such subsection, shall be enforced
5 under the Consumer Financial Protection Act of
6 2010, by the Bureau, subject to subtitle B of the
7 Consumer Financial Protection Act of 2010, and
8 under the Federal Trade Commission Act (15
9 U.S.C. 41 et seq.) by the Federal Trade Commis-
10 sion.”; and

11 (ii) in paragraph (2), by striking sub-
12 paragraph (C) and inserting the following:

13 “(C) LIMITATION ON STATE ACTION
14 WHILE FEDERAL ACTION PENDING.—If the Bu-
15 reau or Federal Trade Commission has insti-
16 tuted an enforcement action for a violation of
17 this section, no appropriate State supervisory
18 agency may, during the pendency of such ac-
19 tion, bring an action under this section against
20 any defendant named in the complaint of the
21 Bureau or Federal Trade Commission for any
22 violation of this section that is alleged in that
23 complaint.”.

1 **SEC. 1091. AMENDMENT TO FEDERAL FINANCIAL INSTITU-**
2 **TIONS EXAMINATION COUNCIL ACT OF 1978.**

3 Section 1004(a)(4) of the Federal Financial Institu-
4 tions Examination Council Act of 1978 (12 U.S.C.
5 3303(a)(4)) is amended by striking “Director, Office of
6 Thrift Supervision” and inserting “Director of the Con-
7 sumer Financial Protection Bureau”.

8 **SEC. 1092. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
9 **ACT.**

10 Title V of the Gramm-Leach-Bliley Act (15 U.S.C.
11 6801 et seq.) is amended—

12 (1) in section 501(b) (15 U.S.C. 6801(b)), by
13 inserting “, other than the Bureau of Consumer Fi-
14 nancial Protection,” after “505(a)”;

15 (2) in section 502(e)(5) (15 U.S.C. 6802(e)(5)),
16 by inserting “the Bureau of Consumer Financial
17 Protection” after “(including”;

18 (3) in section 504(a) (15 U.S.C. 6804(a))—

19 (A) by striking paragraphs (1) and (2) and
20 inserting the following:

21 “(1) RULEMAKING.—

22 “(A) IN GENERAL.—The Bureau of Con-
23 sumer Financial Protection and the Securities
24 and Exchange Commission shall have authority
25 to prescribe such regulations as may be nec-
26 essary to carry out the purposes of this subtitle

1 with respect to financial institutions and other
2 persons subject to their respective jurisdiction
3 under section 505 (and notwithstanding subtitle
4 B of the Consumer Financial Protection Act of
5 2010), except that the Bureau of Consumer Fi-
6 nancial Protection shall not have authority to
7 prescribe regulations with respect to the stand-
8 ards under section 501.

9 “(B) CFTC.—The Commodity Futures
10 Trading Commission shall have authority to
11 prescribe such regulations as may be necessary
12 to carry out the purposes of this subtitle with
13 respect to financial institutions and other per-
14 sons subject to the jurisdiction of the Com-
15 modity Futures Trading Commission under sec-
16 tion 5g of the Commodity Exchange Act.

17 “(C) RULE OF CONSTRUCTION.—Nothing
18 in this paragraph shall be construed to alter,
19 affect, or otherwise limit the authority of a
20 State insurance authority to adopt regulations
21 to carry out this subtitle.

22 “(2) COORDINATION, CONSISTENCY, AND COM-
23 PARABILITY.—Each of the agencies authorized
24 under paragraph (1) to prescribe regulations shall
25 consult and coordinate with the other such agencies

1 and, as appropriate, and with representatives of
2 State insurance authorities designated by the Na-
3 tional Association of Insurance Commissioners, for
4 the purpose of assuring, to the extent possible, that
5 the regulations prescribed by each such agency are
6 consistent and comparable with the regulations pre-
7 scribed by the other such agencies.”; and

8 (B) in paragraph (3), by striking “, and
9 shall be issued in final form not later than 6
10 months after the date of enactment of this
11 Act”;

12 (4) in section 505(a) (15 U.S.C. 6805(a))—

13 (A) by striking “This subtitle” and all that
14 follows through “as follows:” and inserting
15 “Subject to subtitle B of the Consumer Finan-
16 cial Protection Act of 2010, this subtitle and
17 the regulations prescribed thereunder shall be
18 enforced by the Bureau of Consumer Financial
19 Protection, the Federal functional regulators,
20 the State insurance authorities, and the Federal
21 Trade Commission with respect to financial in-
22 stitutions and other persons subject to their ju-
23 risdiction under applicable law, as follows:”;

24 (B) in paragraph (1)—

1 (i) in the matter preceding subpara-
2 graph (A), by inserting “by the appro-
3 priate Federal banking agency, as defined
4 in section 3(q) of the Federal Deposit In-
5 surance Act,” after “Act,”;

6 (ii) in subparagraph (A), by striking
7 “, by the Office of the Comptroller of the
8 Currency”;

9 (iii) in subparagraph (B), by striking
10 “, by the Board of Governors of the Fed-
11 eral Reserve System”;

12 (iv) in subparagraph (C), by striking
13 “, by the Board of Directors of the Federal
14 Deposit Insurance Corporation”; and

15 (v) in subparagraph (D), by striking
16 “, by the Director of the Office of Thrift
17 Supervision”; and

18 (C) by adding at the end the following:

19 “(8) Under subtitle E of the Consumer Finan-
20 cial Protection Act of 2010, by the Bureau of Con-
21 sumer Financial Protection, in the case of any finan-
22 cial institution and other covered person or service
23 provider that is subject to the jurisdiction of the Bu-
24 reau under that Act, but not with respect to the
25 standards under section 501.”;

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1 (5) in section 505(b)(1) (15 U.S.C.
2 6805(b)(1)), by inserting “, other than the Bureau
3 of Consumer Financial Protection,” after “sub-
4 section (a)”;

5 (6) in section 507(b) (15 U.S.C. 6807), by
6 striking “Federal Trade Commission” and inserting
7 “Bureau of Consumer Financial Protection”.

8 **SEC. 1093. AMENDMENTS TO THE HOME MORTGAGE DIS-**
9 **CLOSURE ACT OF 1975.**

10 The Home Mortgage Disclosure Act of 1975 (12
11 U.S.C. 2801 et seq.) is amended—

12 (1) by striking “Board” each place that term
13 appears, other than in sections 303, 304(h), 305(b)
14 (as amended by this section), and 307(a) (as amend-
15 ed by this section) and inserting “Bureau”.

16 (2) in section 303 (12 U.S.C. 2802)—

17 (A) by redesignating paragraphs (1)
18 through (6) as paragraphs (2) through (7), re-
19 spectively; and

20 (B) by inserting before paragraph (2) the
21 following:

22 “(1) the term ‘Bureau’ means the Bureau of
23 Consumer Financial Protection;”;

24 (3) in section 304 (12 U.S.C. 2803)—

25 (A) in subsection (b)—

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1 (i) in paragraph (4), by inserting
2 “age,” before “and gender”;

3 (ii) in paragraph (3), by striking
4 “and” at the end;

5 (iii) in paragraph (4), by striking the
6 period at the end and inserting a semi-
7 colon; and

8 (iv) by adding at the end the fol-
9 lowing:

10 “(5) the number and dollar amount of mort-
11 gage loans grouped according to measurements of—

12 “(A) the total points and fees payable at
13 origination in connection with the mortgage as
14 determined by the Bureau, taking into account
15 15 U.S.C. 1602(aa)(4);

16 “(B) the difference between the annual
17 percentage rate associated with the loan and a
18 benchmark rate or rates for all loans;

19 “(C) the term in months of any prepay-
20 ment penalty or other fee or charge payable on
21 repayment of some portion of principal or the
22 entire principal in advance of scheduled pay-
23 ments; and

24 “(D) such other information as the Bureau
25 may require; and

1 “(6) the number and dollar amount of mort-
2 gage loans and completed applications grouped ac-
3 cording to measurements of—

4 “(A) the value of the real property pledged
5 or proposed to be pledged as collateral;

6 “(B) the actual or proposed term in
7 months of any introductory period after which
8 the rate of interest may change;

9 “(C) the presence of contractual terms or
10 proposed contractual terms that would allow the
11 mortgagor or applicant to make payments other
12 than fully amortizing payments during any por-
13 tion of the loan term;

14 “(D) the actual or proposed term in
15 months of the mortgage loan;

16 “(E) the channel through which applica-
17 tion was made, including retail, broker, and
18 other relevant categories;

19 “(F) as the Bureau may determine to be
20 appropriate, a unique identifier that identifies
21 the loan originator as set forth in section 1503
22 of the S.A.F.E. Mortgage Licensing Act of
23 2008;

24 “(G) as the Bureau may determine to be
25 appropriate, a universal loan identifier;

1 “(H) as the Bureau may determine to be
2 appropriate, the parcel number that cor-
3 responds to the real property pledged or pro-
4 posed to be pledged as collateral;

5 “(I) the credit score of mortgage appli-
6 cants and mortgagors, in such form as the Bu-
7 reau may prescribe; and

8 “(J) such other information as the Bureau
9 may require.”;

10 (B) by striking subsection (h) and insert-
11 ing the following:

12 “(h) SUBMISSION TO AGENCIES.—

13 “(1) IN GENERAL.—The data required to be
14 disclosed under subsection (b) shall be submitted to
15 the Bureau or to the appropriate agency for the in-
16 stitution reporting under this title, in accordance
17 with rules prescribed by the Bureau. Notwith-
18 standing the requirement of subsection (a)(2)(A) for
19 disclosure by census tract, the Bureau, in consulta-
20 tion with other appropriate agencies described in
21 paragraph (2), shall develop regulations that—

22 “(A) prescribe the format for such disclo-
23 sures, the method for submission of the data to
24 the appropriate agency, and the procedures for
25 disclosing the information to the public;

1 “(B) require the collection of data required
2 to be disclosed under subsection (b) with re-
3 spect to loans sold by each institution reporting
4 under this title;

5 “(C) require disclosure of the class of the
6 purchaser of such loans; and

7 “(D) permit any reporting institution to
8 submit in writing to the Bureau or to the ap-
9 propriate agency such additional data or expla-
10 nations as it deems relevant to the decision to
11 originate or purchase mortgage loans.

12 “(2) OTHER APPROPRIATE AGENCIES.—The ap-
13 propriate agencies described in this paragraph are—

14 “(A) the appropriate Federal banking
15 agencies, as defined in section 3(q) of the Fed-
16 eral Deposit Insurance Act (12 U.S.C.
17 1813(q)), with respect to the entities that are
18 subject to the jurisdiction of each such agency,
19 respectively;

20 “(B) the Federal Deposit Insurance Cor-
21 poration for banks insured by the Federal De-
22 posit Insurance Corporation (other than mem-
23 bers of the Federal Reserve System), mutual
24 savings banks, insured State branches of for-
25 eign banks, and any other depository institution

1 described in section 303(2)(A) which is not oth-
2 erwise referred to in this paragraph;

3 “(C) the National Credit Union Adminis-
4 tration Board with respect to credit unions; and

5 “(D) the Secretary of Housing and Urban
6 Development with respect to other lending insti-
7 tutions not regulated by the agencies referred
8 to in subparagraph (A) or (B).”; and

9 (C) in subsection (i), by striking “sub-
10 section (b)(4)” and inserting “subsections
11 (b)(4), (b)(5), and (b)(6)”;

12 (D) in subsection (j)—

13 (i) in paragraph (1), by striking “(as”
14 and inserting “(containing loan-level and
15 application-level information relating to
16 disclosures required under subsections (a)
17 and (b) and as otherwise”;

18 (ii) by striking paragraph (3) and in-
19 serting the following:

20 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
21 pository institution meets the disclosure requirement
22 of paragraph (1) if the institution provides the infor-
23 mation required under such paragraph in such for-
24 mats as the Bureau 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 Bureau
5 may require”;

6 (E) 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 Bureau may require.”;

13 (F) by adding at the end the following:

14 “(n) TIMING OF CERTAIN DISCLOSURES.—The data
15 required to be disclosed under subsection (b) shall be sub-
16 mitted to the Bureau or to the appropriate agency for any
17 institution reporting under this title, in accordance with
18 regulations prescribed by the Bureau. Institutions shall
19 not be required to report new data under paragraph (5)
20 or (6) of subsection (b) before the first January 1 that
21 occurs after the end of the 9-month period beginning on
22 the date on which regulations are issued by the Bureau
23 in final form with respect to such disclosures.”;

24 (4) in section 305 (12 U.S.C. 2804)—

1 (A) by striking subsection (b) and insert-
2 ing the following:

3 “(b) POWERS OF CERTAIN OTHER AGENCIES.—

4 “(1) IN GENERAL.—Subject to subtitle B of the
5 Consumer Financial Protection Act of 2010, compli-
6 ance with the requirements of this title shall be en-
7 forced—

8 “(A) under section 8 of the Federal De-
9 posit Insurance Act, the appropriate Federal
10 banking agency, as defined in section 3(q) of
11 the Federal Deposit Insurance Act (12 U.S.C.
12 1813(q)), with respect to—

13 “(i) any national bank or Federal sav-
14 ings association, and any Federal branch
15 or Federal agency of a foreign bank;

16 “(ii) any member bank of the Federal
17 Reserve System (other than a national
18 bank), branch or agency of a foreign bank
19 (other than a Federal branch, Federal
20 agency, and insured State branch of a for-
21 eign bank), commercial lending company
22 owned or controlled by a foreign bank, and
23 any organization operating under section
24 25 or 25A of the Federal Reserve Act; and

1 “(iii) any bank or State savings asso-
2 ciation insured by the Federal Deposit In-
3 surance Corporation (other than a member
4 of the Federal Reserve System), any mu-
5 tual savings bank as, defined in section
6 3(f) of the Federal Deposit Insurance Act
7 (12 U.S.C. 1813(f)), any insured State
8 branch of a foreign bank, and any other
9 depository institution not referred to in
10 this paragraph or subparagraph (B) or
11 (C);

12 “(B) under subtitle E of the Consumer Fi-
13 nancial Protection Act of 2010, by the Bureau,
14 with respect to a covered person or service pro-
15 vider subject to that subtitle;

16 “(C) under the Federal Credit Union Act,
17 by the Administrator of the National Credit
18 Union Administration with respect to any in-
19 sured credit union; and

20 “(D) with respect to other lending institu-
21 tions, by the Secretary of Housing and Urban
22 Development.

23 “(2) INCORPORATED DEFINITIONS.—The terms
24 used in paragraph (1) that are not defined in this
25 title or otherwise defined in section 3(s) of the Fed-

1 eral Deposit Insurance Act (12 U.S.C. 1813(s))
2 shall have the same meanings as in section 1(b) of
3 the International Banking Act of 1978 (12 U.S.C.
4 3101).”; and

5 (B) by adding at the end the following:

6 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE
7 BUREAU OF CONSUMER FINANCIAL PROTECTION.—Sub-
8 ject to subtitle B of the Consumer Financial Protection
9 Act of 2010, enforcement of the requirements imposed
10 under this title is committed to each of the agencies under
11 subsection (b). The Bureau may exercise its authorities
12 under the Consumer Financial Protection Act of 2010 to
13 exercise principal authority to examine and enforce com-
14 pliance by any person with the requirements of this title.”;

15 (5) in section 306 (12 U.S.C. 2805(b)), by
16 striking subsection (b) and inserting the following:

17 “(b) EXEMPTION AUTHORITY.—The Bureau may, by
18 regulation, exempt from the requirements of this title any
19 State-chartered depository institution within any State or
20 subdivision thereof, if the agency determines that, under
21 the law of such State or subdivision, that institution is
22 subject to requirements that are substantially similar to
23 those imposed under this title, and that such law contains
24 adequate provisions for enforcement. Notwithstanding any
25 other provision of this subsection, compliance with the re-

1 requirements imposed under this subsection shall be en-
2 forced by the Office of the Comptroller of the Currency
3 under section 8 of the Federal Deposit Insurance Act, in
4 the case of national banks and Federal savings associa-
5 tions, the deposits of which are insured by the Federal
6 Deposit Insurance Corporation.”; and

7 (6) by striking section 307 (12 U.S.C. 2806)
8 and inserting the following:

9 **“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.**

10 “(a) IN GENERAL.—

11 “(1) CONSULTATION REQUIRED.—The Director
12 of the Bureau of Consumer Financial Protection,
13 with the assistance of the Secretary, the Director of
14 the Bureau of the Census, the Board of Governors
15 of the Federal Reserve System, the Federal Deposit
16 Insurance Corporation, and such other persons as
17 the Bureau deems appropriate, shall develop or as-
18 sist in the improvement of, methods of matching ad-
19 dresses and census tracts to facilitate compliance by
20 depository institutions in as economical a manner as
21 possible with the requirements of this title.

22 “(2) AUTHORIZATION OF APPROPRIATIONS.—

23 There are authorized to be appropriated, such sums
24 as may be necessary to carry out this subsection.

1 “(3) CONTRACTING AUTHORITY.—The Director
2 of the Bureau of Consumer Financial Protection is
3 authorized to utilize, contract with, act through, or
4 compensate any person or agency in order to carry
5 out this subsection.

6 “(b) RECOMMENDATIONS TO CONGRESS.—The Di-
7 rector of the Bureau of Consumer Financial Protection
8 shall recommend to the Committee on Banking, Housing,
9 and Urban Affairs of the Senate and the Committee on
10 Financial Services of the House of Representatives, such
11 additional legislation as the Director of the Bureau of
12 Consumer Financial Protection deems appropriate to
13 carry out the purpose of this title.”.

14 **SEC. 1094. AMENDMENTS TO THE HOMEOWNERS PROTEC-**
15 **TION ACT OF 1998.**

16 Section 10 of the Homeowners Protection Act of
17 1998 (12 U.S.C. 4909) is amended—

18 (1) in subsection (a)—

19 (A) by striking “Compliance” and all that
20 follows through the end of paragraph (1) and
21 inserting the following: “Subject to subtitle B
22 of the Consumer Financial Protection Act of
23 2010, compliance with the requirements im-
24 posed under this Act shall be enforced under—

1 “(4) subtitle E of the Consumer Financial Pro-
2 tection Act of 2010, by the Bureau of Consumer Fi-
3 nancial Protection.”; and

4 (2) in subsection (b)(2), by inserting before the
5 period at the end the following: “, subject to subtitle
6 B of the Consumer Financial Protection Act of
7 2010”.

8 **SEC. 1095. AMENDMENTS TO THE HOME OWNERSHIP AND**
9 **EQUITY PROTECTION ACT OF 1994.**

10 The Home Ownership and Equity Protection Act of
11 1994 (15 U.S.C. 1601 note) is amended—

12 (1) in section 158(a), by striking “Board of
13 Governors of the Federal Reserve System, in con-
14 sultation with the Consumer Advisory Council of the
15 Board” and inserting “Bureau, in consultation with
16 the Advisory Board to the Bureau”; and

17 (2) in section 158(b), by striking “Board of
18 Governors of the Federal Reserve System” and in-
19 serting “Bureau”.

20 **SEC. 1096. AMENDMENTS TO THE OMNIBUS APPROPRIA-**
21 **TIONS ACT, 2009.**

22 Section 626 of the Omnibus Appropriations Act,
23 2009 (15 U.S.C. 1638 note) is amended—

24 (1) by striking subsection (a) and inserting the
25 following:

1 “(a)(1) The Bureau of Consumer Financial Protec-
2 tion shall have authority to prescribe rules with respect
3 to mortgage loans in accordance with section 553 of title
4 5, United States Code. Such rulemaking shall relate to
5 unfair or deceptive acts or practices regarding mortgage
6 loans, which may include unfair or deceptive acts or prac-
7 tices involving loan modification and foreclosure rescue
8 services. Any violation of a rule prescribed under this
9 paragraph shall be treated as a violation of a rule prohib-
10 iting unfair, deceptive, or abusive acts or practices under
11 the Consumer Financial Protection Act of 2010 and a vio-
12 lation of a rule under section 18 of the Federal Trade
13 Commission Act (15 U.S.C. 57a) regarding unfair or de-
14 ceptive acts or practices.

15 “(2) The Bureau of Consumer Financial Protection
16 shall enforce the rules issued under paragraph (1) in the
17 same manner, by the same means, and with the same ju-
18 risdiction, powers, and duties, as though all applicable
19 terms and provisions of the Consumer Financial Protec-
20 tion Act of 2010 were incorporated into and made part
21 of this subsection.

22 “(3) Subject to subtitle B of the Consumer Financial
23 Protection Act of 2010, the Federal Trade Commission
24 shall enforce the rules issued under paragraph (1), in the
25 same manner, by the same means, and with the same ju-

1 jurisdiction, as though all applicable terms and provisions
2 of the Federal Trade Commission Act were incorporated
3 into and made part of this section.”; and

4 (2) in subsection (b)—

5 (A) by striking paragraph (1) and insert-
6 ing the following:

7 “(1) Except as provided in paragraph (6), in
8 any case in which the attorney general of a State
9 has reason to believe that an interest of the resi-
10 dents of the State has been or is threatened or ad-
11 versely affected by the engagement of any person
12 subject to a rule prescribed under subsection (a) in
13 practices that violate such rule, the State, as *parens*
14 *patriae*, may bring a civil action on behalf of its resi-
15 dents in an appropriate district court of the United
16 States or other court of competent jurisdiction—

17 “(A) to enjoin that practice;

18 “(B) to enforce compliance with the rule;

19 “(C) to obtain damages, restitution, or
20 other compensation on behalf of the residents of
21 the State; or

22 “(D) to obtain penalties and relief provided
23 under the Consumer Financial Protection Act
24 of 2010, the Federal Trade Commission Act,

1 and such other relief as the court deems appro-
2 priate.”;

3 (B) in paragraphs (2) and (3), by striking
4 “the primary Federal regulator” each time the
5 term appears and inserting “the Bureau of
6 Consumer Financial Protection or the Commis-
7 sion, as appropriate”;

8 (C) in paragraph (3), by inserting “and
9 subject to subtitle B of the Consumer Financial
10 Protection Act of 2010,” after “paragraph
11 (2),”; and

12 (D) in paragraph (6), by striking “the pri-
13 mary Federal regulator” each place that term
14 appears and inserting “the Bureau of Con-
15 sumer Financial Protection or the Commis-
16 sion”.

17 **SEC. 1097. AMENDMENTS TO THE REAL ESTATE SETTLE-**
18 **MENT PROCEDURES ACT OF 1974.**

19 The Real Estate Settlement Procedures Act of 1974
20 (12 U.S.C. 2601 et seq.) is amended—

21 (1) in section 3 (12 U.S.C. 2602)—

22 (A) in paragraph (7), by striking “and” at
23 the end;

24 (B) in paragraph (8), by striking the pe-
25 riod at the end and inserting “; and”; and

1701

1 (C) by adding at the end the following:

2 “(9) the term ‘Bureau’ means the Bureau of
3 Consumer Financial Protection.”;

4 (2) in section 4 (12 U.S.C. 2603)—

5 (A) in subsection (a), by striking the first
6 sentence and inserting the following: “The Bu-
7 reau shall publish a single, integrated disclosure
8 for mortgage loan transactions (including real
9 estate settlement cost statements) which in-
10 cludes the disclosure requirements of this title,
11 in conjunction with the disclosure requirements
12 of the Truth in Lending Act that, taken to-
13 gether, may apply to a transaction that is sub-
14 ject to both or either provisions of law. The
15 purpose of such model disclosure shall be to fa-
16 cilitate compliance with the disclosure require-
17 ments of this title and the Truth in Lending
18 Act, and to aid the borrower or lessee in under-
19 standing the transaction by utilizing readily un-
20 derstandable language to simplify the technical
21 nature of the disclosures.”;

22 (B) by striking “Secretary” each place
23 that term appears and inserting “Bureau”; and

24 (C) by striking “form” each place that
25 term appears and inserting “forms”;

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1 (3) in section 5 (12 U.S.C. 2604)—

2 (A) by striking “Secretary” each place that
3 term appears and inserting “Bureau”; and

4 (B) in subsection (a), by striking the first
5 sentence and inserting the following: “The Bu-
6 reau shall prepare and distribute booklets joint-
7 ly addressing compliance with the requirements
8 of the Truth in Lending Act and the provisions
9 of this title, in order to help persons borrowing
10 money to finance the purchase of residential
11 real estate better to understand the nature and
12 costs of real estate settlement services.”;

13 (4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

14 (A) by striking “Secretary” and inserting
15 “Bureau”; and

16 (B) by striking “, by regulations that shall
17 take effect not later than April 20, 1991,”;

18 (5) in section 7(b) (12 U.S.C. 2606(b)) by
19 striking “Secretary” and inserting “Bureau”;

20 (6) in section 8(d) (12 U.S.C. 2607(d))—

21 (A) in the subsection heading, by inserting
22 “BUREAU AND” before “SECRETARY”; and

23 (B) by striking paragraph (4), and insert-
24 ing the following:

1 “(4) The Bureau, the Secretary, or the attorney
2 general or the insurance commissioner of any State
3 may bring an action to enjoin violations of this sec-
4 tion. Except, to the extent that a person is subject
5 to the jurisdiction of the Bureau, the Secretary, or
6 the attorney general or the insurance commissioner
7 of any State, the Bureau shall have primary author-
8 ity to enforce or administer this section, subject to
9 subtitle B of the Consumer Financial Protection Act
10 of 2010.”.

11 (7) in section 10(c) (12 U.S.C. 2609(c) and
12 (d)), by striking “Secretary” and inserting “Bu-
13 reau”;

14 (8) in section 16 (12 U.S.C. 2614), by inserting
15 “the Bureau,” before “the Secretary”;

16 (9) in section 18 (12 U.S.C. 2616), by striking
17 “Secretary” each place that term appears and in-
18 serting “Bureau”; and

19 (10) in section 19 (12 U.S.C. 2617)—

20 (A) in the section heading by striking
21 “**SECRETARY**” and inserting “**BUREAU**”;

22 (B) in subsection (a), by striking “Sec-
23 retary” each place that term appears and in-
24 serting “Bureau”;

1 (C) in subsection (b), by inserting “the
2 Bureau” before “the Secretary”; and

3 (D) in subsection (c), by inserting “or the
4 Bureau” after “the Secretary” each time that
5 term appears.

6 **SEC. 1098. AMENDMENTS TO THE RIGHT TO FINANCIAL**
7 **PRIVACY ACT OF 1978.**

8 The Right to Financial Privacy Act of 1978 (12
9 U.S.C. 3401 et seq.) is amended—

10 (1) in section 1101—

11 (A) in paragraph (6)—

12 (i) in subparagraph (A), by inserting
13 “and” after the semicolon;

14 (ii) in subparagraph (B), by striking
15 “and” at the end; and

16 (iii) by striking subparagraph (C);

17 and

18 (B) in paragraph (7), by striking subpara-
19 graph (B), and inserting the following:

20 “(B) the Bureau of Consumer Financial
21 Protection;”;

22 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
23 striking “and the Commodity Futures Trading Com-
24 mission is permitted” and inserting “the Commodity

1 Futures Trading Commission, and the Bureau of
2 Consumer Financial Protection is permitted”; and

3 (3) in section 1113 (12 U.S.C. 3413), by add-
4 ing at the end the following new subsection:

5 “(r) DISCLOSURE TO THE BUREAU OF CONSUMER
6 FINANCIAL PROTECTION.—Nothing in this title shall
7 apply to the examination by or disclosure to the Bureau
8 of Consumer Financial Protection of financial records or
9 information in the exercise of its authority with respect
10 to a financial institution.”.

11 **SEC. 1099. AMENDMENTS TO THE SECURE AND FAIR EN-**
12 **FORCEMENT FOR MORTGAGE LICENSING ACT**
13 **OF 2008.**

14 The S.A.F.E. Mortgage Licensing Act of 2008 (12
15 U.S.C. 5101 et seq.) is amended—

16 (1) by striking “a Federal banking agency”
17 each place that term appears, other than in para-
18 graphs (7) and (11) of section 1503 and section
19 1507(a)(1), and inserting “the Bureau”;

20 (2) by striking “Federal banking agencies”
21 each place that term appears and inserting “Bu-
22 reau”; and

23 (3) by striking “Secretary” each place that
24 term appears and inserting “Director”;

25 (4) in section 1503 (12 U.S.C. 5102)—

1 (A) by redesignating paragraphs (2)
2 through (12) as (3) through (13), respectively;

3 (B) by striking paragraph (1) and insert-
4 ing the following:

5 “(1) BUREAU.—The term ‘Bureau’ means the
6 Bureau of Consumer Financial Protection.

7 “(2) FEDERAL BANKING AGENCY.—The term
8 ‘Federal banking agency’ means the Board of Gov-
9 ernors of the Federal Reserve System, the Office of
10 the Comptroller of the Currency, the National Credit
11 Union Administration, and the Federal Deposit In-
12 surance Corporation.”; and

13 (C) by striking paragraph (10), as so des-
14 igned by this section, and inserting the fol-
15 lowing:

16 “(10) DIRECTOR.—The term ‘Director’ means
17 the Director of the Bureau of Consumer Financial
18 Protection.”; and

19 (5) in section 1507 (12 U.S.C. 5106)—

20 (A) in subsection (a)—

21 (i) by striking paragraph (1) and in-
22 sserting the following:

23 “(1) IN GENERAL.—The Bureau shall develop
24 and maintain a system for registering employees of
25 a depository institution, employees of a subsidiary

1 that is owned and controlled by a depository institu-
2 tion and regulated by a Federal banking agency, or
3 employees of an institution regulated by the Farm
4 Credit Administration, as registered loan originators
5 with the Nationwide Mortgage Licensing System and
6 Registry. The system shall be implemented before
7 the end of the 1-year period beginning on the date
8 of enactment of the Consumer Financial Protection
9 Act of 2010.”; and

10 (ii) in paragraph (2)—

11 (I) by striking “appropriate Fed-
12 eral banking agency and the Farm
13 Credit Administration” and inserting
14 “Bureau”; and

15 (II) by striking “employees’s
16 identity” and inserting “identity of
17 the employee”; and

18 (B) in subsection (b), by striking “through
19 the Financial Institutions Examination Council,
20 and the Farm Credit Administration”, and in-
21 sserting “and the Bureau of Consumer Financial
22 Protection”;

23 (6) in section 1508 (12 U.S.C. 5107)—

24 (A) by striking the section heading and in-
25 sserting the following: “**SEC. 1508. BUREAU OF**

1 **CONSUMER FINANCIAL PROTECTION**
2 **BACKUP AUTHORITY TO ESTABLISH LOAN**
3 **ORIGINATOR LICENSING SYSTEM.”; and**

4 (B) by adding at the end the following:

5 “(f) REGULATION AUTHORITY.—

6 “(1) IN GENERAL.—The Bureau is authorized
7 to promulgate regulations setting minimum net
8 worth or surety bond requirements for residential
9 mortgage loan originators and minimum require-
10 ments for recovery funds paid into by loan origina-
11 tors.

12 “(2) CONSIDERATIONS.—In issuing regulations
13 under paragraph (1), the Bureau shall take into ac-
14 count the need to provide originators adequate in-
15 centives to originate affordable and sustainable
16 mortgage loans, as well as the need to ensure a com-
17 petitive origination market that maximizes consumer
18 access to affordable and sustainable mortgage
19 loans.”;

20 (7) by striking section 1510 (12 U.S.C. 5109)

21 and inserting the following:

22 **“SEC. 1510. FEES.**

23 “The Bureau, the Farm Credit Administration, and
24 the Nationwide Mortgage Licensing System and Registry
25 may charge reasonable fees to cover the costs of maintain-

1 ing and providing access to information from the Nation-
2 wide Mortgage Licensing System and Registry, to the ex-
3 tent that such fees are not charged to consumers for ac-
4 cess to such system and registry.”;

5 (8) by striking section 1513 (12 U.S.C. 5112)

6 and inserting the following:

7 **“SEC. 1513. LIABILITY PROVISIONS.**

8 “The Bureau, any State official or agency, or any or-
9 ganization serving as the administrator of the Nationwide
10 Mortgage Licensing System and Registry or a system es-
11 tablished by the Director under section 1509, or any offi-
12 cer or employee of any such entity, shall not be subject
13 to any civil action or proceeding for monetary damages
14 by reason of the good faith action or omission of any offi-
15 cer or employee of any such entity, while acting within
16 the scope of office or employment, relating to the collec-
17 tion, furnishing, or dissemination of information con-
18 cerning persons who are loan originators or are applying
19 for licensing or registration as loan originators.”; and

20 (9) in section 1514 (12 U.S.C. 5113) in the
21 section heading, by striking **“UNDER HUD BACKUP**
22 **LICENSING SYSTEM”** and inserting **“BY THE BU-**
23 **REAU”**.

1 **SEC. 1099A. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

2 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
3 is amended—

4 (1) in section 103 (5 U.S.C. 1602)—

5 (A) by redesignating subsections (b)
6 through (bb) as subsections (c) through (cc),
7 respectively; and

8 (B) by inserting after subsection (a) the
9 following:

10 “(b) BUREAU.—The term ‘Bureau’ means the Bu-
11 reau of Consumer Financial Protection.”;

12 (2) by striking “Board” each place that term
13 appears, other than in section 140(d) and section
14 108(a), as amended by this section, and inserting
15 “Bureau”;

16 (3) by striking “Federal Trade Commission”
17 each place that term appears, other than in section
18 108(c) and section 129(m), as amended by this Act,
19 and other than in the context of a reference to the
20 Federal Trade Commission Act, and inserting “Bu-
21 reau”;

22 (4) in section 105(a) (15 U.S.C. 1604(a)), in
23 the second sentence—

24 (A) by striking “Except in the case of a
25 mortgage referred to in section 103(aa), these
26 regulations may contain such” and inserting

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1 “Except with respect to the provisions of sec-
2 tion 129 that apply to a mortgage referred to
3 in section 103(aa), such regulations may con-
4 tain such additional requirements,”; and

5 (B) by inserting “all or” after “exceptions
6 for”;

7 (5) in section 105(b) (15 U.S.C. 1604(b)), by
8 striking the first sentence and inserting the fol-
9 lowing: “The Bureau shall publish a single, inte-
10 grated disclosure for mortgage loan transactions (in-
11 cluding real estate settlement cost statements) which
12 includes the disclosure requirements of this title in
13 conjunction with the disclosure requirements of the
14 Real Estate Settlement Procedures Act of 1974
15 that, taken together, may apply to a transaction that
16 is subject to both or either provisions of law. The
17 purpose of such model disclosure shall be to facili-
18 tate compliance with the disclosure requirements of
19 this title and the Real Estate Settlement Procedures
20 Act of 1974, and to aid the borrower or lessee in un-
21 derstanding the transaction by utilizing readily un-
22 derstandable language to simplify the technical na-
23 ture of the disclosures.”;

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1 (6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)),
2 by inserting “all or” after “from all or part of this
3 title”;

4 (7) in section 108 (15 U.S.C. 1607)—

5 (A) by striking subsection (a) and insert-
6 ing the following:

7 “(a) ENFORCING AGENCIES.—Subject to subtitle B
8 of the Consumer Financial Protection Act of 2010, compli-
9 ance with the requirements imposed under this title shall
10 be enforced under—

11 “(1) section 8 of the Federal Deposit Insurance
12 Act, by the appropriate Federal banking agency, as
13 defined in section 3(q) of the Federal Deposit Insur-
14 ance Act (12 U.S.C. 1813(q)), with respect to—

15 “(A) national banks, Federal savings asso-
16 ciations, and Federal branches and Federal
17 agencies of foreign banks;

18 “(B) member banks of the Federal Reserve
19 System (other than national banks), branches
20 and agencies of foreign banks (other than Fed-
21 eral branches, Federal agencies, and insured
22 State branches of foreign banks), commercial
23 lending companies owned or controlled by for-
24 eign banks, and organizations operating under

1 section 25 or 25A of the Federal Reserve Act;
2 and

3 “(C) banks and State savings associations
4 insured by the Federal Deposit Insurance Cor-
5 poration (other than members of the Federal
6 Reserve System), and insured State branches of
7 foreign banks;

8 “(2) the Federal Credit Union Act, by the Di-
9 rector of the National Credit Union Administration,
10 with respect to any Federal credit union;

11 “(3) the Federal Aviation Act of 1958, by the
12 Secretary of Transportation, with respect to any air
13 carrier or foreign air carrier subject to that Act;

14 “(4) the Packers and Stockyards Act, 1921 (ex-
15 cept as provided in section 406 of that Act), by the
16 Secretary of Agriculture, with respect to any activi-
17 ties subject to that Act;

18 “(5) the Farm Credit Act of 1971, by the Farm
19 Credit Administration with respect to any Federal
20 land bank, Federal land bank association, Federal
21 intermediate credit bank, or production credit asso-
22 ciation; and

23 “(6) subtitle E of the Consumer Financial Pro-
24 tection Act of 2010, by the Bureau.”; and

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1 (B) by striking subsection (c) and insert-
2 ing the following:

3 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
4 FEDERAL TRADE COMMISSION.—Except to the extent
5 that enforcement of the requirements imposed under this
6 title is specifically committed to some other Government
7 agency under any of paragraphs (1) through (6) of sub-
8 section (a), and subject to subtitle B of the Consumer Fi-
9 nancial Protection Act of 2010, the Federal Trade Com-
10 mission shall be authorized to enforce such requirements.
11 For the purpose of the exercise by the Federal Trade
12 Commission of its functions and powers under the Federal
13 Trade Commission Act, a violation of any requirement im-
14 posed under this title shall be deemed a violation of a re-
15 quirement imposed under that Act. All of the functions
16 and powers of the Federal Trade Commission under the
17 Federal Trade Commission Act are available to the Fed-
18 eral Trade Commission to enforce compliance by any per-
19 son with the requirements under this title, irrespective of
20 whether that person is engaged in commerce or meets any
21 other jurisdictional tests under the Federal Trade Com-
22 mission Act.”;

23 (8) in section 129 (15 U.S.C. 1639), by striking
24 subsection (m) and inserting the following:

1 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-
2 MISSION ENFORCEMENT ACTIONS.—For purposes of en-
3 forcement by the Federal Trade Commission, any violation
4 of a regulation issued by the Bureau pursuant to sub-
5 section (l)(2) shall be treated as a violation of a rule pro-
6 mulgated under section 18 of the Federal Trade Commis-
7 sion Act (15 U.S.C. 57a) regarding unfair or deceptive
8 acts or practices.”; and

9 (9) in chapter 5 (15 U.S.C. 1667 et seq.)—

10 (A) by striking “the Board” each place
11 that term appears and inserting “the Bureau”;
12 and

13 (B) by striking “The Board” each place
14 that term appears and inserting “The Bureau”.

15 **SEC. 1099B. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

16 The Truth in Savings Act (12 U.S.C. 4301 et seq.)
17 is amended—

18 (1) by striking “Board” each place that term
19 appears, other than in section 272(b) (12 U.S.C.
20 4311), and inserting “Bureau”;

21 (2) in section 270(a) (12 U.S.C. 4309)—

22 (A) by striking “Compliance” and all that
23 follows through the end of paragraph (1) and
24 inserting: “Subject to subtitle B of the Con-
25 sumer Financial Protection Act of 2010, com-

1 pliance with the requirements imposed under
2 this subtitle shall be enforced under—

3 “(1) section 8 of the Federal Deposit Insurance
4 Act by the appropriate Federal banking agency (as
5 defined in section 3(q) of that Act), with respect
6 to—

7 “(A) insured depository institutions (as de-
8 fined in section 3(c)(2) of that Act);

9 “(B) depository institutions described in
10 clause (i), (ii), or (iii) of section 19(b)(1)(A) of
11 the Federal Reserve Act which are not insured
12 depository institutions (as defined in section
13 3(c)(2) of the Federal Deposit Insurance Act);
14 and

15 “(C) depository institutions described in
16 clause (v) or (vi) of section 19(b)(1)(A) of the
17 Federal Reserve Act which are not insured de-
18 pository institutions (as defined in section
19 3(c)(2) of the Federal Deposit Insurance
20 Act);”;

21 (B) in paragraph (2), by striking the pe-
22 riod at the end and inserting “; and”; and

23 (C) by adding at the end the following:

24 “(3) subtitle E of the Consumer Financial Pro-
25 tection Act of 2010, by the Bureau.”;

1 (3) in section 272(b) (12 U.S.C. 4311(b)), by
2 striking “regulation prescribed by the Board” each
3 place that term appears and inserting “regulation
4 prescribed by the Bureau”; and

5 (4) in section 274 (12 U.S.C. 4313), by striking
6 paragraph (4) and inserting the following:

7 “(4) BUREAU.—The term ‘Bureau’ means the
8 Bureau of Consumer Financial Protection.”.

9 **SEC. 1099C. AMENDMENTS TO THE TELEMARKETING AND**
10 **CONSUMER FRAUD AND ABUSE PREVENTION**
11 **ACT.**

12 (a) AMENDMENTS TO SECTION 3.—Section 3 of the
13 Telemarketing and Consumer Fraud and Abuse Preven-
14 tion Act (15 U.S.C. 6102) is amended by striking sub-
15 sections (b) and (c) and inserting the following:

16 “(b) RULEMAKING AUTHORITY.—The Commission
17 shall have authority to prescribe rules under subsection
18 (a), in accordance with section 553 of title 5, United
19 States Code. In prescribing a rule under this section that
20 relates to the provision of a consumer financial product
21 or service that is subject to the Consumer Financial Pro-
22 tection Act of 2010, including any enumerated consumer
23 law thereunder, the Commission shall consult with the Bu-
24 reau of Consumer Financial Protection regarding the con-
25 sistency of a proposed rule with standards, purposes, or

1 objectives administered by the Bureau of Consumer Fi-
2 nancial Protection.

3 “(c) VIOLATIONS.—Any violation of any rule pre-
4 scribed under subsection (a)—

5 “(1) shall be treated as a violation of a rule
6 under section 18 of the Federal Trade Commission
7 Act regarding unfair or deceptive acts or practices;
8 and

9 “(2) that is committed by a person subject to
10 the Consumer Financial Protection Act of 2010
11 shall be treated as a violation of a rule under section
12 1031 of that Act regarding unfair, deceptive, or abu-
13 sive acts or practices.”.

14 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of
15 the Telemarketing and Consumer Fraud and Abuse Pre-
16 vention Act (15 U.S.C. 6103(d)) is amended by inserting
17 after “Commission” each place that term appears the fol-
18 lowing: “or the Bureau of Consumer Financial Protec-
19 tion”.

20 (c) AMENDMENTS TO SECTION 5.—Section 5(c) of
21 the Telemarketing and Consumer Fraud and Abuse Pre-
22 vention Act (15 U.S.C. 6104(c)) is amended by inserting
23 after “Commission” each place that term appears the fol-
24 lowing: “or the Bureau of Consumer Financial Protec-
25 tion”.

1 (d) AMENDMENT TO SECTION 6.—Section 6 of the
2 Telemarketing and Consumer Fraud and Abuse Preven-
3 tion Act (15 U.S.C. 6105) is amended by adding at the
4 end the following:

5 “(d) ENFORCEMENT BY BUREAU OF CONSUMER FI-
6 NANCIAL PROTECTION.—Except as otherwise provided in
7 sections 3(d), 3(e), 4, and 5, and subject to subtitle B
8 of the Consumer Financial Protection Act of 2010, this
9 Act shall be enforced by the Bureau of Consumer Finan-
10 cial Protection under subtitle E of the Consumer Finan-
11 cial Protection Act of 2010, with respect to the offering
12 or provision of a consumer financial product or service
13 subject to that Act.”.

14 **SEC. 1099D. AMENDMENTS TO THE PAPERWORK REDUC-**
15 **TION ACT.**

16 (a) DESIGNATION AS AN INDEPENDENT AGENCY.—
17 Section 2(5) of the Paperwork Reduction Act (44 U.S.C.
18 3502(5)) is amended by inserting “the Bureau of Con-
19 sumer Financial Protection, the Office of Financial Re-
20 search,” after “the Securities and Exchange Commis-
21 sion,”.

22 (b) COMPARABLE TREATMENT.—Section 3513 of
23 title 44, United States Code, is amended by adding at the
24 end the following:

1 published by the Bureau of Labor Statistics, rounded to
2 the nearest multiple of \$100, or \$1,000, as applicable.

3 **SEC. 1099F. SMALL BUSINESS FAIRNESS AND REGULATORY**
4 **TRANSPARENCY.**

5 (a) PANEL REQUIREMENT.—Section 609(d) of title
6 5, United States Code, is amended by striking “means
7 the” and all that follows and inserting the following:
8 “means—

9 “(1) the Environmental Protection Agency;

10 “(2) the Consumer Financial Protection Bureau
11 of the Federal Reserve System; and

12 “(3) the Occupational Safety and Health Ad-
13 ministration of the Department of Labor.”.

14 (b) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
15 Section 603 of title 5, United States Code, is amended
16 by adding at the end the following:

17 “(d)(1) For a covered agency, as defined in section
18 609(d)(2), each initial regulatory flexibility analysis shall
19 include a description of—

20 “(A) any projected increase in the cost of credit
21 for small entities;

22 “(B) any significant alternatives to the pro-
23 posed rule which accomplish the stated objectives of
24 applicable statutes and which minimize any increase
25 in the cost of credit for small entities; and

1 “(C) advice and recommendations of represent-
2 atives of small entities relating to issues described in
3 subparagraphs (A) and (B) and subsection (b).

4 “(2) A covered agency, as defined in section
5 609(d)(2), shall, for purposes of complying with para-
6 graph (1)(C)—

7 “(A) identify representatives of small entities in
8 consultation with the Chief Counsel for Advocacy of
9 the Small Business Administration; and

10 “(B) collect advice and recommendations from
11 the representatives identified under subparagraph
12 (A) relating to issues described in subparagraphs
13 (A) and (B) of paragraph (1) and subsection (b).”.

14 (c) FINAL REGULATORY FLEXIBILITY ANALYSIS.—
15 Section 604(a) of title 5, United States Code, is amend-
16 ed—

17 (1) in paragraph (4), by striking “and” at the
18 end;

19 (2) in paragraph (5), by striking the period at
20 the end and inserting “; and”; and

21 (3) by adding at the end the following:

22 “(6) for a covered agency, as defined in section
23 609(d)(2), a description of the steps the agency has
24 taken to minimize any additional cost of credit for
25 small entities.”.

1 **SEC. 1099G. EFFECTIVE DATE.**

2 Except as otherwise provided in this subtitle and the
3 amendments made by this subtitle, this subtitle and the
4 amendments made by this subtitle, other than sections
5 1081 and 1082, shall become effective on the designated
6 transfer date.

7 **TITLE XI—FEDERAL RESERVE**
8 **SYSTEM PROVISIONS**

9 **SEC. 1101. FEDERAL RESERVE ACT AMENDMENTS ON**
10 **EMERGENCY LENDING AUTHORITY.**

11 (a) **FEDERAL RESERVE ACT.**—The third undesig-
12 nated paragraph of section 13 of the Federal Reserve Act
13 (12 U.S.C. 343) (relating to emergency lending authority)
14 is amended—

15 (1) by inserting “(3)(A)” before “In unusual”;

16 (2) by striking “individual, partnership, or cor-
17 poration” the first place that term appears and in-
18 serting the following: “participant in any program or
19 facility with broad-based eligibility”;

20 (3) by striking “exchange for an individual or
21 a partnership or corporation” and inserting “ex-
22 change,”;

23 (4) by striking “such individual, partnership, or
24 corporation” and inserting the following: “such par-
25 ticipant in any program or facility with broad-based
26 eligibility”;

1 (5) by striking “for individuals, partnerships,
2 corporations” and inserting “for any participant in
3 any program or facility with broad-based eligibility”;

4 (6) by striking “may prescribe.” and inserting
5 the following: “may prescribe.

6 “(B)(i) As soon as is practicable after the
7 date of enactment of this subparagraph, the
8 Board shall establish, by regulation, in con-
9 sultation with the Secretary of the Treasury,
10 the policies and procedures governing emer-
11 gency lending under this paragraph. Such poli-
12 cies and procedures shall be designed to ensure
13 that any emergency lending program or facility
14 is for the purpose of providing liquidity to the
15 financial system, and not to aid a failing finan-
16 cial company, and that the security for emer-
17 gency loans is sufficient to protect taxpayers
18 from losses and that any such program is ter-
19 minated in a timely and orderly fashion. The
20 policies and procedures established by the
21 Board shall require that a Federal reserve bank
22 assign, consistent with sound risk management
23 practices and to ensure protection for the tax-
24 payer, a lendable value to all collateral for a
25 loan executed by a Federal reserve bank under

1 this paragraph in determining whether the loan
2 is secured satisfactorily for purposes of this
3 paragraph.

4 “(ii) The Board shall establish procedures
5 to prohibit borrowing from programs and facili-
6 ties by borrowers that are insolvent. Such pro-
7 cedures may include a certification from the
8 chief executive officer (or other authorized offi-
9 cer) of the borrower, at the time the borrower
10 initially borrows under the program or facility
11 (with a duty by the borrower to update the cer-
12 tification if the information in the certification
13 materially changes), that the borrower is not in-
14 solvent. A borrower shall be considered insol-
15 vent for purposes of this subparagraph, if the
16 borrower is in bankruptcy, resolution under title
17 II of the Restoring American Financial Sta-
18 bility Act of 2010, or any other Federal or
19 State insolvency proceeding.

20 “(iii) A program or facility that is struc-
21 tured to remove assets from the balance sheet
22 of a single and specific company, or that is es-
23 tablished for the purpose of assisting a single
24 and specific company avoid bankruptcy, resolu-
25 tion under title II of the Restoring American

1 Financial Stability Act of 2010, or any other
2 Federal or State insolvency proceeding, shall
3 not be considered a program or facility with
4 broad-based eligibility.

5 “(iv) The Board may not establish any
6 program or facility under this paragraph with-
7 out the prior approval of the Secretary of the
8 Treasury.

9 “(C) The Board shall provide to the Com-
10 mittee on Banking, Housing, and Urban Affairs
11 of the Senate and the Committee on Financial
12 Services of the House of Representatives—

13 “(i) not later than 7 days after the
14 Board authorizes any loan or other finan-
15 cial assistance under this paragraph, a re-
16 port that includes—

17 “(I) the justification for the exer-
18 cise of authority to provide such as-
19 sistance;

20 “(II) the identity of the recipi-
21 ents of such assistance;

22 “(III) the date and amount of
23 the assistance, and form in which the
24 assistance was provided; and

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1 “(IV) the material terms of the
2 assistance, including—

3 “(aa) duration;

4 “(bb) collateral pledged and
5 the value thereof;

6 “(cc) all interest, fees, and
7 other revenue or items of value to
8 be received in exchange for the
9 assistance;

10 “(dd) any requirements im-
11 posed on the recipient with re-
12 spect to employee compensation,
13 distribution of dividends, or any
14 other corporate decision in ex-
15 change for the assistance; and

16 “(ee) the expected costs to
17 the taxpayers of such assistance;
18 and

19 “(ii) once every 30 days, with respect
20 to any outstanding loan or other financial
21 assistance under this paragraph, written
22 updates on—

23 “(I) the value of collateral;

24 “(II) the amount of interest,
25 fees, and other revenue or items of

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1 value received in exchange for the as-
2 sistance; and

3 “(III) the expected or final cost
4 to the taxpayers of such assistance.

5 “(D) The information required to be sub-
6 mitted to Congress under subparagraph (C) re-
7 lated to—

8 “(i) the identity of the participants in
9 an emergency lending program or facility
10 commenced under this paragraph;

11 “(ii) the amounts borrowed by each
12 participant in any such program or facility;

13 “(iii) identifying details concerning
14 the assets or collateral held by, under, or
15 in connection with such a program or facil-
16 ity,

17 shall be kept confidential, upon the written re-
18 quest of the Chairman of the Board, in which
19 case such information shall be made available
20 only to the Chairpersons or Ranking Members
21 of the Committees described in subparagraph
22 (C).

23 “(E) If an entity to which a Federal re-
24 serve bank has provided a loan under this para-
25 graph becomes a covered financial company, as

1 defined in section 203 of the Restoring Amer-
2 ican Financial Stability Act of 2010, at any
3 time while such loan is outstanding, and the
4 Federal reserve bank incurs a realized net loss
5 on the loan, then the Federal reserve bank shall
6 have a claim equal to the amount of the net re-
7 alized loss against the covered entity, with the
8 same priority as an obligation to the Secretary
9 of the Treasury under sections 210(n) and
10 210(o) of the Restoring American Financial
11 Stability Act of 2010.”.

12 (b) CONFORMING AMENDMENT.—Section 507(a)(2)
13 of title 11, United States Code, is amended by inserting
14 “unsecured claims of any Federal reserve bank related to
15 loans made through programs or facilities authorized
16 under section 13(3) of the Federal Reserve Act (12 U.S.C.
17 343),” after “this title,”.

18 (c) REFERENCES.—On and after the date of enact-
19 ment of this Act, any reference in any provision of Federal
20 law to the third undesignated paragraph of section 13 of
21 the Federal Reserve Act (12 U.S.C. 343) shall be deemed
22 to be a reference to section 13(3) of the Federal Reserve
23 Act, as so designated by this section.

1 **SEC. 1102. 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 a program or facility, includ-
9 ing any special purpose vehicle or other entity estab-
10 lished by or on behalf of the Board of Governors of
11 the Federal Reserve System or a Federal reserve
12 bank, authorized by the Board of Governors under
13 section 13(3) of the Federal Reserve Act (12 U.S.C.
14 343), that is not subject to audit under subsection
15 (e).

16 “(2) AUTHORITY FOR REVIEWS AND EXAMINA-
17 TIONS.—Subject to paragraph (3), and notwith-
18 standing any limitation in subsection (b) on the au-
19 diting and oversight of certain functions of the
20 Board of Governors of the Federal Reserve System
21 or any Federal reserve bank, the Comptroller Gen-
22 eral of the United States may conduct reviews, in-
23 cluding onsite examinations, of the Board of Gov-
24 ernors, a Federal reserve bank, or a credit facility,
25 if the Comptroller General determines that such re-

1 views are appropriate, solely for the purposes of as-
2 sassing, with respect to a credit facility—

3 “(A) the operational integrity, accounting,
4 financial reporting, and internal controls of the
5 credit facility;

6 “(B) the effectiveness of the security and
7 collateral policies established for the facility in
8 mitigating risk to the relevant Federal reserve
9 bank and taxpayers;

10 “(C) whether the credit facility inappropri-
11 ately favors one or more specific participants
12 over other institutions eligible to utilize the fa-
13 cility; and

14 “(D) the policies governing the use, selec-
15 tion, or payment of third-party contractors by
16 or for any credit facility.

17 “(3) REPORTS AND DELAYED DISCLOSURE.—

18 “(A) REPORTS REQUIRED.—A report on
19 each review conducted under paragraph (2)
20 shall be submitted by the Comptroller General
21 to the Congress before the end of the 90-day
22 period beginning on the date on which such re-
23 view is completed.

24 “(B) CONTENTS.—The report under sub-
25 paragraph (A) shall include a detailed descrip-

1 tion of the findings and conclusions of the
2 Comptroller General with respect to the matters
3 described in paragraph (2) that were reviewed
4 and are the subject of the report, together with
5 such recommendations for legislative or admin-
6 istrative action relating to such matters as the
7 Comptroller General may determine to be ap-
8 propriate.

9 “(C) DELAYED RELEASE OF CERTAIN IN-
10 FORMATION.—

11 “(i) IN GENERAL.—The Comptroller
12 General shall not disclose to any person or
13 entity, including to Congress, the names or
14 identifying details of specific participants
15 in any credit facility, the amounts bor-
16 rowed by specific participants in any credit
17 facility, or identifying details regarding as-
18 sets or collateral held by, under, or in con-
19 nection with any credit facility, and any re-
20 port provided under subparagraph (A)
21 shall be redacted to ensure that such
22 names and details are not disclosed.

23 “(ii) DELAYED RELEASE.—The non-
24 disclosure obligation under clause (i) shall
25 expire with respect to any participant on

1 the date on which the Board of Governors,
2 directly or through a Federal reserve bank,
3 publicly discloses the identity of the subject
4 participant or the identifying details of the
5 subject assets or collateral.

6 “(iii) GENERAL RELEASE.—The
7 Comptroller General shall release a non-
8 redacted version of any report on a credit
9 facility 1 year after the effective date of
10 the termination by the Board of Governors
11 of the authorization for the credit facility.
12 For purposes of this clause, a credit facil-
13 ity shall be deemed to have terminated 24
14 months after the date on which the credit
15 facility ceases to make extensions of credit
16 and loans, unless the credit facility is oth-
17 erwise terminated by the Board of Gov-
18 ernors.

19 “(iv) EXCEPTIONS.—The nondisclo-
20 sure obligation under clause (i) shall not
21 apply to the credit facilities Maiden Lane,
22 Maiden Lane II, and Maiden Lane III.”.

23 (b) ACCESS TO RECORDS.—Section 714(d) of title
24 31, United States Code, is amended—

1 (1) in paragraph (2), by inserting “or any per-
2 son or entity described in paragraph (3)(A)” after
3 “used by an agency”;

4 (2) in paragraph (3), by inserting “or (f)” after
5 “subsection (e)” each place that term appears; and

6 (3) in paragraph (3)(B), by adding at the end
7 the following: “The Comptroller General may make
8 and retain copies of books, accounts, and other
9 records provided under subparagraph (A) as the
10 Comptroller General deems appropriate. The Comp-
11 troller General shall provide to any person or entity
12 described in subparagraph (A) a current list of offi-
13 cers and employees to whom, with proper identifica-
14 tion, records and property may be made available,
15 and who may make notes or copies necessary to
16 carry out a review or examination under this sub-
17 section.”.

18 **SEC. 1103. PUBLIC ACCESS TO INFORMATION.**

19 Section 2B of the Federal Reserve Act (12 U.S.C.
20 225b) is amended by adding at the end the following:

21 “(c) PUBLIC ACCESS TO INFORMATION.—The Board
22 shall place on its home Internet website, a link entitled
23 ‘Audit’, which shall link to a webpage that shall serve as
24 a repository of information made available to the public
25 for a reasonable period of time, not less than 6 months

1 following the date of release of the relevant information,
2 including—

3 “(1) the reports prepared by the Comptroller
4 General under section 714 of title 31, United States
5 Code;

6 “(2) the annual financial statements prepared
7 by an independent auditor for the Board in accord-
8 ance with section 11B;

9 “(3) the reports to the Committee on Banking,
10 Housing, and Urban Affairs of the Senate required
11 under section 13(3) (relating to emergency lending
12 authority); and

13 “(4) such other information as the Board rea-
14 sonably believes is necessary or helpful to the public
15 in understanding the accounting, financial reporting,
16 and internal controls of the Board and the Federal
17 reserve banks.”.

18 **SEC. 1104. LIQUIDITY EVENT DETERMINATION.**

19 (a) DETERMINATION AND WRITTEN RECOMMENDA-
20 TION.—

21 (1) DETERMINATION REQUEST.—The Secretary
22 may request the Corporation and the Board of Gov-
23 ernors to determine whether a liquidity event exists
24 that warrants use of the guarantee program author-
25 ized under section 1105.

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1 (2) REQUIREMENTS OF DETERMINATION.—Any
2 determination pursuant to paragraph (1) shall—

3 (A) be written; and

4 (B) contain an evaluation of the evidence
5 that—

6 (i) a liquidity event exists;

7 (ii) failure to take action would have
8 serious adverse effects on financial stability
9 or economic conditions in the United
10 States; and

11 (iii) actions authorized under section
12 1105 are needed to avoid or mitigate po-
13 tential adverse effects on the United States
14 financial system or economic conditions.

15 (b) PROCEDURES.—Notwithstanding any other provi-
16 sion of Federal or State law, upon the determination of
17 both the Corporation (upon a vote of not fewer than $\frac{2}{3}$
18 of the members of the Corporation then serving) and the
19 Board of Governors (upon a vote of not fewer than $\frac{2}{3}$
20 of the members of the Board of Governors then serving)
21 under subsection (a) that a liquidity event exists that war-
22 rants use of the guarantee program authorized under sec-
23 tion 1105, and with the written consent of the Secretary—

24 (1) the Corporation shall take action in accord-
25 ance with section 1105(a); and

1 (2) the Secretary (in consultation with the
2 President) shall take action in accordance with sec-
3 tion 1105(c).

4 (c) DOCUMENTATION AND REVIEW.—

5 (1) DOCUMENTATION.—The Secretary shall—

6 (A) maintain the written documentation of
7 each determination of the Corporation and the
8 Board of Governors under this section; and

9 (B) provide the documentation for review
10 under paragraph (2).

11 (2) GAO REVIEW.—The Comptroller General of
12 the United States shall review and report to Con-
13 gress on any determination of the Corporation and
14 the Board of Governors under subsection (a), includ-
15 ing—

16 (A) the basis for the determination; and

17 (B) the likely effect of the actions taken.

18 (d) REPORT TO CONGRESS.—On the earlier of the
19 date of a submission made to Congress under section
20 1105(c), or within 30 days of the date of a determination
21 under subsection (a), the Secretary shall provide written
22 notice of the determination of the Corporation and the
23 Board of Governors to the Committee on Banking, Hous-
24 ing, and Urban Affairs of the Senate and the Committee

1 on Financial Services of the House of Representatives, in-
2 cluding a description of the basis for the determination.

3 **SEC. 1105. EMERGENCY FINANCIAL STABILIZATION.**

4 (a) IN GENERAL.—Upon the written determination
5 of the Corporation and the Board of Governors under sec-
6 tion 1104, the Corporation shall create a widely available
7 program to guarantee obligations of solvent insured depos-
8 itory institutions or solvent depository institution holding
9 companies (including any affiliates thereof) during times
10 of severe economic distress, except that a guarantee of ob-
11 ligations under this section may not include the provision
12 of equity in any form.

13 (b) RULEMAKING AND TERMS AND CONDITIONS.—

14 (1) POLICIES AND PROCEDURES.—As soon as is
15 practicable after the date of enactment of this Act,
16 the Corporation shall establish, by regulation, and in
17 consultation with the Secretary, policies and proce-
18 dures governing the issuance of guarantees author-
19 ized by this section. Such policies and procedures
20 may include a requirement of collateral as a condi-
21 tion of any such guarantee.

22 (2) TERMS AND CONDITIONS.—The terms and
23 conditions of any guarantee program shall be estab-
24 lished by the Corporation, with the concurrence of
25 the Secretary.

1 (c) DETERMINATION OF GUARANTEED AMOUNT.—

2 (1) IN GENERAL.—In connection with any pro-
3 gram established pursuant to subsection (a) and
4 subject to paragraph (2) of this subsection, the Sec-
5 retary (in consultation with the President) shall de-
6 termine the maximum amount of debt outstanding
7 that the Corporation may guarantee under this sec-
8 tion, and the President may transmit to Congress a
9 written report on the plan of the Corporation to ex-
10 ercise the authority under this section to issue guar-
11 antees up to that maximum amount and a request
12 for approval of such plan. The Corporation shall ex-
13 ercise the authority under this section to issue guar-
14 antees up to that specified maximum amount upon
15 passage of the joint resolution of approval, as pro-
16 vided in subsection (d). Absent such approval, the
17 Corporation shall issue no such guarantees.

18 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-
19 ITY.—If the Secretary (in consultation with the
20 President) determines, after a submission to Con-
21 gress under paragraph (1), that the maximum guar-
22 antee amount should be raised, and the Council con-
23 curs with that determination, the President may
24 transmit to Congress a written report on the plan of
25 the Corporation to exercise the authority under this

1 section to issue guarantees up to the increased max-
2 imum debt guarantee amount. The Corporation shall
3 exercise the authority under this section to issue
4 guarantees up to that specified maximum amount
5 upon passage of the joint resolution of approval, as
6 provided in subsection (d). Absent such approval,
7 the Corporation shall issue no such guarantees.

8 (d) RESOLUTION OF APPROVAL.—

9 (1) ADDITIONAL DEBT GUARANTEE AUTHOR-
10 ITY.—A request by the President under this section
11 shall be considered granted by Congress upon adop-
12 tion of a joint resolution approving such request.
13 Such joint resolution shall be considered in the Sen-
14 ate under expedited procedures.

15 (2) FAST TRACK CONSIDERATION IN SENATE.—

16 (A) RECONVENING.—Upon receipt of a re-
17 quest under subsection (c), if the Senate has
18 adjourned or recessed for more than 2 days, the
19 majority leader of the Senate, after consultation
20 with the minority leader of the Senate, shall no-
21 tify the Members of the Senate that, pursuant
22 to this section, the Senate shall convene not
23 later than the second calendar day after receipt
24 of such message.

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1 (B) PLACEMENT ON CALENDAR.—Upon in-
2 troduction in the Senate, the joint resolution
3 shall be placed immediately on the calendar.

4 (C) FLOOR CONSIDERATION.—

5 (i) IN GENERAL.—Notwithstanding
6 Rule XXII of the Standing Rules of the
7 Senate, it is in order at any time during
8 the period beginning on the 4th day after
9 the date on which Congress receives a re-
10 quest under subsection (c), and ending on
11 the 7th day after that date (even though a
12 previous motion to the same effect has
13 been disagreed to) to move to proceed to
14 the consideration of the joint resolution,
15 and all points of order against the joint
16 resolution (and against consideration of
17 the joint resolution) are waived. The mo-
18 tion to proceed is not debatable. The mo-
19 tion is not subject to a motion to postpone.
20 A motion to reconsider the vote by which
21 the motion is agreed to or disagreed to
22 shall not be in order. If a motion to pro-
23 ceed to the consideration of the resolution
24 is agreed to, the joint resolution shall re-

1 main the unfinished business until dis-
2 posed of.

3 (ii) DEBATE.—Debate on the joint
4 resolution, and on all debatable motions
5 and appeals in connection therewith, shall
6 be limited to not more than 10 hours,
7 which shall be divided equally between the
8 majority and minority leaders or their des-
9 ignees. A motion further to limit debate is
10 in order and not debatable. An amendment
11 to, or a motion to postpone, or a motion to
12 proceed to the consideration of other busi-
13 ness, or a motion to recommit the joint
14 resolution is not in order.

15 (iii) VOTE ON PASSAGE.—The vote on
16 passage shall occur immediately following
17 the conclusion of the debate on the joint
18 resolution, and a single quorum call at the
19 conclusion of the debate if requested in ac-
20 cordance with the rules of the Senate.

21 (iv) RULINGS OF THE CHAIR ON PRO-
22 CEDURE.—Appeals from the decisions of
23 the Chair relating to the application of the
24 rules of the Senate, as the case may be, to

1 the procedure relating to a joint resolution
2 shall be decided without debate.

3 (3) RULES.—

4 (A) COORDINATION WITH ACTION BY
5 HOUSE OF REPRESENTATIVES.—If, before the
6 passage by the Senate of a joint resolution of
7 the Senate, the Senate receives a joint resolu-
8 tion, from the House of Representatives, then
9 the following procedures shall apply:

10 (i) The joint resolution of the House
11 of Representatives shall not be referred to
12 a committee.

13 (ii) With respect to a joint resolution
14 of the Senate—

15 (I) the procedure in the Senate
16 shall be the same as if no joint resolu-
17 tion had been received from the other
18 House; but

19 (II) the vote on passage shall be
20 on the joint resolution of the House of
21 Representatives.

22 (B) TREATMENT OF JOINT RESOLUTION
23 OF HOUSE OF REPRESENTATIVES.—If the Sen-
24 ate fails to introduce or consider a joint resolu-
25 tion under this section, the joint resolution of

1 the House of Representatives shall be entitled
2 to expedited floor procedures under this sub-
3 section.

4 (C) TREATMENT OF COMPANION MEAS-
5 URES.—If, following passage of the joint resolu-
6 tion in the Senate, the Senate then receives the
7 companion measure from the House of Rep-
8 resentatives, the companion measure shall not
9 be debatable.

10 (D) RULES OF THE SENATE.—This sub-
11 section is enacted by Congress—

12 (i) as an exercise of the rulemaking
13 power of the Senate, and as such it is
14 deemed a part of the rules of the Senate,
15 but applicable only with respect to the pro-
16 cedure to be followed in the Senate in the
17 case of a joint resolution, and it supersedes
18 other rules, only to the extent that it is in-
19 consistent with such rules; and

20 (ii) with full recognition of the con-
21 stitutional right of the Senate to change
22 the rules (so far as relating to the proce-
23 dure of the Senate) at any time, in the
24 same manner, and to the same extent as in
25 the case of any other rule of the Senate.

1 (4) DEFINITION.—As used in this subsection,
2 the term “joint resolution” means only a joint reso-
3 lution—

4 (A) that is introduced not later than 3 cal-
5 endar days after the date on which the request
6 referred to in subsection (c) is received by Con-
7 gress;

8 (B) that does not have a preamble;

9 (C) the title of which is as follows: “Joint
10 resolution relating to the approval of a plan to
11 guarantee obligations under section 1105 of the
12 Restoring American Financial Stability Act of
13 2010”; and

14 (D) the matter after the resolving clause of
15 which is as follows: “That Congress approves
16 the obligation of any amount described in sec-
17 tion 1105(c) of the Restoring American Finan-
18 cial Stability Act of 2010.”.

19 (e) FUNDING.—

20 (1) FEES AND OTHER CHARGES.—The Corpora-
21 tion shall charge fees and other assessments to all
22 participants in the program established pursuant to
23 this section, in such amounts as are necessary to off-
24 set projected losses and administrative expenses, in-
25 cluding amounts borrowed pursuant to paragraph

1 (3), and such amounts shall be available to the Cor-
2 poration.

3 (2) EXCESS FUNDS.—If, at the conclusion of
4 the program established under this section, there are
5 any excess funds collected from the fees associated
6 with such program, the funds shall be deposited in
7 the General Fund of the Treasury.

8 (3) AUTHORITY OF CORPORATION.—The Cor-
9 poration—

10 (A) may borrow funds from the Secretary
11 of the Treasury and issue obligations of the
12 Corporation to the Secretary for amounts bor-
13 rowed, and the amounts borrowed shall be
14 available to the Corporation for purposes of car-
15 rying out a program established pursuant to
16 this section, including the payment of reason-
17 able costs of administering the program, and
18 the obligations issued shall be repaid in full
19 with interest through fees and charges paid by
20 participants in accordance with paragraphs (1)
21 and (4), as applicable; and

22 (B) may not borrow funds from the De-
23 posit Insurance Fund established pursuant to
24 section 11(a)(4) of the Federal Deposit Insur-
25 ance Act.

1 (4) BACKUP SPECIAL ASSESSMENTS.—To the
2 extent that the funds collected pursuant to para-
3 graph (1) are insufficient to cover any losses or ex-
4 penses, including amounts borrowed pursuant to
5 paragraph (3), arising from a program established
6 pursuant to this section, the Corporation shall im-
7 pose a special assessment solely on participants in
8 the program, in amounts necessary to address such
9 insufficiency, and which shall be available to the
10 Corporation to cover such losses or expenses.

11 (5) AUTHORITY OF THE SECRETARY.—The Sec-
12 retary may purchase any obligations issued under
13 paragraph (3)(A). For such purpose, the Secretary
14 may use the proceeds of the sale of any securities
15 issued under chapter 31 of title 31, United States
16 Code, and the purposes for which securities may be
17 issued under that chapter 31 are extended to include
18 such purchases, and the amount of any securities
19 issued under that chapter 31 for such purpose shall
20 be treated in the same manner as securities issued
21 under section 208(n)(3)(B).

22 (f) RULE OF CONSTRUCTION.—For purposes of this
23 section, a guarantee of deposits held by insured depository
24 institutions shall not be treated as a debt guarantee pro-
25 gram.

1 (g) DEFINITIONS.—For purposes of this section, the
2 following definitions shall apply:

3 (1) COMPANY.—The term “company” means
4 any entity other than a natural person that is incor-
5 porated or organized under Federal law or the laws
6 of any State.

7 (2) DEPOSITORY INSTITUTION HOLDING COM-
8 PANY.—The term “depository institution holding
9 company” has the same meaning as in section 3 of
10 the Federal Deposit Insurance Act (12 U.S.C.
11 1813).

12 (3) LIQUIDITY EVENT.—The term “liquidity
13 event” means—

14 (A) an exceptional and broad reduction in
15 the general ability of financial market partici-
16 pants—

17 (i) to sell financial assets without an
18 unusual and significant discount; or

19 (ii) to borrow using financial assets as
20 collateral without an unusual and signifi-
21 cant increase in margin; or

22 (B) an unusual and significant reduction
23 in the ability of financial market participants to
24 obtain unsecured credit.

1 (4) SOLVENT.—The term “solvent” means that
2 the value of the assets of an entity exceed its obliga-
3 tions to creditors.

4 **SEC. 1106. ADDITIONAL RELATED AMENDMENTS.**

5 (a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT
6 INSURANCE ACT AUTHORITY.—Effective upon the date of
7 enactment of this section, the Corporation may not exer-
8 cise its authority under section 13(c)(4)(G)(i) of the Fed-
9 eral Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i))
10 to establish any widely available debt guarantee program
11 for which section 1105 would provide authority.

12 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
13 13(c)(4)(G) of the Federal Deposit Insurance Act (12
14 U.S.C. 1823(c)(4)(G)) is amended—

15 (1) in clause (i)—

16 (A) in subclause (I), by inserting “for
17 which the Corporation has been appointed re-
18 ceiver” before “would have serious”; and

19 (B) in the undesignated matter following
20 subclause (II), by inserting “for the purpose of
21 winding up the insured depository institution
22 for which the Corporation has been appointed
23 receiver” after “provide assistance under this
24 section”; and

1 (2) in clause (v)(I), by striking “The” and in-
2 serting “Not later than 3 days after making a deter-
3 mination under clause (i), the”.

4 (c) EFFECT OF DEFAULT ON AN FDIC GUAR-
5 ANTEE.—If an insured depository institution or depository
6 institution holding company (as those terms are defined
7 in section 3 of the Federal Deposit Insurance Act) partici-
8 pating in a program under section 1105, or any partici-
9 pant in a debt guarantee program established pursuant
10 to section 13(c)(4)(G)(i) of the Federal Deposit Insurance
11 Act defaults on any obligation guaranteed by the Corpora-
12 tion after the date of enactment of this Act, the Corpora-
13 tion shall—

14 (1) appoint itself as receiver for the insured de-
15 pository institution that defaults; and

16 (2) with respect to any other participating com-
17 pany that is not an insured depository institution
18 that defaults—

19 (A) require—

20 (i) consideration of whether a deter-
21 mination shall be made, as provided in sec-
22 tion 202 to resolve the company under sec-
23 tion 203; and

24 (ii) the company to file a petition for
25 bankruptcy under section 301 of title 11,

1 United States Code, if the Corporation is
2 not appointed receiver pursuant to section
3 203 within 30 days of the date of default;
4 or

5 (B) file a petition for involuntary bank-
6 ruptcy on behalf of the company under section
7 303 of title 11, United States Code.

8 **SEC. 1107. FEDERAL RESERVE ACT AMENDMENTS ON FED-**
9 **ERAL RESERVE BANK GOVERNANCE.**

10 The Federal Reserve Act (12 U.S.C. 221 et seq.) is
11 amended in section 4 by adding at the end the following:

12 “(25) SELECTION OF THE PRESIDENT OF THE
13 FEDERAL RESERVE BANK OF NEW YORK.—Notwith-
14 standing any other provision of this section, after
15 the date of enactment of the Restoring American Fi-
16 nancial Stability Act of 2010, the president of the
17 Federal Reserve Bank of New York shall be ap-
18 pointed by the President, by and with the advice and
19 consent of the Senate, for terms of 5 years.

20 “(26) LIMITATION ON ELIGIBILITY TO VOTE
21 FOR OR SERVE AS A FEDERAL RESERVE BANK DI-
22 RECTOR.—Notwithstanding any other provision of
23 this section, after the date of enactment of the Re-
24 storing American Financial Stability Act of 2010, no
25 company, or subsidiary or affiliate of a company

1 that is supervised by the Board, may vote for mem-
2 bers of the board of directors of a Federal reserve
3 bank, and no past or current officer, director, or em-
4 ployee of such company, or subsidiary or affiliate of
5 such company, may serve as a member of the board
6 of directors of a Federal reserve bank.”.

7 **SEC. 1108. FEDERAL RESERVE ACT AMENDMENTS ON SU-**
8 **PERVISION AND REGULATION POLICY.**

9 (a) ESTABLISHMENT OF THE POSITION OF VICE
10 CHAIRMAN FOR SUPERVISION.—

11 (1) POSITION ESTABLISHED.—The second un-
12 designated paragraph of section 10 of the Federal
13 Reserve Act (12 U.S.C. 242) (relating to the Chair-
14 man and Vice Chairman of the Board) is amended
15 by striking the third sentence and inserting the fol-
16 lowing: “Of the persons thus appointed, 1 shall be
17 designated by the President, by and with the advice
18 and consent of the Senate, to serve as Chairman of
19 the Board for a term of 4 years, and 2 shall be des-
20 ignated by the President, by and with the advice and
21 consent of the Senate, to serve as Vice Chairmen of
22 the Board, each for a term of 4 years, 1 of whom
23 shall serve in the absence of the Chairman, as pro-
24 vided in the fourth undesignated paragraph of this
25 section, and 1 of whom shall be designated Vice

1 Chairman for Supervision. The Vice Chairman for
2 Supervision shall develop policy recommendations for
3 the Board regarding supervision and regulation of
4 depository institution holding companies and other
5 financial firms supervised by the Board, and shall
6 oversee the supervision and regulation of such
7 firms.”.

8 (2) EFFECTIVE DATE.—The amendment made
9 by subsection (a) takes effect on the date of enact-
10 ment of this title and applies to individuals who are
11 designated by the President on or after that date to
12 serve as Vice Chairman of Supervision.

13 (b) FINANCIAL STABILITY AS BOARD FUNCTION.—
14 Section 10 of the Federal Reserve Act (12 U.S.C. 241)
15 is amended by adding at the end the following:

16 “(11) FINANCIAL STABILITY FUNCTION.—The
17 Board of Governors shall identify, measure, monitor,
18 and mitigate risks to the financial stability of the
19 United States.”.

20 (c) APPEARANCES BEFORE CONGRESS.—Section 10
21 of the Federal Reserve Act (12 U.S.C. 241) is amended
22 by adding at the end the following:

23 “(12) APPEARANCES BEFORE CONGRESS.—The
24 Vice Chairman for Supervision shall appear before
25 the Committee on Banking, Housing, and Urban Af-

1 fairs of the Senate and the Committee on Financial
2 Services of the House of Representatives and at
3 semi-annual hearings regarding the efforts, activi-
4 ties, objectives, and plans of the Board with respect
5 to the conduct of supervision and regulation of de-
6 pository institution holding companies and other fi-
7 nancial firms supervised by the Board.”.

8 (d) **BOARD RESPONSIBILITY TO SET SUPERVISION**
9 **AND REGULATORY POLICY.**—Section 11 of the Federal
10 Reserve Act (12 U.S.C. 248) (relating to enumerated pow-
11 ers of the Board) is amended by adding at the end of sub-
12 section (k) (relating to delegation) the following: “The
13 Board of Governors may not delegate to a Federal reserve
14 bank its functions for the establishment of policies for the
15 supervision and regulation of depository institution hold-
16 ing companies and other financial firms supervised by the
17 Board of Governors.”.

18 **SEC. 1109. GAO AUDIT OF THE FEDERAL RESERVE FACILI-**
19 **TIES; PUBLICATION OF BOARD ACTIONS.**

20 (a) **GAO AUDIT.**—

21 (1) **IN GENERAL.**—Notwithstanding section
22 714(b) of title 31, United States Code, or any other
23 provision of law, the Comptroller General of the
24 United States (in this subsection referred to as the
25 “Comptroller General”) shall conduct a one-time

1 audit of all loans and other financial assistance pro-
2 vided during the period beginning on December 1,
3 2007 and ending on the date of enactment of this
4 Act by the Board of Governors or a Federal reserve
5 bank under the Asset-Backed Commercial Paper
6 Money Market Mutual Fund Liquidity Facility, the
7 Term Asset-Backed Securities Loan Facility, the
8 Primary Dealer Credit Facility, the Commercial
9 Paper Funding Facility, the Term Securities Lend-
10 ing Facility, the Term Auction Facility, Maiden
11 Lane, Maiden Lane II, Maiden Lane III, the agency
12 Mortgage-Backed Securities program, foreign cur-
13 rency liquidity swap lines, and any other program
14 created as a result of section 13(3) of the Federal
15 Reserve Act (as so designated by this title).

16 (2) ASSESSMENTS.—In conducting the audit
17 under paragraph (1), the Comptroller General shall
18 assess—

19 (A) the operational integrity, accounting,
20 financial reporting, and internal controls of the
21 credit facility;

22 (B) the effectiveness of the security and
23 collateral policies established for the facility in
24 mitigating risk to the relevant Federal reserve
25 bank and taxpayers;

1 (C) whether the credit facility inappropriately favors one or more specific participants
2 over other institutions eligible to utilize the facility;
3
4

5 (D) the policies governing the use, selection, or payment of third-party contractors by
6 or for any credit facility; and
7

8 (E) whether there were conflicts of interest
9 with respect to the manner in which such facility was established or operated.
10

11 (3) **TIMING.**—The audit required by this subsection shall be commenced not later than 30 days
12 after the date of enactment of this Act, and shall be completed not later than 12 months after that date
13 of enactment.
14

15 (4) **REPORT REQUIRED.**—The Comptroller General shall submit a report on the audit conducted
16 under paragraph (1) to the Congress not later than
17 12 months after the date of enactment of this Act,
18 and such report shall be made available to—
19

20 (A) the Speaker of the House of Representatives;
21

22 (B) the majority and minority leaders of
23 the House of Representatives;
24

1 (C) the majority and minority leaders of
2 the Senate;

3 (D) the Chairman and Ranking Member of
4 the Committee on Banking, Housing, and
5 Urban Affairs of the Senate and of the Com-
6 mittee on Financial Services of the House of
7 Representatives; and

8 (E) any member of Congress who requests
9 it.

10 (b) AUDIT OF FEDERAL RESERVE BANK GOVERN-
11 ANCE.—

12 (1) AUDIT.—

13 (A) IN GENERAL.—Not later than 1 year
14 after the date of enactment of this Act, the
15 Comptroller General shall complete an audit of
16 the governance of the Federal reserve bank sys-
17 tem.

18 (B) REQUIRED EXAMINATIONS.—The audit
19 required under subparagraph (A) shall—

20 (i) examine the extent to which the
21 current system of appointing Federal re-
22 serve bank directors effectively represents
23 “the public, without discrimination on the
24 basis of race, creed, color, sex or national
25 origin, and with due but not exclusive con-

1 sideration to the interests of agriculture,
2 commerce, industry, services, labor, and
3 consumers” in the selection of bank direc-
4 tors, as such requirement is set forth
5 under section 4 of the Federal Reserve
6 Act;

7 (ii) examine whether there are actual
8 or potential conflicts of interest created
9 when the directors of Federal reserve
10 banks, which execute the supervisory func-
11 tions of the Board of Governors of the
12 Federal Reserve System, are elected by
13 member banks;

14 (iii) examine the establishment and
15 operations of each facility described in sub-
16 section (a)(1) and each Federal reserve
17 bank involved in the establishment and op-
18 erations thereof; and

19 (iv) identify changes to selection pro-
20 cedures for Federal reserve bank directors,
21 or to other aspects of Federal reserve bank
22 governance, that would—

23 (I) improve how the public is rep-
24 resented;

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1 (II) eliminate actual or potential
2 conflicts of interest in bank super-
3 vision;

4 (III) increase the availability of
5 information useful for the formation
6 and execution of monetary policy; or

7 (IV) in other ways increase the
8 effectiveness or efficiency of reserve
9 banks.

10 (2) REPORT REQUIRED.—A report on the audit
11 conducted under paragraph (1) shall be submitted
12 by the Comptroller General to the Congress before
13 the end of the 90-day period beginning on the date
14 on which such audit is completed, and such report
15 shall be made available to—

16 (A) the Speaker of the House of Rep-
17 resentatives;

18 (B) the majority and minority leaders of
19 the House of Representatives;

20 (C) the majority and minority leaders of
21 the Senate;

22 (D) the Chairman and Ranking Member of
23 the Committee on Banking, Housing, and
24 Urban Affairs of the Senate and of the Com-

1 mittee on Financial Services of the House of
2 Representatives; and

3 (E) any member of Congress who requests
4 it.

5 (c) PUBLICATION OF BOARD ACTIONS.—Notwith-
6 standing any other provision of law, the Board of Gov-
7 ernors shall publish on its website, not later than Decem-
8 ber 1, 2010, with respect to all loans and other financial
9 assistance it has provided during the period beginning on
10 December 1, 2007 and ending on the date of enactment
11 of this Act under the Asset-Backed Commercial Paper
12 Money Market Mutual Fund Liquidity Facility, the Term
13 Asset-Backed Securities Loan Facility, the Primary Deal-
14 er Credit Facility, the Commercial Paper Funding Facil-
15 ity, the Term Securities Lending Facility, the Term Auc-
16 tion Facility, Maiden Lane, Maiden Lane II, Maiden Lane
17 III, the agency Mortgage-Backed Securities program, for-
18 eign currency liquidity swap lines, and any other program
19 created as a result of section 13(3) of the Federal Reserve
20 Act (as so designated by this title)—

21 (1) the identity of each business, individual, en-
22 tity, or foreign central bank to which the Board of
23 Governors has provided such assistance;

1 (2) the type of financial assistance provided to
2 that business, individual, entity, or foreign central
3 bank;

4 (3) the value or amount of that financial assist-
5 ance;

6 (4) the date on which the financial assistance
7 was provided;

8 (5) the specific terms of any repayment ex-
9 pected, including the repayment time period, interest
10 charges, collateral, limitations on executive com-
11 pensation or dividends, and other material terms;
12 and

13 (6) the specific rationale for each such facility
14 or program.

15 **TITLE XII—IMPROVING ACCESS**
16 **TO MAINSTREAM FINANCIAL**
17 **INSTITUTIONS**

18 **SEC. 1201. SHORT TITLE.**

19 This title may be cited as the “Improving Access to
20 Mainstream Financial Institutions Act of 2010”.

21 **SEC. 1202. PURPOSE.**

22 The purpose of this title is to encourage initiatives
23 for financial products and services that are appropriate
24 and accessible for millions of Americans who are not fully
25 incorporated into the financial mainstream.

1 **SEC. 1203. DEFINITIONS.**

2 In this title, the following definitions shall apply:

3 (1) ACCOUNT.—The term “account” means an
4 agreement between an individual and an eligible en-
5 tity under which the individual obtains from or
6 through the entity 1 or more banking products and
7 services, and includes a deposit account, a savings
8 account (including a money market savings ac-
9 count), an account for a closed-end loan, and other
10 products or services, as the Secretary deems appro-
11 priate.

12 (2) COMMUNITY DEVELOPMENT FINANCIAL IN-
13 STITUTION.—The term “community development fi-
14 nancial institution” has the same meaning as in sec-
15 tion 103(5) of the Community Development Banking
16 and Financial Institutions Act of 1994 (12 U.S.C.
17 4702(5)).

18 (3) ELIGIBLE ENTITY.—The term “eligible enti-
19 ty” means—

20 (A) an organization described in section
21 501(c)(3) of the Internal Revenue Code of
22 1986, and exempt from tax under section
23 501(a) of such Code;

24 (B) a federally insured depository institu-
25 tion;

1 (C) a community development financial in-
2 stitution;

3 (D) a State, local, or tribal government en-
4 tity; or

5 (E) a partnership or other joint venture
6 comprised of 1 or more of the entities described
7 in subparagraphs (A) through (D), in accord-
8 ance with regulations prescribed by the Sec-
9 retary under this title.

10 (4) **FEDERALLY INSURED DEPOSITORY INSTI-**
11 **TUTION.**—The term “federally insured depository in-
12 stitution” means any insured depository institution
13 (as that term is defined in section 3 of the Federal
14 Deposit Insurance Act (12 U.S.C. 1813)) and any
15 insured credit union (as that term is defined in sec-
16 tion 101 of the Federal Credit Union Act (12 U.S.C.
17 1752)).

18 (5) **PAYDAY LOAN.**—The term “payday loan”
19 means any transaction in which a small cash ad-
20 vance is made to a consumer in exchange for—

21 (A) the personal check or share draft of
22 the consumer, in the amount of the advance
23 plus a fee, where presentment or negotiation of
24 such check or share draft is deferred by agree-

1 ment of the parties until a designated future
2 date; or

3 (B) the authorization of the consumer to
4 debit the transaction account or share draft ac-
5 count of the consumer, in the amount of the ad-
6 vance plus a fee, where such account will be
7 debited on or after a designated future date.

8 **SEC. 1204. EXPANDED ACCESS TO MAINSTREAM FINANCIAL**
9 **INSTITUTIONS.**

10 (a) IN GENERAL.—The Secretary is authorized to es-
11 tablish a multiyear program of grants, cooperative agree-
12 ments, financial agency agreements, and similar contracts
13 or undertakings to promote initiatives designed—

14 (1) to enable low- and moderate-income individ-
15 uals to establish one or more accounts in a federally
16 insured depository institution that are appropriate to
17 meet the financial needs of such individuals; and

18 (2) to improve access to the provision of ac-
19 counts, on reasonable terms, for low- and moderate-
20 income individuals.

21 (b) PROGRAM ELIGIBILITY AND ACTIVITIES.—

22 (1) IN GENERAL.—The Secretary shall restrict
23 participation in any program established under sub-
24 section (a) to an eligible entity. Subject to regula-
25 tions prescribed by the Secretary under this title, 1

1 or more eligible entities may participate in 1 or sev-
2 eral programs established under subsection (a).

3 (2) ACCOUNT ACTIVITIES.—Subject to regula-
4 tions prescribed by the Secretary, an eligible entity
5 may, in participating in a program established under
6 subsection (a), offer or provide to low- and mod-
7 erate-income individuals products and services relat-
8 ing to accounts, including—

9 (A) small-dollar value loans; and

10 (B) financial education and counseling re-
11 lating to conducting transactions in and man-
12 aging accounts.

13 **SEC. 1205. LOW-COST ALTERNATIVES TO PAYDAY LOANS.**

14 (a) GRANTS AUTHORIZED.—The Secretary is author-
15 ized to establish multiyear demonstration programs by
16 means of grants, cooperative agreements, financial agency
17 agreements, and similar contracts or undertakings, with
18 eligible entities to provide low-cost, small loans to con-
19 sumers that will provide alternatives to more costly payday
20 loans.

21 (b) TERMS AND CONDITIONS.—

22 (1) IN GENERAL.—Loans under this section
23 shall be made on terms and conditions, and pursu-
24 ant to lending practices, that are reasonable for con-
25 sumers.

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1 (2) FINANCIAL LITERACY AND EDUCATION OP-
2 PORTUNITIES.—

3 (A) IN GENERAL.—Each eligible entity
4 awarded a grant under this section shall pro-
5 mote and take appropriate steps to ensure the
6 provision of financial literacy and education op-
7 portunities, such as relevant counseling services,
8 educational courses, or wealth building pro-
9 grams, to each consumer provided with a loan
10 pursuant to this section.

11 (B) AUTHORITY TO EXPAND ACCESS.—As
12 part of the grants, agreements, and under-
13 takings established under this section, the Sec-
14 retary may implement reasonable measures or
15 programs designed to expand access to financial
16 literacy and education opportunities, including
17 relevant counseling services, educational
18 courses, or wealth building programs to be pro-
19 vided to individuals who obtain loans from eligi-
20 ble entities under this section.

21 **SEC. 1206. GRANTS TO ESTABLISH LOAN-LOSS RESERVE**
22 **FUNDS.**

23 The Community Development Banking and Financial
24 Institutions Act of 1994 (12 U.S.C. 4701 et seq.) is
25 amended by adding at the end the following:

1 **“SEC. 122. GRANTS TO ESTABLISH LOAN-LOSS RESERVE**
2 **FUNDS.**

3 “(a) PURPOSES.—The purposes of this section are—

4 “(1) to make financial assistance available from
5 the Fund in order to help community development
6 financial institutions defray the costs of operating
7 small dollar loan programs, by providing the
8 amounts necessary for such institutions to establish
9 their own loan loss reserve funds to mitigate some
10 of the losses on such small dollar loan programs;
11 and

12 “(2) to encourage community development fi-
13 nancial institutions to establish and maintain small
14 dollar loan programs that would help give consumers
15 access to mainstream financial institutions and com-
16 bat payday lending.

17 “(b) GRANTS.—

18 “(1) LOAN-LOSS RESERVE FUND GRANTS.—The
19 Fund shall make grants to community development
20 financial institutions or to any partnership between
21 such community development financial institutions
22 and any other federally insured depository institu-
23 tion with a primary mission to serve targeted invest-
24 ment areas, as such areas are defined under section
25 103(16), to enable such institutions or any partner-
26 ship of such institutions to establish a loan-loss re-

1 serve fund in order to defray the costs of a small
2 dollar loan program established or maintained by
3 such institution.

4 “(2) MATCHING REQUIREMENT.—A community
5 development financial institution or any partnership
6 of institutions established pursuant to paragraph (1)
7 shall provide non-Federal matching funds in an
8 amount equal to 50 percent of the amount of any
9 grant received under this section.

10 “(3) USE OF FUNDS.—Any grant amounts re-
11 ceived by a community development financial institu-
12 tion or any partnership between or among such in-
13 stitutions under paragraph (1)—

14 “(A) may not be used by such institution
15 to provide direct loans to consumers;

16 “(B) may be used by such institution to
17 help recapture a portion or all of a defaulted
18 loan made under the small dollar loan program
19 of such institution; and

20 “(C) may be used to designate and utilize
21 a fiscal agent for services normally provided by
22 such an agent.

23 “(4) TECHNICAL ASSISTANCE GRANTS.—The
24 Fund shall make technical assistance grants to com-
25 munity development financial institutions or any

1 partnership between or among such institutions to
2 support and maintain a small dollar loan program.
3 Any grant amounts received under this paragraph
4 may be used for technology, staff support, and other
5 costs associated with establishing a small dollar loan
6 program.

7 “(c) DEFINITIONS.—For purposes of this section—

8 “(1) the term ‘consumer reporting agency that
9 compiles and maintains files on consumers on a na-
10 tionwide basis’ has the same meaning given such
11 term in section 603(p) of the Fair Credit Reporting
12 Act (15 U.S.C. 1681a(p)); and

13 “(2) the term ‘small dollar loan program’
14 means a loan program wherein a community devel-
15 opment financial institution or any partnership be-
16 tween or among such institutions offers loans to con-
17 sumers that—

18 “(A) are made in amounts not exceeding
19 \$2,500;

20 “(B) must be repaid in installments;

21 “(C) have no pre-payment penalty;

22 “(D) the institution has to report pay-
23 ments regarding the loan to at least 1 of the
24 consumer reporting agencies that compiles and

1 maintains files on consumers on a nationwide
2 basis; and

3 “(E) meet any other affordability require-
4 ments as may be established by the Adminis-
5 trator.”.

6 **SEC. 1207. PROCEDURAL PROVISIONS.**

7 An eligible entity desiring to participate in a program
8 or obtain a grant under this title shall submit an applica-
9 tion to the Secretary, in such form and containing such
10 information as the Secretary may require.

11 **SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.**

12 (a) AUTHORIZATION TO THE SECRETARY.—There
13 are authorized to be appropriated to the Secretary, such
14 sums as are necessary to both administer and fund the
15 programs and projects authorized by this title, to remain
16 available until expended.

17 (b) AUTHORIZATION TO THE FUND.—There is au-
18 thorized to be appropriated to the Fund for each fiscal
19 year beginning in fiscal year 2010, an amount equal to
20 the amount of the administrative costs of the Fund for
21 the operation of the grant program established under this
22 title.

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1 SEC. 1209. REGULATIONS.

2 (a) IN GENERAL.—The Secretary is authorized to
3 promulgate regulations to implement and administer the
4 grant programs and undertakings authorized by this title.

5 (b) REGULATORY AUTHORITY.—Regulations pre-
6 scribed under this section may contain such classifications,
7 differentiations, or other provisions, and may provide for
8 such adjustments and exceptions for any class of grant
9 programs, undertakings, or eligible entities, as, in the
10 judgment of the Secretary, are necessary or proper to ef-
11 fectuate the purposes of this title, to prevent circumven-
12 tion or evasion of this title, or to facilitate compliance with
13 this title.

14 SEC. 1210. EVALUATION AND REPORTS TO CONGRESS.

15 For each fiscal year in which a program or project
16 is carried out under this title, the Secretary shall submit
17 a report to the Committee on Banking, Housing, and
18 Urban Affairs of the Senate and the Committee on Finan-
19 cial Services of the House of Representatives containing
20 a description of the activities funded, amounts distributed,
21 and measurable results, as appropriate and available.

22 TITLE XIII—PAY IT BACK ACT**23 SEC. 1301. SHORT TITLE.**

24 This title may be cited as the “Pay It Back Act”.

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1 **SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZA-**
2 **TION.**

3 Section 115(a) of the Emergency Economic Stabiliza-
4 tion Act of 2008 (12 U.S.C. 5225(a)) is amended—

5 (1) in paragraph (3)—

6 (A) by striking “If” and inserting “Except
7 as provided in paragraph (4), if”;

8 (B) by striking “, \$700,000,000,000, as
9 such amount is reduced by \$1,259,000,000, as
10 such amount is reduced by \$1,244,000,000”
11 and inserting “\$550,000,000,000”; and

12 (C) by striking “outstanding at any one
13 time”; and

14 (2) by adding at the end the following:

15 “(4) If the Secretary, with the concurrence of
16 the Chairman of the Board of Governors of the Fed-
17 eral Reserve System, determines that there is an im-
18 mediate and substantial threat to the economy aris-
19 ing from financial instability, the Secretary is au-
20 thorized to purchase troubled assets under this Act
21 in an amount equal to amounts received by the Sec-
22 retary before, on, or after the date of enactment of
23 the Pay It Back Act for repayment of the principal
24 of financial assistance by an entity that has received
25 financial assistance under the TARP or any other
26 program enacted by the Secretary under the authori-

1 ties granted to the Secretary under this Act, but
2 only—

3 “(A) to the extent necessary to address the
4 threat; and

5 “(B) upon transmittal of such determina-
6 tion, in writing, to the appropriate committees
7 of Congress.”.

8 **SEC. 1303. REPORT.**

9 Section 106 of the Emergency Economic Stabilization
10 Act of 2008 (12 U.S.C. 5216) is amended by inserting
11 at the end the following:

12 “(f) REPORT.—The Secretary of the Treasury shall
13 report to Congress every 6 months on amounts received
14 and transferred to the general fund under subsection
15 (d).”.

16 **SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RE-**
17 **COVERY ACT OF 2008.**

18 (a) SALE OF FANNIE MAE OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Sec-
19 tion 304(g)(2) of the Federal National Mortgage Associa-
20 tion Charter Act (12 U.S.C. 1719(g)(2)) is amended—

22 (1) by redesignating subparagraph (C) as sub-
23 paragraph (D); and

24 (2) by inserting after subparagraph (B) the fol-
25 lowing:

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1 “(C) DEFICIT REDUCTION.—The Secretary
2 of the Treasury shall deposit in the General
3 Fund of the Treasury any amounts received by
4 the Secretary from the sale of any obligation
5 acquired by the Secretary under this subsection,
6 where such amounts shall be—

7 “(i) dedicated for the sole purpose of
8 deficit reduction; and

9 “(ii) prohibited from use as an offset
10 for other spending increases or revenue re-
11 ductions.”.

12 (b) SALE OF FREDDIE MAC OBLIGATIONS AND SE-
13 CURITIES BY THE TREASURY; DEFICIT REDUCTION.—
14 Section 306(l)(2) of the Federal Home Loan Mortgage
15 Corporation Act (12 U.S.C. 1455(l)(2)) is amended—

16 (1) by redesignating subparagraph (C) as sub-
17 paragraph (D); and

18 (2) by inserting after subparagraph (B) the fol-
19 lowing:

20 “(C) DEFICIT REDUCTION.—The Secretary
21 of the Treasury shall deposit in the General
22 Fund of the Treasury any amounts received by
23 the Secretary from the sale of any obligation
24 acquired by the Secretary under this subsection,
25 where such amounts shall be—

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1 “(i) dedicated for the sole purpose of
2 deficit reduction; and

3 “(ii) prohibited from use as an offset
4 for other spending increases or revenue re-
5 ductions.”.

6 (c) SALE OF FEDERAL HOME LOAN BANKS OBLIGA-
7 TIONS BY THE TREASURY; DEFICIT REDUCTION.—Sec-
8 tion 11(l)(2) of the Federal Home Loan Bank Act (12
9 U.S.C. 1431(l)(2)) is amended—

10 (1) by redesignating subparagraph (C) as sub-
11 paragraph (D); and

12 (2) by inserting after subparagraph (B) the fol-
13 lowing:

14 “(C) DEFICIT REDUCTION.—The Secretary
15 of the Treasury shall deposit in the General
16 Fund of the Treasury any amounts received by
17 the Secretary from the sale of any obligation
18 acquired by the Secretary under this subsection,
19 where such amounts shall be—

20 “(i) dedicated for the sole purpose of
21 deficit reduction; and

22 “(ii) prohibited from use as an offset
23 for other spending increases or revenue re-
24 ductions.”.

1 (d) REPAYMENT OF FEES.—Any periodic commit-
2 ment fee or any other fee or assessment paid by the Fed-
3 eral National Mortgage Association or Federal Home
4 Loan Mortgage Corporation to the Secretary of the Treas-
5 ury as a result of any preferred stock purchase agreement,
6 mortgage-backed security purchase program, or any other
7 program or activity authorized or carried out pursuant to
8 the authorities granted to the Secretary of the Treasury
9 under section 1117 of the Housing and Economic Recov-
10 ery Act of 2008 (Public Law 110–289; 122 Stat. 2683),
11 including any fee agreed to by contract between the Sec-
12 retary and the Association or Corporation, shall be depos-
13 ited in the General Fund of the Treasury where such
14 amounts shall be—

15 (1) dedicated for the sole purpose of deficit re-
16 duction; and

17 (2) prohibited from use as an offset for other
18 spending increases or revenue reductions.

19 **SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.**

20 The Director of the Federal Housing Finance Agency
21 shall submit to Congress a report on the plans of the
22 Agency to continue to support and maintain the Nation’s
23 vital housing industry, while at the same time guaran-
24 teeing that the American taxpayer will not suffer unneces-
25 sary losses.

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1 **SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.**

2 (a) REJECTION OF ARRA FUNDS BY STATE.—Sec-
3 tion 1607 of the American Recovery and Reinvestment Act
4 of 2009 (Public Law 111–5; 123 Stat. 305) is amended
5 by adding at the end the following:

6 “(d) STATEWIDE REJECTION OF FUNDS.—If funds
7 provided to any State in any division of this Act are not
8 accepted for use by the Governor of the State pursuant
9 to subsection (a) or by the State legislature pursuant to
10 subsection (b), then all such funds shall be—

11 “(1) rescinded; and

12 “(2) deposited in the General Fund of the
13 Treasury where such amounts shall be—

14 “(A) dedicated for the sole purpose of def-
15 icit reduction; and

16 “(B) prohibited from use as an offset for
17 other spending increases or revenue reduc-
18 tions.”.

19 (b) WITHDRAWAL OR RECAPTURE OF UNOBLIGATED
20 FUNDS.—Title XVI of the American Recovery and Rein-
21 vestment Act of 2009 (Public Law 111–5; 123 Stat. 302)
22 is amended by adding at the end the following:

23 **“SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLI-
24 GATED FUNDS.**

25 “Notwithstanding any other provision of this Act, if
26 the head of any executive agency withdraws or recaptures

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1 for any reason funds appropriated or otherwise made
2 available under this division, and such funds have not been
3 obligated by a State to a local government or for a specific
4 project, such recaptured funds shall be—

5 “(1) rescinded; and

6 “(2) deposited in the General Fund of the
7 Treasury where such amounts shall be—

8 “(A) dedicated for the sole purpose of def-
9 icit reduction; and

10 “(B) prohibited from use as an offset for
11 other spending increases or revenue reduc-
12 tions.”.

13 (c) RETURN OF UNOBLIGATED FUNDS BY END OF
14 2012.—Section 1603 of the American Recovery and Rein-
15 vestment Act of 2009 (Public Law 111–5; 123 Stat. 302)
16 is amended by—

17 (1) striking “All funds” and inserting “(a) IN
18 GENERAL.—All funds”; and

19 (2) adding at the end the following:

20 “(b) REPAYMENT OF UNOBLIGATED FUNDS.—Any
21 discretionary appropriations made available in this divi-
22 sion that have not been obligated as of December 31,
23 2012, are hereby rescinded, and such amounts shall be
24 deposited in the General Fund of the Treasury where such
25 amounts shall be—

1 “(1) dedicated for the sole purpose of deficit re-
2 duction; and

3 “(2) prohibited from use as an offset for other
4 spending increases or revenue reductions.

5 “(c) PRESIDENTIAL WAIVER AUTHORITY.—

6 “(1) IN GENERAL.—The President may waive
7 the requirements under subsection (b), if the Presi-
8 dent determines that it is not in the best interest of
9 the Nation to rescind a specific unobligated amount
10 after December 31, 2012.

11 “(2) REQUESTS.—The head of an executive
12 agency may also apply to the President for a waiver
13 from the requirements under subsection (b).”.

14 **TITLE XIV—MORTGAGE REFORM**
15 **AND ANTI-PREDATORY LEND-**
16 **ING ACT**

17 **SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED**
18 **CONSUMER LAW.**

19 (a) SHORT TITLE.—This title may be cited as the
20 “Mortgage Reform and Anti-Predatory Lending Act”.

21 (b) DESIGNATION AS ENUMERATED CONSUMER LAW
22 UNDER THE PURVIEW OF THE BUREAU OF CONSUMER
23 FINANCIAL PROTECTION.—Subtitles A, B, C, and E and
24 sections 1471, 1472, 1475, and 1476, and the amend-
25 ments made by such subtitles and sections, shall be enu-

1 merated consumer laws, as defined in section 1002, and
2 come under the purview of the Bureau of Consumer Fi-
3 nancial Protection for purposes of title X, including the
4 transfer of functions and personnel under subtitle F of
5 title X and the savings provisions of such subtitle.

6 **Subtitle A—Residential Mortgage**
7 **Loan Origination Standards**

8 **SEC. 1401. DEFINITIONS.**

9 Section 103 of the Truth in Lending Act (15 U.S.C.
10 1602) is amended by adding at the end the following new
11 subsection:

12 “(cc) DEFINITIONS RELATING TO MORTGAGE ORIGI-
13 NATION AND RESIDENTIAL MORTGAGE LOANS.—

14 “(1) COMMISSION.—Unless otherwise specified,
15 the term ‘Commission’ means the Federal Trade
16 Commission.

17 “(2) FEDERAL BANKING AGENCIES.—The term
18 ‘Federal banking agencies’ means the Board of Gov-
19 ernors of the Federal Reserve System, the Comp-
20 troller of the Currency, the Director of the Office of
21 Thrift Supervision, the Federal Deposit Insurance
22 Corporation, and the National Credit Union Admin-
23 istration Board. All rule writing by the ‘Federal
24 banking agencies’ as designated by the Mortgage
25 Reform and Anti-Predatory Lending Act will be co-

1 ordinated through the Financial Institutions Exam-
2 ination Council in consultation with the Chairman of
3 the State Liaison Committee.

4 “(3) MORTGAGE ORIGINATOR.—The term
5 ‘mortgage originator’—

6 “(A) means any person who, for direct or
7 indirect compensation or gain, or in the expect-
8 ation of direct or indirect compensation or
9 gain—

10 “(i) takes a residential mortgage loan
11 application;

12 “(ii) assists a consumer in obtaining
13 or applying to obtain a residential mort-
14 gage loan; or

15 “(iii) offers or negotiates terms of a
16 residential mortgage loan;

17 “(B) includes any person who represents
18 to the public, through advertising or other
19 means of communicating or providing informa-
20 tion (including the use of business cards, sta-
21 tionery, brochures, signs, rate lists, or other
22 promotional items), that such person can or will
23 provide any of the services or perform any of
24 the activities described in subparagraph (A);

1 “(C) does not include any person who is (i)
2 not otherwise described in subparagraph (A) or
3 (B) and who performs purely administrative or
4 clerical tasks on behalf of a person who is de-
5 scribed in any such subparagraph, or (ii) an
6 employee of a retailer of manufactured homes
7 who is not described in clause (i) or (iii) of sub-
8 paragraph (A) and who does not advise a con-
9 sumer on loan terms (including rates, fees, and
10 other costs);

11 “(D) does not include a person or entity
12 that only performs real estate brokerage activi-
13 ties and is licensed or registered in accordance
14 with applicable State law, unless such person or
15 entity is compensated for performing such bro-
16 kerage activities by a lender, a mortgage
17 broker, or other mortgage originator or by any
18 agent of such lender, mortgage broker, or other
19 mortgage originator;

20 “(E) does not include, with respect to a
21 residential mortgage loan, a person, estate, or
22 trust that provides mortgage financing for the
23 sale of 1 property in any 36-month period, pro-
24 vided that such loan—

25 “(i) is fully amortizing;

1 “(ii) is with respect to a sale for
2 which the seller determines in good faith
3 and documents that the buyer has a rea-
4 sonable ability to repay the loan;

5 “(iii) has a fixed rate or an adjustable
6 rate that is adjustable after 5 or more
7 years, subject to reasonable annual and
8 lifetime limitations on interest rate in-
9 creases; and

10 “(iv) meets any other criteria the
11 Board may prescribe;

12 “(F) does not include the creditor under
13 paragraph (1), (2), or (4) of section 129B(c);
14 and

15 “(G) does not include a servicer or servicer
16 employees, agents and contractors, including
17 but not limited to those who offer or negotiate
18 terms of a residential mortgage loan for pur-
19 poses of renegotiating, modifying, replacing and
20 subordinating principal of existing mortgages
21 where borrowers are behind in their payments,
22 in default or have a reasonable likelihood of
23 being in default or falling behind.

24 “(4) NATIONWIDE MORTGAGE LICENSING SYS-
25 TEM AND REGISTRY.—The term ‘Nationwide Mort-

1 gage Licensing System and Registry’ has the same
2 meaning as in the Secure and Fair Enforcement for
3 Mortgage Licensing Act of 2008.

4 “(5) OTHER DEFINITIONS RELATING TO MORT-
5 GAGE ORIGINATOR.—For purposes of this sub-
6 section, a person ‘assists a consumer in obtaining or
7 applying to obtain a residential mortgage loan’ by,
8 among other things, advising on residential mort-
9 gage loan terms (including rates, fees, and other
10 costs), preparing residential mortgage loan packages,
11 or collecting information on behalf of the consumer
12 with regard to a residential mortgage loan.

13 “(6) RESIDENTIAL MORTGAGE LOAN.—The
14 term ‘residential mortgage loan’ means any con-
15 sumer credit transaction that is secured by a mort-
16 gage, deed of trust, or other equivalent consensual
17 security interest on a dwelling or on residential real
18 property that includes a dwelling, other than a con-
19 sumer credit transaction under an open end credit
20 plan or, for purposes of sections 129B and 129C
21 and section 128(a) (16), (17), and (18), and 128(f)
22 and any regulations promulgated thereunder, an ex-
23 tension of credit relating to a plan described in sec-
24 tion 101(53D) of title 11, United States Code.

1 “(7) SECRETARY.—The term ‘Secretary’, when
2 used in connection with any transaction or person
3 involved with a residential mortgage loan, means the
4 Secretary of Housing and Urban Development.

5 “(8) SECURITIZATION VEHICLE.—The term
6 ‘securitization vehicle’ means a trust, corporation,
7 partnership, limited liability entity, special purpose
8 entity, or other structure that—

9 “(A) is the issuer, or is created by the
10 issuer, of mortgage pass-through certificates,
11 participation certificates, mortgage-backed secu-
12 rities, or other similar securities backed by a
13 pool of assets that includes residential mortgage
14 loans; and

15 “(B) holds such loans.

16 “(9) SECURITIZER.—The term ‘securitizer’
17 means the person that transfers, conveys, or assigns,
18 or causes the transfer, conveyance, or assignment of,
19 residential mortgage loans, including through a spe-
20 cial purpose vehicle, to any securitization vehicle, ex-
21 cluding any trustee that holds such loans solely for
22 the benefit of the securitization vehicle.

23 “(10) SERVICER.—The term ‘servicer’ has the
24 same meaning as in section 6(i)(2) of the Real Es-
25 tate Settlement Procedures Act of 1974.”.

1 **SEC. 1402. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

2 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
3 ing Act (15 U.S.C. 1631 et seq.) is amended—

4 (1) by redesignating the 2nd of the 2 sections
5 designated as section 129 (15 U.S.C. 1639a) (relat-
6 ing to duty of servicers of residential mortgages) as
7 section 129A; and

8 (2) by inserting after section 129A (as so redес-
9 igned) the following new section:

10 **“§ 129B. Residential mortgage loan origination**

11 “(a) FINDING AND PURPOSE.—

12 “(1) FINDING.—The Congress finds that eco-
13 nomic stabilization would be enhanced by the protec-
14 tion, limitation, and regulation of the terms of resi-
15 dential mortgage credit and the practices related to
16 such credit, while ensuring that responsible, afford-
17 able mortgage credit remains available to consumers.

18 “(2) PURPOSE.—It is the purpose of this sec-
19 tion and section 129C to assure that consumers are
20 offered and receive residential mortgage loans on
21 terms that reasonably reflect their ability to repay
22 the loans and that are understandable and not un-
23 fair, deceptive or abusive.

24 “(b) DUTY OF CARE.—

25 “(1) STANDARD.—Subject to regulations pre-
26 scribed under this subsection, each mortgage origi-

1 nator shall, in addition to the duties imposed by oth-
2 erwise applicable provisions of State or Federal
3 law—

4 “(A) be qualified and, when required, reg-
5 istered and licensed as a mortgage originator in
6 accordance with applicable State or Federal
7 law, including the Secure and Fair Enforcement
8 for Mortgage Licensing Act of 2008; and

9 “(B) include on all loan documents any
10 unique identifier of the mortgage originator
11 provided by the Nationwide Mortgage Licensing
12 System and Registry.

13 “(2) COMPLIANCE PROCEDURES REQUIRED.—
14 The Board shall prescribe regulations requiring de-
15 pository institutions to establish and maintain proce-
16 dures reasonably designed to assure and monitor the
17 compliance of such depository institutions, the sub-
18 sidiaries of such institutions, and the employees of
19 such institutions or subsidiaries with the require-
20 ments of this section and the registration procedures
21 established under section 1507 of the Secure and
22 Fair Enforcement for Mortgage Licensing Act of
23 2008.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for chapter 2 of the Truth in Lending Act is amended

1 by inserting after the item relating to section 129 the fol-
2 lowing new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.
“129B. Residential mortgage loan origination.”.

3 **SEC. 1403. PROHIBITION ON STEERING INCENTIVES.**

4 Section 129B of the Truth in Lending Act (as added
5 by section 1402(a)) is amended by inserting after sub-
6 section (b) the following new subsection:

7 “(c) PROHIBITION ON STEERING INCENTIVES.—

8 “(1) IN GENERAL.—For any mortgage loan, no
9 mortgage originator shall receive from any person
10 and no person shall pay to a mortgage originator,
11 directly or indirectly, compensation that varies based
12 on the terms of the loan (other than the amount of
13 the principal).

14 “(2) RESTRUCTURING OF FINANCING ORIGINA-
15 TION FEE.—

16 “(A) IN GENERAL.—For any mortgage
17 loan, a mortgage originator may not receive
18 from any person other than the consumer and
19 no person, other than the consumer, who knows
20 or has reason to know that a consumer has di-
21 rectly compensated or will directly compensate
22 a mortgage originator may pay a mortgage
23 originator any origination fee or charge except
24 bona fide third party charges not retained by

1 the creditor, mortgage originator, or an affiliate
2 of the creditor or mortgage originator .

3 “(B) EXCEPTION.—Notwithstanding sub-
4 paragraph (A), a mortgage originator may re-
5 ceive from a person other than the consumer an
6 origination fee or charge, and a person other
7 than the consumer may pay a mortgage origi-
8 nator an origination fee or charge, if—

9 “(i) the mortgage originator does not
10 receive any compensation directly from the
11 consumer; and

12 “(ii) the consumer does not make an
13 upfront payment of discount points, origi-
14 nation points, or fees, however denomi-
15 nated (other than bona fide third party
16 charges not retained by the mortgage origi-
17 nator, creditor, or an affiliate of the cred-
18 itor or originator), except that the Board
19 may, by rule, waive or provide exemptions
20 to this clause if the Board determines that
21 such waiver or exemption is in the interest
22 of consumers and in the public interest.

23 “(3) REGULATIONS.—The Board shall prescribe
24 regulations to prohibit—

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1 “(A) mortgage originators from steering
2 any consumer to a residential mortgage loan
3 that—

4 “(i) the consumer lacks a reasonable
5 ability to repay (in accordance with regula-
6 tions prescribed under section 129C(a));

7 “(ii) in the case of a refinancing of a
8 residential mortgage loan, does not provide
9 the consumer with a net tangible benefit
10 (in accordance with regulations prescribed
11 under section 129C(b)); or

12 “(iii) has predatory characteristics or
13 effects (such as equity stripping, excessive
14 fees, or abusive terms);

15 “(B) mortgage originators from steering
16 any consumer from a residential mortgage loan
17 for which the consumer is qualified that is a
18 qualified mortgage (as defined in section
19 129C(e)(3)) to a residential mortgage loan that
20 is not a qualified mortgage;

21 “(C) abusive or unfair lending practices
22 that promote disparities among consumers of
23 equal credit worthiness but of different race,
24 ethnicity, gender, or age; and

25 “(D) mortgage originators from—

1 “(i) mischaracterizing the credit his-
2 tory of a consumer or the residential mort-
3 gage loans available to a consumer;

4 “(ii) mischaracterizing or suborning
5 the mischaracterization of the appraised
6 value of the property securing the exten-
7 sion of credit; or

8 “(iii) if unable to suggest, offer, or
9 recommend to a consumer a loan that is
10 not more expensive than a loan for which
11 the consumer qualifies, discouraging a con-
12 sumer from seeking a home mortgage loan
13 secured by a consumer’s principal dwelling
14 from another mortgage originator.

15 “(4) RULES OF CONSTRUCTION.—No provision
16 of this subsection shall be construed as—

17 “(A) permitting any yield spread premium
18 or other similar compensation that would, for
19 any mortgage loan, permit the total amount of
20 direct and indirect compensation from all
21 sources permitted to a mortgage originator to
22 vary based on the terms of the loan (other than
23 the amount of the principal);

24 “(B) limiting or affecting the amount of
25 compensation received by a creditor upon the

1 sale of a consummated loan to a subsequent
2 purchaser;

3 “(C) restricting a consumer’s ability to fi-
4 nance, at the option of the consumer, including
5 through principal or rate, any origination fees
6 or costs permitted under this subsection, or the
7 mortgage originator’s right to receive such fees
8 or costs (including compensation) from any per-
9 son, subject to paragraph (2)(B), so long as
10 such fees or costs do not vary based on the
11 terms of the loan (other than the amount of the
12 principal) or the consumer’s decision about
13 whether to finance such fees or costs; or

14 “(D) prohibiting incentive payments to a
15 mortgage originator based on the number of
16 residential mortgage loans originated within a
17 specified period of time.”.

18 **SEC. 1404. LIABILITY.**

19 Section 129B of the Truth in Lending Act is amend-
20 ed by inserting after subsection (c) (as added by section
21 1403) the following new subsection:

22 “(d) LIABILITY FOR VIOLATIONS.—

23 “(1) IN GENERAL.—For purposes of providing
24 a cause of action for any failure by a mortgage origi-
25 nator, other than a creditor, to comply with any re-

1 requirement imposed under this section and any regu-
2 lation prescribed under this section, section 130
3 shall be applied with respect to any such failure by
4 substituting ‘mortgage originator’ for ‘creditor’ each
5 place such term appears in each such subsection.

6 “(2) MAXIMUM.—The maximum amount of any
7 liability of a mortgage originator under paragraph
8 (1) to a consumer for any violation of this section
9 shall not exceed the greater of actual damages or an
10 amount equal to 3 times the total amount of direct
11 and indirect compensation or gain accruing to the
12 mortgage originator in connection with the residen-
13 tial mortgage loan involved in the violation, plus the
14 costs to the consumer of the action, including a rea-
15 sonable attorney’s fee.”.

16 **SEC. 1405. REGULATIONS.**

17 (a) DISCRETIONARY REGULATORY AUTHORITY.—
18 Section 129B of the Truth in Lending Act is amended
19 by inserting after subsection (d) (as added by section
20 1404) the following new subsection:

21 “(e) DISCRETIONARY REGULATORY AUTHORITY.—

22 “(1) IN GENERAL.—The Board shall, by regula-
23 tions, prohibit or condition terms, acts or practices
24 relating to residential mortgage loans that the Board
25 finds to be abusive, unfair, deceptive, predatory, nec-

1 essary or proper to ensure that responsible, afford-
2 able mortgage credit remains available to consumers
3 in a manner consistent with the purposes of this sec-
4 tion and section 129C, necessary or proper to effec-
5 tuate the purposes of this section and section 129C,
6 to prevent circumvention or evasion thereof, or to fa-
7 cilitate compliance with such sections, or are not in
8 the interest of the borrower.

9 “(2) APPLICATION.—The regulations prescribed
10 under paragraph (1) shall be applicable to all resi-
11 dential mortgage loans and shall be applied in the
12 same manner as regulations prescribed under section
13 105.

14 “(f) Section 129B and any regulations promulgated
15 thereunder do not apply to an extension of credit relating
16 to a plan described in section 101(53D) of title 11, United
17 States Code.”.

18 (b) EFFECTIVE DATE.—The regulations required or
19 authorized to be prescribed under this subtitle or the
20 amendments made by this subtitle—

21 (1) shall be prescribed in final form before the
22 end of the 12-month period beginning on the des-
23 ignated transfer date; and

24 (2) shall take effect not later than 18 months
25 after the designated transfer date.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
2 Section 129(l)(2) of the Truth in Lending Act (15 U.S.C.
3 1639(l)(2)) is amended by inserting “referred to in section
4 103(aa)” after “loans” each place such term appears.

5 (d) DISCLOSURES.—Notwithstanding any other pro-
6 vision of this title, in order to improve consumer aware-
7 ness and understanding of transactions involving residen-
8 tial mortgage loans through the use of disclosures, the Bu-
9 reau may, by rule, exempt from or modify disclosure re-
10 quirements, in whole or in part, for any class of residential
11 mortgage loans if the Bureau determines that such exemp-
12 tion or modification is in the interest of consumers and
13 in the public interest.

14 **SEC. 1406. STUDY OF SHARED APPRECIATION MORTGAGES.**

15 (a) STUDY.—The Secretary of Housing and Urban
16 Development, in consultation with the Secretary of the
17 Treasury and other relevant agencies, shall conduct a com-
18 prehensive study to determine prudent statutory and regu-
19 latory requirements sufficient to provide for the wide-
20 spread use of shared appreciation mortgages to strengthen
21 local housing markets, provide new opportunities for af-
22 fordable homeownership, and enable homeowners at risk
23 of foreclosure to refinance or modify their mortgages.

24 (b) REPORT.—Not later than the expiration of the
25 6-month period beginning on the date of the enactment

1 of this Act, the Secretary of Housing and Urban Develop-
2 ment shall submit a report to the Congress on the results
3 of the study, which shall include recommendations for the
4 regulatory and legislative requirements referred to in sub-
5 section (a).

6 **Subtitle B—Minimum Standards**
7 **For Mortgages**

8 **SEC. 1411. ABILITY TO REPAY.**

9 (a) IN GENERAL.—

10 (1) RULE OF CONSTRUCTION.—No regulation,
11 order, or guidance issued by the Bureau under this
12 title shall be construed as requiring a depository in-
13 stitution to apply mortgage underwriting standards
14 that do not meet the minimum underwriting stand-
15 ards required by the appropriate prudential regu-
16 lator of the depository institution.

17 (2) AMENDMENT TO TRUTH IN LENDING
18 ACT.—Chapter 2 of the Truth in Lending Act (15
19 U.S.C. 1631 et seq.) is amended by inserting after
20 section 129B (as added by section 1402(a)) the fol-
21 lowing new section:

22 **“§ 129C. Minimum standards for residential mortgage**
23 **loans**

24 **“(a) ABILITY TO REPAY.—**

1 “(1) IN GENERAL.—In accordance with regula-
2 tions prescribed by the Board, no creditor may make
3 a residential mortgage loan unless the creditor
4 makes a reasonable and good faith determination
5 based on verified and documented information that,
6 at the time the loan is consummated, the consumer
7 has a reasonable ability to repay the loan, according
8 to its terms, and all applicable taxes, insurance (in-
9 cluding mortgage guarantee insurance), and assess-
10 ments.

11 “(2) MULTIPLE LOANS.—If the creditor knows,
12 or has reason to know, that 1 or more residential
13 mortgage loans secured by the same dwelling will be
14 made to the same consumer, the creditor shall make
15 a reasonable and good faith determination, based on
16 verified and documented information, that the con-
17 sumer has a reasonable ability to repay the com-
18 bined payments of all loans on the same dwelling ac-
19 cording to the terms of those loans and all applicable
20 taxes, insurance (including mortgage guarantee in-
21 surance), and assessments.

22 “(3) BASIS FOR DETERMINATION.—A deter-
23 mination under this subsection of a consumer’s abil-
24 ity to repay a residential mortgage loan shall include
25 consideration of the consumer’s credit history, cur-

1 rent income, expected income the consumer is rea-
2 sonably assured of receiving, current obligations,
3 debt-to-income ratio or the residual income the con-
4 sumer will have after paying non-mortgage debt and
5 mortgage-related obligations, employment status,
6 and other financial resources other than the con-
7 sumer's equity in the dwelling or real property that
8 secures repayment of the loan. A creditor shall de-
9 termine the ability of the consumer to repay using
10 a payment schedule that fully amortizes the loan
11 over the term of the loan.

12 “(4) INCOME VERIFICATION.—A creditor shall
13 verify amounts of income or assets that such cred-
14 itor relies on to determine repayment ability, includ-
15 ing expected income or assets, by reviewing the con-
16 sumer's Internal Revenue Service Form W-2, tax
17 returns, payroll receipts, financial institution
18 records, or other third-party documents that provide
19 reasonably reliable evidence of the consumer's in-
20 come or assets. In order to safeguard against fraud-
21 ulent reporting, any consideration of a consumer's
22 income history in making a determination under this
23 subsection shall include the verification of such in-
24 come by the use of—

1 “(A) Internal Revenue Service transcripts
2 of tax returns; or

3 “(B) a method that quickly and effectively
4 verifies income documentation by a third party
5 subject to rules prescribed by the Board.

6 “(5) NONSTANDARD LOANS.—

7 “(A) VARIABLE RATE LOANS THAT DEFER
8 REPAYMENT OF ANY PRINCIPAL OR INTER-
9 EST.—For purposes of determining, under this
10 subsection, a consumer’s ability to repay a vari-
11 able rate residential mortgage loan that allows
12 or requires the consumer to defer the repay-
13 ment of any principal or interest, the creditor
14 shall use a fully amortizing repayment schedule.

15 “(B) INTEREST-ONLY LOANS.—For pur-
16 poses of determining, under this subsection, a
17 consumer’s ability to repay a residential mort-
18 gage loan that permits or requires the payment
19 of interest only, the creditor shall use the pay-
20 ment amount required to amortize the loan by
21 its final maturity.

22 “(C) CALCULATION FOR NEGATIVE AMOR-
23 TIZATION.—In making any determination under
24 this subsection, a creditor shall also take into

1 consideration any balance increase that may ac-
2 crue from any negative amortization provision.

3 “(D) CALCULATION PROCESS.—For pur-
4 poses of making any determination under this
5 subsection, a creditor shall calculate the month-
6 ly payment amount for principal and interest on
7 any residential mortgage loan by assuming—

8 “(i) the loan proceeds are fully dis-
9 bursed on the date of the consummation of
10 the loan;

11 “(ii) the loan is to be repaid in sub-
12 stantially equal monthly amortizing pay-
13 ments for principal and interest over the
14 entire term of the loan with no balloon
15 payment, unless the loan contract requires
16 more rapid repayment (including balloon
17 payment), in which case the calculation
18 shall be made (I) in accordance with regu-
19 lations prescribed by the Board, with re-
20 spect to any loan which has an annual per-
21 centage rate that does not exceed the aver-
22 age prime offer rate for a comparable
23 transaction, as of the date the interest rate
24 is set, by 1.5 or more percentage points for
25 a first lien residential mortgage loan; and

1 by 3.5 or more percentage points for a
2 subordinate lien residential mortgage loan;
3 or (II) using the contract's repayment
4 schedule, with respect to a loan which has
5 an annual percentage rate, as of the date
6 the interest rate is set, that is at least 1.5
7 percentage points above the average prime
8 offer rate for a first lien residential mort-
9 gage loan; and 3.5 percentage points above
10 the average prime offer rate for a subordi-
11 nate lien residential mortgage loan; and

12 “(iii) the interest rate over the entire
13 term of the loan is a fixed rate equal to the
14 fully indexed rate at the time of the loan
15 closing, without considering the introduc-
16 tory rate.

17 “(E) REFINANCE OF HYBRID LOANS WITH
18 CURRENT LENDER.—In considering any appli-
19 cation for refinancing an existing hybrid loan
20 by the creditor into a standard loan to be made
21 by the same creditor in any case in which the
22 sole net-tangible benefit to the mortgagor would
23 be a reduction in monthly payment and the
24 mortgagor has not been delinquent on any pay-

1 ment on the existing hybrid loan, the creditor
2 may—

3 “(i) consider the mortgagor’s good
4 standing on the existing mortgage;

5 “(ii) consider if the extension of new
6 credit would prevent a likely default should
7 the original mortgage reset and give such
8 concerns a higher priority as an acceptable
9 underwriting practice; and

10 “(iii) offer rate discounts and other
11 favorable terms to such mortgagor that
12 would be available to new customers with
13 high credit ratings based on such under-
14 writing practice.

15 “(6) FULLY-INDEXED RATE DEFINED.—For
16 purposes of this subsection, the term ‘fully indexed
17 rate’ means the index rate prevailing on a residential
18 mortgage loan at the time the loan is made plus the
19 margin that will apply after the expiration of any in-
20 troductory interest rates.

21 “(7) REVERSE MORTGAGES.—This subsection
22 shall not apply with respect to any reverse mortgage.

23 “(8) SEASONAL INCOME.—If documented in-
24 come, including income from a small business, is a
25 repayment source for an extension of credit secured

1 by residential real estate or a dwelling, a creditor
2 may consider the seasonality and irregularity of such
3 income in the underwriting of and scheduling of pay-
4 ments for such credit.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 for chapter 2 of the Truth in Lending Act is amended
7 by inserting after the item relating to section 129B (as
8 added by section 1402(b)) the following new item:

“129C. Minimum standards for residential mortgage loans.”.

9 **SEC. 1412. NET TANGIBLE BENEFIT FOR REFINANCING OF**
10 **RESIDENTIAL MORTGAGE LOANS.**

11 Section 129C of the Truth in Lending Act (as added
12 by section 1411) is amended by inserting after subsection
13 (a) the following new subsection:

14 “(b) NET TANGIBLE BENEFIT FOR REFINANCING OF
15 RESIDENTIAL MORTGAGE LOANS.—

16 “(1) IN GENERAL.—In accordance with regula-
17 tions prescribed under paragraph (3), no creditor
18 may extend credit in connection with any residential
19 mortgage loan that involves a refinancing of a prior
20 existing residential mortgage loan unless the creditor
21 reasonably and in good faith determines, at the time
22 the loan is consummated and on the basis of infor-
23 mation known by or obtained in good faith by the
24 creditor, that the refinanced loan will provide a net
25 tangible benefit to the consumer, considering all of

1 the circumstances, including the terms of both the
2 new and the refinanced loans or credit, the cost of
3 the new loan or credit, and the consumer's cir-
4 cumstances.

5 “(2) CERTAIN LOANS PROVIDING NO NET TAN-
6 GIBLE BENEFIT.—A residential mortgage loan that
7 involves a refinancing of a prior existing residential
8 mortgage loan shall not be considered to provide a
9 net tangible benefit to the consumer if the costs of
10 the refinanced loan, including points, fees and other
11 charges, exceed the amount of any newly advanced
12 principal without any corresponding changes in the
13 terms of the refinanced loan that are advantageous
14 to the consumer.

15 “(3) NET TANGIBLE BENEFIT.—The Board
16 shall prescribe regulations defining the term ‘net
17 tangible benefit’ for purposes of this subsection.”.

18 **SEC. 1413. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

19 Section 129C of the Truth in Lending Act is amend-
20 ed by inserting after subsection (b) (as added by section
21 1411) the following new subsection:

22 “(c) PRESUMPTION OF ABILITY TO REPAY AND NET
23 TANGIBLE BENEFIT.—

24 “(1) IN GENERAL.—Any creditor with respect
25 to any residential mortgage loan, and any assignee

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1 or securitizer of such loan, may presume that the
2 loan has met the requirements of subsections (a)
3 and (b), if the loan is a qualified mortgage.

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

6 “(A) QUALIFIED MORTGAGE.—The term
7 ‘qualified mortgage’ means any residential
8 mortgage loan—

9 “(i) for which the regular periodic
10 payments for the loan may not—

11 “(I) result in an increase of the
12 principal balance; or

13 “(II) allow the consumer to defer
14 repayment of principal;

15 “(ii) the terms of which do not result
16 in a balloon payment, where a ‘balloon
17 payment’ is a scheduled payment that is
18 more than twice as large as the average of
19 earlier scheduled payments;

20 “(iii) for which the income and finan-
21 cial resources relied upon to qualify the ob-
22 ligors on the loan are verified and docu-
23 mented;

24 “(iv) in the case of a fixed rate loan,
25 for which the underwriting process is based

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1 on a payment schedule that fully amortizes
2 the loan over the loan term and takes into
3 account all applicable taxes, insurance, and
4 assessments;

5 “(v) in the case of an adjustable rate
6 loan, for which the underwriting is based
7 on the maximum rate permitted under the
8 loan during the first 5 years, and a pay-
9 ment schedule that fully amortizes the loan
10 over the loan term and takes into account
11 all applicable taxes, insurance, and assess-
12 ments;

13 “(vi) that does not cause the con-
14 sumer’s total monthly debts, including
15 amounts under the loan, to exceed a per-
16 centage established by regulation of the
17 consumer’s monthly gross income or such
18 other maximum percentage of such income,
19 or does not exceed a threshold that permits
20 the consumer to pay regular expenses after
21 payment of all installment and revolving
22 debt, as such percentage or threshold may
23 be prescribed by regulation under para-
24 graph (4);

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1 “(vii) for which the total points and
2 fees (as defined in subparagraph (C)) pay-
3 able in connection with the loan do not ex-
4 ceed 3 percent of the total loan amount;
5 and

6 “(viii) for which the term of the loan
7 does not exceed 30 years, except as such
8 term may be extended under paragraph
9 (4), such as in high-cost areas.

10 “(B) AVERAGE PRIME OFFER RATE.—The
11 term ‘average prime offer rate’ means the
12 Freddie Mac Weekly Primary Mortgage Market
13 Survey Rate or the equivalent for 30-year fixed
14 rate conforming loans.

15 “(C) POINTS AND FEES.—

16 “(i) IN GENERAL.—For purposes of
17 subparagraph (A), the term ‘points and
18 fees’—

19 “(I) means points and fees as de-
20 fined by section 103(aa)(4) (other
21 than bona fide third party charges not
22 retained by the mortgage originator,
23 creditor, or an affiliate of the creditor
24 or mortgage originator), subject to
25 clause (ii); and

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1 “(II) includes any premium for
2 mortgage guarantee insurance that is
3 not provided by an agency of the Fed-
4 eral Government or an agency of a
5 State and is paid by the consumer at
6 or before closing.

7 “(ii) COMPUTATION.—For purposes of
8 computing the total points and fees under
9 this subparagraph, the total points and
10 fees shall exclude either of the amounts de-
11 scribed in the following subclauses, but not
12 both:

13 “(I) Up to and including 2 bona
14 fide discount points payable by the
15 consumer in connection with the mort-
16 gage, but only if the interest rate
17 from which the mortgage’s interest
18 rate will be discounted does not ex-
19 ceed by more than 1 percentage point
20 the average prime offer rate.

21 “(II) Unless 2 bona fide discount
22 points have been excluded under sub-
23 clause (I), up to and including 1 bona
24 fide discount point payable by the
25 consumer in connection with the mort-

1 gage, but only if the interest rate
2 from which the mortgage's interest
3 rate will be discounted does not ex-
4 ceed by more than 2 percentage
5 points the average prime offer rate.

6 “(iii) BONA FIDE DISCOUNT POINTS
7 DEFINED.—For purposes of clause (ii), the
8 term ‘bona fide discount points’ means
9 loan discount points which are knowingly
10 paid by the consumer for the purpose of
11 reducing, and which in fact result in a
12 bona fide reduction of, the interest rate or
13 time-price differential applicable to the
14 mortgage.

15 “(iv) INTEREST RATE REDUCTION.—
16 Subclauses (I) and (II) of clause (ii) shall
17 not apply to discount points used to pur-
18 chase an interest rate reduction unless the
19 amount of the interest rate reduction pur-
20 chased is reasonably consistent with estab-
21 lished industry norms and practices for
22 secondary mortgage market transactions.

23 “(D) REVERSE MORTGAGES.—For pur-
24 poses of this subsection, the term ‘qualified
25 mortgage’ includes any reverse mortgage that—

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1 “(i) is insured by the Federal Housing
2 Administration; or

3 “(ii) which has an annual percentage
4 rate that does not exceed the Freddie Mac
5 Weekly Primary Mortgage Market Survey
6 Rate or the equivalent for 30-year fixed
7 rate conforming loans, as of the date the
8 interest rate is set—

9 “(I) by 1.5 or more percentage
10 points, in the case of a first lien resi-
11 dential mortgage loan having a origi-
12 nal principal obligation amount that is
13 equal to or less than the amount of
14 the maximum limitation on the origi-
15 nal principal obligation of mortgage in
16 effect for a residence of the applicable
17 size, as of the date of such interest
18 rate set, pursuant to the sixth sen-
19 tence of section 305(a)(2) the Federal
20 Home Loan Mortgage Corporation
21 Act (12 U.S.C. 1454(a)(2));

22 “(II) by 2.5 or more percentage
23 points, in the case of a first lien resi-
24 dential mortgage loan having a origi-
25 nal principal obligation amount that is

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1 more than the amount of the max-
2 imum limitation on the original prin-
3 cipal obligation of mortgage in effect
4 for a residence of the applicable size,
5 as of the date of such interest rate
6 set, pursuant to the sixth sentence of
7 section 305(a)(2) the Federal Home
8 Loan Mortgage Corporation Act (12
9 U.S.C. 1454(a)(2)); and

10 “(III) by 3.5 or more percentage
11 points, in the case of a subordinate
12 lien residential mortgage loan.

13 “(3) REGULATIONS.—

14 “(A) IN GENERAL.—The Board shall pre-
15 scribe regulations to carry out the purposes of
16 this subsection.

17 “(B) REVISION OF SAFE HARBOR CRI-
18 TERIA.—

19 “(i) IN GENERAL.—The Board may
20 prescribe regulations that revise, add to, or
21 subtract from the criteria that define a
22 qualified mortgage upon a finding that
23 such regulations are necessary or proper to
24 ensure that responsible, affordable mort-
25 gage credit remains available to consumers

1 in a manner consistent with the purposes
2 of this section, necessary and appropriate
3 to effectuate the purposes of this section
4 and section 129B, to prevent circumven-
5 tion or evasion thereof, or to facilitate
6 compliance with such sections.

7 “(ii) LOAN DEFINITION.—The Board
8 shall, in consultation with the following
9 agencies, prescribe regulations defining the
10 types of loans such agencies insure, guar-
11 antee or administer, as the case may be,
12 that are qualified mortgages for purposes
13 of subsection (c)(1)(A) upon a finding that
14 such rules are consistent with the purposes
15 of this section and section 129B, to pre-
16 vent circumvention or evasion thereof, or
17 to facilitate compliance with such sec-
18 tions—

19 “(I) The Secretary of Housing
20 and Urban Development, with regard
21 to mortgages insured under title II of
22 the National Housing Act (12 U.S.C.
23 1707 et seq.);

24 “(II) The Secretary of Veterans
25 Affairs, with regard to a loan made or

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1 guaranteed by the Secretary of Vet-
2 erans Affairs;

3 “(III) The Secretary of Agri-
4 culture, with regard loans guaranteed
5 by the Secretary of Agriculture pursu-
6 ant to 42 U.S.C. 1472(h); and

7 “(IV) The Rural Housing Serv-
8 ice, with regard to loans insured by
9 the Rural Housing Service.”.

10 **SEC. 1414. DEFENSE TO FORECLOSURE.**

11 Section 130 of the Truth in Lending Act (15 U.S.C.
12 1640) is amended by adding at the end the following new
13 subsection:

14 “(k) DEFENSE TO FORECLOSURE.—

15 “(1) IN GENERAL.—Notwithstanding any other
16 provision of law, when a creditor, assignee, or other
17 holder of a residential mortgage loan or anyone act-
18 ing on behalf of such creditor, assignee, or holder,
19 initiates a judicial or nonjudicial foreclosure of the
20 residential mortgage loan, or any other action to col-
21 lect the debt in connection with such loan, a con-
22 sumer may assert a violation by a creditor of para-
23 graph (1) or (2) of section 129B(c), or of section
24 129C(a), as a matter of defense by recoupment or

1 set off without regard for the time limit on a private
2 action for damages under subsection (e).

3 “(2) AMOUNT OF RECOUPMENT OR SETOFF.—

4 “(A) IN GENERAL.—The amount of
5 recoupment or set-off under paragraph (1) shall
6 equal the amount to which the consumer would
7 be entitled under subsection (a) for damages for
8 a valid claim brought in an original action
9 against the creditor, plus the costs to the con-
10 sumer of the action, including a reasonable at-
11 torney’s fee.

12 “(B) SPECIAL RULE.—Where such judg-
13 ment is rendered after the expiration of the ap-
14 plicable time limit on a private action for dam-
15 ages under subsection (e), the amount of
16 recoupment or set-off under paragraph (1) de-
17 rived from damages under subsection (a)(4)
18 shall not exceed the amount to which the con-
19 sumer would have been entitled under sub-
20 section (a)(4) for damages computed up to the
21 day preceding the expiration of the applicable
22 time limit.”.

1 **SEC. 1415. ADDITIONAL STANDARDS AND REQUIREMENTS.**

2 (a) IN GENERAL.—Section 129C of the Truth in
3 Lending Act is amended by inserting after subsection (c)
4 (as added by this title) the following new subsections:

5 “(d) PROHIBITION ON CERTAIN PREPAYMENT PEN-
6 ALTIES.—

7 “(1) PROHIBITED ON CERTAIN LOANS.—

8 “(A) IN GENERAL.—A residential mort-
9 gage loan that is not a ‘qualified mortgage’ may
10 not contain terms under which a consumer
11 must pay a prepayment penalty for paying all
12 or part of the principal after the loan is con-
13 summated.

14 “(B) EXCLUSIONS.—For purposes of this
15 subsection, a ‘qualified mortgage’ may not in-
16 clude a residential mortgage loan that—

17 “(i) has an adjustable rate; or

18 “(ii) has an annual percentage rate
19 that does not exceed the average prime
20 offer rate for a comparable transaction, as
21 of the date the interest rate is set—

22 “(I) by 1.5 or more percentage
23 points, in the case of a first lien resi-
24 dential mortgage loan having a origi-
25 nal principal obligation amount that is
26 equal to or less than the amount of

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1 the maximum limitation on the origi-
2 nal principal obligation of mortgage in
3 effect for a residence of the applicable
4 size, as of the date of such interest
5 rate set, pursuant to the 6th sentence
6 of section 305(a)(2) the Federal
7 Home Loan Mortgage Corporation
8 Act (12 U.S.C. 1454(a)(2));

9 “(II) by 2.5 or more percentage
10 points, in the case of a first lien resi-
11 dential mortgage loan having a origi-
12 nal principal obligation amount that is
13 more than the amount of the max-
14 imum limitation on the original prin-
15 cipal obligation of mortgage in effect
16 for a residence of the applicable size,
17 as of the date of such interest rate
18 set, pursuant to the 6th sentence of
19 section 305(a)(2) the Federal Home
20 Loan Mortgage Corporation Act (12
21 U.S.C. 1454(a)(2)); and

22 “(III) by 3.5 or more percentage
23 points, in the case of a subordinate
24 lien residential mortgage loan.

1 “(2) PUBLICATION OF AVERAGE PRIME OFFER
2 RATE AND APR THRESHOLDS.—The Board—

3 “(A) shall publish, and update at least
4 weekly, average prime offer rates;

5 “(B) may publish multiple rates based on
6 varying types of mortgage transactions; and

7 “(C) shall adjust the thresholds established
8 under subclause (I), (II), and (III) as necessary
9 to reflect significant changes in market condi-
10 tions and to effectuate the purposes of the
11 Mortgage Reform and Anti-Predatory Lending
12 Act.

13 “(3) PHASED-OUT PENALTIES ON QUALIFIED
14 MORTGAGES.—A qualified mortgage (as defined in
15 subsection (c)) may not contain terms under which
16 a consumer must pay a prepayment penalty for pay-
17 ing all or part of the principal after the loan is con-
18 summated in excess of the following limitations:

19 “(A) During the 1-year period beginning
20 on the date the loan is consummated, the pre-
21 payment penalty shall not exceed an amount
22 equal to 3 percent of the outstanding balance
23 on the loan.

24 “(B) During the 1-year period beginning
25 after the period described in subparagraph (A),

1 the prepayment penalty shall not exceed an
2 amount equal to 2 percent of the outstanding
3 balance on the loan.

4 “(C) During the 1-year period beginning
5 after the 1-year period described in subpara-
6 graph (B), the prepayment penalty shall not ex-
7 ceed an amount equal to 1 percent of the out-
8 standing balance on the loan.

9 “(D) After the end of the 3-year period be-
10 ginning on the date the loan is consummated,
11 no prepayment penalty may be imposed on a
12 qualified mortgage.

13 “(4) OPTION FOR NO PREPAYMENT PENALTY
14 REQUIRED.—A creditor may not offer a consumer a
15 residential mortgage loan product that has a prepay-
16 ment penalty for paying all or part of the principal
17 after the loan is consummated as a term of the loan
18 without offering the consumer a residential mort-
19 gage loan product that does not have a prepayment
20 penalty as a term of the loan.

21 “(e) SINGLE PREMIUM CREDIT INSURANCE PROHIB-
22 ITED.—No creditor may finance, directly or indirectly, in
23 connection with any residential mortgage loan or with any
24 extension of credit under an open end consumer credit
25 plan secured by the principal dwelling of the consumer,

1 any credit life, credit disability, credit unemployment or
2 credit property insurance, or any other accident, loss-of-
3 income, life or health insurance, or any payments directly
4 or indirectly for any debt cancellation or suspension agree-
5 ment or contract, except that—

6 “(1) insurance premiums or debt cancellation or
7 suspension fees calculated and paid in full on a
8 monthly basis shall not be considered financed by
9 the creditor; and

10 “(2) this subsection shall not apply to credit
11 unemployment insurance for which the unemploy-
12 ment insurance premiums are reasonable, the cred-
13 itor receives no direct or indirect compensation in
14 connection with the unemployment insurance pre-
15 miums, and the unemployment insurance premiums
16 are paid pursuant to another insurance contract and
17 not paid to an affiliate of the creditor.

18 “(f) ARBITRATION.—

19 “(1) IN GENERAL.—No residential mortgage
20 loan and no extension of credit under an open end
21 consumer credit plan secured by the principal dwell-
22 ing of the consumer may include terms which re-
23 quire arbitration or any other nonjudicial procedure
24 as the method for resolving any controversy or set-
25 tling any claims arising out of the transaction.

1 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-
2 ject to paragraph (3), paragraph (1) shall not be
3 construed as limiting the right of the consumer and
4 the creditor, any assignee, or any securitizer to
5 agree to arbitration or any other nonjudicial proce-
6 dure as the method for resolving any controversy at
7 any time after a dispute or claim under the trans-
8 action arises.

9 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-
10 TION.—No provision of any residential mortgage
11 loan or of any extension of credit under an open end
12 consumer credit plan secured by the principal dwell-
13 ing of the consumer, and no other agreement be-
14 tween the consumer and the creditor relating to the
15 residential mortgage loan or extension of credit re-
16 ferred to in paragraph (1), shall be applied or inter-
17 preted so as to bar a consumer from bringing an ac-
18 tion in an appropriate district court of the United
19 States, or any other court of competent jurisdiction,
20 pursuant to section 130 or any other provision of
21 law, for damages or other relief in connection with
22 any alleged violation of this section, any other provi-
23 sion of this title, or any other Federal law.

24 “(g) MORTGAGES WITH NEGATIVE AMORTIZA-
25 TION.—No creditor may extend credit to a borrower in

1 connection with a consumer credit transaction under an
2 open or closed end consumer credit plan secured by a
3 dwelling or residential real property that includes a dwell-
4 ing, other than a reverse mortgage, that provides or per-
5 mits a payment plan that may, at any time over the term
6 of the extension of credit, result in negative amortization
7 unless, before such transaction is consummated—

8 “(1) the creditor provides the consumer with a
9 statement that—

10 “(A) the pending transaction will or may,
11 as the case may be, result in negative amortiza-
12 tion;

13 “(B) describes negative amortization in
14 such manner as the Board shall prescribe;

15 “(C) negative amortization increases the
16 outstanding principal balance of the account;
17 and

18 “(D) negative amortization reduces the
19 consumer’s equity in the dwelling or real prop-
20 erty; and

21 “(2) in the case of a first-time borrower with
22 respect to a residential mortgage loan that is not a
23 qualified mortgage, the first-time borrower provides
24 the creditor with sufficient documentation to dem-
25 onstrate that the consumer received homeownership

1 counseling from organizations or counselors certified
2 by the Secretary of Housing and Urban Develop-
3 ment as competent to provide such counseling.”.

4 (b) CONFORMING AMENDMENT RELATING TO EN-
5 FORCEMENT.—Section 108(a) of the Truth in Lending
6 Act (15 U.S.C. 1607(a)) is amended by inserting after
7 paragraph (6) the following new paragraph:

8 “(7) sections 21B and 21C of the Securities
9 Exchange Act of 1934, in the case of a broker or
10 dealer, other than a depository institution, by the
11 Securities and Exchange Commission.”.

12 (c) PROTECTION AGAINST LOSS OF ANTI-DEFI-
13 CIENCY PROTECTION.—Section 129C of the Truth in
14 Lending Act is amended by inserting after subsection (g)
15 (as added by subsection (a)) the following new subsection:

16 “(h) PROTECTION AGAINST LOSS OF ANTI-DEFI-
17 CIENCY PROTECTION.—

18 “(1) DEFINITION.—For purposes of this sub-
19 section, the term ‘anti-deficiency law’ means the law
20 of any State which provides that, in the event of
21 foreclosure on the residential property of a consumer
22 securing a mortgage, the consumer is not liable, in
23 accordance with the terms and limitations of such
24 State law, for any deficiency between the sale price

1 obtained on such property through foreclosure and
2 the outstanding balance of the mortgage.

3 “(2) NOTICE AT TIME OF CONSUMMATION.—In
4 the case of any residential mortgage loan that is, or
5 upon consummation will be, subject to protection
6 under an anti-deficiency law, the creditor or mort-
7 gage originator shall provide a written notice to the
8 consumer describing the protection provided by the
9 anti-deficiency law and the significance for the con-
10 sumer of the loss of such protection before such loan
11 is consummated.

12 “(3) NOTICE BEFORE REFINANCING THAT
13 WOULD CAUSE LOSS OF PROTECTION.—In the case
14 of any residential mortgage loan that is subject to
15 protection under an anti-deficiency law, if a creditor
16 or mortgage originator provides an application to a
17 consumer, or receives an application from a con-
18 sumer, for any type of refinancing for such loan that
19 would cause the loan to lose the protection of such
20 anti-deficiency law, the creditor or mortgage origi-
21 nator shall provide a written notice to the consumer
22 describing the protection provided by the anti-defi-
23 ciency law and the significance for the consumer of
24 the loss of such protection before any agreement for
25 any such refinancing is consummated.”.

1 (d) POLICY REGARDING ACCEPTANCE OF PARTIAL
2 PAYMENT.—Section 129C of the Truth in Lending Act
3 is amended by inserting after subsection (h) (as added by
4 subsection (e)) the following new subsection:

5 “(i) POLICY REGARDING ACCEPTANCE OF PARTIAL
6 PAYMENT.—In the case of any residential mortgage loan,
7 a creditor shall disclose prior to settlement or, in the case
8 of a person becoming a creditor with respect to an existing
9 residential mortgage loan, at the time such person be-
10 comes a creditor—

11 “(1) the creditor’s policy regarding the accept-
12 ance of partial payments; and

13 “(2) if partial payments are accepted, how such
14 payments will be applied to such mortgage and if
15 such payments will be placed in escrow.”.

16 **SEC. 1416. RULE OF CONSTRUCTION.**

17 Except as otherwise expressly provided in section
18 129B or 129C of the Truth in Lending Act (as added by
19 this title), no provision of such section 129B or 129C shall
20 be construed as superseding, repealing, or affecting any
21 duty, right, obligation, privilege, or remedy of any person
22 under any other provision of the Truth in Lending Act
23 or any other provision of Federal or State law.

1 **SEC. 1417. REGULATIONS.**

2 Regulations required or authorized to be prescribed
3 under this subtitle or the amendments made by this sub-
4 title—

5 (1) shall be prescribed in final form before the
6 end of the 12-month period beginning on the date of
7 the enactment of this Act; and

8 (2) shall take effect not later than 18 months
9 after the date of the enactment of this Act.

10 **SEC. 1418. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

11 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-
12 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of
13 the Truth in Lending Act (15 U.S.C. 1640(a)) is amend-
14 ed—

15 (1) in paragraph (2)—

16 (A) by striking “\$100” and inserting
17 “\$200”;

18 (B) by striking “\$1,000” and inserting
19 “\$2,000”; and

20 (C) by striking “\$500,000” and inserting
21 “\$1,000,000”; and

22 (2) in paragraph (4), by inserting “, paragraph
23 (1) or (2) of section 129B(e), or section 129C(a)”
24 after “section 129”.

1 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
2 TION 129 VIOLATIONS.—Section 130(e) of the Truth in
3 Lending Act (15 U.S.C. 1640(e)) is amended—

4 (1) in the first sentence, by striking “Any ac-
5 tion” and inserting “Except as provided in the sub-
6 sequent sentence, any action”; and

7 (2) by inserting after the first sentence the fol-
8 lowing new sentence: “Any action under this section
9 with respect to any violation of section 129, 129B,
10 or 129C may be brought in any United States dis-
11 trict court, or in any other court of competent juris-
12 diction, before the end of the 3-year period begin-
13 ning on the date of the occurrence of the violation.”.

14 **SEC. 1419. LENDER RIGHTS IN THE CONTEXT OF BOR-**
15 **ROWER DECEPTION.**

16 Section 130 of the Truth in Lending Act (15 U.S.C.
17 1640) is amended by adding after subsection (k) (as added
18 by this title) the following new subsection:

19 “(l) EXEMPTION FROM LIABILITY AND RESCISSION
20 IN CASE OF BORROWER FRAUD OR DECEPTION.—In ad-
21 dition to any other remedy available by law or contract,
22 no creditor, assignee, or securitizer shall be liable to an
23 obligor under this section, if such obligor, or co-obligor
24 has been convicted of obtaining by actual fraud such resi-
25 dential mortgage loan.”.

1 **SEC. 1420. SIX-MONTH NOTICE REQUIRED BEFORE RESET**
2 **OF HYBRID ADJUSTABLE RATE MORTGAGES.**

3 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
4 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
5 after section 128 the following new section:

6 **“§ 128A. Reset of hybrid adjustable rate mortgages**

7 “(a) HYBRID ADJUSTABLE RATE MORTGAGES DE-
8 FINED.—For purposes of this section, the term ‘hybrid ad-
9 justable rate mortgage’ means a consumer credit trans-
10 action secured by the consumer’s principal residence with
11 a fixed interest rate for an introductory period that ad-
12 justs or resets to a variable interest rate after such period.

13 “(b) NOTICE OF RESET AND ALTERNATIVES.—Dur-
14 ing the 1-month period that ends 6 months before the date
15 on which the interest rate in effect during the introductory
16 period of a hybrid adjustable rate mortgage adjusts or
17 resets to a variable interest rate or, in the case of such
18 an adjustment or resetting that occurs within the first 6
19 months after consummation of such loan, at consumma-
20 tion, the creditor or servicer of such loan shall provide a
21 written notice, separate and distinct from all other cor-
22 respondence to the consumer, that includes the following:

23 “(1) Any index or formula used in making ad-
24 justments to or resetting the interest rate and a
25 source of information about the index or formula.

1 “(2) An explanation of how the new interest
2 rate and payment would be determined, including an
3 explanation of how the index was adjusted, such as
4 by the addition of a margin.

5 “(3) A good faith estimate, based on accepted
6 industry standards, of the creditor or servicer of the
7 amount of the monthly payment that will apply after
8 the date of the adjustment or reset, and the assump-
9 tions on which this estimate is based.

10 “(4) A list of alternatives consumers may pur-
11 sue before the date of adjustment or reset, and de-
12 scriptions of the actions consumers must take to
13 pursue these alternatives, including—

14 “(A) refinancing;

15 “(B) renegotiation of loan terms;

16 “(C) payment forbearances; and

17 “(D) pre-foreclosure sales.

18 “(5) The names, addresses, telephone numbers,
19 and Internet addresses of counseling agencies or
20 programs reasonably available to the consumer that
21 have been certified or approved and made publicly
22 available by the Secretary of Housing and Urban
23 Development or a State housing finance authority
24 (as defined in section 1301 of the Financial Institu-

1 tions Reform, Recovery, and Enforcement Act of
2 1989).

3 “(6) The address, telephone number, and Inter-
4 net address for the State housing finance authority
5 (as so defined) for the State in which the consumer
6 resides.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for chapter 2 of the Truth in Lending Act is amended
9 by inserting after the item relating to section 128 the fol-
10 lowing new item:

“128A. Reset of hybrid adjustable rate mortgages.”.

11 **SEC. 1421. REQUIRED DISCLOSURES.**

12 Section 128(a) of Truth in Lending Act (15 U.S.C.
13 1638(a)) is amended by adding at the end the following
14 new paragraphs:

15 “(16) In the case of a variable rate residential
16 mortgage loan for which an escrow or impound ac-
17 count will be established for the payment of all ap-
18 plicable taxes, insurance, and assessments—

19 “(A) the amount of initial monthly pay-
20 ment due under the loan for the payment of
21 principal and interest, and the amount of such
22 initial monthly payment including the monthly
23 payment deposited in the account for the pay-
24 ment of all applicable taxes, insurance, and as-
25 sessments; and

1 “(B) the amount of the fully indexed
2 monthly payment due under the loan for the
3 payment of principal and interest, and the
4 amount of such fully indexed monthly payment
5 including the monthly payment deposited in the
6 account for the payment of all applicable taxes,
7 insurance, and assessments.

8 “(17) In the case of a residential mortgage
9 loan, the aggregate amount of settlement charges for
10 all settlement services provided in connection with
11 the loan, the amount of charges that are included in
12 the loan and the amount of such charges the bor-
13 rower must pay at closing, the approximate amount
14 of the wholesale rate of funds in connection with the
15 loan, and the aggregate amount of other fees or re-
16 quired payments in connection with the loan.

17 “(18) In the case of a residential mortgage
18 loan, the aggregate amount of fees paid to the mort-
19 gage originator in connection with the loan, the
20 amount of such fees paid directly by the consumer,
21 and any additional amount received by the originator
22 from the creditor.

23 “(19) In the case of a residential mortgage
24 loan, the total amount of interest that the consumer
25 will pay over the life of the loan as a percentage of

1 the principal of the loan. Such amount shall be com-
2 puted assuming the consumer makes each monthly
3 payment in full and on-time, and does not make any
4 over-payments.”.

5 **SEC. 1422. DISCLOSURES REQUIRED IN MONTHLY STATE-**
6 **MENTS FOR RESIDENTIAL MORTGAGE**
7 **LOANS.**

8 Section 128 of the Truth in Lending Act (15 U.S.C.
9 1638) is amended by adding at the end the following new
10 subsection:

11 “(f) PERIODIC STATEMENTS FOR RESIDENTIAL
12 MORTGAGE LOANS.—

13 “(1) IN GENERAL.—The creditor, assignee, or
14 servicer with respect to any residential mortgage
15 loan shall transmit to the obligor, for each billing
16 cycle, a statement setting forth each of the following
17 items, to the extent applicable, in a conspicuous and
18 prominent manner:

19 “(A) The amount of the principal obliga-
20 tion under the mortgage.

21 “(B) The current interest rate in effect for
22 the loan.

23 “(C) The date on which the interest rate
24 may next reset or adjust.

1 “(D) The amount of any prepayment fee
2 to be charged, if any.

3 “(E) A description of any late payment
4 fees.

5 “(F) A telephone number and electronic
6 mail address that may be used by the obligor to
7 obtain information regarding the mortgage.

8 “(G) The names, addresses, telephone
9 numbers, and Internet addresses of counseling
10 agencies or programs reasonably available to
11 the consumer that have been certified or ap-
12 proved and made publicly available by the Sec-
13 retary of Housing and Urban Development or a
14 State housing finance authority (as defined in
15 section 1301 of the Financial Institutions Re-
16 form, Recovery, and Enforcement Act of 1989).

17 “(H) Such other information as the Board
18 may prescribe in regulations.

19 “(2) DEVELOPMENT AND USE OF STANDARD
20 FORM.—The Federal banking agencies shall jointly
21 develop and prescribe a standard form for the dislo-
22 sure required under this subsection, taking into ac-
23 count that the statements required may be trans-
24 mitted in writing or electronically.”.

1 **SEC. 1423. EFFECTIVE DATE.**

2 The amendments made by this subtitle shall apply to
3 transactions consummated on or after the effective date
4 of the regulations specified in section 1417.

5 **SEC. 1424. REPORT BY THE GAO.**

6 (a) REPORT REQUIRED.—The Comptroller General
7 shall conduct a study to determine the effects the enact-
8 ment of this Act will have on the availability and afford-
9 ability of credit for consumers, small businesses, home-
10 buyers, and mortgage lending, including the effect—

11 (1) on the mortgage market for mortgages that
12 are not within the safe harbor provided in the
13 amendments made by this subtitle;

14 (2) on the ability of prospective homebuyers to
15 obtain financing;

16 (3) on the ability of homeowners facing resets
17 or adjustments to refinance—for example, do they
18 have fewer refinancing options due to the unavail-
19 ability of certain loan products that were available
20 before the enactment of this Act;

21 (4) on minorities' ability to access affordable
22 credit compared with other prospective borrowers;

23 (5) on home sales and construction;

24 (6) of extending the rescission right, if any, on
25 adjustable rate loans and its impact on litigation;

1 (7) of State foreclosure laws and, if any, an in-
2 vestor's ability to transfer a property after fore-
3 closure;

4 (8) of expanding the existing provisions of the
5 Home Ownership and Equity Protection Act of
6 1994;

7 (9) of prohibiting prepayment penalties on
8 high-cost mortgages; and

9 (10) of establishing counseling services under
10 the Department of Housing and Urban Development
11 and offered through the Office of Housing Coun-
12 seling.

13 (b) REPORT.—Before the end of the 1-year period be-
14 ginning on the date of the enactment of this Act, the
15 Comptroller General shall submit a report to the Congress
16 containing the findings and conclusions of the Comptroller
17 General with respect to the study conducted pursuant to
18 subsection (a).

19 (c) EXAMINATION RELATED TO CERTAIN CREDIT
20 RISK RETENTION PROVISIONS.—The report required by
21 subsection (b) shall also include an analysis by the Comp-
22 troller General of the effect on the capital reserves and
23 funding of lenders of credit risk retention provisions for
24 non-qualified mortgages, including an analysis of the ex-
25 ceptions and adjustments authorized in section

1 129C(1)(3)(A) of the Truth in Lending Act and a rec-
2 ommendation on whether a uniform standard is needed.

3 (d) ANALYSIS OF CREDIT RISK RETENTION PROVI-
4 SIONS.—The report required by subsection (b) shall also
5 include—

6 (1) an analysis by the Comptroller General of
7 whether the credit risk retention provisions have sig-
8 nificantly reduced risks to the larger credit market
9 of the repackaging and selling of securitized loans on
10 a secondary market; and

11 (2) recommendations to the Congress on adjust-
12 ments that should be made, or additional measures
13 that should be undertaken.

14 **SEC. 1425. STATE ATTORNEY GENERAL ENFORCEMENT AU-**
15 **THORITY.**

16 Section 130(e) of the Truth in Lending Act (15
17 U.S.C. 1640(e)) is amended by striking “section 129 may
18 also” and inserting “section 129, 129B, or 129C of this
19 Act may also”.

20 **Subtitle C—High-Cost Mortgages**

21 **SEC. 1431. DEFINITIONS RELATING TO HIGH-COST MORT-**
22 **GAGES.**

23 (a) HIGH-COST MORTGAGE DEFINED.—Section
24 103(aa) of the Truth in Lending Act (15 U.S.C.

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1 1602(aa)) is amended by striking all that precedes para-
2 graph (2) and inserting the following:

3 “(aa) HIGH-COST MORTGAGE.—

4 “(1) DEFINITION.—

5 “(A) IN GENERAL.—The term ‘high-cost
6 mortgage’, and a mortgage referred to in this
7 subsection, means a consumer credit trans-
8 action that is secured by the consumer’s prin-
9 cipal dwelling, other than a reverse mortgage
10 transaction, if—

11 “(i) in the case of a credit transaction
12 secured—

13 “(I) by a first mortgage on the
14 consumer’s principal dwelling, the an-
15 nual percentage rate at consummation
16 of the transaction will exceed by more
17 than 6.5 percentage points (8.5 per-
18 centage points, if the dwelling is per-
19 sonal property and the transaction is
20 for less than \$50,000) the average
21 prime offer rate, as defined in section
22 129C(c)(2)(B), for a comparable
23 transaction; or

24 “(II) by a subordinate or junior
25 mortgage on the consumer’s principal

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1 dwelling, the annual percentage rate
2 at consummation of the transaction
3 will exceed by more than 8.5 percent-
4 age points the average prime offer
5 rate, as defined in section
6 129C(e)(2)(B), for a comparable
7 transaction;

8 “(ii) the total points and fees payable
9 in connection with the transaction, other
10 than bona fide third party charges not re-
11 tained by the mortgage originator, cred-
12 itor, or an affiliate of the creditor or mort-
13 gage originator, exceed—

14 “(I) in the case of a transaction
15 for \$20,000 or more, 5 percent of the
16 total transaction amount; or

17 “(II) in the case of a transaction
18 for less than \$20,000, the lesser of 8
19 percent of the total transaction
20 amount or \$1,000 (or such other dol-
21 lar amount as the Board shall pre-
22 scribe by regulation); or

23 “(iii) the credit transaction documents
24 permit the creditor to charge or collect pre-
25 payment fees or penalties more than 36

1 months after the transaction closing or
2 such fees or penalties exceed, in the aggregate,
3 more than 2 percent of the amount
4 prepaid.

5 “(B) INTRODUCTORY RATES TAKEN INTO
6 ACCOUNT.—For purposes of subparagraph
7 (A)(i), the annual percentage rate of interest
8 shall be determined based on the following interest
9 rate:

10 “(i) In the case of a fixed-rate transaction
11 in which the annual percentage rate
12 will not vary during the term of the loan,
13 the interest rate in effect on the date of
14 consummation of the transaction.

15 “(ii) In the case of a transaction in
16 which the rate of interest varies solely in
17 accordance with an index, the interest rate
18 determined by adding the index rate in effect
19 on the date of consummation of the
20 transaction to the maximum margin permitted
21 at any time during the loan agreement.
22

23 “(iii) In the case of any other transaction
24 in which the rate may vary at any
25 time during the term of the loan for any

1 reason, the interest charged on the trans-
2 action at the maximum rate that may be
3 charged during the term of the loan.

4 “(C) PRIVATE MORTGAGE INSURANCE.—
5 For the purposes of computing the total points
6 and fees under this paragraph, the total points
7 and fees shall include any premium for mort-
8 gage guarantee insurance that is not provided
9 by an agency of the Federal Government or an
10 agency of a State and that is paid by the con-
11 sumer at or before closing.”.

12 (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section
13 103(aa)(2) of the Truth in Lending Act (15 U.S.C.
14 1602(aa)(2)) is amended by striking subparagraph (B)
15 and inserting the following new subparagraph:

16 “(B) An increase or decrease under sub-
17 paragraph (A)—

18 “(i) may not result in the number of
19 percentage points referred to in paragraph
20 (1)(A)(i)(I) being less than 6 percentage
21 points or greater than 10 percentage
22 points; and

23 “(ii) may not result in the number of
24 percentage points referred to in paragraph
25 (1)(A)(i)(II) being less than 8 percentage

1 points or greater than 12 percentage
2 points.”.

3 (c) POINTS AND FEES DEFINED.—

4 (1) IN GENERAL.—Section 103(aa)(4) of the
5 Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is
6 amended—

7 (A) by striking subparagraph (B) and in-
8 serting the following:

9 “(B) all compensation paid directly or indi-
10 rectly by a consumer or creditor to a mortgage
11 originator from any source, including a mort-
12 gage originator that originates a loan in the
13 name of the creditor in a table-funded trans-
14 action;”;

15 (B) in subparagraph (C)(ii), by inserting
16 “except where applied to the charges set forth
17 in section 106(e)(1) where a creditor may re-
18 ceive indirect compensation solely as a result of
19 obtaining distributions of profits from an affili-
20 ated entity based on its ownership interest in
21 compliance with section 8(c)(4) of the Real Es-
22 tate Settlement Procedures Act of 1974” before
23 the semicolon at the end;

1 (C) in subparagraph (C)(iii), by striking “;
2 and” and inserting “, except as provided for in
3 clause (ii);”;

4 (D) by redesignating subparagraph (D) as
5 subparagraph (G); and

6 (E) by inserting after subparagraph (C)
7 the following new subparagraphs:

8 “(D) premiums or other charges payable at
9 or before closing for any credit life, credit dis-
10 ability, credit unemployment, or credit property
11 insurance, or any other accident, loss-of-income,
12 life or health insurance, or any payments di-
13 rectly or indirectly for any debt cancellation or
14 suspension agreement or contract, except that
15 insurance premiums or debt cancellation or sus-
16 pension fees calculated and paid in full on a
17 monthly basis shall not be considered financed
18 by the creditor;

19 “(E) except as provided in subsection (cc),
20 the maximum prepayment fees and penalties
21 which may be charged or collected under the
22 terms of the credit transaction;

23 “(F) all prepayment fees or penalties that
24 are incurred by the consumer if the loan refi-
25 nances a previous loan made or currently held

1 by the same creditor or an affiliate of the cred-
2 itor; and”.

3 (2) CALCULATION OF POINTS AND FEES FOR
4 OPEN-END CONSUMER CREDIT PLANS.—Section
5 103(aa) of the Truth in Lending Act (15 U.S.C.
6 1602(aa)) is amended—

7 (A) by redesignating paragraph (5) as
8 paragraph (6); and

9 (B) by inserting after paragraph (4) the
10 following new paragraph:

11 “(5) CALCULATION OF POINTS AND FEES FOR
12 OPEN-END CONSUMER CREDIT PLANS.—In the case
13 of open-end consumer credit plans, points and fees
14 shall be calculated, for purposes of this section and
15 section 129, by adding the total points and fees
16 known at or before closing, including the maximum
17 prepayment penalties which may be charged or col-
18 lected under the terms of the credit transaction, plus
19 the minimum additional fees the consumer would be
20 required to pay to draw down an amount equal to
21 the total credit line.”.

22 (d) BONA FIDE DISCOUNT LOAN DISCOUNT
23 POINTS.—Section 103 of the Truth in Lending Act (15
24 U.S.C. 1602) is amended by inserting after subsection (cc)
25 (as added by section 1401) the following new subsection:

1 “(dd) BONA FIDE DISCOUNT POINTS AND PREPAY-
2 MENT PENALTIES.—For the purposes of determining the
3 amount of points and fees for purposes of subsection (aa),
4 either the amounts described in paragraph (1) or (2) of
5 the following paragraphs, but not both, shall be excluded:

6 “(1) Up to and including 2 bona fide discount
7 points payable by the consumer in connection with
8 the mortgage, but only if the interest rate from
9 which the mortgage’s interest rate will be discounted
10 does not exceed by more than 1 percentage point—

11 “(A) the average prime offer rate, as de-
12 fined in section 129C; or

13 “(B) if secured by a personal property
14 loan, the average rate on a loan in connection
15 with which insurance is provided under title I
16 of the National Housing Act (12 U.S.C. 1702
17 et seq.).

18 “(2) Unless 2 bona fide discount points have
19 been excluded under paragraph (1), up to and in-
20 cluding 1 bona fide discount point payable by the
21 consumer in connection with the mortgage, but only
22 if the interest rate from which the mortgage’s inter-
23 est rate will be discounted does not exceed by more
24 than 2 percentage points—

1 “(A) the average prime offer rate, as de-
2 fined in section 129C; or

3 “(B) if secured by a personal property
4 loan, the average rate on a loan in connection
5 with which insurance is provided under title I
6 of the National Housing Act (12 U.S.C. 1702
7 et seq.).

8 “(3) For purposes of paragraph (1), the term
9 ‘bona fide discount points’ means loan discount
10 points which are knowingly paid by the consumer for
11 the purpose of reducing, and which in fact result in
12 a bona fide reduction of, the interest rate or time-
13 price differential applicable to the mortgage.

14 “(4) Paragraphs (1) and (2) shall not apply to
15 discount points used to purchase an interest rate re-
16 duction unless the amount of the interest rate reduc-
17 tion purchased is reasonably consistent with estab-
18 lished industry norms and practices for secondary
19 mortgage market transactions.”.

20 **SEC. 1432. AMENDMENTS TO EXISTING REQUIREMENTS**
21 **FOR CERTAIN MORTGAGES.**

22 (a) PREPAYMENT PENALTY PROVISIONS.—Section
23 129(c)(2) of the Truth in Lending Act (15 U.S.C.
24 1639(c)(2)) is hereby repealed.

1 (b) NO BALLOON PAYMENTS.—Section 129(e) of the
2 Truth in Lending Act (15 U.S.C. 1639(e)) is amended to
3 read as follows:

4 “(e) NO BALLOON PAYMENTS.—No high-cost mort-
5 gage may contain a scheduled payment that is more than
6 twice as large as the average of earlier scheduled pay-
7 ments. This subsection shall not apply when the payment
8 schedule is adjusted to the seasonal or irregular income
9 of the consumer or in the case of a balance due under
10 the customary terms of a reverse mortgage.”.

11 **SEC. 1433. ADDITIONAL REQUIREMENTS FOR CERTAIN**
12 **MORTGAGES.**

13 (a) ADDITIONAL REQUIREMENTS FOR CERTAIN
14 MORTGAGES.—Section 129 of the Truth in Lending Act
15 (15 U.S.C. 1639) is amended—

16 (1) by redesignating subsections (j), (k), (l) and
17 (m) as subsections (n), (o), (p), and (q) respectively;
18 and

19 (2) by inserting after subsection (i) the fol-
20 lowing new subsections:

21 “(j) RECOMMENDED DEFAULT.—No creditor shall
22 recommend or encourage default on an existing loan or
23 other debt prior to and in connection with the closing or
24 planned closing of a high-cost mortgage that refinances
25 all or any portion of such existing loan or debt.

1 “(k) LATE FEES.—

2 “(1) IN GENERAL.—No creditor may impose a
3 late payment charge or fee in connection with a
4 high-cost mortgage—

5 “(A) in an amount in excess of 4 percent
6 of the amount of the payment past due;

7 “(B) unless the loan documents specifically
8 authorize the charge or fee;

9 “(C) before the end of the 15-day period
10 beginning on the date the payment is due, or in
11 the case of a loan on which interest on each in-
12 stallment is paid in advance, before the end of
13 the 30-day period beginning on the date the
14 payment is due; or

15 “(D) more than once with respect to a sin-
16 gle late payment.

17 “(2) COORDINATION WITH SUBSEQUENT LATE
18 FEES.—If a payment is otherwise a full payment for
19 the applicable period and is paid on its due date or
20 within an applicable grace period, and the only delin-
21 quency or insufficiency of payment is attributable to
22 any late fee or delinquency charge assessed on any
23 earlier payment, no late fee or delinquency charge
24 may be imposed on such payment.

1 “(3) FAILURE TO MAKE INSTALLMENT PAY-
2 MENT.—If, in the case of a loan agreement the
3 terms of which provide that any payment shall first
4 be applied to any past due principal balance, the
5 consumer fails to make an installment payment and
6 the consumer subsequently resumes making install-
7 ment payments but has not paid all past due install-
8 ments, the creditor may impose a separate late pay-
9 ment charge or fee for any principal due (without
10 deduction due to late fees or related fees) until the
11 default is cured.

12 “(1) ACCELERATION OF DEBT.—No high-cost mort-
13 gage may contain a provision which permits the creditor
14 to accelerate the indebtedness, except when repayment of
15 the loan has been accelerated by default in payment, or
16 pursuant to a due-on-sale provision, or pursuant to a ma-
17 terial violation of some other provision of the loan docu-
18 ment unrelated to payment schedule.

19 “(m) RESTRICTION ON FINANCING POINTS AND
20 FEES.—No creditor may directly or indirectly finance, in
21 connection with any high-cost mortgage, any of the fol-
22 lowing:

23 “(1) Any prepayment fee or penalty payable by
24 the consumer in a refinancing transaction if the

1 creditor or an affiliate of the creditor is the
2 noteholder of the note being refinanced.

3 “(2) Any points or fees.”

4 (b) PROHIBITIONS ON EVASIONS.—Section 129 of
5 the Truth in Lending Act (15 U.S.C. 1639) is amended
6 by inserting after subsection (q) (as so redesignated by
7 subsection (a)(1)) the following new subsection:

8 “(r) PROHIBITIONS ON EVASIONS, STRUCTURING OF
9 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A
10 creditor may not take any action in connection with a
11 high-cost mortgage—

12 “(1) to structure a loan transaction as an open-
13 end credit plan or another form of loan for the pur-
14 pose and with the intent of evading the provisions of
15 this title; or

16 “(2) to divide any loan transaction into sepa-
17 rate parts for the purpose and with the intent of
18 evading provisions of this title.”

19 (c) MODIFICATION OR DEFERRAL FEES.—Section
20 129 of the Truth in Lending Act (15 U.S.C. 1639) is
21 amended by inserting after subsection (r) (as added by
22 subsection (b) of this section) the following new sub-
23 section:

24 “(s) MODIFICATION AND DEFERRAL FEES PROHIB-
25 ITED.—A creditor, successor in interest, assignee, or any

1 agent of any of the above, may not charge a consumer
2 any fee to modify, renew, extend, or amend a high-cost
3 mortgage, or to defer any payment due under the terms
4 of such mortgage.”.

5 (d) PAYOFF STATEMENT.—Section 129 of the Truth
6 in Lending Act (15 U.S.C. 1639) is amended by inserting
7 after subsection (s) (as added by subsection (c) of this
8 section) the following new subsection:

9 “(t) PAYOFF STATEMENT.—

10 “(1) FEES.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), no creditor or servicer may
13 charge a fee for informing or transmitting to
14 any person the balance due to pay off the out-
15 standing balance on a high-cost mortgage.

16 “(B) TRANSACTION FEE.—When payoff in-
17 formation referred to in subparagraph (A) is
18 provided by facsimile transmission or by a cou-
19 rier service, a creditor or servicer may charge a
20 processing fee to cover the cost of such trans-
21 mission or service in an amount not to exceed
22 an amount that is comparable to fees imposed
23 for similar services provided in connection with
24 consumer credit transactions that are secured

1 by the consumer's principal dwelling and are
2 not high-cost mortgages.

3 “(C) FEE DISCLOSURE.—Prior to charging
4 a transaction fee as provided in subparagraph
5 (B), a creditor or servicer shall disclose that
6 payoff balances are available for free pursuant
7 to subparagraph (A).

8 “(D) MULTIPLE REQUESTS.—If a creditor
9 or servicer has provided payoff information re-
10 ferred to in subparagraph (A) without charge,
11 other than the transaction fee allowed by sub-
12 paragraph (B), on 4 occasions during a cal-
13 endar year, the creditor or servicer may there-
14 after charge a reasonable fee for providing such
15 information during the remainder of the cal-
16 endar year.

17 “(2) PROMPT DELIVERY.—Payoff balances shall
18 be provided within 5 business days after receiving a
19 request by a consumer or a person authorized by the
20 consumer to obtain such information.”.

21 (e) PRE-LOAN COUNSELING REQUIRED.—Section
22 129 of the Truth in Lending Act (15 U.S.C. 1639) is
23 amended by inserting after subsection t) (as added by sub-
24 section (d) of this section) the following new subsection:

25 “(u) PRE-LOAN COUNSELING.—

1 “(1) IN GENERAL.—A creditor may not extend
2 credit to a consumer under a high-cost mortgage
3 without first receiving certification from a counselor
4 that is approved by the Secretary of Housing and
5 Urban Development, or at the discretion of the Sec-
6 retary, a State housing finance authority, that the
7 consumer has received counseling on the advisability
8 of the mortgage. Such counselor shall not be em-
9 ployed by the creditor or an affiliate of the creditor
10 or be affiliated with the creditor.

11 “(2) DISCLOSURES REQUIRED PRIOR TO COUN-
12 SELING.—No counselor may certify that a consumer
13 has received counseling on the advisability of the
14 high-cost mortgage unless the counselor can verify
15 that the consumer has received each statement re-
16 quired (in connection with such loan) by this section
17 or the Real Estate Settlement Procedures Act of
18 1974 with respect to the transaction.

19 “(3) REGULATIONS.—The Board may prescribe
20 such regulations as the Board determines to be ap-
21 propriate to carry out the requirements of paragraph
22 (1).”.

23 (f) FLIPPING PROHIBITED.—Section 129 of the
24 Truth in Lending Act (15 U.S.C. 1639) is amended by

1 inserting after subsection (u) (as added by subsection (e))
2 the following new subsections:

3 “(v) FLIPPING.—

4 “(1) IN GENERAL.—No creditor may knowingly
5 or intentionally engage in the unfair act or practice
6 of flipping in connection with a high-cost mortgage.

7 “(2) FLIPPING DEFINED.—For purposes of this
8 subsection, the term ‘flipping’ means the making of
9 a loan or extension of credit in the form a high-cost
10 mortgage to a consumer which refinances an existing
11 mortgage when the creditor does not reasonably and
12 in good faith determine that, at the time the loan is
13 consummated and on the basis of information known
14 or obtained in good faith by the creditor, the new
15 loan or extension of credit has a reasonable, net tan-
16 gible benefit (as determined in accordance with regu-
17 lations prescribed under section 129C(b)) to the con-
18 sumer considering all of the circumstances, including
19 the terms of both the new and the refinanced loans
20 or credit, the cost of the new loan or credit, and the
21 consumer’s circumstances.

22 “(w) CORRECTIONS AND UNINTENTIONAL VIOLA-
23 TIONS.—A creditor or assignee in a high cost loan who,
24 when acting in good faith, fails to comply with any re-
25 quirement under this section will not be deemed to have

1 violated such requirement if the creditor or assignee estab-
2 lishes that either—

3 “(1) within 30 days of the loan closing and
4 prior to the institution of any action, the consumer
5 is notified of or discovers the violation, appropriate
6 restitution is made, and whatever adjustments are
7 necessary are made to the loan to either, at the
8 choice of the consumer—

9 “(A) make the loan satisfy the require-
10 ments of this chapter; or

11 “(B) in the case of a high-cost mortgage,
12 change the terms of the loan in a manner bene-
13 ficial to the consumer so that the loan will no
14 longer be a high-cost mortgage; or

15 “(2) within 60 days of the creditor’s discovery
16 or receipt of notification of an unintentional viola-
17 tion or bona fide error as described in subsection (c)
18 and prior to the institution of any action, the con-
19 sumer is notified of the compliance failure, appro-
20 priate restitution is made, and whatever adjustments
21 are necessary are made to the loan to either, at the
22 choice of the consumer—

23 “(A) make the loan satisfy the require-
24 ments of this chapter; or

1 “(B) in the case of a high-cost mortgage,
2 change the terms of the loan in a manner bene-
3 ficial so that the loan will no longer be a high-
4 cost mortgage.”.

5 **SEC. 1434. REGULATIONS.**

6 The Board of Governors of the Federal Reserve Sys-
7 tem shall publish regulations implementing this subtitle,
8 and the amendments made by this subtitle, in final form
9 before the end of the 6-month period beginning on the
10 date of the enactment of this Act.

11 **SEC. 1435. EFFECTIVE DATE.**

12 The amendments made by this subtitle shall take ef-
13 fect at the end of the 6-month period beginning on the
14 date of the enactment of this Act and shall apply to mort-
15 gages referred to in section 103(aa) of the Truth in Lend-
16 ing Act (15 U.S.C. 1602(aa)) for which an application is
17 received by the creditor after the end of such period.

18 **Subtitle D—Office of Housing**
19 **Counseling**

20 **SEC. 1441. SHORT TITLE.**

21 This subtitle may be cited as the “Expand and Pre-
22 serve Home Ownership Through Counseling Act”.

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1 **SEC. 1442. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**
2 **SELING.**

3 Section 4 of the Department of Housing and Urban
4 Development Act (42 U.S.C. 3533) is amended by adding
5 at the end the following new subsection:

6 “(g) OFFICE OF HOUSING COUNSELING.—

7 “(1) ESTABLISHMENT.—There is established,
8 in the Department, the Office of Housing Coun-
9 seling.

10 “(2) DIRECTOR.—There is established the posi-
11 tion of Director of Housing Counseling. The Direc-
12 tor shall be the head of the Office of Housing Coun-
13 seling and shall be appointed by, and shall report to,
14 the Secretary. Such position shall be a career-re-
15 served position in the Senior Executive Service.

16 “(3) FUNCTIONS.—

17 “(A) IN GENERAL.—The Director shall
18 have primary responsibility within the Depart-
19 ment for all activities and matters relating to
20 homeownership counseling and rental housing
21 counseling, including—

22 “(i) research, grant administration,
23 public outreach, and policy development re-
24 lating to such counseling; and

25 “(ii) establishment, coordination, and
26 administration of all regulations, require-

1 ments, standards, and performance meas-
2 ures under programs and laws adminis-
3 tered by the Department that relate to
4 housing counseling, homeownership coun-
5 seling (including maintenance of homes),
6 mortgage-related counseling (including
7 home equity conversion mortgages and
8 credit protection options to avoid fore-
9 closure), and rental housing counseling, in-
10 cluding the requirements, standards, and
11 performance measures relating to housing
12 counseling.

13 “(B) SPECIFIC FUNCTIONS.—The Director
14 shall carry out the functions assigned to the Di-
15 rector and the Office under this section and any
16 other provisions of law. Such functions shall in-
17 clude establishing rules necessary for—

18 “(i) the counseling procedures under
19 section 106(g)(1) of the Housing and
20 Urban Development Act of 1968 (12
21 U.S.C. 1701x(h)(1));

22 “(ii) carrying out all other functions
23 of the Secretary under section 106(g) of
24 the Housing and Urban Development Act
25 of 1968, including the establishment, oper-

1 ation, and publication of the availability of
2 the toll-free telephone number under para-
3 graph (2) of such section;

4 “(iii) contributing to the preparation
5 and distribution of home buying informa-
6 tion booklets pursuant to section 5 of the
7 Real Estate Settlement Procedures Act of
8 1974 (12 U.S.C. 2604);

9 “(iv) carrying out the certification
10 program under section 106(e) of the Hous-
11 ing and Urban Development Act of 1968
12 (12 U.S.C. 1701x(e));

13 “(v) carrying out the assistance pro-
14 gram under section 106(a)(4) of the Hous-
15 ing and Urban Development Act of 1968,
16 including criteria for selection of applica-
17 tions to receive assistance;

18 “(vi) carrying out any functions re-
19 garding abusive, deceptive, or unscrupulous
20 lending practices relating to residential
21 mortgage loans that the Secretary con-
22 siders appropriate, which shall include con-
23 ducting the study under section 6 of the
24 Expand and Preserve Home Ownership
25 Through Counseling Act;

1 “(vii) providing for operation of the
2 advisory committee established under para-
3 graph (4) of this subsection;

4 “(viii) collaborating with community-
5 based organizations with expertise in the
6 field of housing counseling; and

7 “(ix) providing for the building of ca-
8 pacity to provide housing counseling serv-
9 ices in areas that lack sufficient services,
10 including underdeveloped areas that lack
11 basic water and sewer systems, electricity
12 services, and safe, sanitary housing.

13 “(4) ADVISORY COMMITTEE.—

14 “(A) IN GENERAL.—The Secretary shall
15 appoint an advisory committee to provide advice
16 regarding the carrying out of the functions of
17 the Director.

18 “(B) MEMBERS.—Such advisory committee
19 shall consist of not more than 12 individuals,
20 and the membership of the committee shall
21 equally represent the mortgage and real estate
22 industry, including consumers and housing
23 counseling agencies certified by the Secretary.

24 “(C) TERMS.—Except as provided in sub-
25 paragraph (D), each member of the advisory

1 committee shall be appointed for a term of 3
2 years. Members may be reappointed at the dis-
3 cretion of the Secretary.

4 “(D) TERMS OF INITIAL APPOINTEES.—As
5 designated by the Secretary at the time of ap-
6 pointment, of the members first appointed to
7 the advisory committee, 4 shall be appointed for
8 a term of 1 year and 4 shall be appointed for
9 a term of 2 years.

10 “(E) PROHIBITION OF PAY; TRAVEL EX-
11 PENSES.—Members of the advisory committee
12 shall serve without pay, but shall receive travel
13 expenses, including per diem in lieu of subsist-
14 ence, in accordance with applicable provisions
15 under subchapter I of chapter 57 of title 5,
16 United States Code.

17 “(F) ADVISORY ROLE ONLY.—The advi-
18 sory committee shall have no role in reviewing
19 or awarding housing counseling grants.

20 “(5) SCOPE OF HOMEOWNERSHIP COUN-
21 SELING.—In carrying out the responsibilities of the
22 Director, the Director shall ensure that homeowner-
23 ship counseling provided by, in connection with, or
24 pursuant to any function, activity, or program of the
25 Department addresses the entire process of home-

1 ownership, including the decision to purchase a
2 home, the selection and purchase of a home, issues
3 arising during or affecting the period of ownership
4 of a home (including refinancing, default and fore-
5 closure, and other financial decisions), and the sale
6 or other disposition of a home.”.

7 **SEC. 1443. COUNSELING PROCEDURES.**

8 (a) IN GENERAL.—Section 106 of the Housing and
9 Urban Development Act of 1968 (12 U.S.C. 1701x) is
10 amended by adding at the end the following new sub-
11 section:

12 “(g) PROCEDURES AND ACTIVITIES.—

13 “(1) COUNSELING PROCEDURES.—

14 “(A) IN GENERAL.—The Secretary shall
15 establish, coordinate, and monitor the adminis-
16 tration by the Department of Housing and
17 Urban Development of the counseling proce-
18 dures for homeownership counseling and rental
19 housing counseling provided in connection with
20 any program of the Department, including all
21 requirements, standards, and performance
22 measures that relate to homeownership and
23 rental housing counseling.

24 “(B) HOMEOWNERSHIP COUNSELING.—

25 For purposes of this subsection and as used in

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1 the provisions referred to in this subparagraph,
2 the term ‘homeownership counseling’ means
3 counseling related to homeownership and resi-
4 dential mortgage loans. Such term includes
5 counseling related to homeownership and resi-
6 dential mortgage loans that is provided pursu-
7 ant to—

8 “(i) section 105(a)(20) of the Housing
9 and Community Development Act of 1974
10 (42 U.S.C. 5305(a)(20));

11 “(ii) in the United States Housing
12 Act of 1937—

13 “(I) section 9(e) (42 U.S.C.
14 1437g(e));

15 “(II) section 8(y)(1)(D) (42
16 U.S.C. 1437f(y)(1)(D));

17 “(III) section 18(a)(4)(D) (42
18 U.S.C. 1437p(a)(4)(D));

19 “(IV) section 23(c)(4) (42 U.S.C.
20 1437u(c)(4));

21 “(V) section 32(e)(4) (42 U.S.C.
22 1437z-4(e)(4));

23 “(VI) section 33(d)(2)(B) (42
24 U.S.C. 1437z-5(d)(2)(B));

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1 “(VII) sections 302(b)(6) and
2 303(b)(7) (42 U.S.C. 1437aaa–
3 1(b)(6), 1437aaa–2(b)(7)); and

4 “(VIII) section 304(c)(4) (42
5 U.S.C. 1437aaa–3(c)(4));

6 “(iii) section 302(a)(4) of the Amer-
7 ican Homeownership and Economic Oppor-
8 tunity Act of 2000 (42 U.S.C. 1437f note);

9 “(iv) sections 233(b)(2) and 258(b) of
10 the Cranston-Gonzalez National Affordable
11 Housing Act (42 U.S.C. 12773(b)(2),
12 12808(b));

13 “(v) this section and section 101(e) of
14 the Housing and Urban Development Act
15 of 1968 (12 U.S.C. 1701x, 1701w(e));

16 “(vi) section 220(d)(2)(G) of the Low-
17 Income Housing Preservation and Resident
18 Homeownership Act of 1990 (12 U.S.C.
19 4110(d)(2)(G));

20 “(vii) sections 422(b)(6), 423(b)(7),
21 424(c)(4), 442(b)(6), and 443(b)(6) of the
22 Cranston-Gonzalez National Affordable
23 Housing Act (42 U.S.C. 12872(b)(6),
24 12873(b)(7), 12874(c)(4), 12892(b)(6),
25 and 12893(b)(6));

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1 “(viii) section 491(b)(1)(F)(iii) of the
2 McKinney-Vento Homeless Assistance Act
3 (42 U.S.C. 11408(b)(1)(F)(iii));

4 “(ix) sections 202(3) and
5 810(b)(2)(A) of the Native American
6 Housing and Self-Determination Act of
7 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

8 “(x) in the National Housing Act—

9 “(I) in section 203 (12 U.S.C.
10 1709), the penultimate undesignated
11 paragraph of paragraph (2) of sub-
12 section (b), subsection (c)(2)(A), and
13 subsection (r)(4);

14 “(II) subsections (a) and (c)(3)
15 of section 237 (12 U.S.C. 1715z-2);
16 and

17 “(III) subsections (d)(2)(B) and
18 (m)(1) of section 255 (12 U.S.C.
19 1715z-20);

20 “(xi) section 502(h)(4)(B) of the
21 Housing Act of 1949 (42 U.S.C.
22 1472(h)(4)(B));

23 “(xii) section 508 of the Housing and
24 Urban Development Act of 1970 (12
25 U.S.C. 1701z-7); and

1 “(xiii) section 106 of the Energy Pol-
2 icy Act of 1992 (42 U.S.C. 12712 note).

3 “(C) RENTAL HOUSING COUNSELING.—
4 For purposes of this subsection, the term ‘rent-
5 al housing counseling’ means counseling related
6 to rental of residential property, which may in-
7 clude counseling regarding future homeownership
8 opportunities and providing referrals for
9 renters and prospective renters to entities pro-
10 viding counseling and shall include counseling
11 related to such topics that is provided pursuant
12 to—

13 “(i) section 105(a)(20) of the Housing
14 and Community Development Act of 1974
15 (42 U.S.C. 5305(a)(20));

16 “(ii) in the United States Housing
17 Act of 1937—

18 “(I) section 9(e) (42 U.S.C.
19 1437g(e));

20 “(II) section 18(a)(4)(D) (42
21 U.S.C. 1437p(a)(4)(D));

22 “(III) section 23(c)(4) (42
23 U.S.C. 1437u(c)(4));

24 “(IV) section 32(e)(4) (42 U.S.C.
25 1437z-4(e)(4));

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1 “(V) section 33(d)(2)(B) (42
2 U.S.C. 1437z–5(d)(2)(B)); and

3 “(VI) section 302(b)(6) (42
4 U.S.C. 1437aaa–1(b)(6));

5 “(iii) section 233(b)(2) of the Cran-
6 ston-Gonzalez National Affordable Housing
7 Act (42 U.S.C. 12773(b)(2));

8 “(iv) section 106 of the Housing and
9 Urban Development Act of 1968 (12
10 U.S.C. 1701x);

11 “(v) section 422(b)(6) of the Cran-
12 ston-Gonzalez National Affordable Housing
13 Act (42 U.S.C. 12872(b)(6));

14 “(vi) section 491(b)(1)(F)(iii) of the
15 McKinney-Vento Homeless Assistance Act
16 (42 U.S.C. 11408(b)(1)(F)(iii));

17 “(vii) sections 202(3) and
18 810(b)(2)(A) of the Native American
19 Housing and Self-Determination Act of
20 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
21 and

22 “(viii) the rental assistance program
23 under section 8 of the United States Hous-
24 ing Act of 1937 (42 U.S.C. 1437f).

1 “(2) STANDARDS FOR MATERIALS.—The Sec-
2 retary, in consultation with the advisory committee
3 established under subsection (g)(4) of the Depart-
4 ment of Housing and Urban Development Act, shall
5 establish standards for materials and forms to be
6 used, as appropriate, by organizations providing
7 homeownership counseling services, including any re-
8 cipients of assistance pursuant to subsection (a)(4).

9 “(3) MORTGAGE SOFTWARE SYSTEMS.—

10 “(A) CERTIFICATION.—The Secretary shall
11 provide for the certification of various computer
12 software programs for consumers to use in eval-
13 uating different residential mortgage loan pro-
14 posals. The Secretary shall require, for such
15 certification, that the mortgage software sys-
16 tems take into account—

17 “(i) the consumer’s financial situation
18 and the cost of maintaining a home, in-
19 cluding insurance, taxes, and utilities;

20 “(ii) the amount of time the consumer
21 expects to remain in the home or expected
22 time to maturity of the loan; and

23 “(iii) such other factors as the Sec-
24 retary considers appropriate to assist the
25 consumer in evaluating whether to pay

1 points, to lock in an interest rate, to select
2 an adjustable or fixed rate loan, to select
3 a conventional or government-insured or
4 guaranteed loan and to make other choices
5 during the loan application process.

6 If the Secretary determines that available exist-
7 ing software is inadequate to assist consumers
8 during the residential mortgage loan application
9 process, the Secretary shall arrange for the de-
10 velopment by private sector software companies
11 of new mortgage software systems that meet
12 the Secretary's specifications.

13 “(B) USE AND INITIAL AVAILABILITY.—
14 Such certified computer software programs
15 shall be used to supplement, not replace, hous-
16 ing counseling. The Secretary shall provide that
17 such programs are initially used only in connec-
18 tion with the assistance of housing counselors
19 certified pursuant to subsection (e).

20 “(C) AVAILABILITY.—After a period of ini-
21 tial availability under subparagraph (B) as the
22 Secretary considers appropriate, the Secretary
23 shall take reasonable steps to make mortgage
24 software systems certified pursuant to this
25 paragraph widely available through the Internet

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1 and at public locations, including public librar-
2 ies, senior-citizen centers, public housing sites,
3 offices of public housing agencies that admin-
4 ister rental housing assistance vouchers, and
5 housing counseling centers.

6 “(D) BUDGET COMPLIANCE.—This para-
7 graph shall be effective only to the extent that
8 amounts to carry out this paragraph are made
9 available in advance in appropriations Acts.

10 “(4) NATIONAL PUBLIC SERVICE MULTIMEDIA
11 CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

12 “(A) IN GENERAL.—The Director of Hous-
13 ing Counseling shall develop, implement, and
14 conduct national public service multimedia cam-
15 paigns designed to make persons facing mort-
16 gage foreclosure, persons considering a
17 subprime mortgage loan to purchase a home, el-
18 derly persons, persons who face language bar-
19 riers, low-income persons, minorities, and other
20 potentially vulnerable consumers aware that it
21 is advisable, before seeking or maintaining a
22 residential mortgage loan, to obtain homeown-
23 ership counseling from an unbiased and reliable
24 sources and that such homeownership coun-
25 seling is available, including through programs

1 sponsored by the Secretary of Housing and
2 Urban Development.

3 “(B) CONTACT INFORMATION.—Each seg-
4 ment of the multimedia campaign under sub-
5 paragraph (A) shall publicize the toll-free tele-
6 phone number and website of the Department
7 of Housing and Urban Development through
8 which persons seeking housing counseling can
9 locate a housing counseling agency in their
10 State that is certified by the Secretary of Hous-
11 ing and Urban Development and can provide
12 advice on buying a home, renting, defaults,
13 foreclosures, credit issues, and reverse mort-
14 gages.

15 “(C) AUTHORIZATION OF APPROPRIA-
16 TIONS.—There are authorized to be appro-
17 priated to the Secretary, not to exceed
18 \$3,000,000 for fiscal years 2009, 2010, and
19 2011, for the development, implementation, and
20 conduct of national public service multimedia
21 campaigns under this paragraph.

22 “(D) FORECLOSURE RESCUE EDUCATION
23 PROGRAMS.—

24 “(i) IN GENERAL.—Ten percent of
25 any funds appropriated pursuant to the

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1 authorization under subparagraph (C)
2 shall be used by the Director of Housing
3 Counseling to conduct an education pro-
4 gram in areas that have a high density of
5 foreclosure. Such program shall involve di-
6 rect mailings to persons living in such
7 areas describing—

8 “(I) tips on avoiding foreclosure
9 rescue scams;

10 “(II) tips on avoiding predatory
11 lending mortgage agreements;

12 “(III) tips on avoiding for-profit
13 foreclosure counseling services; and

14 “(IV) local counseling resources
15 that are approved by the Department
16 of Housing and Urban Development.

17 “(ii) PROGRAM EMPHASIS.—In con-
18 ducting the education program described
19 under clause (i), the Director of Housing
20 Counseling shall also place an emphasis on
21 serving communities that have a high per-
22 centage of retirement communities or a
23 high percentage of low-income minority
24 communities.

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1 “(iii) TERMS DEFINED.—For pur-
2 poses of this subparagraph:

3 “(I) HIGH DENSITY OF FORE-
4 CLOSURES.—An area has a ‘high den-
5 sity of foreclosures’ if such area is one
6 of the metropolitan statistical areas
7 (as that term is defined by the Direc-
8 tor of the Office of Management and
9 Budget) with the highest home fore-
10 closure rates.

11 “(II) HIGH PERCENTAGE OF RE-
12 TIREMENT COMMUNITIES.—An area
13 has a ‘high percentage of retirement
14 communities’ if such area is one of
15 the metropolitan statistical areas (as
16 that term is defined by the Director of
17 the Office of Management and Budg-
18 et) with the highest percentage of
19 residents aged 65 or older.

20 “(III) HIGH PERCENTAGE OF
21 LOW-INCOME MINORITY COMMU-
22 NITIES.—An area has a ‘high percent-
23 age of low-income minority commu-
24 nities’ if such area contains a higher-
25 than-normal percentage of residents

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1 who are both minorities and low-in-
2 come, as defined by the Director of
3 Housing Counseling.

4 “(5) EDUCATION PROGRAMS.—The Secretary
5 shall provide advice and technical assistance to
6 States, units of general local government, and non-
7 profit organizations regarding the establishment and
8 operation of, including assistance with the develop-
9 ment of content and materials for, educational pro-
10 grams to inform and educate consumers, particularly
11 those most vulnerable with respect to residential
12 mortgage loans (such as elderly persons, persons
13 facing language barriers, low-income persons, mi-
14 norities, and other potentially vulnerable con-
15 sumers), regarding home mortgages, mortgage refi-
16 nancing, home equity loans, home repair loans, and
17 where appropriate by region, any requirements and
18 costs associated with obtaining flood or other dis-
19 aster-specific insurance coverage.”.

20 (b) CONFORMING AMENDMENTS TO GRANT PRO-
21 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
22 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
23 Urban Development Act of 1968 (12 U.S.C.
24 1701x(c)(5)(A)(ii)) is amended—

1 (1) in subclause (III), by striking “and” at the
2 end;

3 (2) in subclause (IV) by striking the period at
4 the end and inserting “; and”; and

5 (3) by inserting after subclause (IV) the fol-
6 lowing new subclause:

7 (V) notify the housing or mort-
8 gage applicant of the availability of
9 mortgage software systems provided
10 pursuant to subsection (g)(3).”.

11 **SEC. 1444. GRANTS FOR HOUSING COUNSELING ASSIST-**
12 **ANCE.**

13 Section 106(a) of the Housing and Urban Develop-
14 ment Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended
15 by adding at the end the following new paragraph:

16 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING
17 ASSISTANCE.—

18 “(A) IN GENERAL.—The Secretary shall make
19 financial assistance available under this paragraph
20 to HUD-approved housing counseling agencies and
21 State housing finance agencies.

22 “(B) QUALIFIED ENTITIES.—The Secretary
23 shall establish standards and guidelines for eligibility
24 of organizations (including governmental and non-

1 profit organizations) to receive assistance under this
2 paragraph, in accordance with subparagraph (D).

3 “(C) DISTRIBUTION.—Assistance made avail-
4 able under this paragraph shall be distributed in a
5 manner that encourages efficient and successful
6 counseling programs and that ensures adequate dis-
7 tribution of amounts for rural areas having tradi-
8 tionally low levels of access to such counseling serv-
9 ices, including areas with insufficient access to the
10 Internet. In distributing such assistance, the Sec-
11 retary may give priority consideration to entities
12 serving areas with the highest home foreclosure
13 rates.

14 “(D) LIMITATION ON DISTRIBUTION OF ASSIST-
15 ANCE.—

16 “(i) IN GENERAL.—None of the amounts
17 made available under this paragraph shall be
18 distributed to—

19 “(I) any organization which has been
20 convicted for a violation under Federal law
21 relating to an election for Federal office; or

22 “(II) any organization which employs
23 applicable individuals.

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1 “(ii) DEFINITION OF APPLICABLE INDIVID-
2 UALS.—In this subparagraph, the term ‘appli-
3 cable individual’ means an individual who—

4 “(I) is—

5 “(aa) employed by the organiza-
6 tion in a permanent or temporary ca-
7 pacity;

8 “(bb) contracted or retained by
9 the organization; or

10 “(cc) acting on behalf of, or with
11 the express or apparent authority of,
12 the organization; and

13 “(II) has been convicted for a viola-
14 tion under Federal law relating to an elec-
15 tion for Federal office.

16 “(E) GRANTMAKING PROCESS.—In making as-
17 sistance available under this paragraph, the Sec-
18 retary shall consider appropriate ways of stream-
19 lining and improving the processes for grant applica-
20 tion, review, approval, and award.

21 “(F) AUTHORIZATION OF APPROPRIATIONS.—
22 There are authorized to be appropriated
23 \$45,000,000 for each of fiscal years 2009 through
24 2012 for—

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1 “(i) the operations of the Office of Hous-
2 ing Counseling of the Department of Housing
3 and Urban Development;

4 “(ii) the responsibilities of the Director of
5 Housing Counseling under paragraphs (2)
6 through (5) of subsection (g); and

7 “(iii) assistance pursuant to this para-
8 graph for entities providing homeownership and
9 rental counseling.”.

10 **SEC. 1445. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
11 **SELORS UNDER HUD PROGRAMS.**

12 Section 106(e) of the Housing and Urban Develop-
13 ment Act of 1968 (12 U.S.C. 1701x(e)) is amended—

14 (1) by striking paragraph (1) and inserting the
15 following new paragraph:

16 “(1) REQUIREMENT FOR ASSISTANCE.—An or-
17 ganization may not receive assistance for counseling
18 activities under subsection (a)(1)(iii), (a)(2), (a)(4),
19 (c), or (d) of this section, or under section 101(e),
20 unless the organization, or the individuals through
21 which the organization provides such counseling, has
22 been certified by the Secretary under this subsection
23 as competent to provide such counseling.”;

24 (2) in paragraph (2)—

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1 (A) by inserting “and for certifying organi-
2 zations” before the period at the end of the
3 first sentence; and

4 (B) in the second sentence by striking “for
5 certification” and inserting “, for certification
6 of an organization, that each individual through
7 which the organization provides counseling shall
8 demonstrate, and, for certification of an indi-
9 vidual,”;

10 (3) in paragraph (3), by inserting “organiza-
11 tions and” before “individuals”;

12 (4) by redesignating paragraph (3) as para-
13 graph (5); and

14 (5) by inserting after paragraph (2) the fol-
15 lowing new paragraphs:

16 “(3) REQUIREMENT UNDER HUD PROGRAMS.—
17 Any homeownership counseling or rental housing
18 counseling (as such terms are defined in subsection
19 (g)(1)) required under, or provided in connection
20 with, any program administered by the Department
21 of Housing and Urban Development shall be pro-
22 vided only by organizations or counselors certified by
23 the Secretary under this subsection as competent to
24 provide such counseling.

1 “(4) OUTREACH.—The Secretary shall take
2 such actions as the Secretary considers appropriate
3 to ensure that individuals and organizations pro-
4 viding homeownership or rental housing counseling
5 are aware of the certification requirements and
6 standards of this subsection and of the training and
7 certification programs under subsection (f).”.

8 **SEC. 1446. STUDY OF DEFAULTS AND FORECLOSURES.**

9 The Secretary of Housing and Urban Development
10 shall conduct an extensive study of the root causes of de-
11 fault and foreclosure of home loans, using as much empir-
12 ical data as are available. The study shall also examine
13 the role of escrow accounts in helping prime and nonprime
14 borrowers to avoid defaults and foreclosures, and the role
15 of computer registries of mortgages, including those used
16 for trading mortgage loans. Not later than 12 months
17 after the date of the enactment of this Act, the Secretary
18 shall submit to the Congress a preliminary report regard-
19 ing the study. Not later than 24 months after such date
20 of enactment, the Secretary shall submit a final report re-
21 garding the results of the study, which shall include any
22 recommended legislation relating to the study, and rec-
23 ommendations for best practices and for a process to iden-
24 tify populations that need counseling the most.

1 **SEC. 1447. DEFAULT AND FORECLOSURE DATABASE.**

2 (a) ESTABLISHMENT.—The Secretary of Housing
3 and Urban Development, in consultation with the Federal
4 agencies responsible for regulation of banking and finan-
5 cial institutions involved in residential mortgage lending
6 and servicing, shall establish and maintain a database of
7 information on foreclosures and defaults on mortgage
8 loans for one- to four-unit residential properties and shall
9 make such information publicly available.

10 (b) CENSUS TRACT DATA.—Information in the data-
11 base shall be collected, aggregated, and made available on
12 a census tract basis.

13 (c) REQUIREMENTS.—Information collected and
14 made available through the database shall include—

15 (1) the number and percentage of such mort-
16 gage loans that are delinquent by more than 30
17 days;

18 (2) the number and percentage of such mort-
19 gage loans that are delinquent by more than 90
20 days;

21 (3) the number and percentage of such prop-
22 erties that are real estate-owned;

23 (4) number and percentage of such mortgage
24 loans that are in the foreclosure process;

25 (5) the number and percentage of such mort-
26 gage loans that have an outstanding principal obli-

1 gation amount that is greater than the value of the
2 property for which the loan was made; and

3 (6) such other information as the Secretary
4 considers appropriate.

5 **SEC. 1448. DEFINITIONS FOR COUNSELING-RELATED PRO-**
6 **GRAMS.**

7 Section 106 of the Housing and Urban Development
8 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
9 ceding provisions of this subtitle, is amended by adding
10 at the end the following new subsection:

11 “(h) DEFINITIONS.—For purposes of this section:

12 “(1) NONPROFIT ORGANIZATION.—The term
13 ‘nonprofit organization’ has the meaning given such
14 term in section 104(5) of the Cranston-Gonzalez Na-
15 tional Affordable Housing Act (42 U.S.C.
16 12704(5)), except that subparagraph (D) of such
17 section shall not apply for purposes of this section.

18 “(2) STATE.—The term ‘State’ means each of
19 the several States, the Commonwealth of Puerto
20 Rico, the District of Columbia, the Commonwealth
21 of the Northern Mariana Islands, Guam, the Virgin
22 Islands, American Samoa, the Trust Territories of
23 the Pacific, or any other possession of the United
24 States.

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1 “(3) UNIT OF GENERAL LOCAL GOVERN-
2 MENT.—The term ‘unit of general local government’
3 means any city, county, parish, town, township, bor-
4 ough, village, or other general purpose political sub-
5 division of a State.

6 “(4) HUD-APPROVED COUNSELING AGENCY.—
7 The term ‘HUD-approved counseling agency’ means
8 a private or public nonprofit organization that is—

9 “(A) exempt from taxation under section
10 501(c) of the Internal Revenue Code of 1986;
11 and

12 “(B) certified by the Secretary to provide
13 housing counseling services.

14 “(5) STATE HOUSING FINANCE AGENCY.—The
15 term ‘State housing finance agency’ means any pub-
16 lic body, agency, or instrumentality specifically cre-
17 ated under State statute that is authorised to fi-
18 nance activities designed to provide housing and re-
19 lated facilities throughout an entire State through
20 land acquisition, construction, or rehabilitation.”.

21 **SEC. 1449. ACCOUNTABILITY AND TRANSPARENCY FOR**
22 **GRANT RECIPIENTS.**

23 Section 106 of the Housing and Urban Development
24 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-

1 ceding provisions of this subtitle, is amended by adding
2 at the end the following:

3 “(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED
4 ASSISTANCE.—

5 “(1) TRACKING OF FUNDS.—The Secretary
6 shall—

7 “(A) develop and maintain a system to en-
8 sure that any organization or entity that re-
9 ceives any covered assistance uses all amounts
10 of covered assistance in accordance with this
11 section or section 1415 of the Mortgage Reform
12 and Anti-Predatory Lending Act, as applicable,
13 the regulations issued under this section or
14 such section 1415, as applicable, and any re-
15 quirements or conditions under which such
16 amounts were provided; and

17 “(B) require any organization or entity, as
18 a condition of receipt of any covered assistance,
19 to agree to comply with such requirements re-
20 garding covered assistance as the Secretary
21 shall establish, which shall include—

22 “(i) appropriate periodic financial and
23 grant activity reporting, record retention,
24 and audit requirements for the duration of
25 the covered assistance to the organization

1 or entity to ensure compliance with the
2 limitations and requirements of this section
3 or section 1415 of the Mortgage Reform
4 and Anti-Predatory Lending Act, as appli-
5 cable, the regulations under this section or
6 such section 1415, as applicable, and any
7 requirements or conditions under which
8 such amounts were provided; and

9 “(ii) any other requirements that the
10 Secretary determines are necessary to en-
11 sure appropriate administration and com-
12 pliance.

13 “(2) MISUSE OF FUNDS.—If any organization
14 or entity that receives any covered assistance is de-
15 termined by the Secretary to have used any covered
16 assistance in a manner that is materially in violation
17 of this section or section 1415 of the Mortgage Re-
18 form and Anti-Predatory Lending Act, as applicable,
19 the regulations issued under this section or such sec-
20 tion 1415, as applicable, or any requirements or con-
21 ditions under which such assistance was provided—

22 “(A) the Secretary shall require that, with-
23 in 12 months after the determination of such
24 misuse, the organization or entity shall reim-
25 burse the Secretary for such misused amounts

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1 and return to the Secretary any such amounts
2 that remain unused or uncommitted for use;
3 and

4 “(B) such organization or entity shall be
5 ineligible, at any time after such determination,
6 to apply for or receive any further covered as-
7 sistance.

8 The remedies under this paragraph are in addition
9 to any other remedies that may be available under
10 law.

11 “(3) COVERED ASSISTANCE.—For purposes of
12 this subsection, the term ‘covered assistance’ means
13 any grant or other financial assistance provided
14 under—

15 “(A) this section; or

16 “(B) section 1415 of the Mortgage Reform
17 and Anti-Predatory Lending Act.”.

18 **SEC. 1450. UPDATING AND SIMPLIFICATION OF MORTGAGE**
19 **INFORMATION BOOKLET.**

20 Section 5 of the Real Estate Settlement Procedures
21 Act of 1974 (12 U.S.C. 2604) is amended—

22 (1) in the section heading, by striking “SPE-
23 CIAL” and inserting “HOME BUYING”;

24 (2) by striking subsections (a) and (b) and in-
25 serting the following new subsections:

1 “(a) PREPARATION AND DISTRIBUTION.—The Direc-
2 tor of the Consumer Financial Protection Agency (here-
3 after in this section referred to as the ‘Director’) shall pre-
4 pare, at least once every 5 years, a booklet to help con-
5 sumers applying for federally related mortgage loans to
6 understand the nature and costs of real estate settlement
7 services. The Director shall prepare the booklet in various
8 languages and cultural styles, as the Director determines
9 to be appropriate, so that the booklet is understandable
10 and accessible to homebuyers of different ethnic and cul-
11 tural backgrounds. The Director shall distribute such
12 booklets to all lenders that make federally related mort-
13 gage loans. The Director shall also distribute to such lend-
14 ers lists, organized by location, of homeownership coun-
15 selors certified under section 106(e) of the Housing and
16 Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for
17 use in complying with the requirement under subsection
18 (c) of this section.

19 “(b) CONTENTS.—Each booklet shall be in such form
20 and detail as the Director shall prescribe and, in addition
21 to such other information as the Director may provide,
22 shall include in plain and understandable language the fol-
23 lowing information:

24 “(1) A description and explanation of the na-
25 ture and purpose of the costs incident to a real es-

1 tate settlement or a federally related mortgage loan.

2 The description and explanation shall provide gen-

3 eral information about the mortgage process as well

4 as specific information concerning, at a minimum—

5 “(A) balloon payments;

6 “(B) prepayment penalties;

7 “(C) the advantages of prepayment; and

8 “(D) the trade-off between closing costs

9 and the interest rate over the life of the loan.

10 “(2) An explanation and sample of the uniform

11 settlement statement required by section 4.

12 “(3) A list and explanation of lending practices,

13 including those prohibited by the Truth in Lending

14 Act or other applicable Federal law, and of other un-

15 fair practices and unreasonable or unnecessary

16 charges to be avoided by the prospective buyer with

17 respect to a real estate settlement.

18 “(4) A list and explanation of questions a con-

19 sumer obtaining a federally related mortgage loan

20 should ask regarding the loan, including whether the

21 consumer will have the ability to repay the loan,

22 whether the consumer sufficiently shopped for the

23 loan, whether the loan terms include prepayment

24 penalties or balloon payments, and whether the loan

25 will benefit the borrower.

1 “(5) An explanation of the right of rescission as
2 to certain transactions provided by sections 125 and
3 129 of the Truth in Lending Act.

4 “(6) A brief explanation of the nature of a vari-
5 able rate mortgage and a reference to the booklet
6 entitled ‘Consumer Handbook on Adjustable Rate
7 Mortgages’, published by the Director, or to any
8 suitable substitute of such booklet that the Director
9 may subsequently adopt pursuant to such section.

10 “(7) A brief explanation of the nature of a
11 home equity line of credit and a reference to the
12 pamphlet required to be provided under section
13 127A of the Truth in Lending Act.

14 “(8) Information about homeownership coun-
15 seling services made available pursuant to section
16 106(a)(4) of the Housing and Urban Development
17 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
18 ommendation that the consumer use such services,
19 and notification that a list of certified providers of
20 homeownership counseling in the area, and their
21 contact information, is available.

22 “(9) An explanation of the nature and purpose
23 of escrow accounts when used in connection with
24 loans secured by residential real estate and the re-

1 requirements under section 10 of this Act regarding
2 such accounts.

3 “(10) An explanation of the choices available to
4 buyers of residential real estate in selecting persons
5 to provide necessary services incidental to a real es-
6 tate settlement.

7 “(11) An explanation of a consumer’s respon-
8 sibilities, liabilities, and obligations in a mortgage
9 transaction.

10 “(12) An explanation of the nature and purpose
11 of real estate appraisals, including the difference be-
12 tween an appraisal and a home inspection.

13 “(13) Notice that the Office of Housing of the
14 Department of Housing and Urban Development has
15 made publicly available a brochure regarding loan
16 fraud and a World Wide Web address and toll-free
17 telephone number for obtaining the brochure.

18 The booklet prepared pursuant to this section shall take
19 into consideration differences in real estate settlement pro-
20 cedures that may exist among the several States and terri-
21 tories of the United States and among separate political
22 subdivisions within the same State and territory.”;

23 (3) in subsection (c), by inserting at the end
24 the following new sentence: “Each lender shall also
25 include with the booklet a reasonably complete or

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1 updated list of homeownership counselors who are
2 certified pursuant to section 106(e) of the Housing
3 and Urban Development Act of 1968 (12 U.S.C.
4 1701x(e)) and located in the area of the lender.”;
5 and

6 (4) in subsection (d), by inserting after the pe-
7 riod at the end of the first sentence the following:
8 “The lender shall provide the HUD-issued booklet in
9 the version that is most appropriate for the person
10 receiving it.”.

11 **SEC. 1451. HOME INSPECTION COUNSELING.**

12 (a) PUBLIC OUTREACH.—

13 (1) IN GENERAL.—The Secretary of Housing
14 and Urban Development (in this section referred to
15 as the “Secretary”) shall take such actions as may
16 be necessary to inform potential homebuyers of the
17 availability and importance of obtaining an inde-
18 pendent home inspection. Such actions shall in-
19 clude—

20 (A) publication of the HUD/FHA form
21 HUD 92564–CN entitled “For Your Protec-
22 tion: Get a Home Inspection”, in both English
23 and Spanish languages;

24 (B) publication of the HUD/FHA booklet
25 entitled “For Your Protection: Get a Home In-

1 spection”, in both English and Spanish lan-
2 guages;

3 (C) development and publication of a HUD
4 booklet entitled “For Your Protection—Get a
5 Home Inspection” that does not reference
6 FHA-insured homes, in both English and Span-
7 ish languages; and

8 (D) publication of the HUD document en-
9 titled “Ten Important Questions To Ask Your
10 Home Inspector”, in both English and Spanish
11 languages.

12 (2) AVAILABILITY.—The Secretary shall make
13 the materials specified in paragraph (1) available for
14 electronic access and, where appropriate, inform po-
15 tential homebuyers of such availability through home
16 purchase counseling public service announcements
17 and toll-free telephone hotlines of the Department of
18 Housing and Urban Development. The Secretary
19 shall give special emphasis to reaching first-time and
20 low-income homebuyers with these materials and ef-
21 forts.

22 (3) UPDATING.—The Secretary may periodi-
23 cally update and revise such materials, as the Sec-
24 retary determines to be appropriate.

1 (b) REQUIREMENT FOR FHA-APPROVED LEND-
2 ERS.—Each mortgagee approved for participation in the
3 mortgage insurance programs under title II of the Na-
4 tional Housing Act shall provide prospective homebuyers,
5 at first contact, whether upon pre-qualification, pre-ap-
6 proval, or initial application, the materials specified in
7 subparagraphs (A), (B), and (D) of subsection (a)(1).

8 (c) REQUIREMENTS FOR HUD-APPROVED COUN-
9 SELING AGENCIES.—Each counseling agency certified
10 pursuant by the Secretary to provide housing counseling
11 services shall provide each of their clients, as part of the
12 home purchase counseling process, the materials specified
13 in subparagraphs (C) and (D) of subsection (a)(1).

14 (d) TRAINING.—Training provided the Department
15 of Housing and Urban Development for housing coun-
16 seling agencies, whether such training is provided directly
17 by the Department or otherwise, shall include—

18 (1) providing information on counseling poten-
19 tial homebuyers of the availability and importance of
20 getting an independent home inspection;

21 (2) providing information about the home in-
22 spection process, including the reasons for specific
23 inspections such as radon and lead-based paint test-
24 ing;

1 (3) providing information about advising poten-
2 tial homebuyers on how to locate and select a quali-
3 fied home inspector; and

4 (4) review of home inspection public outreach
5 materials of the Department.

6 **SEC. 1452. WARNINGS TO HOMEOWNERS OF FORECLOSURE**

7 **RESCUE SCAMS.**

8 (a) ASSISTANCE TO NRC.—Notwithstanding any
9 other provision of law, of any amounts made available for
10 any fiscal year pursuant to section 106(a)(4)(F) of the
11 Housing and Urban Development Act of 1968 (12 U.S.C.
12 1701x(a)(4)(F)) (as added by section 1444), 10 percent
13 shall be used only for assistance to the Neighborhood Re-
14 investment Corporation for activities, in consultation with
15 servicers of residential mortgage loans, to provide notice
16 to borrowers under such loans who are delinquent with
17 respect to payments due under such loans that makes such
18 borrowers aware of the dangers of fraudulent activities as-
19 sociated with foreclosure.

20 (b) NOTICE.—The Neighborhood Reinvestment Cor-
21 poration, in consultation with servicers of residential mort-
22 gage loans, shall use the amounts provided pursuant to
23 subsection (a) to carry out activities to inform borrowers
24 under residential mortgage loans—

1 (1) that the foreclosure process is complex and
2 can be confusing;

3 (2) that the borrower may be approached dur-
4 ing the foreclosure process by persons regarding sav-
5 ing their home and they should use caution in any
6 such dealings;

7 (3) that there are Federal Government and
8 nonprofit agencies that may provide information
9 about the foreclosure process, including the Depart-
10 ment of Housing and Urban Development;

11 (4) that they should contact their lender imme-
12 diately, contact the Department of Housing and
13 Urban Development to find a housing counseling
14 agency certified by the Department to assist in
15 avoiding foreclosure, or visit the Department's
16 website regarding tips for avoiding foreclosure; and

17 (5) of the telephone number of the loan servicer
18 or successor, the telephone number of the Depart-
19 ment of Housing and Urban Development housing
20 counseling line, and the Uniform Resource Locators
21 (URLs) for the Department of Housing and Urban
22 Development Web sites for housing counseling and
23 for tips for avoiding foreclosure.

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1 **Subtitle E—Mortgage Servicing**

2 **SEC. 1461. ESCROW AND IMPOUND ACCOUNTS RELATING**
3 **TO CERTAIN CONSUMER CREDIT TRANS-**
4 **ACTIONS.**

5 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
6 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
7 after section 129C (as added by section 1411) the fol-
8 lowing new section:

9 **“SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING**
10 **TO CERTAIN CONSUMER CREDIT TRANS-**
11 **ACTIONS.**

12 “(a) IN GENERAL.—Except as provided in subsection
13 (b), (c), or (d) , a creditor, in connection with the forma-
14 tion or consummation of a consumer credit transaction se-
15 cured by a first lien on the principal dwelling of the con-
16 sumer, other than a consumer credit transaction under an
17 open end credit plan or a reverse mortgage, shall establish,
18 before the consummation of such transaction, an escrow
19 or impound account for the payment of taxes and hazard
20 insurance, and, if applicable, flood insurance, mortgage in-
21 surance, ground rents, and any other required periodic
22 payments or premiums with respect to the property or the
23 loan terms, as provided in, and in accordance with, this
24 section.

1 “(b) WHEN REQUIRED.—No impound, trust, or other
2 type of account for the payment of property taxes, insur-
3 ance premiums, or other purposes relating to the property
4 may be required as a condition of a real property sale con-
5 tract or a loan secured by a first deed of trust or mortgage
6 on the principal dwelling of the consumer, other than a
7 consumer credit transaction under an open end credit plan
8 or a reverse mortgage, except when—

9 “(1) any such impound, trust, or other type of
10 escrow or impound account for such purposes is re-
11 quired by Federal or State law;

12 “(2) a loan is made, guaranteed, or insured by
13 a State or Federal governmental lending or insuring
14 agency;

15 “(3) the transaction is secured by a first mort-
16 gage or lien on the consumer’s principal dwelling
17 having an original principal obligation amount
18 that—

19 “(A) does not exceed the amount of the
20 maximum limitation on the original principal
21 obligation of mortgage in effect for a residence
22 of the applicable size, as of the date such inter-
23 est rate set, pursuant to the sixth sentence of
24 section 305(a)(2) the Federal Home Loan
25 Mortgage Corporation Act (12 U.S.C.

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1 1454(a)(2)), and the annual percentage rate
2 will exceed the average prime offer rate for a
3 comparable transaction by 1.5 or more percent-
4 age points; or

5 “(B) exceeds the amount of the maximum
6 limitation on the original principal obligation of
7 mortgage in effect for a residence of the appli-
8 cable size, as of the date such interest rate set,
9 pursuant to the sixth sentence of section
10 305(a)(2) the Federal Home Loan Mortgage
11 Corporation Act (12 U.S.C. 1454(a)(2)), and
12 the annual percentage rate will exceed the aver-
13 age prime offer rate for a comparable trans-
14 action by 2.5 or more percentage points; or

15 “(4) so required pursuant to regulation.

16 “(c) DURATION OF MANDATORY ESCROW OR IM-
17 POUND ACCOUNT.—An escrow or impound account estab-
18 lished pursuant to subsection (b), shall remain in existence
19 for a minimum period of 5 years, beginning with the date
20 of the consummation of the loan, and until such borrower
21 has sufficient equity in the dwelling securing the consumer
22 credit transaction so as to no longer be required to main-
23 tain private mortgage insurance, or such other period as
24 may be provided in regulations to address situations such

1 as borrower delinquency, unless the underlying mortgage
2 establishing the account is terminated.

3 “(d) LIMITED EXEMPTIONS FOR LOANS SECURED BY
4 SHARES IN A COOPERATIVE AND FOR CERTAIN CONDO-
5 MINUM UNITS.—Escrow accounts need not be established
6 for loans secured by shares in a cooperative. Insurance
7 premiums need not be included in escrow accounts for
8 loans secured by condominium units, where the condo-
9 minium association has an obligation to the condominium
10 unit owners to maintain a master policy insuring condo-
11 minium units.

12 “(e) CLARIFICATION ON ESCROW ACCOUNTS FOR
13 LOANS NOT MEETING STATUTORY TEST.—For mort-
14 gages not covered by the requirements of subsection (b),
15 no provision of this section shall be construed as pre-
16 cluding the establishment of an impound, trust, or other
17 type of account for the payment of property taxes, insur-
18 ance premiums, or other purposes relating to the prop-
19 erty—

20 “(1) on terms mutually agreeable to the parties
21 to the loan;

22 “(2) at the discretion of the lender or servicer,
23 as provided by the contract between the lender or
24 servicer and the borrower; or

1 “(3) pursuant to the requirements for the
2 escrowing of flood insurance payments for regulated
3 lending institutions in section 102(d) of the Flood
4 Disaster Protection Act of 1973.

5 “(f) ADMINISTRATION OF MANDATORY ESCROW OR
6 IMPOUND ACCOUNTS.—

7 “(1) IN GENERAL.—Except as may otherwise
8 be provided for in this title or in regulations pre-
9 scribed by the Board, escrow or impound accounts
10 established pursuant to subsection (b) shall be estab-
11 lished in a federally insured depository institution.

12 “(2) ADMINISTRATION.—Except as provided in
13 this section or regulations prescribed under this sec-
14 tion, an escrow or impound account subject to this
15 section shall be administered in accordance with—

16 “(A) the Real Estate Settlement Proce-
17 dures Act of 1974 and regulations prescribed
18 under such Act;

19 “(B) the Flood Disaster Protection Act of
20 1973 and regulations prescribed under such
21 Act; and

22 “(C) the law of the State, if applicable,
23 where the real property securing the consumer
24 credit transaction is located.

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1 “(3) APPLICABILITY OF PAYMENT OF INTER-
2 EST.—If prescribed by applicable State or Federal
3 law, each creditor shall pay interest to the consumer
4 on the amount held in any impound, trust, or escrow
5 account that is subject to this section in the manner
6 as prescribed by that applicable State or Federal
7 law.

8 “(4) PENALTY COORDINATION WITH RESPA.—
9 Any action or omission on the part of any person
10 which constitutes a violation of the Real Estate Set-
11 tlement Procedures Act of 1974 or any regulation
12 prescribed under such Act for which the person has
13 paid any fine, civil money penalty, or other damages
14 shall not give rise to any additional fine, civil money
15 penalty, or other damages under this section, unless
16 the action or omission also constitutes a direct viola-
17 tion of this section.

18 “(g) DISCLOSURES RELATING TO MANDATORY ES-
19 CROW OR IMPOUND ACCOUNT.—In the case of any im-
20 pound, trust, or escrow account that is subject to this sec-
21 tion, the creditor shall disclose by written notice to the
22 consumer at least 3 business days before the consumma-
23 tion of the consumer credit transaction giving rise to such
24 account or in accordance with timeframes established in
25 prescribed regulations the following information:

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1 “(1) The fact that an escrow or impound ac-
2 count will be established at consummation of the
3 transaction.

4 “(2) The amount required at closing to initially
5 fund the escrow or impound account.

6 “(3) The amount, in the initial year after the
7 consummation of the transaction, of the estimated
8 taxes and hazard insurance, including flood insur-
9 ance, if applicable, and any other required periodic
10 payments or premiums that reflects, as appropriate,
11 either the taxable assessed value of the real property
12 securing the transaction, including the value of any
13 improvements on the property or to be constructed
14 on the property (whether or not such construction
15 will be financed from the proceeds of the trans-
16 action) or the replacement costs of the property.

17 “(4) The estimated monthly amount payable to
18 be escrowed for taxes, hazard insurance (including
19 flood insurance, if applicable) and any other re-
20 quired periodic payments or premiums.

21 “(5) The fact that, if the consumer chooses to
22 terminate the account at the appropriate time in the
23 future, the consumer will become responsible for the
24 payment of all taxes, hazard insurance, and flood in-
25 surance, if applicable, as well as any other required

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1 periodic payments or premiums on the property un-
2 less a new escrow or impound account is established.

3 “(6) Such other information as the Federal
4 banking agencies jointly determine necessary for the
5 protection of the consumer.

6 “(h) DEFINITIONS.—For purposes of this section, the
7 following definitions shall apply:

8 “(1) FLOOD INSURANCE.—The term ‘flood in-
9 surance’ means flood insurance coverage provided
10 under the national flood insurance program pursu-
11 ant to the National Flood Insurance Act of 1968.

12 “(2) HAZARD INSURANCE.—The term ‘hazard
13 insurance’ shall have the same meaning as provided
14 for ‘hazard insurance’, ‘casualty insurance’, ‘home-
15 owner’s insurance’, or other similar term under the
16 law of the State where the real property securing the
17 consumer credit transaction is located.”.

18 (b) IMPLEMENTATION.—

19 (1) REGULATIONS.—The Board of Governors of
20 the Federal Reserve System, the Comptroller of the
21 Currency, the Director of the Office of Thrift Super-
22 vision, the Federal Deposit Insurance Corporation,
23 the National Credit Union Administration Board,
24 (hereafter in this title referred to as the “Federal
25 banking agencies”) and the Federal Trade Commis-

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1 sion shall prescribe, in final form, such regulations
2 as determined to be necessary to implement the
3 amendments made by subsection (a) before the end
4 of the 180-day period beginning on the date of the
5 enactment of this Act.

6 (2) EFFECTIVE DATE.—The amendments made
7 by subsection (a) shall only apply to covered mort-
8 gage loans consummated after the end of the 1-year
9 period beginning on the date of the publication of
10 final regulations in the Federal Register.

11 (c) CLERICAL AMENDMENT.—The table of sections
12 for chapter 2 of the Truth in Lending Act is amended
13 by inserting after the item relating to section 129C (as
14 added by section 1411) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit trans-
actions.”.

15 **SEC. 1462. DISCLOSURE NOTICE REQUIRED FOR CON-**
16 **SUMERS WHO WAIVE ESCROW SERVICES.**

17 (a) IN GENERAL.—Section 129D of the Truth in
18 Lending Act (as added by section 1461) is amended by
19 adding at the end the following new subsection:

20 “(i) DISCLOSURE NOTICE REQUIRED FOR CON-
21 SUMERS WHO WAIVE ESCROW SERVICES.—

22 “(1) IN GENERAL.—If—

23 “(A) an impound, trust, or other type of
24 account for the payment of property taxes, in-

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1 surance premiums, or other purposes relating to
2 real property securing a consumer credit trans-
3 action is not established in connection with the
4 transaction; or

5 “(B) a consumer chooses, and provides
6 written notice to the creditor or servicer of such
7 choice, at any time after such an account is es-
8 tablished in connection with any such trans-
9 action and in accordance with any statute, reg-
10 ulation, or contractual agreement, to close such
11 account,

12 the creditor or servicer shall provide a timely and
13 clearly written disclosure to the consumer that ad-
14 vises the consumer of the responsibilities of the con-
15 sumer and implications for the consumer in the ab-
16 sence of any such account.

17 “(2) DISCLOSURE REQUIREMENTS.—Any dis-
18 closure provided to a consumer under paragraph (1)
19 shall include the following:

20 “(A) Information concerning any applica-
21 ble fees or costs associated with either the non-
22 establishment of any such account at the time
23 of the transaction, or any subsequent closure of
24 any such account.

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1 “(B) A clear and prominent notice that the
2 consumer is responsible for personally and di-
3 rectly paying the non-escrowed items, in addi-
4 tion to paying the mortgage loan payment, in
5 the absence of any such account, and the fact
6 that the costs for taxes, insurance, and related
7 fees can be substantial.

8 “(C) A clear explanation of the con-
9 sequences of any failure to pay non-escrowed
10 items, including the possible requirement for
11 the forced placement of insurance by the cred-
12 itor or servicer and the potentially higher cost
13 (including any potential commission payments
14 to the servicer) or reduced coverage for the con-
15 sumer in the event of any such creditor-placed
16 insurance.

17 “(D) Such other information as the Fed-
18 eral banking agencies jointly determine nec-
19 essary for the protection of the consumer.”.

20 (b) IMPLEMENTATION.—

21 (1) REGULATIONS.—The Federal banking agen-
22 cies and the Federal Trade Commission shall pre-
23 scribe, in final form, such regulations as such agen-
24 cies determine to be necessary to implement the
25 amendments made by subsection (a) before the end

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1 of the 180-day period beginning on the date of the
2 enactment of this Act.

3 (2) EFFECTIVE DATE.—The amendments made
4 by subsection (a) shall only apply in accordance with
5 the regulations established in paragraph (1) and be-
6 ginning on the date occurring 180-days after the
7 date of the publication of final regulations in the
8 Federal Register.

9 **SEC. 1463. REAL ESTATE SETTLEMENT PROCEDURES ACT**
10 **OF 1974 AMENDMENTS.**

11 (a) SERVICER PROHIBITIONS.—Section 6 of the Real
12 Estate Settlement Procedures Act of 1974 (12 U.S.C.
13 2605) is amended by adding at the end the following new
14 subsections:

15 “(k) SERVICER PROHIBITIONS.—

16 “(1) IN GENERAL.—A servicer of a federally re-
17 lated mortgage shall not—

18 “(A) obtain force-placed hazard insurance
19 unless there is a reasonable basis to believe the
20 borrower has failed to comply with the loan
21 contract’s requirements to maintain property
22 insurance;

23 “(B) charge fees for responding to valid
24 qualified written requests (as defined in regula-

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1 tions which the Secretary shall prescribe) under
2 this section;

3 “(C) fail to take timely action to respond
4 to a borrower’s requests to correct errors relat-
5 ing to allocation of payments, final balances for
6 purposes of paying off the loan, or avoiding
7 foreclosure, or other standard servicer’s duties;

8 “(D) fail to respond within 10 business
9 days to a request from a borrower to provide
10 the identity, address, and other relevant contact
11 information about the owner assignee of the
12 loan; or

13 “(E) fail to comply with any other obliga-
14 tion found by the Secretary, by regulation, to
15 be appropriate to carry out the consumer pro-
16 tection purposes of this Act.

17 “(2) FORCE-PLACED INSURANCE DEFINED.—
18 For purposes of this subsection and subsections (l)
19 and (m), the term ‘force-placed insurance’ means
20 hazard insurance coverage obtained by a servicer of
21 a federally related mortgage when the borrower has
22 failed to maintain or renew hazard insurance on
23 such property as required of the borrower under the
24 terms of the mortgage.

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1 “(1) REQUIREMENTS FOR FORCE-PLACED INSUR-
2 ANCE.—A servicer of a federally related mortgage shall
3 not be construed as having a reasonable basis for obtain-
4 ing force-placed insurance unless the requirements of this
5 subsection have been met.

6 “(1) WRITTEN NOTICES TO BORROWER.—A
7 servicer may not impose any charge on any borrower
8 for force-placed insurance with respect to any prop-
9 erty securing a federally related mortgage unless—

10 “(A) the servicer has sent, by first-class
11 mail, a written notice to the borrower con-
12 taining—

13 “(i) a reminder of the borrower’s obli-
14 gation to maintain hazard insurance on the
15 property securing the federally related
16 mortgage;

17 “(ii) a statement that the servicer
18 does not have evidence of insurance cov-
19 erage of such property;

20 “(iii) a clear and conspicuous state-
21 ment of the procedures by which the bor-
22 rower may demonstrate that the borrower
23 already has insurance coverage; and

24 “(iv) a statement that the servicer
25 may obtain such coverage at the borrower’s

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1 expense if the borrower does not provide
2 such demonstration of the borrower's exist-
3 ing coverage in a timely manner;

4 “(B) the servicer has sent, by first-class
5 mail, a second written notice, at least 30 days
6 after the mailing of the notice under subpara-
7 graph (A) that contains all the information de-
8 scribed in each clause of such subparagraph;
9 and

10 “(C) the servicer has not received from the
11 borrower any demonstration of hazard insur-
12 ance coverage for the property securing the
13 mortgage by the end of the 15-day period be-
14 ginning on the date the notice under subpara-
15 graph (B) was sent by the servicer.

16 “(2) SUFFICIENCY OF DEMONSTRATION.—A
17 servicer of a federally related mortgage shall accept
18 any reasonable form of written confirmation from a
19 borrower of existing insurance coverage, which shall
20 include the existing insurance policy number along
21 with the identity of, and contact information for, the
22 insurance company or agent.

23 “(3) TERMINATION OF FORCE-PLACED INSUR-
24 ANCE.—Within 15 days of the receipt by a servicer

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1 of confirmation of a borrower’s existing insurance
2 coverage, the servicer shall—

3 “(A) terminate the force-placed insurance;
4 and

5 “(B) refund to the consumer all force-
6 placed insurance premiums paid by the bor-
7 rower during any period during which the bor-
8 rower’s insurance coverage and the force-placed
9 insurance coverage were each in effect, and any
10 related fees charged to the consumer’s account
11 with respect to the force-placed insurance dur-
12 ing such period.

13 “(4) CLARIFICATION WITH RESPECT TO FLOOD
14 DISASTER PROTECTION ACT.—No provision of this
15 section shall be construed as prohibiting a servicer
16 from providing simultaneous or concurrent notice of
17 a lack of flood insurance pursuant to section 102(e)
18 of the Flood Disaster Protection Act of 1973.

19 “(m) LIMITATIONS ON FORCE-PLACED INSURANCE
20 CHARGES.—All charges for force-placed insurance pre-
21 miums shall be bona fide and reasonable in amount.”.

22 (b) INCREASE IN PENALTY AMOUNTS.—Section 6(f)
23 of the Real Estate Settlement Procedures Act of 1974 (12
24 U.S.C. 2605(f)) is amended—

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1 (1) in paragraphs (1)(B) and (2)(B), by strik-
2 ing “\$1,000” each place such term appears and in-
3 serting “\$2,000”; and

4 (2) in paragraph (2)(B)(i), by striking
5 “\$500,000” and inserting “\$1,000,000”.

6 (c) DECREASE IN RESPONSE TIMES.—Section 6(e) of
7 the Real Estate Settlement Procedures Act of 1974 (12
8 U.S.C. 2605(e)) is amended—

9 (1) in paragraph (1)(A), by striking “20 days”
10 and inserting “5 days”;

11 (2) in paragraph (2), by striking “60 days” and
12 inserting “30 days”; and

13 (3) by adding at the end the following new
14 paragraph:

15 “(4) LIMITED EXTENSION OF RESPONSE
16 TIME.—The 30-day period described in paragraph
17 (2) may be extended for not more than 15 days if,
18 before the end of such 30-day period, the servicer
19 notifies the borrower of the extension and the rea-
20 sons for the delay in responding.”.

21 (d) PROMPT REFUND OF ESCROW ACCOUNTS UPON
22 PAYOFF.—Section 6(g) of the Real Estate Settlement
23 Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended
24 by adding at the end the following new sentence: “Any
25 balance in any such account that is within the servicer’s

1 control at the time the loan is paid off shall be promptly
2 returned to the borrower within 20 business days or cred-
3 ited to a similar account for a new mortgage loan to the
4 borrower with the same lender.”.

5 **SEC. 1464. TRUTH IN LENDING ACT AMENDMENTS.**

6 (a) REQUIREMENTS FOR PROMPT CREDITING OF
7 HOME LOAN PAYMENTS.—Chapter 2 of the Truth in
8 Lending Act (15 U.S.C. 1631 et seq.) is amended by in-
9 serting after section 129E (as added by section 1462) the
10 following new section:

11 **“SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF**
12 **HOME LOAN PAYMENTS.**

13 “(a) IN GENERAL.—In connection with a consumer
14 credit transaction secured by a consumer’s principal dwell-
15 ing, no servicer shall fail to credit a payment to the con-
16 sumer’s loan account as of the date of receipt, except when
17 a delay in crediting does not result in any charge to the
18 consumer or in the reporting of negative information to
19 a consumer reporting agency, except as required in sub-
20 section (b).

21 “(b) EXCEPTION.—If a servicer specifies in writing
22 requirements for the consumer to follow in making pay-
23 ments, but accepts a payment that does not conform to
24 the requirements, the servicer shall credit the payment as
25 of 5 days after receipt.”.

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1 (b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2
2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.),
3 as amended by this title, is amended by inserting after
4 section 129F (as added by subsection (a)) the following
5 new section:

6 **“SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME**
7 **LOAN.**

8 “A creditor or servicer of a home loan shall send an
9 accurate payoff balance within a reasonable time, but in
10 no case more than 7 business days, after the receipt of
11 a written request for such balance from or on behalf of
12 the borrower.”.

13 **SEC. 1465. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

14 Section 128(b) of the Truth in Lending Act (15
15 U.S.C. 1638(b)) is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(4) REPAYMENT ANALYSIS REQUIRED TO IN-
18 CLUDE ESCROW PAYMENTS.—

19 “(A) IN GENERAL.—In the case of any
20 consumer credit transaction secured by a first
21 mortgage or lien on the principal dwelling of
22 the consumer, other than a consumer credit
23 transaction under an open end credit plan or a
24 reverse mortgage, for which an impound, trust,
25 or other type of account has been or will be es-

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1 tablished in connection with the transaction for
2 the payment of property taxes, hazard and flood
3 (if any) insurance premiums, or other periodic
4 payments or premiums with respect to the
5 property, the information required to be pro-
6 vided under subsection (a) with respect to the
7 number, amount, and due dates or period of
8 payments scheduled to repay the total of pay-
9 ments shall take into account the amount of
10 any monthly payment to such account for each
11 such repayment in accordance with section
12 10(a)(2) of the Real Estate Settlement Proce-
13 dures Act of 1974.

14 “(B) ASSESSMENT VALUE.—The amount
15 taken into account under subparagraph (A) for
16 the payment of property taxes, hazard and flood
17 (if any) insurance premiums, or other periodic
18 payments or premiums with respect to the
19 property shall reflect the taxable assessed value
20 of the real property securing the transaction
21 after the consummation of the transaction, in-
22 cluding the value of any improvements on the
23 property or to be constructed on the property
24 (whether or not such construction will be fi-
25 nanced from the proceeds of the transaction), if

1 known, and the replacement costs of the prop-
2 erty for hazard insurance, in the initial year
3 after the transaction.”.

4 **Subtitle F—Appraisal Activities**

5 **SEC. 1471. PROPERTY APPRAISAL REQUIREMENTS.**

6 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
7 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
8 after 129G (as added by section 1464(b)) the following
9 new section:

10 **“SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.**

11 “(a) IN GENERAL.—A creditor may not extend credit
12 in the form of a subprime mortgage to any consumer with-
13 out first obtaining a written appraisal of the property to
14 be mortgaged prepared in accordance with the require-
15 ments of this section.

16 “(b) APPRAISAL REQUIREMENTS.—

17 “(1) PHYSICAL PROPERTY VISIT.—An appraisal
18 of property to be secured by a subprime mortgage
19 does not meet the requirement of this section unless
20 it is performed by a qualified appraiser who con-
21 ducts a physical property visit of the interior of the
22 mortgaged property.

23 “(2) SECOND APPRAISAL UNDER CERTAIN CIR-
24 CUMSTANCES.—

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1 “(A) IN GENERAL.—If the purpose of a
2 subprime mortgage is to finance the purchase
3 or acquisition of the mortgaged property from
4 a person within 180 days of the purchase or ac-
5 quisition of such property by that person at a
6 price that was lower than the current sale price
7 of the property, the creditor shall obtain a sec-
8 ond appraisal from a different qualified ap-
9 praiser. The second appraisal shall include an
10 analysis of the difference in sale prices, changes
11 in market conditions, and any improvements
12 made to the property between the date of the
13 previous sale and the current sale.

14 “(B) NO COST TO APPLICANT.—The cost
15 of any second appraisal required under sub-
16 paragraph (A) may not be charged to the appli-
17 cant.

18 “(3) QUALIFIED APPRAISER DEFINED.—For
19 purposes of this section, the term ‘qualified ap-
20 praiser’ means a person who—

21 “(A) is, at a minimum, certified or licensed
22 by the State in which the property to be ap-
23 praised is located; and

24 “(B) performs each appraisal in con-
25 formity with the Uniform Standards of Profes-

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1 sional Appraisal Practice and title XI of the Fi-
2 nancial Institutions Reform, Recovery, and En-
3 forcement Act of 1989, and the regulations pre-
4 scribed under such title, as in effect on the date
5 of the appraisal.

6 “(c) FREE COPY OF APPRAISAL.—A creditor shall
7 provide 1 copy of each appraisal conducted in accordance
8 with this section in connection with a subprime mortgage
9 to the applicant without charge, and at least 3 days prior
10 to the transaction closing date.

11 “(d) CONSUMER NOTIFICATION.—At the time of the
12 initial mortgage application, the applicant shall be pro-
13 vided with a statement by the creditor that any appraisal
14 prepared for the mortgage is for the sole use of the cred-
15 itor, and that the applicant may choose to have a separate
16 appraisal conducted at their own expense.

17 “(e) VIOLATIONS.—In addition to any other liability
18 to any person under this title, a creditor found to have
19 willfully failed to obtain an appraisal as required in this
20 section shall be liable to the applicant or borrower for the
21 sum of \$2,000.

22 “(f) SUBPRIME MORTGAGE DEFINED.—For purposes
23 of this section, the term ‘subprime mortgage’ means a res-
24 idential mortgage loan, other than a reverse mortgage loan
25 insured by the Federal Housing Administration, secured

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1 by a principal dwelling with an annual percentage rate
2 that exceeds the average prime offer rate for a comparable
3 transaction, as of the date the interest rate is set—

4 “(1) by 1.5 or more percentage points, in the
5 case of a first lien residential mortgage loan having
6 an original principal obligation amount that does not
7 exceed the amount of the maximum limitation on the
8 original principal obligation of mortgage in effect for
9 a residence of the applicable size, as of the date of
10 such interest rate set, pursuant to the sixth sentence
11 of section 305(a)(2) the Federal Home Loan Mort-
12 gage Corporation Act (12 U.S.C. 1454(a)(2));

13 “(2) by 2.5 or more percentage points, in the
14 case of a first lien residential mortgage loan having
15 an original principal obligation amount that exceeds
16 the amount of the maximum limitation on the origi-
17 nal principal obligation of mortgage in effect for a
18 residence of the applicable size, as of the date of
19 such interest rate set, pursuant to the sixth sentence
20 of section 305(a)(2) the Federal Home Loan Mort-
21 gage Corporation Act (12 U.S.C. 1454(a)(2)); and

22 “(3) by 3.5 or more percentage points for a
23 subordinate lien residential mortgage loan.”.

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1 **SEC. 1472. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
2 **RELATING TO CERTAIN CONSUMER CREDIT**
3 **TRANSACTIONS.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
5 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
6 after section 129D (as added by section 1461(a)) the fol-
7 lowing new section:

8 **“SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
9 **RELATING TO CERTAIN CONSUMER CREDIT**
10 **TRANSACTIONS.**

11 “(a) IN GENERAL.—It shall be unlawful, in extending
12 credit or in providing any services for a consumer credit
13 transaction secured by the principal dwelling of the con-
14 sumer, to engage in any unfair or deceptive act or practice
15 as described in or pursuant to regulations prescribed
16 under this section.

17 “(b) APPRAISAL INDEPENDENCE.—For purposes of
18 subsection (a), unfair and deceptive practices shall in-
19 clude—

20 “(1) any appraisal of a property offered as se-
21 curity for repayment of the consumer credit trans-
22 action that is conducted in connection with such
23 transaction in which a person with an interest in the
24 underlying transaction compensates, coerces, extorts,
25 colludes, instructs, induces, bribes, or intimidates a
26 person, appraisal management company, firm, or

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1 other entity conducting or involved in an appraisal,
2 or attempts, to compensate, coerce, extort, collude,
3 instruct, induce, bribe, or intimidate such a person,
4 for the purpose of causing the appraised value as-
5 signed, under the appraisal, to the property to be
6 based on any factor other than the independent
7 judgment of the appraiser;

8 “(2) mischaracterizing, or suborning any
9 mischaracterization of, the appraised value of the
10 property securing the extension of the credit;

11 “(3) seeking to influence an appraiser or other-
12 wise to encourage a targeted value in order to facili-
13 tate the making or pricing of the transaction; and

14 “(4) withholding or threatening to withhold
15 timely payment for an appraisal report or for ap-
16 praisal services rendered when the appraisal report
17 or services are provided for in accordance with the
18 contract between the parties.

19 “(c) EXCEPTIONS.—The requirements of subsection
20 (b) shall not be construed as prohibiting a mortgage lend-
21 er, mortgage broker, mortgage banker, real estate broker,
22 appraisal management company, employee of an appraisal
23 management company, consumer, or any other person
24 with an interest in a real estate transaction from asking
25 an appraiser to undertake 1 or more of the following:

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1 “(1) Consider additional, appropriate property
2 information, including the consideration of addi-
3 tional comparable properties to make or support an
4 appraisal.

5 “(2) Provide further detail, substantiation, or
6 explanation for the appraiser’s value conclusion.

7 “(3) Correct errors in the appraisal report.

8 “(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—
9 No certified or licensed appraiser conducting, and no ap-
10 praisal management company procuring or facilitating, an
11 appraisal in connection with a consumer credit transaction
12 secured by the principal dwelling of a consumer may have
13 a direct or indirect interest, financial or otherwise, in the
14 property or transaction involving the appraisal.

15 “(e) MANDATORY REPORTING.—Any mortgage lend-
16 er, mortgage broker, mortgage banker, real estate broker,
17 appraisal management company, employee of an appraisal
18 management company, or any other person involved in a
19 real estate transaction involving an appraisal in connection
20 with a consumer credit transaction secured by the prin-
21 cipal dwelling of a consumer who has a reasonable basis
22 to believe an appraiser is failing to comply with the Uni-
23 form Standards of Professional Appraisal Practice, is vio-
24 lating applicable laws, or is otherwise engaging in uneth-
25 ical or unprofessional conduct, shall refer the matter to

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1 the applicable State appraiser certifying and licensing
2 agency.

3 “(f) NO EXTENSION OF CREDIT.—In connection with
4 a consumer credit transaction secured by a consumer’s
5 principal dwelling, a creditor who knows, at or before loan
6 consummation, of a violation of the appraisal independ-
7 ence standards established in subsections (b) or (d) shall
8 not extend credit based on such appraisal unless the cred-
9 itor documents that the creditor has acted with reasonable
10 diligence to determine that the appraisal does not materi-
11 ally misstate or misrepresent the value of such dwelling.

12 “(g) RULEMAKING PROCEEDINGS.—The Director of
13 the Bureau of Consumer Financial Protection—

14 “(1) shall, for purposes of this section, pre-
15 scribe regulations no later than 180 days after the
16 date of the enactment of this section, and where
17 such regulations have an effective date of no later
18 than 1 year after the date of the enactment of this
19 section, defining with specificity acts or practices
20 which are unfair or deceptive in the provision of
21 mortgage lending services for a consumer credit
22 transaction secured by the principal dwelling of the
23 consumer or mortgage brokerage services for such a
24 transaction and defining any terms in this section or
25 such regulations; and

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1 “(2) may issue interpretive guidelines and gen-
2 eral statements of policy with respect to unfair or
3 deceptive acts or practices in the provision of mort-
4 gage lending services for a consumer credit trans-
5 action secured by the principal dwelling of the con-
6 sumer and mortgage brokerage services for such a
7 transaction, within the meaning of subsections (a),
8 (b), (c), (d), (e), and (f).

9 “(h) PENALTIES.—

10 “(1) FIRST VIOLATION.—In addition to the en-
11 forcement provisions referred to in section 130, each
12 person who violates this section shall forfeit and pay
13 a civil penalty of not more than \$10,000 for each
14 day any such violation continues.

15 “(2) SUBSEQUENT VIOLATIONS.—In the case of
16 any person on whom a civil penalty has been im-
17 posed under paragraph (1), paragraph (1) shall be
18 applied by substituting ‘\$20,000’ for ‘\$10,000’ with
19 respect to all subsequent violations.

20 “(3) ASSESSMENT.—The agency referred to in
21 subsection (a) or (c) of section 108 with respect to
22 any person described in paragraph (1) shall assess
23 any penalty under this subsection to which such per-
24 son is subject.”.

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1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 2 of the Truth in Lending Act is amended
3 by inserting after the item relating to section 129D (as
4 added by section 1461(c)) the following new item:

“129E. Unfair and deceptive practices and acts relating to certain consumer credit transactions.

“129F. Requirements for prompt crediting of home loan payments.

“129G. Requests for payoff amounts of home loan.

“129H. Property appraisal requirements.”.

5 **SEC. 1473. AMENDMENTS RELATING TO APPRAISAL SUB-**
6 **COMMITTEE OF FFIEC, APPRAISER INDE-**
7 **PENDENCE MONITORING, APPROVED AP-**
8 **PRAISER EDUCATION, APPRAISAL MANAGE-**
9 **MENT COMPANIES, APPRAISER COMPLAINT**
10 **HOTLINE, AUTOMATED VALUATION MODELS,**
11 **AND BROKER PRICE OPINIONS.**

12 (a) CONSUMER PROTECTION MISSION.—

13 (1) PURPOSES.—Section 1101 of the Financial
14 Institutions Reform, Recovery, and Enforcement Act
15 of 1989 (12 U.S.C. 3331) is amended by inserting
16 “and to provide the Appraisal Subcommittee with a
17 consumer protection mandate” before the period at
18 the end.

19 (2) FUNCTIONS OF APPRAISAL SUB-
20 COMMITTEE.—Section 1103(a) of the Financial In-
21 stitutions Reform, Recovery, and Enforcement Act
22 of 1989 (12 U.S.C. 3332(a)) is amended—

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1 (A) by striking “and” at the end of para-
2 graph (3); and

3 (B) by amending paragraph (4) to read as
4 follows:

5 “(4) monitor the efforts of, and requirements
6 established by, States and the Federal financial in-
7 stitutions regulatory agencies to protect consumers
8 from improper appraisal practices and the preda-
9 tions of unlicensed appraisers in consumer credit
10 transactions that are secured by a consumer’s prin-
11 cipal dwelling; and”.

12 (3) THRESHOLD LEVELS.—Section 1112(b) of
13 the Financial Institutions Reform, Recovery, and
14 Enforcement Act of 1989 (12 U.S.C. 3341(b)) is
15 amended by inserting before the period the fol-
16 lowing: “, and that such threshold level provides rea-
17 sonable protection for consumers who purchase 1–4
18 unit single-family residences. In determining whether
19 a threshold level provides reasonable protection for
20 consumers, each Federal financial institutions regu-
21 latory agency shall consult with consumer groups
22 and convene a public hearing”.

23 (b) ANNUAL REPORT OF APPRAISAL SUB-
24 COMMITTEE.—Section 1103(a) of the Financial Institu-
25 tions Reform, Recovery, and Enforcement Act of 1989 (12

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1 U.S.C. 3332(a)) is amended at the end by inserting the
2 following new paragraph:

3 “(5) transmit an annual report to the Congress
4 not later than January 31 of each year that de-
5 scribes the manner in which each function assigned
6 to the Appraisal Subcommittee has been carried out
7 during the preceding year. The report shall also de-
8 tail the activities of the Appraisal Subcommittee, in-
9 cluding the results of all audits of State appraiser
10 regulatory agencies, and provide an accounting of
11 disapproved actions and warnings taken in the pre-
12 vious year, including a description of the conditions
13 causing the disapproval and actions taken to achieve
14 compliance.”.

15 (c) OPEN MEETINGS.—Section 1104(b) of the Finan-
16 cial Institutions Reform, Recovery, and Enforcement Act
17 of 1989 (12 U.S.C. 3333(b)) is amended—

18 (1) by inserting “in public session after notice
19 in the Federal Register, but may close certain por-
20 tions of these meetings related to personnel and re-
21 view of preliminary State audit reports,” after “shall
22 meet”; and

23 (2) by adding after the final period the fol-
24 lowing: “The subject matter discussed in any closed

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1 or executive session shall be described in the Federal
2 Register notice of the meeting.”.

3 (d) REGULATIONS.—Section 1106 of the Financial
4 Institutions Reform, Recovery, and Enforcement Act of
5 1989 (12 U.S.C. 3335) is amended—

6 (1) by inserting “prescribe regulations after no-
7 tice and opportunity for comment,” after “hold
8 hearings”; and

9 (2) at the end by inserting “Any regulations
10 prescribed by the Appraisal Subcommittee shall (un-
11 less otherwise provided in this title) be limited to the
12 following functions: temporary practice, national reg-
13 istry, information sharing, and enforcement. For
14 purposes of prescribing regulations, the Appraisal
15 Subcommittee shall establish an advisory committee
16 of industry participants, including appraisers, lend-
17 ers, consumer advocates, real estate agents, and gov-
18 ernment agencies, and hold meetings as necessary to
19 support the development of regulations.”.

20 (e) APPRAISALS AND APPRAISAL REVIEWS.—Section
21 1113 of the Financial Institutions Reform, Recovery, and
22 Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

23 (1) by striking “In determining” and inserting
24 “(a) IN GENERAL.—In determining”;

1927

1 (2) in subsection (a) (as designated by para-
2 graph (1)), by inserting before the period the fol-
3 lowing: “, where a complex 1-to-4 unit single family
4 residential appraisal means an appraisal for which
5 the property to be appraised, the form of ownership,
6 the property characteristics, or the market condi-
7 tions are atypical”; and

8 (3) by adding at the end the following new sub-
9 section:

10 “(b) APPRAISALS AND APPRAISAL REVIEWS.—All ap-
11 praisals performed at a property within a State shall be
12 prepared by appraisers licensed or certified in the State
13 where the property is located. All appraisal reviews for
14 compliance with the Uniform Standards of Professional
15 Appraisal Practice, including appraisal reviews by a lend-
16 er, appraisal management company, or other third party
17 organization, shall be performed by an appraiser who is
18 duly licensed or certified by a State appraisal board.”.

19 (f) APPRAISAL MANAGEMENT SERVICES.—

20 (1) SUPERVISION OF THIRD PARTY PROVIDERS
21 OF APPRAISAL MANAGEMENT SERVICES.—Section
22 1103(a) of the Financial Institutions Reform, Recov-
23 ery, and Enforcement Act of 1989 (12 U.S.C.
24 3332(a)) (as previously amended by this section) is
25 amended—

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1 (A) by amending paragraph (1) to read as
2 follows:

3 “(1) monitor the requirements established by
4 States—

5 “(A) for the certification and licensing of
6 individuals who are qualified to perform ap-
7 praisals in connection with federally related
8 transactions, including a code of professional
9 responsibility; and

10 “(B) for the registration and supervision
11 of the operations and activities of an appraisal
12 management company;”; and

13 (B) by adding at the end the following new
14 paragraph:

15 “(7) maintain a national registry of appraisal
16 management companies that either are registered
17 with and subject to supervision of a State appraiser
18 certifying and licensing agency or are operating sub-
19 sidiaries of a Federally regulated financial institu-
20 tion.”.

21 (2) APPRAISAL MANAGEMENT COMPANY MIN-
22 IMUM QUALIFICATIONS.—Title XI of the Financial
23 Institutions Reform, Recovery, and Enforcement Act
24 of 1989 (12 U.S.C. 3331 et seq.) is amended by

1929

1 adding at the end the following new section (and
2 amending the table of contents accordingly):

3 **“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM**
4 **QUALIFICATIONS.**

5 “(a) IN GENERAL.—The Appraiser Qualifications
6 Board of the Appraisal Foundation shall establish min-
7 imum qualifications to be applied by a State in the reg-
8 istration of appraisal management companies. Such quali-
9 fications shall include a requirement that such compa-
10 nies—

11 “(1) register with and be subject to supervision
12 by a State appraiser certifying and licensing agency
13 in each State in which such company operates;

14 “(2) verify that only licensed or certified ap-
15 praisers are used for federally related transactions;

16 “(3) require that appraisals coordinated by an
17 appraisal management company comply with the
18 Uniform Standards of Professional Appraisal Prac-
19 tice; and

20 “(4) require that appraisals are conducted inde-
21 pendently and free from inappropriate influence and
22 coercion pursuant to the appraisal independence
23 standards established under section 129E of the
24 Truth in Lending Act.

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1 “(b) EXCEPTION FOR FEDERALLY REGULATED FI-
2 NANCIAL INSTITUTIONS.—The requirements of subsection
3 (a) shall not apply to an appraisal management company
4 that is a subsidiary owned and controlled by a financial
5 institution and regulated by a federal financial institution
6 regulatory agency. In such case, the appropriate federal
7 financial institutions regulatory agency shall, at a min-
8 imum, develop regulations affecting the operations of the
9 appraisal management company to—

10 “(1) verify that only licensed or certified ap-
11 praisers are used for federally related transactions;

12 “(2) require that appraisals coordinated by an
13 institution or subsidiary providing appraisal manage-
14 ment services comply with the Uniform Standards of
15 Professional Appraisal Practice; and

16 “(3) require that appraisals are conducted inde-
17 pendently and free from inappropriate influence and
18 coercion pursuant to the appraisal independence
19 standards established under section 129E of the
20 Truth in Lending Act.

21 “(c) REGISTRATION LIMITATIONS.—An appraisal
22 management company shall not be registered by a State
23 or included on the national registry if such company, in
24 whole or in part, directly or indirectly, is owned by any
25 person who has had an appraiser license or certificate re-

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1 fused, denied, cancelled, surrendered in lieu of revocation,
2 or revoked in any State. Additionally, each person that
3 owns more than 10 percent of an appraisal management
4 company shall be of good moral character, as determined
5 by the State appraiser certifying and licensing agency, and
6 shall submit to a background investigation carried out by
7 the State appraiser certifying and licensing agency.

8 “(d) REGULATIONS.—The Appraisal Subcommittee
9 shall promulgate regulations to implement the minimum
10 qualifications developed by the Appraiser Qualifications
11 Board under this section, as such qualifications relate to
12 the State appraiser certifying and licensing agencies. The
13 Appraisal Subcommittee shall also promulgate regulations
14 for the reporting of the activities of appraisal management
15 companies in determining the payment of the annual reg-
16 istry fee.

17 “(e) EFFECTIVE DATE.—

18 “(1) IN GENERAL.—No appraisal management
19 company may perform services related to a federally
20 related transaction in a State after the date that is
21 36 months after the date of the enactment of this
22 section unless such company is registered with such
23 State or subject to oversight by a federal financial
24 institutions regulatory agency.

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1 “(2) EXTENSION OF EFFECTIVE DATE.—Sub-
2 ject to the approval of the Council, the Appraisal
3 Subcommittee may extend by an additional 12
4 months the requirements for the registration and su-
5 pervision of appraisal management companies if it
6 makes a written finding that a State has made sub-
7 stantial progress in establishing a State appraisal
8 management company registration and supervision
9 system that appears to conform with the provisions
10 of this title.”.

11 (3) STATE APPRAISER CERTIFYING AND LI-
12 CENSING AGENCY AUTHORITY.—Section 1117 of the
13 Financial Institutions Reform, Recovery, and En-
14 forcement Act of 1989 (12 U.S.C. 3346) is amended
15 by adding at the end the following: “The duties of
16 such agency may additionally include the registra-
17 tion and supervision of appraisal management com-
18 panies.”.

19 (4) APPRAISAL MANAGEMENT COMPANY DEFINI-
20 TION.—Section 1121 of the Financial Institutions
21 Reform, Recovery, and Enforcement Act of 1989
22 (12 U.S.C. 3350) is amended by adding at the end
23 the following:

24 “(11) APPRAISAL MANAGEMENT COMPANY.—
25 The term ‘appraisal management company’ means,

1933

1 in connection with valuing properties collateralizing
2 mortgage loans or mortgages incorporated into a
3 securitization, any external third party authorized ei-
4 ther by a creditor of a consumer credit transaction
5 secured by a consumer's principal dwelling or by an
6 underwriter of or other principal in the secondary
7 mortgage markets, that oversees a network or panel
8 of more than 15 certified or licensed appraisers in
9 a State or 25 or more nationally within a given
10 year—

11 “(A) to recruit, select, and retain apprais-
12 ers;

13 “(B) to contract with licensed and certified
14 appraisers to perform appraisal assignments;

15 “(C) to manage the process of having an
16 appraisal performed, including providing admin-
17 istrative duties such as receiving appraisal or-
18 ders and appraisal reports, submitting com-
19 pleted appraisal reports to creditors and under-
20 writers, collecting fees from creditors and un-
21 derwriters for services provided, and reimburs-
22 ing appraisers for services performed; or

23 “(D) to review and verify the work of ap-
24 praisers.”.

1934

1 (g) STATE AGENCY REPORTING REQUIREMENT.—
2 Section 1109(a) of the Financial Institutions Reform, Re-
3 covery, and Enforcement Act of 1989 (12 U.S.C. 3338(a))
4 is amended—

5 (1) by striking “and” after the semicolon in
6 paragraph (1);

7 (2) by redesignating paragraph (2) as para-
8 graph (4); and

9 (3) by inserting after paragraph (1) the fol-
10 lowing new paragraphs:

11 “(2) transmit reports on sanctions, disciplinary
12 actions, license and certification revocations, and li-
13 cense and certification suspensions on a timely basis
14 to the national registry of the Appraisal Sub-
15 committee;

16 “(3) transmit reports on a timely basis of su-
17 pervisory activities involving appraisal management
18 companies or other third-party providers of apprais-
19 als and appraisal management services, including in-
20 vestigations initiated and disciplinary actions taken;
21 and”.

22 (h) REGISTRY FEES MODIFIED.—

23 (1) IN GENERAL.—Section 1109(a) of the Fi-
24 nancial Institutions Reform, Recovery, and Enforce-

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1 ment Act of 1989 (12 U.S.C. 3338(a)) is amend-
2 ed—

3 (A) by amending paragraph (4) (as modi-
4 fied by section 1473(g)) to read as follows:

5 “(4) collect—

6 “(A) from such individuals who perform or
7 seek to perform appraisals in federally related
8 transactions, an annual registry fee of not more
9 than \$40, such fees to be transmitted by the
10 State agencies to the Council on an annual
11 basis; and

12 “(B) from an appraisal management com-
13 pany that either has registered with a State ap-
14 praiser certifying and licensing agency in ac-
15 cordance with this title or operates as a sub-
16 sidiary of a federally regulated financial institu-
17 tion, an annual registry fee of—

18 “(i) in the case of such a company
19 that has been in existence for more than a
20 year, \$25 multiplied by the number of ap-
21 praisers working for or contracting with
22 such company in such State during the
23 previous year, but where such \$25 amount
24 may be adjusted, up to a maximum of \$50,
25 at the discretion of the Appraisal Sub-

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1 committee, if necessary to carry out the
2 Subcommittee's functions under this title;
3 and

4 “(ii) in the case of such a company
5 that has not been in existence for more
6 than a year, \$25 multiplied by an appro-
7 priate number to be determined by the Ap-
8 praisal Subcommittee, and where such
9 number will be used for determining the
10 fee of all such companies that were not in
11 existence for more than a year, but where
12 such \$25 amount may be adjusted, up to
13 a maximum of \$50, at the discretion of the
14 Appraisal Subcommittee, if necessary to
15 carry out the Subcommittee's functions
16 under this title.”; and

17 (B) by amending the matter following
18 paragraph (4), as redesignated, to read as fol-
19 lows:

20 “Subject to the approval of the Council, the Appraisal
21 Subcommittee may adjust the dollar amount of registry
22 fees under paragraph (4)(A), up to a maximum of \$80
23 per annum, as necessary to carry out its functions under
24 this title. The Appraisal Subcommittee shall consider at
25 least once every 5 years whether to adjust the dollar

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1 amount of the registry fees to account for inflation. In
2 implementing any change in registry fees, the Appraisal
3 Subcommittee shall provide flexibility to the States for
4 multi-year certifications and licenses already in place, as
5 well as a transition period to implement the changes in
6 registry fees. In establishing the amount of the annual
7 registry fee for an appraisal management company, the
8 Appraisal Subcommittee shall have the discretion to im-
9 pose a minimum annual registry fee for an appraisal man-
10 agement company to protect against the under reporting
11 of the number of appraisers working for or contracted by
12 the appraisal management company.”.

13 (2) INCREMENTAL REVENUES.—Incremental
14 revenues collected pursuant to the increases required
15 by this subsection shall be placed in a separate ac-
16 count at the United States Treasury, entitled the
17 “Appraisal Subcommittee Account”.

18 (i) GRANTS AND REPORTS.—Section 1109(b) of the
19 Financial Institutions Reform, Recovery, and Enforce-
20 ment Act of 1989 (12 U.S.C. 3348(b)) is amended—

21 (1) by striking “and” after the semicolon in
22 paragraph (3);

23 (2) by striking the period at the end of para-
24 graph (4) and inserting a semicolon;

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1 (3) by adding at the end the following new
2 paragraphs:

3 “(5) to make grants to State appraiser certi-
4 fying and licensing agencies, in accordance with poli-
5 cies to be developed by the Appraisal Subcommittee,
6 to support the efforts of such agencies to comply
7 with this title, including—

8 “(A) the complaint process, complaint in-
9 vestigations, and appraiser enforcement activi-
10 ties of such agencies; and

11 “(B) the submission of data on State li-
12 censed and certified appraisers and appraisal
13 management companies to the National ap-
14 praisal registry, including information affirming
15 that the appraiser or appraisal management
16 company meets the required qualification cri-
17 teria and formal and informal disciplinary ac-
18 tions; and

19 “(6) to report to all State appraiser certifying
20 and licensing agencies when a license or certification
21 is surrendered, revoked, or suspended.”.

22 Obligations authorized under this subsection may not ex-
23 ceed 75 percent of the fiscal year total of incremental in-
24 crease in fees collected and deposited in the “Appraisal
25 Subcommittee Account” pursuant to subsection (h).

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1 (j) CRITERIA.—Section 1116 of the Financial Institu-
2 tions Reform, Recovery, and Enforcement Act of 1989 (12
3 U.S.C. 3345) is amended—

4 (1) in subsection (c), by inserting “whose cri-
5 teria for the licensing of a real estate appraiser cur-
6 rently meet or exceed the minimum criteria issued
7 by the Appraisal Qualifications Board of The Ap-
8 praisal Foundation for the licensing of real estate
9 appraisers” before the period at the end; and

10 (2) by striking subsection (e) and inserting the
11 following new subsection:

12 “(e) MINIMUM QUALIFICATION REQUIREMENTS.—
13 Any requirements established for individuals in the posi-
14 tion of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’
15 shall meet or exceed the minimum qualification require-
16 ments of the Appraiser Qualifications Board of The Ap-
17 praisal Foundation. The Appraisal Subcommittee shall
18 have the authority to enforce these requirements.”.

19 (k) MONITORING OF STATE APPRAISER CERTIFYING
20 AND LICENSING AGENCIES.—Section 1118 of the Finan-
21 cial Institutions Reform, Recovery, and Enforcement Act
22 of 1989 (12 U.S.C. 3347) is amended—

23 (1) by amending subsection (a) to read as fol-
24 lows:

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1 “(a) IN GENERAL.—The Appraisal Subcommittee
2 shall monitor each State appraiser certifying and licensing
3 agency for the purposes of determining whether such
4 agency—

5 “(1) has policies, practices, funding, staffing,
6 and procedures that are consistent with this title;

7 “(2) processes complaints and completes inves-
8 tigations in a reasonable time period;

9 “(3) appropriately disciplines sanctioned ap-
10 praisers and appraisal management companies;

11 “(4) maintains an effective regulatory program;
12 and

13 “(5) reports complaints and disciplinary actions
14 on a timely basis to the national registries on ap-
15 praisers and appraisal management companies main-
16 tained by the Appraisal Subcommittee.

17 The Appraisal Subcommittee shall have the authority to
18 remove a State licensed or certified appraiser or a reg-
19 istered appraisal management company from a national
20 registry on an interim basis, not to exceed 90 days, pend-
21 ing State agency action on licensing, certification, reg-
22 istration, and disciplinary proceedings. The Appraisal
23 Subcommittee and all agencies, instrumentalities, and
24 Federally recognized entities under this title shall not rec-
25 ognize appraiser certifications and licenses from States

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1 whose appraisal policies, practices, funding, staffing, or
2 procedures are found to be inconsistent with this title. The
3 Appraisal Subcommittee shall have the authority to im-
4 pose sanctions, as described in this section, against a State
5 agency that fails to have an effective appraiser regulatory
6 program. In determining whether such a program is effec-
7 tive, the Appraisal Subcommittee shall include an analyses
8 of the licensing and certification of appraisers, the reg-
9 istration of appraisal management companies, the
10 issuance of temporary licenses and certifications for ap-
11 praisers, the receiving and tracking of submitted com-
12 plaints against appraisers and appraisal management
13 companies, the investigation of complaints, and enforce-
14 ment actions against appraisers and appraisal manage-
15 ment companies. The Appraisal Subcommittee shall have
16 the authority to impose interim actions and suspensions
17 against a State agency as an alternative to, or in advance
18 of, the derecognition of a State agency.”.

19 (2) in subsection (b)(2), by inserting after “au-
20 thority” the following: “or sufficient funding”.

21 (1) RECIPROcity.—Subsection (b) of section 1122 of
22 the Financial Institutions Reform, Recovery, and Enforce-
23 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read
24 as follows:

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1 “(b) RECIPROCITY.—A State appraiser certifying or
2 licensing agency shall issue a reciprocal certification or li-
3 cense for an individual from another State when—

4 “(1) the appraiser licensing and certification
5 program of such other State is in compliance with
6 the provisions of this title; and

7 “(2) the appraiser holds a valid certification
8 from a State whose requirements for certification or
9 licensing meet or exceed the licensure standards es-
10 tablished by the State where an individual seeks ap-
11 praisal licensure.”.

12 (m) CONSIDERATION OF PROFESSIONAL APPRAISAL
13 DESIGNATIONS.—Section 1122(d) of the Financial Insti-
14 tutions Reform, Recovery, and Enforcement Act of 1989
15 (12 U.S.C. 3351(d)) is amended by striking “shall not ex-
16 clude” and all that follows through the end of the sub-
17 section and inserting the following: “may include edu-
18 cation achieved, experience, sample appraisals, and ref-
19 erences from prior clients. Membership in a nationally rec-
20 ognized professional appraisal organization may be a cri-
21 teria considered, though lack of membership therein shall
22 not be the sole bar against consideration for an assign-
23 ment under these criteria.”.

24 (n) APPRAISER INDEPENDENCE.—Section 1122 of
25 the Financial Institutions Reform, Recovery, and Enforce-

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1 ment Act of 1989 (12 U.S.C. 3351) is amended by adding
2 at the end the following new subsection:

3 “(g) APPRAISER INDEPENDENCE MONITORING.—
4 The Appraisal Subcommittee shall monitor each State ap-
5 praiser certifying and licensing agency for the purpose of
6 determining whether such agency’s policies, practices, and
7 procedures are consistent with the purposes of maintain-
8 ing appraiser independence and whether such State has
9 adopted and maintains effective laws, regulations, and
10 policies aimed at maintaining appraiser independence.”.

11 (o) APPRAISER EDUCATION.—Section 1122 of the
12 Financial Institutions Reform, Recovery, and Enforce-
13 ment Act of 1989 (12 U.S.C. 3351) is amended by insert-
14 ing after subsection (g) (as added by subsection (l) of this
15 section) the following new subsection:

16 “(h) APPROVED EDUCATION.—The Appraisal Sub-
17 committee shall encourage the States to accept courses ap-
18 proved by the Appraiser Qualification Board’s Course Ap-
19 proval Program.”.

20 (p) APPRAISAL COMPLAINT HOTLINE.—Section 1122
21 of the Financial Institutions Reform, Recovery, and En-
22 forcement Act of 1989 (12 U.S.C. 3351), as amended by
23 this section, is amended by adding at the end the following
24 new subsection:

1 “(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—
2 If, 6 months after the date of the enactment of this sub-
3 section, the Appraisal Subcommittee determines that no
4 national hotline exists to receive complaints of non-compli-
5 ance with appraisal independence standards and Uniform
6 Standards of Professional Appraisal Practice, including
7 complaints from appraisers, individuals, or other entities
8 concerning the improper influencing or attempted im-
9 proper influencing of appraisers or the appraisal process,
10 the Appraisal Subcommittee shall establish and operate
11 such a national hotline, which shall include a toll-free tele-
12 phone number and an email address. If the Appraisal Sub-
13 committee operates such a national hotline, the Appraisal
14 Subcommittee shall refer complaints for further action to
15 appropriate governmental bodies, including a State ap-
16 praiser certifying and licensing agency, a financial institu-
17 tion regulator, or other appropriate legal authorities. For
18 complaints referred to State appraiser certifying and li-
19 censing agencies or to Federal regulators, the Appraisal
20 Subcommittee shall have the authority to follow up such
21 complaint referrals in order to determine the status of the
22 resolution of the complaint.”.

23 (q) AUTOMATED VALUATION MODELS.—Title XI of
24 the Financial Institutions Reform, Recovery, and Enforce-
25 ment Act of 1989 (12 U.S.C. 3331 et seq.), as amended

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1 by this section, is amended by adding at the end the fol-
2 lowing new section (and amending the table of contents
3 accordingly):

4 **“SEC. 1125. AUTOMATED VALUATION MODELS USED TO**
5 **VALUE CERTAIN MORTGAGES.**

6 “(a) IN GENERAL.—Automated valuation models
7 shall adhere to quality control standards designed to—

8 “(1) ensure a high level of confidence in the es-
9 timates produced by automated valuation models;

10 “(2) protect against the manipulation of data;

11 “(3) seek to avoid conflicts of interest; and

12 “(4) require random sample testing and re-
13 views, where such testing and reviews are performed
14 by an appraiser who is licensed or certified in the
15 State where the testing and reviews take place.

16 “(b) ADOPTION OF REGULATIONS.—The Appraisal
17 Subcommittee and its member agencies, in consultation
18 with the Appraisal Standards Board of the Appraisal
19 Foundation and other interested parties, shall promulgate
20 regulations to implement the quality control standards re-
21 quired under this section.

22 “(c) ENFORCEMENT.—Compliance with regulations
23 issued under this subsection shall be enforced by—

24 “(1) with respect to a financial institution, or
25 subsidiary owned and controlled by a financial insti-

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1 tution and regulated by a Federal financial institu-
2 tion regulatory agency, the Federal financial institu-
3 tion regulatory agency that acts as the primary Fed-
4 eral supervisor of such financial institution or sub-
5 sidiary; and

6 “(2) with respect to other persons, the Ap-
7 praisal Subcommittee.

8 “(d) AUTOMATED VALUATION MODEL DEFINED.—
9 For purposes of this section, the term ‘automated valu-
10 ation model’ means any computerized model used by mort-
11 gage originators and secondary market issuers to deter-
12 mine the collateral worth of a mortgage secured by a con-
13 sumer’s principal dwelling.”.

14 (r) BROKER PRICE OPINIONS.—Title XI of the Fi-
15 nancial Institutions Reform, Recovery, and Enforcement
16 Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this
17 section, is amended by adding at the end the following
18 new section (and amending the table of contents accord-
19 ingly):

20 **“SEC. 1126. BROKER PRICE OPINIONS.**

21 “(a) GENERAL PROHIBITION.—In conjunction with
22 the purchase of a consumer’s principal dwelling, broker
23 price opinions may not be used as the primary basis to
24 determine the value of a piece of property for the purpose

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1 of a loan origination of a residential mortgage loan se-
2 cured by such piece of property.

3 “(b) **BROKER PRICE OPINION DEFINED.**—For pur-
4 poses of this section, the term ‘broker price opinion’ means
5 an estimate prepared by a real estate broker, agent, or
6 sales person that details the probable selling price of a
7 particular piece of real estate property and provides a
8 varying level of detail about the property’s condition, mar-
9 ket, and neighborhood, and information on comparable
10 sales, but does not include an automated valuation model,
11 as defined in section 1125(c).”.

12 (s) **AMENDMENTS TO APPRAISAL SUBCOMMITTEE.**—
13 Section 1011 of the Federal Financial Institutions Exam-
14 ination Council Act of 1978 (12 U.S.C. 3310) is amend-
15 ed—

16 (1) in the first sentence, by adding before the
17 period the following: “and the Federal Housing Fi-
18 nance Agency”; and

19 (2) by inserting at the end the following: “At
20 all times at least one member of the Appraisal Sub-
21 committee shall have demonstrated knowledge and
22 competence through licensure, certification, or pro-
23 fessional designation within the appraisal profes-
24 sion.”.

25 (t) **TECHNICAL CORRECTIONS.**—

1948

1 (1) Section 1119(a)(2) of the Financial Institu-
2 tions Reform, Recovery, and Enforcement Act of
3 1989 (12 U.S.C. 3348(a)(2)) is amended by striking
4 “council,” and inserting “Council,”.

5 (2) Section 1121(6) of the Financial Institu-
6 tions Reform, Recovery, and Enforcement Act of
7 1989 (12 U.S.C. 3350(6)) is amended by striking
8 “Corporations,” and inserting “Corporation,”.

9 (3) Section 1121(8) of the Financial Institu-
10 tions Reform, Recovery, and Enforcement Act of
11 1989 (12 U.S.C. 3350(8)) is amended by striking
12 “council” and inserting “Council”.

13 (4) Section 1122 of the Financial Institutions
14 Reform, Recovery, and Enforcement Act of 1989
15 (12 U.S.C. 3351) is amended—

16 (A) in subsection (a)(1) by moving the left
17 margin of subparagraphs (A), (B), and (C) 2
18 ems to the right; and

19 (B) in subsection (c)—

20 (i) by striking “Federal Financial In-
21 stitutions Examination Council” and in-
22 serting “Financial Institutions Examina-
23 tion Council”; and

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1 (ii) by striking “the council’s func-
2 tions” and inserting “the Council’s func-
3 tions”.

4 **SEC. 1474. STUDY REQUIRED ON IMPROVEMENTS IN AP-**
5 **PRAISAL PROCESS AND COMPLIANCE PRO-**
6 **GRAMS.**

7 (a) STUDY.—The Comptroller General shall conduct
8 a comprehensive study on possible improvements in the
9 appraisal process generally, and specifically on the consist-
10 ency in and the effectiveness of, and possible improve-
11 ments in, State compliance efforts and programs in ac-
12 cordance with title XI of the Financial Institutions Re-
13 form, Recovery, and Enforcement Act of 1989. In addi-
14 tion, this study shall examine the existing exemptions to
15 the use of certified appraisers issued by Federal financial
16 institutions regulatory agencies. The study shall also re-
17 view the threshold level established by Federal regulators
18 for compliance under title XI and whether there is a need
19 to revise them to reflect the addition of consumer protec-
20 tion to the purposes and functions of the Appraisal Sub-
21 committee. The study shall additionally examine the qual-
22 ity of different types of mortgage collateral valuations pro-
23 duced by broker price opinions, automated valuation mod-
24 els, licensed appraisals, and certified appraisals, among
25 others, and the quality of appraisals provided through dif-

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1 ferent distribution channels, including appraisal manage-
2 ment companies, independent appraisal operations within
3 a mortgage originator, and fee-for-service appraisals. The
4 study shall also include an analysis and statistical break-
5 down of enforcement actions taken during the last 10
6 years against different types of appraisers, including cer-
7 tified, licensed, supervisory, and trainee appraisers. Fur-
8 thermore, the study shall examine the benefits and costs,
9 as well as the advantages and disadvantages, of estab-
10 lishing a national repository to collect data related to real
11 estate property collateral valuations performed in the
12 United States.

13 (b) REPORT.—Before the end of the 18-month period
14 beginning on the date of the enactment of this Act, the
15 Comptroller General shall submit a report on the study
16 under subsection (a) to the Committee on Financial Serv-
17 ices of the House of Representatives and the Committee
18 on Banking, Housing, and Urban Affairs of the Senate,
19 together with such recommendations for administrative or
20 legislative action, at the Federal or State level, as the
21 Comptroller General may determine to be appropriate.

22 (c) ADDITIONAL STUDY REQUIRED.—The Comp-
23 troller General shall conduct an additional study to deter-
24 mine the effects that the changes to the seller-guide ap-
25 praisal requirements of Fannie Mae and Freddie Mac con-

1 tained in the Home Valuation Code of Conduct have on
2 small business, like mortgage brokers and independent ap-
3 praisers, and consumers, including the effect on the—

4 (1) quality and costs of appraisals;

5 (2) length of time for obtaining appraisals;

6 (3) impact on consumer protection, especially
7 regarding maintaining appraisal independence, abat-
8 ing appraisal inflation, and mitigating acts of ap-
9 praisal fraud;

10 (4) structure of the appraisal industry, espe-
11 cially regarding appraisal management companies,
12 fee-for-service appraisers, and the regulation of ap-
13 praisal management companies by the states; and

14 (5) impact on mortgage brokers and other small
15 business professionals in the financial services indus-
16 try.

17 (d) ADDITIONAL REPORT.—Before the end of the 6-
18 month period beginning on the date of the enactment of
19 this Act, the Comptroller General shall submit an addi-
20 tional report to the Committee on Financial Services of
21 the House of Representatives and the Committee on
22 Banking, Housing, and Urban Affairs of the Senate con-
23 taining the findings and conclusions of the Comptroller
24 General with respect to the study conducted pursuant to
25 subsection (c). Such additional report shall take into con-

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1 sideration the Small Business Administration's views on
2 how small businesses are affected by the Home Valuation
3 Code of Conduct.

4 **SEC. 1475. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

5 Subsection (e) of section 701 of the Equal Credit Op-
6 portunity Act (15 U.S.C. 1691) is amended to read as
7 follows:

8 “(e) COPIES FURNISHED TO APPLICANTS.—

9 “(1) IN GENERAL.—Each creditor shall furnish
10 to an applicant a copy of any and all written ap-
11 praisals and valuations developed in connection with
12 the applicant's application for a loan that is secured
13 or would have been secured by a first lien on a
14 dwelling promptly upon completion, but in no case
15 later than 3 days prior to the closing of the loan,
16 whether the creditor grants or denies the applicant's
17 request for credit or the application is incomplete or
18 withdrawn.

19 “(2) WAIVER.—The applicant may waive the 3
20 day requirement provided for in paragraph (1), ex-
21 cept where otherwise required in law.

22 “(3) REIMBURSEMENT.—The applicant may be
23 required to pay a reasonable fee to reimburse the
24 creditor for the cost of the appraisal, except where
25 otherwise required in law.

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1 “(4) FREE COPY.—Notwithstanding paragraph
2 (3), the creditor shall provide a copy of each written
3 appraisal or valuation at no additional cost to the
4 applicant.

5 “(5) NOTIFICATION TO APPLICANTS.—At the
6 time of application, the creditor shall notify an ap-
7 plicant in writing of the right to receive a copy of
8 each written appraisal and valuation under this sub-
9 section.

10 “(6) REGULATIONS.—The Board shall prescribe
11 regulations to implement this subsection within 1
12 year of the date of the enactment of this subsection.

13 “(7) VALUATION DEFINED.—For purposes of
14 this subsection, the term ‘valuation’ shall include
15 any estimate of the value of a dwelling developed in
16 connection with a creditor’s decision to provide cred-
17 it, including those values developed pursuant to a
18 policy of a government sponsored enterprise or by an
19 automated valuation model, a broker price opinion,
20 or other methodology or mechanism.”.

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1 **SEC. 1476. REAL ESTATE SETTLEMENT PROCEDURES ACT**
2 **OF 1974 AMENDMENT RELATING TO CERTAIN**
3 **APPRAISAL FEES.**

4 Section 4 of the Real Estate Settlement Procedures
5 Act of 1974 is amended by adding at the end the following
6 new subsection:

7 “(c) The standard form described in subsection (a)
8 shall include, in the case of an appraisal coordinated by
9 an appraisal management company (as such term is de-
10 fined in section 1121(11) of the Financial Institutions Re-
11 form, Recovery, and Enforcement Act of 1989 (12 U.S.C.
12 3350(11))), a clear disclosure of—

13 “(1) the fee paid directly to the appraiser by
14 such company; and

15 “(2) the administration fee charged by such
16 company.”.

17 **Subtitle G—Mortgage Resolution**
18 **and Modification**

19 **SEC. 1481. MULTIFAMILY MORTGAGE RESOLUTION PRO-**
20 **GRAM.**

21 (a) ESTABLISHMENT.—The Secretary of Housing
22 and Urban Development shall develop a program under
23 this subsection to ensure the protection of current and fu-
24 ture tenants and at-risk multifamily properties, where fea-
25 sible, based on criteria that may include—

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1 (1) creating sustainable financing of such prop-
2 erties, that may take into consideration such factors
3 as—

4 (A) the rental income generated by such
5 properties; and

6 (B) the preservation of adequate operating
7 reserves;

8 (2) maintaining the level of Federal, State, and
9 city subsidies in effect as of the date of the enact-
10 ment of this Act;

11 (3) providing funds for rehabilitation; and

12 (4) facilitating the transfer of such properties,
13 when appropriate and with the agreement of owners,
14 to responsible new owners and ensuring affordability
15 of such properties.

16 (b) COORDINATION.—The Secretary of Housing and
17 Urban Development may, in carrying out the program de-
18 veloped under this section, coordinate with the Secretary
19 of the Treasury, the Federal Deposit Insurance Corpora-
20 tion, the Board of Governors of the Federal Reserve Sys-
21 tem, the Federal Housing Finance Agency, and any other
22 Federal Government agency that the Secretary considers
23 appropriate.

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1 (c) DEFINITION.—For purposes of this section, the
2 term “multifamily properties” means a residential struc-
3 ture that consists of 5 or more dwelling units.

4 **SEC. 1482. HOME AFFORDABLE MODIFICATION PROGRAM**
5 **GUIDELINES.**

6 (a) NET PRESENT VALUE INPUT DATA.—The Sec-
7 retary of the Treasury (in this section referred to as the
8 “Secretary”) shall revise the supplemental directives and
9 other guidelines for the Home Affordable Modification
10 Program of the Making Home Affordable initiative of the
11 Secretary of the Treasury, authorized under the Emer-
12 gency Economic Stabilization Act of 2008 (Public Law
13 110–343), to require each mortgage servicer participating
14 in such program to provide each borrower under a mort-
15 gage whose request for a mortgage modification under the
16 Program is denied with all borrower-related and mort-
17 gage-related input data used in any net present value
18 (NPV) analyses performed in connection with the subject
19 mortgage. Such input data shall be provided to the bor-
20 rower at the time of such denial.

21 (b) WEB-BASED SITE FOR NPV CALCULATOR AND
22 APPLICATION.—

23 (1) NPV CALCULATOR.—In carrying out the
24 Home Affordable Modification Program, the Sec-
25 retary shall establish and maintain a site on the

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1 World Wide Web that provides a calculator for net
2 present value analyses of a mortgage, based on the
3 Secretary's methodology for calculating such value,
4 that mortgagors can use to enter information re-
5 garding their own mortgages and that provides a de-
6 termination after entering such information regard-
7 ing a mortgage of whether such mortgage would be
8 accepted or rejected for modification under the Pro-
9 gram, using such methodology.

10 (2) DISCLOSURE.—Such Web site shall also
11 prominently disclose that each mortgage servicer
12 participating in such Program may use a method for
13 calculating net present value of a mortgage that is
14 different than the method used by such calculator.

15 (3) APPLICATION.—The Secretary shall make a
16 reasonable effort to include on such World Wide
17 Web site a method for homeowners to apply for a
18 mortgage modification under the Home Affordable
19 Modification Program.

20 (c) PUBLIC AVAILABILITY OF NPV METHODOLOGY,
21 COMPUTER MODEL, AND VARIABLES.—The Secretary
22 shall make publicly available, including by posting on a
23 World Wide Web site of the Secretary—

24 (1) the Secretary's methodology and computer
25 model, including all formulae used in such computer

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1 model, used for calculating net present value of a
2 mortgage that is used by the calculator established
3 pursuant to subsection (b); and

4 (2) all variables used in such net present value
5 analysis.

6 **SEC. 1483. PUBLIC AVAILABILITY OF INFORMATION OF**
7 **MAKING HOME AFFORDABLE PROGRAM.**

8 (a) **REVISIONS TO PROGRAM GUIDELINES.**—The Sec-
9 retary of the Treasury (in this section referred to as the
10 “Secretary”) shall revise the guidelines for the Home Af-
11 fordable Modification Program of the Making Home Af-
12 fordable initiative of the Secretary of the Treasury, au-
13 thorized under the Emergency Economic Stabilization Act
14 of 2008 (Public Law 110–343), to provide that the data
15 being collected by the Secretary from each mortgage
16 servicer and lender participating in the Program is made
17 public in accordance with subsection (b).

18 (b) **PUBLIC AVAILABILITY.**—Data shall be made
19 available according to the following guidelines:

20 (1) Not more than 14 days after each monthly
21 deadline for submission of data by mortgage
22 servicers and lenders participating in the Program,
23 reports shall be made publicly available by means of
24 a World Wide Web site of the Secretary, and by sub-

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1 mitting a report to the Congress, that shall includes
2 the following information:

3 (A) The number of requests for mortgage
4 modifications under the Program that the
5 servicer or lender has received.

6 (B) The number of requests for mortgage
7 modifications under the Program that the
8 servicer or lender has processed.

9 (C) The number of requests for mortgage
10 modifications under the Program that the
11 servicer or lender has approved.

12 (D) The number of requests for mortgage
13 modifications under the Program that the
14 servicer or lender has denied.

15 (2) Not more than 60 days after each monthly
16 deadline for submission of data by mortgage
17 servicers and lenders participating in the Program,
18 the Secretary shall make data tables available to the
19 public at the individual record level. The Secretary
20 shall issue regulations prescribing—

21 (A) the procedures for disclosing such data
22 to the public; and

23 (B) such deletions as the Secretary may
24 determine to be appropriate to protect any pri-
25 vacy interest of any mortgage modification ap-

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1 plicant, including the deletion or alteration of
2 the applicant’s name and identification number.

3 **SEC. 1484. PROTECTING TENANTS AT FORECLOSURE EX-**
4 **TENSION.**

5 Section 704 of the Protecting Tenants at Foreclosure
6 Act of 2009 (12 U.S.C. 5201 note) is amended by striking
7 “2012” and inserting “2014”.

8 **Subtitle H—Miscellaneous**
9 **Provisions**

10 **SEC. 1491. SENSE OF CONGRESS REGARDING THE IMPOR-**
11 **TANCE OF GOVERNMENT-SPONSORED EN-**
12 **TERPRISES REFORM TO ENHANCE THE PRO-**
13 **TECTION, LIMITATION, AND REGULATION OF**
14 **THE TERMS OF RESIDENTIAL MORTGAGE**
15 **CREDIT.**

16 (a) FINDINGS.—The Congress finds as follows:

17 (1) The Government-sponsored enterprises,
18 Federal National Mortgage Association (Fannie
19 Mae) and the Federal Home Loan Mortgage Cor-
20 poration (Freddie Mac), were chartered by Congress
21 to ensure a reliable and affordable supply of mort-
22 gage funding, but enjoy a dual legal status as pri-
23 vately owned corporations with Government man-
24 dated affordable housing goals.

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1 (2) In 1996, the Department of Housing and
2 Urban Development required that 42 percent of
3 Fannie Mae’s and Freddie Mac’s mortgage financing
4 should go to borrowers with income levels below the
5 median for a given area.

6 (3) In 2004, the Department of Housing and
7 Urban Development revised those goals, increasing
8 them to 56 percent of their overall mortgage pur-
9 chases by 2008, and additionally mandated that 12
10 percent of all mortgage purchases by Fannie Mae
11 and Freddie Mac be “special affordable” loans made
12 to borrowers with incomes less than 60 percent of an
13 area’s median income, a target that ultimately in-
14 creased to 28 percent for 2008.

15 (4) To help fulfill those mandated affordable
16 housing goals, in 1995 the Department of Housing
17 and Urban Development authorized Fannie Mae and
18 Freddie Mac to purchase subprime securities that
19 included loans made to low-income borrowers.

20 (5) After this authorization to purchase
21 subprime securities, subprime and near-prime loans
22 increased from 9 percent of securitized mortgages in
23 2001 to 40 percent in 2006, while the market share
24 of conventional mortgages dropped from 78.8 per-
25 cent in 2003 to 50.1 percent by 2007 with a cor-

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1 responding increase in subprime and Alt-A loans
2 from 10.1 percent to 32.7 percent over the same pe-
3 riod.

4 (6) In 2004 alone, Fannie Mae and Freddie
5 Mac purchased \$175,000,000,000 in subprime mort-
6 gage securities, which accounted for 44 percent of
7 the market that year, and from 2005 through 2007,
8 Fannie Mae and Freddie Mac purchased approxi-
9 mately \$1,000,000,000,000 in subprime and Alt-A
10 loans, while Fannie Mae's acquisitions of mortgages
11 with less than 10 percent down payments almost tri-
12 pled.

13 (7) According to data from the Federal Hous-
14 ing Finance Agency (FHFA) for the fourth quarter
15 of 2008, Fannie Mae and Freddie Mac own or guar-
16 antee 75 percent of all newly originated mortgages,
17 and Fannie Mae and Freddie Mac currently own
18 13.3 percent of outstanding mortgage debt in the
19 United States and have issued mortgage-backed se-
20 curities for 31.0 percent of the residential debt mar-
21 ket, a combined total of 44.3 percent of outstanding
22 mortgage debt in the United States.

23 (8) On September 7, 2008, the FHFA placed
24 Fannie Mae and Freddie Mac into conservatorship,
25 with the Treasury Department subsequently agree-

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1 ing to purchase at least \$200,000,000,000 of pre-
2 ferred stock from each enterprise in exchange for
3 warrants for the purchase of 79.9 percent of each
4 enterprise's common stock.

5 (9) The conservatorship for Fannie Mae and
6 Freddie Mac has potentially exposed taxpayers to
7 upwards of \$5,300,000,000,000 worth of risk.

8 (10) The hybrid public-private status of Fannie
9 Mae and Freddie Mac is untenable and must be re-
10 solved to assure that consumers are offered and re-
11 ceive residential mortgage loans on terms that rea-
12 sonably reflect their ability to repay the loans and
13 that are understandable and not unfair, deceptive, or
14 abusive.

15 (b) SENSE OF THE CONGRESS.—It is the sense of
16 the Congress that efforts to enhance by the protection,
17 limitation, and regulation of the terms of residential mort-
18 gage credit and the practices related to such credit would
19 be incomplete without enactment of meaningful structural
20 reforms of Fannie Mae and Freddie Mac.

1964

1 **SEC. 1492. GAO STUDY REPORT ON GOVERNMENT EFFORTS**
2 **TO COMBAT MORTGAGE FORECLOSURE RES-**
3 **CUE SCAMS AND LOAN MODIFICATION**
4 **FRAUD.**

5 (a) STUDY.—The Comptroller General of the United
6 States shall conduct a study of the current inter-agency
7 efforts of the Secretary of the Treasury, the Secretary of
8 Housing and Urban Development, the Attorney General,
9 and the Federal Trade Commission to crackdown on mort-
10 gage foreclosure rescue scams and loan modification fraud
11 in order to advise the Congress to the risks and
12 vulnerabilities of emerging schemes in the loan modifica-
13 tion arena.

14 (b) REPORT.—

15 (1) IN GENERAL.—The Comptroller General
16 shall submit a report to the Congress on the study
17 conducted under subsection (a) containing such rec-
18 ommendations for legislative and administrative ac-
19 tions as the Comptroller General may determine to
20 be appropriate in addition to the recommendations
21 required under paragraph (2).

22 (2) SPECIFIC TOPICS.—The report made under
23 paragraph (1) shall include—

24 (A) an evaluation of the effectiveness of
25 the inter-agency task force current efforts to

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1 combat mortgage foreclosure rescue scams and
2 loan modification fraud scams;

3 (B) specific recommendations on agency or
4 legislative action that are essential to properly
5 protect homeowners from mortgage foreclosure
6 rescue scams and loan modification fraud
7 scams; and

8 (C) the adequacy of financial resources
9 that the Federal Government is allocating to—

10 (i) crackdown on loan modification
11 and foreclosure rescue scams; and

12 (ii) the education of homeowners
13 about fraudulent scams relating to loan
14 modification and foreclosure rescues.

15 **SEC. 1493. REPORTING OF MORTGAGE DATA BY STATE.**

16 (a) IN GENERAL.—Section 104(a) of the Helping
17 Families Save Their Homes Act of 2009 (division A of
18 Public Law 111–22) is amended—

19 (1) in paragraph (2), by striking “resulting”
20 and inserting “in each State that result”;

21 (2) in paragraph (3), by inserting “each State
22 for” after “modifications in”; and

23 (3) in paragraph (4), by inserting “in each
24 State” after “total number of loans”.

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1 (b) CONFORMING AMENDMENT.—Section
2 104(b)(1)(A) of such Act is amended by adding at the end
3 the following sentence: “Not later than 60 days after the
4 date of the enactment of the Wall Street Reform and Con-
5 sumer Protection Act of 2009, the Comptroller of the Cur-
6 rency and the Director of the Office of Thrift Supervision
7 shall update such requirements to reflect amendments
8 made to this section by such Act.”.

9 **SEC. 1494. STUDY OF EFFECT OF DRYWALL PRESENCE ON**
10 **FORECLOSURES.**

11 (a) STUDY.—The Secretary of Housing and Urban
12 Development, in consultation with the Secretary of the
13 Treasury, shall conduct a study of the effect on residential
14 mortgage loan foreclosures of—

15 (1) the presence in residential structures sub-
16 ject to such mortgage loans of drywall that was im-
17 ported from China during the period beginning with
18 2004 and ending at the end of 2007; and

19 (2) the availability of property insurance for
20 residential structures in which such drywall is
21 present.

22 (b) REPORT.—Not later than the expiration of the
23 120-day period beginning on the date of the enactment
24 of this Act, the Secretary of Housing and Urban Develop-
25 ment shall submit to the Congress a report on the study

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1 conducted under subsection (a) containing its findings,
2 conclusions, and recommendations.

3 **TITLE XV—MISCELLANEOUS**
4 **PROVISIONS**

5 **SEC. 1501. RESTRICTIONS ON USE OF UNITED STATES**
6 **FUNDS FOR FOREIGN GOVERNMENTS; PRO-**
7 **TECTION OF AMERICAN TAXPAYERS.**

8 The Bretton Woods Agreements Act (22 U.S.C. 286
9 et seq.) is amended by adding at the end the following:

10 **“SEC. 68. RESTRICTIONS ON USE OF UNITED STATES**
11 **FUNDS FOR FOREIGN GOVERNMENTS; PRO-**
12 **TECTION OF AMERICAN TAXPAYERS.**

13 “(a) IN GENERAL.—The Secretary of the Treasury
14 shall instruct the United States Executive Director at the
15 International Monetary Fund—

16 “(1) to evaluate, prior to consideration by the
17 Board of Executive Directors of the Fund , any pro-
18 posal submitted to the Board for the Fund to make
19 a loan to a country if—

20 “(A) the amount of the public debt of the
21 country exceeds the gross domestic product of
22 the country as of the most recent year for
23 which such information is available; and

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1 “(B) the country is not eligible for assist-
2 ance from the International Development Asso-
3 ciation.

4 “(2) OPPOSITION TO LOANS UNLIKELY TO BE
5 REPAID IN FULL.—If any such evaluation indicates
6 that the proposed loan is not likely to be repaid in
7 full, the Secretary of the Treasury shall instruct the
8 United States Executive Director at the Fund to use
9 the voice and vote of the United States to oppose the
10 proposal.

11 “(b) REPORTS TO CONGRESS.—Within 30 days after
12 the Board of Executive Directors of the Fund approves
13 a proposal described in subsection (a), and annually there-
14 after by June 30, for the duration of any program ap-
15 proved under such proposals, the Secretary of the Treas-
16 ury shall report in writing to the Committee on Financial
17 Services of the House of Representatives and the Com-
18 mittee on Foreign Relations and the Committee on Bank-
19 ing, Housing, and Urban Affairs of the Senate assessing
20 the likelihood that loans made pursuant to such proposals
21 will be repaid in full, including—

22 “(1) the borrowing country’s current debt sta-
23 tus, including, to the extent possible, its maturity
24 structure, whether it has fixed or floating rates,
25 whether it is indexed, and by whom it is held;

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1 “(2) the borrowing country’s external and inter-
2 nal vulnerabilities that could potentially affect its
3 ability to repay; and

4 “(3) the borrowing country’s debt management
5 strategy.”.

6 **SEC. 1502. CONGO CONFLICT MINERALS.**

7 (a) SENSE OF CONGRESS ON EXPLOITATION AND
8 TRADE OF COLUMBITE-TANTALITE, CASSITERITE, GOLD,
9 AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUB-
10 LIC OF CONGO.—It is the sense of Congress that the ex-
11 ploitation and trade of columbite-tantalite, cassiterite,
12 gold, and wolframite in the eastern Democratic Republic
13 of Congo is helping to finance extreme levels of violence
14 in the eastern Democratic Republic of Congo, particularly
15 sexual and gender-based violence, and contributing to an
16 emergency humanitarian situation therein, warranting the
17 provisions of section 13(o) of the Securities Exchange Act
18 of 1934, as added by section 1302.

19 (b) DISCLOSURE TO SECURITIES AND EXCHANGE
20 COMMISSION RELATING TO COLUMBITE-TANTALITE, CAS-
21 SITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN
22 DEMOCRATIC REPUBLIC OF CONGO.—Section 13 of the
23 Securities Exchange Act of 1934 (15 U.S.C. 78m), as
24 amended by section 763 of this Act, is further amended
25 by adding at the end the following new subsection:

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1 “(o) DISCLOSURES TO COMMISSION RELATING TO
2 COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND
3 WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC
4 OF CONGO.—

5 “(1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this subsection,
7 the Commission shall promulgate rules requiring any
8 person described in paragraph (2)—

9 “(A) to disclose annually to the Commis-
10 sion in a report—

11 “(i) whether the columbite-tantalite,
12 cassiterite, gold, or wolframite that was
13 necessary as described in paragraph
14 (2)(A)(ii) in the year for which such report
15 is submitted originated or may have origi-
16 nated in the Democratic Republic of Congo
17 or an adjoining country; and

18 “(ii) a description of the measures
19 taken by the person, which may include an
20 independent audit, to exercise due diligence
21 on the source and chain of custody of such
22 columbite-tantalite, cassiterite, gold, or
23 wolframite, or derivatives of such minerals,
24 in order to ensure that the activities of
25 such person that involve such minerals or

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1 derivatives did not directly or indirectly fi-
2 nance or benefit armed groups in the
3 Democratic Republic of Congo or an ad-
4 joining country; and

5 “(B) make the information disclosed under
6 subparagraph (A) available to the public on the
7 Internet website of the person.

8 “(2) PERSON DESCRIBED.—

9 “(A) IN GENERAL.—A person is described
10 in this paragraph if—

11 “(i) the person is required to file re-
12 ports to the Commission under subsection
13 (a)(2); and

14 “(ii) columbite-tantalite, cassiterite,
15 gold, or wolframite is necessary to the
16 functionality or production of a product
17 manufactured by such person.

18 “(B) DERIVATIVES.—For purposes of this
19 paragraph, if a derivative of a mineral is nec-
20 essary to the functionality or production of a
21 product manufactured by a person, such min-
22 eral shall also be considered necessary to the
23 functionality or production of a product manu-
24 factured by the person.

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1 “(3) REVISIONS AND WAIVERS.—The Commis-
2 sion shall revise or temporarily waive the require-
3 ments described in paragraph (1) if the President
4 determines that such revision or waiver is in the
5 public interest.

6 “(4) TERMINATION OF DISCLOSURE REQUIRE-
7 MENTS.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), the requirements of para-
10 graph (1) shall terminate on the date that is 5
11 years after the date of the enactment of this
12 subsection.

13 “(B) EXTENSION BY SECRETARY OF
14 STATE.—The date described in subparagraph
15 (A) shall be extended by 1 year for each year
16 in which the Secretary of State certifies that
17 armed parties to the ongoing armed conflict in
18 the Democratic Republic of Congo or adjoining
19 countries continue to be directly involved and
20 benefitting from commercial activity involving
21 columbite-tantalite, cassiterite, gold, or wolf-
22 ramite.

23 “(5) ADJOINING COUNTRY DEFINED.—In this
24 subsection, the term ‘adjoining country’, with re-
25 spect to the Democratic Republic of Congo, means

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1 a country that shares an internationally recognized
2 border with the Democratic Republic of Congo.”.

3 (c) REPORT.—Not later than 2 years after the date
4 of the enactment of this Act, the Comptroller General of
5 the United States shall submit to Congress a report that
6 includes the following:

7 (1) An assessment of the effectiveness of sec-
8 tion 13(o) of the Securities Exchange Act of 1934,
9 as added by section 1302, in promoting peace and
10 security in the eastern Democratic Republic of
11 Congo.

12 (2) A description of the problems, if any, en-
13 countered by the Securities and Exchange Commis-
14 sion in carrying out the provisions of such section
15 13(o).

16 (3) A description of the adverse impacts of car-
17 rying out the provisions of such section 13(o), if
18 any, on communities in the eastern Democratic Re-
19 public of Congo.

20 (4) Recommendations for legislative or regu-
21 latory actions that can be taken—

22 (A) to improve the effectiveness of the pro-
23 visions of such section 13(o) to promote peace
24 and security in the eastern Democratic Republic
25 of Congo;

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- 1 (B) to resolve the problems described pur-
- 2 suant to paragraph (2), if any; and
- 3 (C) to mitigate the adverse impacts de-
- 4 scribed pursuant paragraph (3), if any.